**Guidance for analyzing an EMI license application**

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# The objective of this guidance document

This document provides general guidance for the analyses performed by regulators and supervisors, with respect to applications for a license (or authorization) to operate as a new non-bank e-money issuer (EMI).

# Application of this guidance document

This document focuses on the analyses pertaining to the applications by new EMIs (not yet in operation at the time of the application). Banks are usually not required to obtain an EMI license to offer e-money, but they may create a subsidiary company to operate as an EMI. In such cases, the guidance in this document would be applicable to the proposed EMI owned by a bank.

This document may be used as a starting point for supervisors to produce their own licensing manuals, or as an input to improve existing ones. It should not be used as the sole guidance for analyzing licensing applications without customization to the local regulatory framework. This is because, while this document is based on international practice and regulatory frameworks for EMIs, there could be instances where it may not align with local laws, regulations, or supervisory practice.

This document may also be used to help supervisors create manuals for analyzing licensing applications of other types of DFS providers (other licensing categories than EMIs), such as Payment Service Provider (PSP) and others. However, each licensing category will have a different focus and scope of activities in line with the activities permitted by regulation. As a consequence, the sections of this document that are particularly tailored to EMIs (e.g., 7.3 and 7.4.3), may not be fully applicable or applicable at all. Supervisors using this document to develop licensing manuals for other licensing categories should ensure it is adequately adjusted.

# Single-phase vs two-phase licensing process

The use of certain elements of this guidance, such as the checklist for licensing applications, will also vary depending on whether there is a single-phase or a two-phase licensing process.

In a single-phase process, the supervisor will need to make a judgement about the level of detail required for the licensing documentation, depending on the level of preparedness expected from the applicant at time of application. The supervisor needs to clearly communicate in which stage of their planning or setting-up EMIs should be in order to apply for a license. If EMIs can apply very early in their planning process (typical of a two-phased licensing process), they may not be able to provide, for instance, a detailed description of their operational procedures and the names of key executives.

A two-phase processentails the following:

* In the first phase, the supervisor will require less detailed information from the applicant, typically, the information about the proposed business, the main shareholders and investors. The supervisor may also require the applicant to make a presentation about the business, and to prove that it has set aside the required minimum initial capital. After this initial analysis, the supervisor will issue the initial authorization or license (in some countries this is known as “in-principle authorization/license” or “provisory license”) to allow the EMI to enter the second phase.
* In the second phase, the applicant will get ready to start operations, by setting up the business, buying equipment, hiring personnel, installing systems and networks, formalizing partnerships, preparing marketing materials, among other activities. The applicant may be able to run pilots with a limited number of customers during a specified period, if that’s agreed upon with the supervisor. By the end of the second phase, whose duration is either set in regulation or agreed with the supervisor, the supervisor will issue her final decision to issue or not the license. Typically, the supervisor will have at least one meeting with the applicant before issuing the license, and may request additional information or documentation, including results of any pilots. Many supervisors also conduct an inspection of the facilities of the applicant, prior to issuing the license.

This guidance can be adapted to be used in both approaches to licensing.

# Principles and objectives when analyzing EMI licensing applications

## Principles in licensing EMIs

1. Supervisors should strive to achieve fairness and consistency in their licensing decision and avoid, for example, treating more favorably well-known or large applicants.
2. Supervisors should strive to achieve proportionality in their licensing requirements and depth of analysis of licensing applications. The more complex and larger the applicant EMI, the higher the supervisor’s expectations not only regarding the quality of the licensing application, but also the standards that the applicants shall meet (e.g., risk management procedures, investment plan, qualified executives).

## Objectives in licensing EMIs

In analyzing and deciding upon an EMI’s licensing application, the supervisor should have in mind the following objectives:

1. Ensure that EMI promoters (board members, significant shareholders and senior management) are fit and proper, having good standing and reputation in the industry, relevant experience and expertise, and no compromising background.
2. Ensure that the EMI is ready and capable to comply with minimum entry and operating requirements.
3. Ensure that the EMI’s entry will contribute to all or some of the policy objectives of the supervisor, for example by increasing competition, serving underserved segments, operating in a niche market, increasing efficiency, enhancing consumer protection, or increasing safety.
4. Ensure that the EMI has secured enough resources and commitment to build a solid business at par with the best domestic or international practices for this industry.
5. Deciding upon an application for a new EMI to operate should not be just a bureaucratic process. Assembling a licensing package and demonstrating compliance with the minimum entry capital as required by the regulation are not enough grounds for automatically approving the application. Rather, licensing procedures should include a thorough analysis of whether the applicant complies with the minimum entry requirements and shows willingness and capacity to comply with ongoing operating requirements.
6. Not all detailed standards and requirements set in the EMI regulation need to or can be checked in detail during the EMI licensing, but the supervisor must be satisfied that the proponent has demonstrated resources and expertise to fulfill operating requirements such as internal controls, risk management and governance standards. Full verification of regulatory compliance should be done through ongoing supervision, when the EMI is in full operation, following the risk-based methodology.

