

**PSF Financial Crime Working Group**

**Indirect Access Liability Model Solution**

**Provider PSP Questionnaire**

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| The Forum are asking for information and comments on this questionnaire by 5pm on Friday 18th August 2017.  Send your responses to this questionnaire via email to the PSR acting as the Forum Secretariat at forum@psr.org.uk. Please entitle the email “Access to Account Services Questionnaire”.  When you email, we would be grateful if you either return the completed questionnaire using the spaces provided (preferred), or provide your response in a Word document or other text document format if your firm does not have access to Word.  The responses to this questionnaire will not be published.  We ask respondents to minimise elements of your submission which you want us to treat as confidential. We will assume you give us consent to use material which is not marked as confidential within the PSF for analysis.  Where you do submit confidential and non-confidential material, please submit a non-confidential or a redacted text version which you consent for us to use for analysis within the PSF. |

# PSF FCWG Liability Models for Indirect Access Solution – Provider PSP Questionnaire

## Glossary

Provider PSP: A Provider Payment Service Provider is the institution that provides Accounts Services and / or access to other institutions to payment systems. Also known in some industry documentation as an “Indirect Access Provider” (IAP).

Indirect PSP: An Indirect Payment Service Provider is an institution that does not have direct access to the payment systems in the UK. They rely on Provider PSPs for access to payment systems. These are usually firms that are authorised by the FCA as Small Payment Institutions, Authorised Payment Institutions, or Electronic Money Institutions.

PSP: A Payment Service Provider is used as defined in the UK Payment Services Regulations 2017 and covers banks, building societies, credit card providers, money remitters, e-money issuers and payments institutions, including payment initiation service providers and account information service providers.

JMLSG: The Joint Money Laundering Steering Group is made up of UK trade associations and promotes good practice in countering money laundering and provides practical assistance in the interpretation of the UK Money Laundering Regulations. This is primarily achieved by the publication of industry Guidance[[1]](#footnote-1).

Forum: The Payments Strategy Forum was established by the PSR to lead a process to identify, prioritise, and develop strategic initiatives where the industry needs to work together to deliver innovation for the benefit of those who use services provided by payment systems.

Account Services: these are the accounts facilitating a payment institution to receive and make payments on behalf of its customers, to hold a designated safeguarding account, and an account(s) for the firm’s own proprietary reasons (for example to receive profits and facilitate their own business needs).

## Introduction

This document contains the questions for Provider PSPs. These have been developed as part of the Forum strategy to improve access to payment systems.

It is expected that all recipients of this questionnaire have direct access to one or more of the UK payment systems and are Pound Sterling Clearers (i.e. these institutions do not directly rely on other Provider PSPs to provide their services).

A brief introduction to the problem statement, objectives and approach for this solution is detailed below.

## Problem statement

The Forum’s Strategy published in November 2016 [[2]](#footnote-2) included proposals to address the issues faced by Indirect PSPs to obtain Account Services with Provider PSPs, to facilitate their access to the payment systems.

The summary solution sets out that clarity was still needed to identify the party holding responsibility for relevant obligations in providing Account Services and payment system access. The solution acknowledged the complexity and extent of the issues identified, the range of interested parties, and the various efforts by industry and regulators to address the issue. The proposal of a multi stakeholder group to address the issues was made.

Specific potential options to help address the indirect access liability issues were that:

* Provider PSPs should be asked to define more clearly the criteria they would expect an Indirect PSP to meet to obtain Account Services, noting that these Provider PSPs would continue to exercise commercial and risk based approach criteria as defined within their corporate policies
* Consideration should be given to the introduction of a simplified and standardised accreditation process of direct and indirect access for payment institutions at the time of their authorisation and periodically, potentially through external accredited review

The Forum noted that the industry already had guidance in the form of JMLSG Guidance and required the solution group to identify any concerns or gaps regarding liability for indirect access in current JMLSG Guidance and subsequent follow up with JMLSG.

## Solution Approach

To fulfil the Forum’s objective, engagement has taken place with stakeholders across the PSP range and with JMLSG and BBA. This next stage activity is to seek the views of both Provider PSPs and Indirect PSPs through targeted questionnaires.

