



payments and crypto network

Compliance Arrangements

A series of guides addressing operational compliance issues for UK authorised Electronic Money Institutions (“EMI”) and Payment Institutions (“PI”).

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

Guide 6: EMD / PSD Individuals

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 associated guidance from the UK’s Financial Conduct Authority (“FCA”).

In addition, following the UK’s exit from the EU, the FCA continue to expect the firms that they regulate to comply with, to the extent that they remain relevant, guidelines published by the European Banking Authority (“EBA Guidelines”).

The directors and persons responsible for the management of the firm and its electronic money and payment services are referred to as “EMD Individuals” or “PSD Individuals” depending on whether the firm is an Electronic Money Institution (“EMI”) or Payment Institution (“PI”).

The FCA must assess individuals that will perform roles that are EMD / PSD Individual roles, as being ‘Fit and Proper’ before allowing the individual to perform the role.

The FCA’s fitness and propriety assessment is conducted considering the specific role for which authorisation is being sought and is designed to ascertain whether the individual:

- (i) is of good repute, and
- (ii) possesses appropriate knowledge and experience

to issue electronic money and provide payment services.

Applicants for authorisation would submit the relevant EMD or PSD Individual Forms as part of the overall application package or, for firms that are already authorised, forms would be submitted as part of the ongoing notification requirements.



The FCA's Principles for business

The FCA Handbook includes the 'Principles' (in the 'PRIN' sourcebook) which are a general statement of the fundamental obligations of firms. The Principles apply in whole, or in part, to every firm and are relevant in the context of the individuals that control and operate firms.

FCA Principles 1 to 3 are particularly relevant to the staff involved in an EMI or PI:

- Principle 1 ("**Integrity**") - A firm must conduct its business with integrity.
- Principle 2 ("**Skill, care and diligence**") - A firm must conduct its business with due skill, care and diligence.
- Principle 3 ("**Management and control**") - A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Firms will need to maintain policies, and operate procedures, to implement these Principles in the business.

Information required by the FCA to assess fitness and propriety

In order for the FCA to conduct their assessment of an individuals' fitness and propriety they require certain information which would be submitted in an EMD Individual Form or PSD Individual Form (depending on whether the firm is an EMI or PI). The information required in these forms is set by the FCA but also considers that specified by EBA Guidelines¹.

Forms would be submitted by the firm, either as part of an application for authorisation or, once authorised, in accordance with their ongoing notification requirements.

The forms require information on the identity of the individuals and evidence that they are of good repute and that they possess appropriate knowledge and experience to issue electronic money and perform payment services. Specifically, the forms require information including:

- Personal identification details
- Residential address history (3 years)
- Employment history (5 years); and
- Declarations in relation to various criminal, civil and administrative, business and employment, and regulatory matters.

Information that is provided should be "*full and complete*". The FCA "*attach considerable importance to the completeness and accuracy of the PSD Individual form or EMD Individual form. If the applicant is in any doubt as to whether or not any information is relevant, it should be included*".

Supporting documents include evidence of employment such as a letter of appointment or offer of employment, employment contract, CV, and evidence in relation to any civil or criminal matters that are declared.

The forms are available for download from the FCA's website.

¹ EBA Guidelines on the information to be provided for the authorisation of payment institutions and e-money institutions and for the registration of account information service providers - Guideline 16: Identity and suitability assessment of directors and persons responsible for the management of the electronic money institution.

Roles and EMD / PSD Individuals

Firms are likely to need to submit forms for each and every “manager”, but only to the extent that their role is directly relevant to payment services or e-money issuance. All directors (in the legal sense of the term ‘director’) would meet this definition. The majority of the next level senior managers, who would be responsible for the day to day operation of business functions, and who would report to the director level / Board, would also meet this definition.

FCA Guidance states that they “*would not expect a procurement manager, whose responsibility is limited to sourcing and purchasing goods and services for the applicant, to seek approval*”. Similarly, and in practice, sales or business development roles would likely not meet the definition.