# Step 1: Identifying specific entry and operating requirements

As a first step, supervisors should identify all the specific requirements laid down in laws and regulations for an EMI to obtain a license and operate in the country. Such requirements should be incorporated into the supervisor’s own internal guidance for EMI licensing applications. Entry and operating requirements may include:

* The documentation required for a licensing application, in each licensing phase
* Who can be the shareholders and controllers of an EMI
* The minimum entry capital, whether and how it needs to be deposited with the authority during the licensing procedure
* Licensing fees
* Licensing timelines
* The permitted activities for EMIs
* Operational requirements including:
  + Use of agents
  + Systems, technological and safety standards
  + Trust account, fund segregation and reconciliation requirements
* Internal controls requirements
* Risk management requirements
* Record-keeping and reporting requirements
* AML/CFT control requirements
* Consumer protection and conduct requirements
* Ongoing capital and liquidity requirements

# Step 2: Checking the application package

1. This step should start by checking whether the application package presented by the proponents is complete according to the requirements of the regulation. It needs to have all documentation and information listed in the regulation dealing with licensing applications and other guidance put out by the supervisor for new EMIs.
2. One way to make this process easier, faster and more consistent is to create a ***checklist*** (see template below) for the supervisor to follow.
3. At this stage, the content of the application is not analyzed. This is purely to check the formality of the application.
4. The checking of the payment of the licensing fees should be done following local practices.
5. The checking of compliance with the minimum entry capital should be done following local practices.
6. If the application is complete, a notification should be sent to the applicant, informing that the analysis has officially started, and with it, the counting of days for the deadline for the decision. Supervisors should clarify that the counting is interrupted in case additional information and meetings are called for.
7. If the application is incomplete, the supervisor should immediately summon the proponents for a meeting or list in a notification the missing items, setting a deadline.
8. Ideally, this initial process is conducted using an online system that allows the applicant to submit the licensing package in digital format and provides a means for easy communication between the applicant and the supervisor, including requests for additional documentation or to re-submit a particular file.