These questionnaires are intended to gather a broad cross section of views, to address the Forum objective and assess if JMLSG or another industry body can provide a vehicle to address some of the concerns around access to Account Services and the liability split between Provider PSPs and Indirect PSPs in the provision of indirect payment services. It will also seek views on ancillary proposals for an industry agreed approach and a possible accreditation process.

## Questionnaire Management

We recognise that some information you provide may be commercially sensitive and confidential. Therefore, you should send your reply to the PSR acting as the Forum Secretariat: forum@psr.org.uk. Any information you provide in your response will be aggregated and anonymised by the Forum Secretariat before it is analysed further by the PSF.

Once the responses have been collated and their findings summarised, these will be provided to the Forum for review and development of its final report on follow up action. Depending on what is discovered, this may require an engagement with the FCA and potentially HMT on any proposals, along with JMLSG.

During this stage, activity will also focus on identifying an appropriate body to take forward the next stage proposed activity.

# Provider PSP Questionnaire

This questionnaire is designed for Provider PSPs. There is a separate questionnaire for Indirect PSPs.

The questions are split into 5 sections; each contains an introduction and related questions. Please answer these as fully as you can, drawing out the issues relevant to the section from your organisation’s perspective as a Provider PSP when considering whether or not to provide indirect access to the payment systems to other institutions.

It is expected that the Compliance / Financial Crime department of your organisation will complete this Questionnaire. However, it is appreciated that industry specific knowledge may be held by product and relationship teams and as such we encourage the Compliance / Financial Crime departments to also capture all relevant organisational views when replying.

## Section 1 – Regulatory Environment and Risk Appetite

## 

**Overview:**

The regulatory environment is critical both for the Provider PSP and the indirect PSP. It is important to understand which regulators have an influence over these organisations and what this means for Provider PSPs and their operations in the UK.

This questionnaire is intended to be completed by UK institutions (this includes branches / subsidiaries of overseas institutions that either provide access to the payment systems to other institutions or could provide access but chose not to). We are interested to understand which, if any, other nation’s anti-money laundering regulations impact Provider PSPs. We are aware that the USA is often cited as one such jurisdiction.

It is understood that it is the management and avoidance of Money Laundering, terrorist financing and sanctions risk that drive much of the regulatory impacts around Provider PSPs providing indirect access to Indirect PSPs. However, it is also appreciated that there are other risk factors also involved when choosing to provide services to indirect PSPs and the below questions also enquire about these.

**Questions:**

**The regulatory environment for your organisation**

* 1. Separate from UK laws, are there other jurisdictions’ laws your organisation needs to consider that impact your risk appetite as a Provider PSP in the UK?

Yes No

If yes, please name the specific jurisdictions (for example the US):

* 1. Please provide details of how the jurisdictions and laws you list in Q1.1 impact your risk appetite as a Provider PSP?

**The regulatory environment for Indirect PSPs**

NOTE: In the UK, depending on the type of Indirect PSP, or the products they offer, the Indirect PSP could be supervised by either the FCA or HMRC for Money Laundering purposes.

* 1. When considering whether to provide services to Indirect PSPs, does your organisation’s risk appetite differentiate between the FCA and HMRC as supervisors of the Indirect PSP? This includes where the supervisor results in a different classification of the Indirect PSP.

Yes No

If yes, please explain:

* 1. In the current environment there are many types of Indirect PSP. Does your organisation anticipate a benefit to having a single supervisor for Money Laundering purposes in relation to Indirect PSPs, (for example to assist in ensuring a consistent approach for this growing market segment)?

Yes No

If yes, which supervisory authority does your organisation believe is best placed to undertake this?

**Risk Appetite and liability for Money Laundering**

* 1. Where does your organisation consider the Money Laundering liability for the “actions” of an Indirect PSP currently resides?

With only the Indirect PSP  With only the Provider PSP

With both

Please explain further below:

* 1. Where does your organisation consider the Money Laundering liability for the “actions” of an Indirect PSP **should** reside?