The FCA guidance on roles that would meet the definition of EMD / PSD Individuals should also be considered:

- *“persons within the payment or e-money institution that are responsible for each of the outsourced activities*
- *persons responsible for the internal control functions (including for periodic, permanent and compliance control) e.g. Compliance Officer*
- *persons in charge of ensuring compliance with anti-money laundering and counter-terrorism obligations e.g. MLRO”.*

Individuals who will perform roles that are directly relevant to payment services or e-money issuance will need to be approved as EMD Individuals or PSD Individuals and submit the relevant form to the FCA.

Job descriptions

The EMD Individual or PSD Individual roles should have job descriptions that detail their associated responsibilities. Job descriptions should be agreed by the Board and used to guide the recruitment, staff due diligence and training arrangements.

Further information on roles and staff organisation can be found here, ***Applications for Authorisation: Guide 3 - Staff organisation structure.***

Staff Due Diligence

It is common for businesses to perform due diligence on potential new staff as part of a recruitment process, particularly during the final stages of the recruitment process and before offering employment.

A staff due diligence process for an authorised EMI / PI should involve some additional checks designed to ensure that candidates for EMD / PSD Individual roles are able to meet the FCA’s fitness and propriety requirements. This could involve, for example, candidates completing a draft EMD / PSD Individual Form.

Staff due diligence checks typically include all, or elements, of the following:

1. **Background checks:** This would involve checking the criminal records of employees to ensure that they do not have any previous convictions that would prevent them from working in a regulated financial institution.
2. **Identity verification:** This would involve verifying the identity of employees to ensure that they are who they claim to be and that they have the right to work in the UK.

3. **Education and qualifications:** This would involve checking the educational and professional qualifications of all employees to ensure that they have the necessary skills and knowledge to carry out their roles (as defined in the relevant job descriptions).
4. **Professional references:** This would involve checking references from previous employers to ensure that employees have a good work history and that they are suitable for the role they are applying for.

The checks required to ensure the FCA's fitness and propriety requirements are met could be incorporated into the above due diligence areas.

Firms could maintain a 'Recruitment and due diligence policy' to document the process, information requirements and checks that are performed on candidates for employment, in general and particularly in relation to EMD / PSD Individual roles. The policy could also describe the ongoing due diligence arrangements applied to existing employees.

Staff that will be performing Board or senior management roles should be assessed as being capable of being approved by the FCA as 'Fit and Proper' before they are recruited. These staff members would be subject to a more detailed due diligence process, which incorporates the requirements / declarations associated with the FCA's EMD / PSD Individual Form, than those staff performing roles that are not EMD / PSD Individual roles.

Records and documentation collected as part of the due diligence process should be reviewed as part of the initial assessment of candidate suitability and subject to ongoing review to ensure that staff remain fit and proper.

In particular, and with regard to EMD / PSD Individuals, the records should evidence the firms' actions to:

- assess the fitness and propriety of the candidates before recruitment to an EMD / PSD Individual role
- evidence the ongoing monitoring of fitness and propriety of such individuals
- highlight any notifications that would need to be made to the FCA with regard to changes in an individuals' circumstances; and
- highlight training requirements and training provided.

The recruitment and due diligence processes should also be guided by the job descriptions that should be maintained for each EMD / PSD Individual role and involve, to some extent, the person responsible for regulatory compliance matters, e.g. Compliance Manager (as a person to coordinate the regulatory aspects and advise on questions that may be raised).

Ongoing monitoring of the fitness and propriety of each EMD / PSD Individual should be conducted in a co-ordinated and logical manner, e.g. through the operation of the Compliance Monitoring Programme ("CMP"). The CMP would also serve as a valuable source of information for record keeping purposes. The subject of building a CMP is described here, ***Compliance Arrangements: Guide 3 - Building a Compliance Monitoring Programme.***

Fitness and propriety

Firms must satisfy the FCA that their directors and any other persons who are, or will be, responsible for the management of the firm, and its e-money or payment services, are of good repute and have the appropriate knowledge and experience. The FCA will use information submitted in the EMD / PSD Individual Form, and supporting documents, to perform this assessment.