***Checklist template (with a few examples of items usually required in EMI regulations)***

|  |  |  |  |
| --- | --- | --- | --- |
| **Document / Information** | **Related regulatory provision** | **Yes** | **No** |
| ***Application letter***  Purpose of the application, the purpose of the business, the documentation that is being submitted, the contact for the person responsible for the application, and signature of competent persons. |  |  |  |
| ***Articles of incorporation***  Documentation showing the existence of the company created to operate as the EMI |  |  |  |
| ***Minimum initial capital***   * Proof that the minimum initial capital has been paid up (or otherwise according to the regulation) |  |  |  |
| ***Origin of funds***  Proof of the origin of funds for the minimum initial capital and explanation about the sources of initial and further investments in the EMI   * + SWIFT message (for foreign) or proof of bank transfer (for domestic)   + Bank account statement of the EMI and the investor   + Financial statements of shareholders   + Further explanations |  |  |  |
| ***Business Plan***  Strategic Plan  Market analysis (business opportunities, competition, target market segments, positioning strategy, marketing) |  |  |  |
| Details of nature and functionality of the EMI operations |  |  |  |
| Details of the products/services to be offered |  |  |  |
| Geographical coverage |  |  |  |
| Operational Plan  Revenue sources: range of fees and charges |  |  |  |
| Staffing and agents   * Hiring and retention strategy * Remuneration policy, including for agents |  |  |  |
| * Detailed organizational chart, showing reporting lines and staff numbers and major functions * Description of process for customer onboarding * Workflow of e-money transactions * Explanation of how notifications and receipts will be available to customers * Detailed description of the technical platform to be used, including its reputation, trust and use in the market, record keeping features and scalability * Description of major reliance on third parties such as cloud computing providers and agent network managers * Description of the agent onboarding and network growth strategy * Description of the plans and technical capacity to connect to the national payment system |  |  |  |
| Financial Projections  Projected Key Performance Indicators (KPIs) for the period of the business plan, possibly considering 3 alternative scenarios: optimistic, probable, pessimistic. Minimum items include:   * + Number of accounts (registered and active)   + Total e-float   + Number of agents   + Number of agent network managers   + Total revenue   + Total expense, itemizing agent fees   + Total overhead costs   + Total commercial/marketing costs   + Capital expenditure (including investment in the technology platform)   + Result (profit/loss) * Key assumptions impacting funding cost and performance (e.g., inflation, GDP, interest rates, etc.) * Projected yearly financial statements (balance sheet, income statement) * Projected monthly cash flow for the first year of operation |  |  |  |
| ***Regulatory Compliance***  Policies and Procedures   * Policies and procedures for data security, with description of data infrastructure and security features * Policies, procedures, and systems to avoid, identify and address internal and external frauds * Internal control policies and procedures * Business continuity and disaster recovery plan (BCP) * Policies and procedures, as well as information systems for registering, addressing and storing complaints by customers and agents |  |  |  |
| AML/CFT   * AML/CFT policies and procedures, including customer and agent due diligence * Description of systems and procedures for ensuring compliance with daily and monthly transaction and balance limits, including in case of aggregate balances of multiple accounts held by a single customer or agent |  |  |  |
| ***Fit & Proper***   * Identification details * Description of professional experience * Description of roles/jobs the person has in other companies * Description of duties to be assumed at the EMI * Certifications by police authorities |  |  |  |
| Owners   * Allotment of shares of the EMI * Profile of holding company and individual final owners * Detailed organizational chart of the economic group * Recent financial statement of the holding company * Tax returns of the individual owners |  |  |  |
| ***Agents***   * Services to be provided through agents * Geographical coverage over initial growth period * Policies and procedures for services through agents * Standard agency agreement (model) * Assessment of risks of using agents and risk management procedures * Description of agent monitoring procedures |  |  |  |
| * Use of third parties (e.g., agent network managers) * Description of the systems utilized to manage agents (e.g., agent database) |  |  |  |
| ***Trust Account and Fund Segregation Requirements***   * Information about planned trust (or similar) account arrangement with one or more banks. * Model trust agreement * Investment strategy for the funds kept in the trust account * Planned use of the interest earned from the trust account |  |  |  |
| Reconciliation of Trust Account   * Detailed description of the reconciliation process, with details of any integration between the trust account and the EMI operational accounts, and accounts of agents and agent network managers |  |  |  |
| ***Consumer Protection***   * Model consumer agreement for e-money accounts * Draft marketing and other consumer communication and marketing materials * Description of how customers will be given access to transaction history and account statement * Description of fee disclosures at transaction points * Print screens of customer interaction platforms * Description of complaints handling procedures |  |  |  |
| ***No-Objection letters***  If the EMI is owned by a company regulated by another domestic authority (e.g., telecommunications regulator) or a foreign authority (e.g., a payments regulator)   * Letter of no-objection from such authority |  |  |  |

# Step 3: Analyzing the application

After the initial check for completeness of the licensing package, the supervisor can start the analysis, focusing on 3 elements:

1. Fit & Proper requirements
2. Business plan
3. Regulatory compliance

**The** **analysis may combine several techniques, including**:

1. examining documentation submitted in the application package
2. examining documentation requested to other authorities
3. consulting databases (e.g., courts, police)
4. examining third-party sources such as media reports, academic institutions, reports by other authorities
5. examining the applicant’s websites
6. conducting meetings with the applicant, proposed Board members, proposed senior management
7. exchanging messages for clarification or other purposes.

## Initial meeting

At least an initial meeting (and potentially multiple meetings) should be organized with the applicant after a preliminary analysis of the licensing package, including the analyses described below. In this meeting, the applicant should present a complete overview about the proposed EMI business, in line with the business plan, an overview of the risks and challenges, threats and opportunities to be faced by the EMI, as well as detailed explanations of the operational strategy and the systems to be used. Demonstrations of the products and customer interfaces can also be done. This will also be the first opportunity for the supervisor to clarify questions and issues raised in the preliminary analysis and that could not be clarified through remote communications. Meeting the applicant is also the main way for supervisors to “have a feeling” for the applicant, their commitment to the project, knowledge about the application, about the regulatory framework, their expertise and intentions. These more subjective aspects cannot be covered by document analyses. Further meetings and calls should happen whenever needed.