With only the Indirect PSP  With only the Provider PSP

With both

Please explain further below:

* 1. Does your Risk Appetite differ between types of Indirect PSP (for example EMIs, APIs, SPIs) and the products they provide (for example payments from and to bank accounts only, or accepting and paying physical cash)?

Yes No

If your risk appetite differs between different types of Indirect PSP, or the products they provide, please explain this difference:

* 1. Does your organisation permit your Indirect PSP clients to provide Account Services and / or access to the Payment Systems to other indirect PSPs?

Yes No

If yes, is this to all of your Indirect PSP clients, or only for select clients.

All Indirect PSP Clients Only for select clients

If only select clients, how you assess which clients are permitted to provide this services to other Indirect PSPs?

* 1. In addition to Money Laundering risk, what other key risks does your organisation consider before providing services to Indirect PSP?
  2. What other factors impact your risk based decision to provide services to Indirect PSPs?

## Section 2 – JMLSG Guidance

**Overview:**

The JMLSG’s Guidance is to[[3]](#footnote-3):

* Outline the legal and regulatory framework for AML/CTF requirements and systems across the financial services sector;
* Interpret the requirements of the relevant law and regulations, and how they may be implemented in practice;
* Indicate good industry practice in AML/CTF procedures through a proportionate, risk-based approach;
* Assist firms to design and implement the systems and controls necessary to mitigate the risks of the firm being used in connection with money laundering and/or the financing of terrorism.

Where legislation and regulations make mention of ‘industry guidance’ (e.g. POCA, Terrorism Act, Criminal Finances Act) the JMLSG Guidance fulfils this function and is a standard against which processes and procedures are assessed to determine whether or not they were reasonable and sound as controls against money laundering and terrorist financing.

JMLSG issued a consultation version of Part II of the Guidance on 9th May 2017. This contained no proposed changes to Section 1A “Money service businesses (as customers of banks)”. The 2017 post consultation version of Part II of the Guidance was published on 23rd June 2017 with no changes to Section 1A.

Note: Money service businesses as defined in JMLSG Guidance include Authorised Payment Institutions and Small Payment Institutions.

**Questions:**

**JMLSG’s Purpose.**

2.1 As per the Purpose of JMLSG (defined above) what role does JMLSG Guidance fulfil for your organisation in relation to providing services to Indirect PSPs?

**JMLSG Members and representation**

2.2 The JMLSG members are noted on the following website. <http://www.jmlsg.org.uk/faqs/who-are-the-members-of-the-jmlsg>. Which other associations/ trade bodies in your opinion should be included to support the provision of guidance specific to Payment Service Providers?

**JMLSG Content**

2.3.1 Does JMLSG Guidance provide you with sufficient guidance to support your provision of services to Indirect PSPs, or as a Provider PSP have you had to develop your own interpretation of Laws and Regulations to cover any aspects that are missing?

The JMLSG Guidance is sufficient to support our provision of services to Indirect PSPs

We have had to develop our own interpretation of Laws and Regulations to cover missing aspects from the JMLSG Guidance

If you have developed your own interpretation, what areas does this cover?

2.3.2 If your organisation has developed its own interpretations of the Laws and Regulations, which parts of JMLSG Guidance does it supplement and/ or clarify. Are there parts of JMLSG Guidance which need to be more clearly defined?

Yes No

If so, which parts?

2.3.3 Does your organisation believe JMLSG Guidance adequately covers how AML rules are to be applied and the related liability and accountabilities of the Provider PSP and Indirect PSP?

Yes No

If not, what could be enhanced?

2.3.4 What other external guidance do you refer to in relation to the onboarding Indirect PSPs?

**JMLSG Guidance Format**

2.4 JMLSG guidance is currently issued as PDFs available on the JMLSG website. Would you prefer a different format, or is this current format “user friendly” enough to help you easily access the information you need to achieve what is required?

The current format is sufficiently “user friendly”

I would prefer a different format

If a different format, what would you like to see?

**Additional comments**

2.5 In your organisation’s role as a Provider PSP do you have any other comments or concerns not noted above about the current JMLSG Guidance? For example, is there anything you would like to see included, clarified or changed? Please provide as much detail as possible supporting your comments and JMLSG Guidance section references where applicable.