The assessment of 'Fitness and Propriety' comprises assessments of:

- **Honesty, integrity and reputation** – including previous assessments from regulatory bodies; convictions (or current investigations) of any criminal offence particularly of dishonesty, fraud, or financial crime; any adverse findings or any settlements in civil proceedings; adverse findings or any settlements in civil proceedings; investigations or disciplinary proceedings; refused membership from professional organisations; disciplinary actions and 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 was connected with that organization; and
- **Competence and capability** - whether the individual has the knowledge, experience, and training to perform their role.

The ongoing monitoring of the fitness and propriety of these individuals will be key to identifying changes that may affect the fitness and propriety assessment (and which should be notified to the FCA – see below). Ongoing monitoring could be based around an annual performance appraisal process whereby individuals are required to confirm information previously provided that is relevant to their fitness and propriety assessment, i.e. the information provided on the EMD / PSD Individual Form.

Similarly, the provision of appropriate, role specific training will be important to maintaining the 'competence and capability' of these staff members. Training arrangements should be carefully thought out, cover compliance / regulatory matters and address the responsibilities associated with each specific role.

The coordination of the ongoing monitoring and training arrangements would typically form part of the operation of the CMP.

Appointment of EMD / PSD Individuals

An EMD / PSD Individual Form (depending on whether the firm is an EMI or PI) must be submitted for each Board member and senior manager.

The form should be completed by the relevant individual, and could involve assistance from the Compliance Manager, as part of the final stages of the recruitment process, i.e. as part of the due diligence process. Forms are available on the FCA's website, and should be completed in an open and honest manner, to include all the information required for the FCA to perform their assessment of whether the individual is of good repute and possesses appropriate knowledge. The form could also be completed following recruitment, although incorporating some of these checks at the recruitment / due diligence stage would make sense and help to protect the firm against recruiting staff that may fail the FCA's fitness and propriety assessment.

The Compliance Manager would be best placed to coordinate the submission of forms to the FCA and responding to any queries. The Compliance Manager should also maintain a list of roles that will represent EMD / PSD Individual roles and the individuals that perform them. Copies of the EMD / PSD Individual Forms should be retained for reference purposes and to facilitate ongoing due diligence and staff appraisals.

Changes in EMD / PSD Individuals

Changes to the individuals performing EMD / PSD Individual roles will need to be notified to the FCA by submitting an EMD / PSD Individual Form for the new individual and a 'Remove EMD Individual' or 'Remove PSD Individual' form in relation to a departing individual.

Changes in EMD / PSD Individuals are regarded as a significant change, requiring firms to notify the FCA of appointments before the change takes place, and removals no later than seven working days after the event.

Notification of changes to EMD / PSD Individuals

Firms must also notify the FCA of any changes in the details of existing EMD / PSD Individuals, such as name or address changes and matters relating to fitness and propriety, using the 'Amend an EMD Individual' or 'Amend a PSD Individual' form.

It should be the responsibility of the EMD / PSD Individual to bring to the attention of the Compliance Manager a change in their personal circumstances, or any other matter, which may be relevant to their status as an EMD / PSD Individual. Firms could include this requirement to notify the company of any relevant changes in the staff members' employment contract / terms of service. EMD / PSD Individuals should be provided with periodic training designed to highlight the importance of notifying such matters to the Compliance Manager.

Further guidance in relation to the notification requirements is available here, ***Compliance Arrangements: Guide 8 - Notifications and Reporting***.

Training arrangements

Training should be provided to all EMD / PSD Individuals at various stages, including as part of the appointment process and on a reasonably frequent ongoing basis, to ensure that such individuals understand the requirements and consequences of performing a role that is classified as an EMD / PSD Individual.

Training in relation to the EMD / PSD Individual requirements, as a regulatory matter, would typically be provided by the Compliance Manager.