## Analysis of Fit & Proper Requirements

### Analytical procedures

1. **Professional experience and expertise**
   1. Check whether the CEO and Senior Management have the required professional experience and profile to undertake their roles, by comparing their CVs with the description of their roles in the EMI.
   2. Check if at least one Board Member has experience with e-money issuing, payment services, or some type of transactional financial services, and at least one has experience with technology services applied to financial services, by analyzing their CVs.
   3. Do an internet search on the CEO, Board Members and Senior Management, as well as on the companies they have worked for, to check the information provided on professional experience with internet information.
   4. In case there is suspicion about the veracity of the information, get in touch with the academic institutions and companies mentioned in the CVs.
2. **Potential conflicts**
   1. In case the EMI is part of an economic group, check whether the roles played by the CEO and other Senior Management members can raise any conflict with their roles in the EMI, such as limited capacity to perform their roles due to time constraints and distance, or functional conflicts, such as combining responsibility for consumer complaints at the EMI and commercial business units (which are sources of consumer complaints).
   2. Evaluate whether any information in the documentation or in the internet search could indicate any conflict of interest or impediment.
3. **Reputation**
   1. In case the CEO, Senior Managers and Board Members have played roles in financial institutions in the country, evaluate whether their previous performance or reputation could in any way negatively impact the EMI or even the market. Attempt to do the same analysis for foreigners whose experience has been abroad. If necessary, require more information and reference contacts.
   2. Evaluate whether the roles played in other companies, as well as the information on the internet about the CEO, Senior Managers, Board Members, and the economic group in which the EMI participates could raise any reputational issue.
   3. Check information with other authorities if necessary.
   4. Check for any inconsistencies in the information provided about professional experience, academic record and the knowledge needed for the proposed role at the EMI.
4. **Financial strength of owners** 
   1. By analyzing the financial statement (if a holding company) or tax returns (if individuals) of the EMI owners, an assessment must be made regarding their financial strength to cover not only the initial investment in the EMI (including minimum entry capital), but also losses projected for the first years and future investments (foreseen in the investment plan of the business plan)

## Business Plan Analysis

The Business Plan (BP) is the core of the analysis of the EMI application. Through the BP the supervisor will look for regulatory requirements and an overall understanding of the applicant’s intentions and strategy, as well as the strength of the proposed business. A BP is a full description of the business strategy, policies, resources, infrastructure, funding strategy, and the expected financial results. In general terms, the analysis will focus on deciding whether the BP is complete and coherent, and whether the plans and projections are realistic.

### Determining whether the Business Plan is complete

The first step is to determine whether the BP submitted gives a complete picture. Essentially, the needed content can be divided into 3 elements.

1. Strategic Plan – explanations about the EMI objectives, a market analysis showing the current situation of the e-money and payments market, the business opportunities to be explored, the challenges and success factors of the EMI business, the positioning strategy, and targets of the EMI (e.g., market share, KPIs). A SWOT analysis is also useful.[[1]](#footnote-1)
2. Operational Plan – the core of the BP plan is the operational plan. This is a detailed explanation of how the strategy will be implemented, including details about products and services, geographical coverage, revenue sources, major costs, staffing and retention plan, organizational and governance structure, risk management framework, main IT systems, agent network strategy, other channels, complaints handling mechanism, marketing, branding, etc.
3. Financial Projections – these are the financial projections resulting from the strategic and operational plans. The financial projections must be complete (projected balance sheet, income statement and first year’s cash flow) and cover a minimum period of 3 years. Ideally, this is sent in electronic form (e.g., Excel), so that the supervisor can see the formulas used.

To decide whether the BP is complete, the licensing team needs to look at the content and quality of the information provided. A complete BP provides:

* a background of the promoters and why they are investing in the EMI
* an overview of the EMI business
* the objectives and goals of the EMI, such as through mission, vision, goals statements
* an explanation of the EMI market, description of market segments, competition, and specific business opportunity (e.g., demand that is not met by competitors) that will be explored (Market Analysis)[[2]](#footnote-2)
* explanation about the target market, distribution and market strategy, products, pricing
* the specific targets (e.g., market share, growth)
* organizational chart of the EMI and the economic group in which it is inserted, relationship between the EMI and other businesses in the economic group, EMI governance framework, staffing strategy
* remuneration policy for senior management and agents (agent fees/commissions)
* main IT platform, other major IT systems (e.g., complaints handling, agent database), description of major operational processes, and continuity and disaster recovery plan
* business risks and mitigation mechanisms, including internal controls
* revenue model, including fees from customers and third parties (e.g., partnerships with insurers, banks, nonbank lenders)
* strategic partnerships planned
* growth and expansion plan, backed by explanations on funding and capitalization
* projection for financial KPIs
* key assumptions to support financial projections and funding costs (e.g., inflation, GDP growth, central bank rate, maximum bank lending rate)
* financial projections for at least 3 years, in line with growth plan and KPIs, including income statement and balance sheet (ideally also a monthly cash flow for the first year)[[3]](#footnote-3)

### Analytical procedures

#### Quality: coherent and realist BP

The analysis of the BP and its elements should be thorough. It should assess whether it is realistic, whether the various elements are consistent with each other, and whether the proposed business and strategy are considered beneficial for the local market – including consumers – and the relevant policy goals.

