payments and crypto network

Governance arrangements

A series of guides addressing the subject of governance arrangements 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: Board composition and responsibilities

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").

The EMR and PSR require firms to maintain *"robust governance arrangements"*, including *"a clear organisational structure with well-defined, transparent and consistent lines of responsibility"*, which are *"comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided".*

The requirement will therefore require a degree of interpretation considering the specific context of the particular firm. In any case, the Board will form a key part of a firms' organisational structure and will be the "body" to which the majority of reporting lines should lead.

What is a Board?

In the UK, the board of directors ("Board") is the highest level of decision-making body within a company. It is responsible for overseeing the management and direction of the company, setting strategic objectives and policies, and representing the interests of shareholders. Within an EMI or PI business, the Board will hold ultimate responsibility for compliance with regulatory requirements.

The Board is typically elected by the company's shareholders and is responsible to them. Shareholders have the right to attend and vote at the annual general meeting ("AGM"), where they can hold the Board accountable for the performance of the company.

What is the purpose of the Board?

The purpose of the Board is to provide oversight and guidance to the management of a company. The Board is responsible for setting the overall strategic direction of the company, ensuring that the company is being properly managed (including complying with regulatory requirements as an EMI / PI), and representing the interests of the shareholders. Members of the Board, i.e. the individual directors, would have specific managerial responsibilities associated with their particular roles (e.g. CEO, CFO, COO, CTO, etc), as described further below.

Some specific responsibilities of the Board (as a whole) include:

- Setting the company's vision, mission, and values
- Establishing strategic objectives and policies
- Overseeing the management of the company and ensuring that the company is being run effectively
- Reviewing and approving major business decisions
- Ensuring that the company complies with all relevant laws and regulations; and
- Representing the interests of the shareholders and promoting shareholder value.

The Board plays a crucial role in the overall governance and performance of a company. It helps to ensure that the company is being run in a transparent, accountable, compliant and responsible manner.

Composition of a Board

The Board typically comprises a mix of both executive directors and non-executive directors, and may be led by a Chairman (who could be either an executive or non-executive director). The majority of EMI and PI businesses are not of a sufficient size to warrant maintaining a Chairman role (which is not a regulatory requirement in any case).

Executive directors are responsible for the day-to-day management and operation of the company (i.e. they are hands on).

Non-executive directors ("NED") do not have any operational responsibilities within the company and are generally not involved in day-to-day management activities. They provide independent oversight and challenge to the executive directors, and should bring valuable skills, experience and (potentially) contacts to the Board.

The responsibilities of the executive directors, given their day-to-day focus, will be of primary interest to the FCA. Note that only the larger EMI / PI businesses tend to maintain NEDs since they are not a regulatory requirement and are not involved in operational arrangements.

It is important to note that the composition of the Board will vary depending on the size, complexity and structure of the company, as well as the specific requirements and objectives of the business.

Executive and Non-Executive Directors

Executive directors are members of the Board and are responsible for the overall management and direction of the company. Executive directors are typically full-time employees of the company, have day-to-day operational responsibilities and report to the Board on matters concerning their relevant area of operations. They are expected to have a deep understanding of the company's operations, markets, and industry, and to use this knowledge to help guide the company's decision-making. Their daily involvement and operational responsibilities are key.

Executive director roles would therefore need to make operational sense, e.g. Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operating Officer ("COO") and Chief Technical Officer ("CTO"). The specific executive director roles that would be maintained by an EMI / PI should be guided by operational requirements and consider the senior manager roles that are also maintained (for example, a CTO may not be required if there is an IT Manager reporting to the COO). In all cases, the CEO is the highest-ranking executive director in the company and is responsible for implementing the strategic direction set by the Board.

There are no regulatory requirements regarding the executive director roles that should be maintained (see above point re making operational sense), although the number of executive directors based in the UK will be an important consideration regarding whether the EMI / PI is considered as having a UK Head Office – see the separate guidance documents:

- ***Applications for Authorisation (Guide 3 - Staff organisation structure)***
- ***Applications for Authorisation (Guide 4 - Head Office)***

A non-executive director is not involved in the day-to-day management of the company and does not have any operational responsibilities within the business. NEDs are typically not full-time employees of the company and may have other business or professional commitments. The main role of a NED is to provide independent oversight and challenge to the executive team. They are expected to bring a fresh perspective and challenge the assumptions and decisions of the executive directors. NEDs would therefore be expected to have a broad range of skills and experience that can be valuable to the company; they may have expertise in specific areas, such as finance, legal, or strategic planning, or they may have a strong track record of success (and contacts) in their own industry. Often, NEDs are known within their industry and can lend weight and credibility to the business.

Maintaining NEDs may be helpful in a group context to bring group culture and expertise to the EMI / PI. For example, executive directors of a parent entity could be appointed as NEDs of a subsidiary EMI / PI business in order to guide the local executive team. This is often seen within groups and can be especially helpful when a new business is being established and new executive directors recruited (basically, the NEDs can keep an eye on things until confidence grows in the executive team).

Overview of the main responsibilities of the Board

The main responsibilities of the Board are to provide oversight and guidance to the management of the company, set the overall strategic direction of the company, ensure that the business operates in a compliant manner and represent the interests of the shareholders.

Some specific responsibilities of a Board would include:

- **Setting the company's vision, mission, and values**: The Board is responsible for defining the long-term goals and values of the company and ensuring that these are reflected in the company's operations and decision-making.
- **Establishing strategic objectives and policies**: The Board is responsible for setting the overall strategic direction of the company and establishing policies and plans to

achieve the company's goals. This may involve setting performance targets, allocating resources, and making decisions about key business initiatives.

- **Overseeing the management of the company**: The Board is responsible for ensuring that the company is being properly managed and that the management team (i.e. directors and senior managers) is acting in the best interests of the company and its shareholders. This may involve reviewing financial and operational reports, assessing performance, allocating resources and providing guidance and support to the management team.
- **Reviewing and approving major business decisions**: The Board is responsible for reviewing and approving major business decisions, such as acquisitions, divestitures, and major capital expenditures.
- **Ensuring compliance with laws and regulations**: The Board is responsible for ensuring that the company complies with all relevant laws and regulations.
- **Representing the interests of the shareholders**: The Board is accountable to the shareholders of the company and is expected to represent their interests and promote shareholder value. This may involve communicating with shareholders, attending shareholder meetings, and responding to shareholder concerns.