## 

## Section 3 – PSD 2 – Criteria for Indirect Access

**Overview:**

The revised Payment Services Directive (“PSD2”) comes in to force in January 2018. This will be adopted in to UK law as the Payment Services Regulations 2017 (“PSR 2017”) and the FCA is currently consulting on its approach guidance. Amongst the new regulations are clearer and more specific requirements on both payment systems and Provider PSPs to ensure their criteria for participation and the supply of Account Services respectively are proportionate, objective and non-discriminatory (POND).

The draft PSR 2017 is available at the following link:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588961/Annex_B.pdf>

**Questions:**

3.1 How will PSR 2017 impact your provision of Account Services to Indirect PSPs?

3.2 How will PSR 2017 change your procedures for onboarding Indirect PSPs and managing the provision of Account Services?

3.3 Please tell us of any other concerns you have about the requirements of PSR 2017, with specific focus on the provision of Account Services to Indirect PSPs (PSR 2017 Regulation 105).

## Section 4 – Development of an Industry Agreed Approach

**Overview:**

There are a lot of changes currently underway around access to payment systems. These include the new Payment Services Regulations 2017 (transposed from PSD2), where regulations 103, 104 and 105 will have an impact. The Payment Systems Regulator[[4]](#footnote-4) published its proposed approach in April (to 103 and 104) with a consultation period running until 8 June. Likewise the FCA published similar documents including the joint regulatory approach to regulation 105.

Given this proposed approach, we would like to hear your views on whether an industry agreed approach has a role to play within this new environment, and if so in what ways.

**Questions:**

4.1 In relation to complying with PSR 2017 and in addition the Open Banking requirements, does your organisation believe there should be an industry agreed approach detailing Provider PSPs roles and potentially requirements for providing Indirect PSPs with Account Services?

Yes  No

4.2 If your organisation believes there should be an industry agreed approach, what should this cover?

4.3 If your organisation believes there should be an industry agreed approach, which body would you propose leads this development and why?

## Section 5 – A simplified and standardised accreditation process

**Overview:**

Following on from Section 4, this section considers whether a standard accreditation process could add value to the assessment process of Indirect PSPs seeking indirect access once PSD2 is adopted. This could enable Provider PSPs to agree a base level of information required, but not necessarily bar them from adding their own additional items. For Indirect PSPs seeking services, it could enable them to complete one set of forms / process and present the accredited results to a number of providers, rather than completing many different sets of similar documentation.

An accreditation process could take a number of forms and we seek your views as to which, if any, you think might add value.

We have heard in our engagement with Indirect PSPs that they are sometimes asked to have external reviews completed of their AML controls. These can be costly and potentially inconsistent depending on which firm they choose to perform review.

**Questions:**

5.1 Does your organisation require an external 3rd party firm to conduct a review of the AML controls and processes of the Indirect PSP, with the results provided to your organisation?

Yes  No

If yes, does your organisation have a list of approved firms that may perform such a review?

Yes  No

5.2 Would an industry wide mechanism to accredit Indirect PSPs to demonstrate they meet minimum criteria for the services they offer give you more comfort to enable you to offer Account Services to Indirect PSPs?

Yes  No

5.3 If you agree with 5.2, who do you think could or should accredit a prospective Indirect PSP?

5.4 If you agree with 5.2 what areas does your organisation think the accreditation should cover?

1. <http://www.jmlsg.org.uk/what-is-jmlsg> [↑](#footnote-ref-1)
2. <https://consultation.paymentsforum.uk/sites/default/files/documents/A%20Payments%20Strategy%20for%20the%2021st%20Century%20-%20Putting%20the%20needs%20of%20users%20first_0.pdf> [↑](#footnote-ref-2)
3. http://www.jmlsg.org.uk/faqs/what-is-the-status-and-purpose-of-the-guidance [↑](#footnote-ref-3)
4. The Payment Systems Regulator is the regulatory authority for regulations 103, 104 and is joint with the FCA for Regulation 105 [↑](#footnote-ref-4)