The main objectives of asking for and analyzing the BP are:

1. Check the consistency of the BP with other licensing documentation.
2. Assess whether the BP is realistic and generally in line with market practices, including other applications being analyzed or already finalized.
3. Assess whether the financial projections are realistic given the market conditions.
4. Assess, judging by the quality of the BP and the meetings conducted with the applicant, whether the applicant is committed to the long-term success of the EMI business, including to face projected losses during the first years of operation.
5. Ensure that the BP describes business practices, organizational structure, staffing, and strategy that are aligned with the broader goals of competition, consumer protection and systemic stability, and are compliant with the requirements of the EMI regulation.

All significant issues resulting from the BP analysis should be noted for discussion in meetings with the applicant, and minor inconsistencies and issues may be resolved through remote communications.

The analysis should determine whether the BP presents a coherent proposal, including its projections. In the Strategic Plan, for instance, the strategic objectives must be consistent with the mission statement and with the market analysis. Also, the products and services to be offered must be a response to the market opportunity described in the market analysis, which should provide a view of how the EMI will enter the market and compete with existing players, acquire and retain customers, have funds to cover losses and grow to achieve the KPIs in the Financial Projections. A good portion of the BP analysis will be to understand the business and identify inconsistencies across different elements of the BP, such as in the following examples:

*àIf the market analysis indicates that the main opportunity is to focus on rural populations, it would be inconsistent to offer a product whose marketing is focused on urban youth.*

*àAnother inconsistency would be when the projected fee revenue in the Financial Projections is not aligned with the projected growth of active e-money accounts, or if the target market share (% of the total market to be covered by the applicant) is not aligned with the projected number of accounts.*

Another technique is to compare the business strategy and projections with those of other applicants in the same market. Does the BP deviate too much from current market strategies and practices? Do the KPIs and projections deviate too much? One way of comparing the applicant with existing EMIs or payment institutions is to go back to previous applications, and check the financial statements reported by other EMIs of similar size. If there are important differences, explanations could be required from the applicant.

The supervisor should be able to make a judgment about whether the BP is realistic.While the viability of an EMI is not the most important concern in the analysis of the BP (as it could be for a bank, for instance), it is relevant to form a view about it. This can be done considering the country market conditions, including microeconomic factors (e.g., number and focus of competitors, unmet demand) and macroeconomic factors (e.g., social economic variables, such as inflation, central bank rate, GDP growth). If available, information about foreign EMI markets and how they grew over time may also be of value. It is not uncommon for applicants that want to enter a market to present an overly optimistic BP, as they may believe this will please the regulator (they may have another version – more realistic BP – for internal use), or simply because there is an unmet demand. Many EMIs fail for not having focus, having an unclear positioning strategy, or for lacking shareholder commitment to cover losses. Some applicants may think that it is necessary to show a profit by the last year of the Financial Projections presented to the supervisor, regardless of how unrealistic that may be for a new EMI. A good BP does not necessarily need to show profit by the end of the projection period.

An incomplete or low-quality BP does not necessarily mean that the EMI has a bad business strategy or does not have the right skills and resourcesto be successful. It may simply be a reflection of a misunderstanding of the licensing requirements. In some extreme cases, the applicant may be dismissive of the need to present full information and a quality BP. Applicants with existing non-financial, non-regulated businesses, and with no previous experience in being regulated may be wary of sharing too much information with the supervisor. However, a poor BP can sometimes be a reflection of a real inability and inadequacy of the applicant. The supervisor should differentiate these two situations, and the best way to do it is to address questions and issues in meetings with the applicant, followed by internal discussions within the supervision team and potentially other teams.

Analysis of the Operational Plan shall include such questions as:

* 1. Are the organizational and governance structure proportional to the current and projected complexity and size of the EMI and are they aligned with good corporate governance principles?
  2. Are there indications that the EMI will have effective risk management?
  3. Are there indications that the EMI will follow good business conduct standards?

Analysis of the Financial Projections shall include such questions as:

1. Does the EMI use trusted sources of macroeconomic variables?
2. Are the sources and cost of funding realistic, given the reality of the applicant and the current and projected market conditions (e.g., if there is a bank credit crunch and the EMI projects a large bank loan in the first year)
3. If alternative scenarios have been analyzed in the BP, is the business resilient to changes in key variables?
4. Do the formulas in the excel file make sense? Are the results correct?

#### Consistency with other information provided or gathered

The supervisor should also compare the consistency of the BP with other information in the licensing package, information from the meetings, or information gathered some other way. For instance, it’s an inconsistency if the policies and procedures for consumer complaints handling state that there will be a dedicated team for addressing consumer complaints, but the organizational chart in the BP does not show any unit with that function. Also, it’s an inconsistency when the Strategic Plan describes the products to be offered in one way, but the marketing material submitted describes them in another way.

## Regulatory Requirements

Not all requirements set forth in the EMI regulation will be analyzed during the application. The focus should be on an overall assessment of the applicant’s commitment and ability to comply with the EMI regulation. In some areas and depending on the stage at which the EMI project is, the supervisor may require more detailed information (e.g., on customer onboarding).

### Minimum Capital and Origin of Funds

The main purpose of this analysis is to check whether the applicant has presented sufficient proof of the payment of the minimum entry capital and assess whether the value transferred is consistent with the owner’s financial capacity and the information provided about the origin of such funds (e.g., retained earnings, a loan from a bank).

#### Analytical procedures

1. Check whether the funds were transferred directly from the applicants to the EMI, through SWIFT receipts, credit notice, or bank statements (from both ends). If not transferred directly, additional bank documentation must be presented to trace the funds back to the applicants, and additional clarifications may be needed.
2. Check whether the amount transferred is consistent with the financial situation of the applicants by looking at the applicants’ financial statement or tax returns. If there is indication that the owner did not have enough funds or if the funds’ origins cannot be established, clarifications must be sought.

### Dedicated Company and Permitted Activities

Applicants for an EMI license are usually required to create a separate legal entity set up solely for the purposes of carrying out the EMI business. Also, EMIs are usually allowed to offer a limited set of services to their customers., such as:

1. Opening and maintaining e-money accounts
2. Cash-in/cash-out transactions to/from e-money accounts
3. Transfers between e-money accounts and to/from bank accounts
4. Domestic payments (e.g., P2G, P2B, B2B)

#### Analytical procedures

1. In the EMI bylaws (articles of incorporation), check the description of the corporate purpose (objective) and the activities to be undertaken.
2. In the application letter and the BP, check the description of the services to be offered to the customers.
3. If marketing materials were presented, check the description of the services offered.
4. Check the information about strategic partnerships with other financial institutions or other partners.

If further clarification is needed, take note of the questions raised and address them in the meeting with the applicant. In case the information indicates that the EMI plans to offer something that is not explicitly permitted by regulation, a decision needs to be made as to whether to allow the additional services using the supervisor’s prerogative to expand the list of permitted activities, or request the applicant to drop such plans and adjust its BP.

### Trust Account and Reconciliation

Most regulations require EMIs to set up one or more than one trust (or similar) accounts with one or multiple banks in which it will keep, at all times, at least the equivalent to the total e-money issued. A trust account agreement is necessary to set the terms of the account, between the trustee and the bank. The trust agreement does not establish a partnership between the EMI and the bank for the purpose of the EMI business and hence shall not have clauses that intend to do so. For instance, a trust agreement should not give the bank right of access to EMI client data.

#### Analysis of trust agreement

In the existing or planned trust agreement(s), check that it:

* 1. Clearly establishes a trust relationship between the trustee and the e-money accountholders, including agents, business and individuals, that is, establishes that the trustee holds and manages the funds (“trust assets”) on behalf of the accountholders – the “beneficiaries”.
  2. Requires the EMI to place all accountholder funds into a licensed bank (the custodian), in:
     1. current account(s), with proper market standard remuneration (and relevant characteristics of a trust account per the legal framework) or
     2. a specified asset portfolio, which shall be examined and approved by the DFS supervisor (in case such a situation is allowed by regulation)
  3. Requires the EMI to:
     1. keep at least the balance of total e-float in the trust account
     2. reconcile e-float and the trust account balances at least by the minimum reconciliation period required by regulation
     3. keep all records concerning the e-money accounts according to generally accepted accounting standards
  4. Forbids the EMI to use trust account funds to:
     1. finance its own business operations
     2. extend credit or
     3. any other purposes, except repaying e-money accountholders when cashing-out their remaining e-money balances, or conducting transactions using their account balances.
  5. Clearly states whether interest is paid on the trust account and how it will be paid.
  6. Allows independent auditors and the supervisor to have access to all the books and records concerning the trust account.
  7. Allows the supervisor to:
     1. monitor and audit the trust account, and have access to any audit report
     2. require amendments to the trust agreement
     3. mandate the termination of the trust agreement
     4. appoint a new trustee
     5. remove a trustee
  8. Clearly states that in case of termination of the trust agreement, the beneficiaries will be repaid the equivalent of their e-money account balances, or their balances will be transferred to another float account.
  9. Clearly states that the bank will have no access to the individual e-money accountholder information.[[4]](#footnote-4)

#### Analysis of reconciliation procedures

Analyze the description of the trust account reconciliation procedures to check whether:

1. It is clear how the EMI’s procedures and systems will ensure that the trust account will have at least the equivalent to the total e-float balance in the frequency required by regulation (e.g., by the end of every day, or real time)
2. The person/department responsible for trust account reconciliation is identified
3. The procedures are strong enough to avoid system and human errors and internal or external frauds.

#### Analysis of planned e-float balances

Analyze the planned total e-float balances to assess whether the EMI shall place them in trust accounts of two or more banks to reduce the risk to the EMI. The EMI supervisor should also discuss with the bank supervisor whether the bank(s) assigned to hold the float account(s) are capable of doing so.

### Agents, Risk Management, Systems and Internal Controls

#### Analysis of agent business

For each agent model agreement:

* 1. Ensure there is no clause requiring agent exclusivity
  2. Ensure there is a clause keeping the EMI liable for the actions of agents
  3. Check that the obligations of both agents and the EMI are clearly established
* A clause must make agents responsible for ensuring customers are informed that agents act on behalf of the EMI, for conspicuously displaying applicable fees and charges, and for abiding to the EMI policies and procedures, including CDD procedures.
* A clause must make the EMI responsible for furnishing agents with necessary communication materials (signage), operational procedures manuals and training, and fee schedule and other disclosures to be displayed at the agent.

1. Check if there are clauses prohibiting certain actions by the agent and establishing consequences should the agent commit them, including:

* To conduct e-money transactions in the name of the EMI without permission by the EMI
* To charge customers fees in addition to those that are set by the EMI and disclosed in the fee schedule displayed at the agent
* To conduct e-money transactions when the systems are down

Documentation describing agent network and agent-related policies:

1. Assess whether policies related to agent selection, training and remuneration are in line with market practices, and signal a commitment by the EMI to establish and maintain high quality agent operations, including when third parties such as agent network managers are used.
2. Assess whether the EMI is able to effectively monitor and manage agents when using third parties such as agent network managers (e.g., check whether EMI is able to remotely see and block agent transactions).
3. In the agent network manager agreement, check whether there is undue shifting of responsibilities away from the EMI.

#### Analysis of safety, soundness and efficacy

Verify policies concerning:

* 1. Data security, including access to consumer data, transactions, authentication processes and IT standards to check whether the main policies and mechanisms to keep confidentiality are clear and reasonable. Enquire whether the information about customer ID is stored at the EMI, not at agents and not at banks holding the float accounts.
  2. Fraud detection, mitigation and notification to the supervisor. Assess whether the EMI describes main procedures, systems and policies to avoid and address frauds.
  3. Business continuity and disaster recovery plan (BCP), to check whether there is a clear description of procedures to resume operations and precautions to avoid loss of transaction information, in the case of extreme events. Verify if there are back-up sites to keep systems running and recovery plans.

#### Analysis of the AML/CFT Policies and Procedures

Assess whether the policies and procedures, including customer and agent due diligence, comply with AML/CFT rules, in particular:

1. Whether the account opening workflow ensures reception and checking of customer ID information by the agent or other channel and how the documentation is sent and checked by the EMI’s back office.
2. Whether there are clear procedures to suspend e-money accounts that do not comply with CDD requirements, including timeframe to suspend, and procedures to notify the customer and close these accounts.

In the description of the system used and procedures for enforcing transaction and balance limits, and identifying suspicious transactions:

1. Check whether it is clear how the EMI will comply with the regulatory limits.
2. Check whether the EMI can aggregate balances and transactions in multiple accounts held by the same individual/business in the EMI.
3. Check the procedures and criteria set for monitoring and flagging suspicious transactions.

### Consumer Protection

When consumer protection regulation is applicable to EMIs, the most important aspects should be analyzed during the licensing process. The intent is to assess the EMI’s ability and commitment to comply with the most relevant requirements and good business conduct standards. In case consumer protection is the jurisdiction of another supervisor, coordination will be required to collect their view on the application.

#### Analytical procedures

1. Analysis of the model consumer agreement (Terms and Conditions)
2. The EMI must enter into a written (physical or electronic) agreement with every customer who opens an e-money account.
3. The agreement must follow best practices in financial consumer protection and must not have clauses that can be considered abusive, unclear or misleading and put the customer in disadvantageous situations or limit consumer rights.
   1. Conciseness, clarity and simplicity:

* The agreement must be written in as simple a language as possible to ensure consumers understand it.
* The agreement must be written in a language that is most likely to be read by most customers in the country. Depending on the target consumer segments, local languages may be required.
* The agreement must be as concise as possible, not several pages long, in particular if it’s in electronic form. EMIs should be encouraged to offer summary terms and conditions in addition to the complete agreement.
* The agreement shall not use different terms for the same key concepts such as “e-money account”, “trust account”, “redemption”, “fee”, “services”.
  1. Completeness: despite the need to be concise, the agreement must have all the key information for the consumer, including the identity of the customer, applicable fees, transaction, balance and cash-in/out limits, any fees related to third party services, such as SMS or data services by MNOs, phone number of complaints mechanism and procedures for complaints submission.
  2. Erroneous transactions reversal: the agreement must set fair rules for the customer to request reversal of erroneous transactions.
  3. Duty to notify consumer prior to changes: the agreement must make the EMI responsible for providing reasonable notice to the customer prior to effecting changes to the agreement and give the customer the right to rescind the contract. Clauses allowing the EMI to change terms and conditions at its own discretion without prior notice, stating the customer accepts future (unspecified) changes, or clauses making the customer responsible for checking the EMI website for applicable changes, shall not be accepted.
  4. Liability and onus of proof on disputed transactions: there must be fair clauses setting the EMI’s primary responsibility for fraud and fund protection. The onus of proof for failed transactions, suspected fraud and unauthorized access to customer account must lie with the EMI, not with the customer.
  5. Obligations: the agreement must concisely and clearly state balanced obligations for the EMI (e.g., taking measures to protect the accounts from unauthorized access, ensuring smooth operations, ensuring availability of the funds, etc.), and the obligations of the customer (e.g., not sharing their PIN). The obligations on customer must be fair.
  6. Indemnities: clauses requiring the consumer to indemnify the EMI for its legal costs in judicial cases related to the consumer shall not be accepted, unless such liability is only due in case of proven customer fraud or similar cases.
  7. Data privacy and sharing: The agreement must state the EMI’s responsibility to keep customer data confidential. Clauses stating generally that the EMI will share customer data with undisclosed third parties for “commercial purposes”, are unacceptable.
  8. Mandatory arbitration: the agreement shall not make arbitration mandatory. The consumer must retain her/his right to seek court resolution, even if court procedures are burdensome and lengthy in a particular country. When arbitration is offered, it must happen in country and it must not be binding on the consumer.

1. Analysis of marketing materials and website: Marketing materials, including thoseon the EMI website (if already available ) can be analyzed to:
2. Check whether key information about e-money services and the EMI is provided.
3. Check whether there is information that is in contradiction to the information provided in the licensing package.
4. Check whether there is any misleading statement to consumers
5. Assessing EMI complaints handling procedures: Minimum aspects about the complaints procedures must be checked during the licensing application, by comparing the policies and procedures related to consumer complaints with the regulatory requirements. For instance, this can be done by checking whether the placing of the complaints handling function in the organizational chart allows for independence and issuance of impartial responses to consumers.
6. Analysis of SMS or system-generated receipt: Check if the EMI platform is capable of generating free-of-charge SMS or other type of transaction receipts containing key information about the transaction (e.g., amount and type, fee charged, and a unique transaction reference number).

1. Strengths, Weaknesses, Opportunities, and Threats. [↑](#footnote-ref-1)
2. Good market analyses are usually based on market surveys and studies. Although such studies do not need to be submitted, the licensing team may request them in case they have specific doubts about the solidity of the business proposition. [↑](#footnote-ref-2)
3. The complexity of the Financial Projections will vary across different applicants, demonstrating either or both their preparedness and business acumen, and their seriousness into providing a quality application. For instance, very complete and high-quality financial projections may provide a scenarios analysis, in which different projections are done according to changes in key variables (e.g., inflation rate), resulting in three (or more) potential scenarios. [↑](#footnote-ref-3)
4. Only when the bank is the trustee – which, although not ideal, can happen in some countries – it would have access to the information related to the individual accounts, for the sole purpose of being able to refund customers in the case of failure of the EMI. [↑](#footnote-ref-4)