

**PSF Financial Crime Working Group**

**Indirect Access Liability Model Solution**

**Indirect 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or other text document format if your firm does not have access to Word.The responses to this questionnaire will not be published.We ask respondents to minimise elements of your submission which you want us to treat as confidential.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 – Indirect 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 Indirect PSPs. These have been developed as part of the Forum strategy to improve access to payment systems.

It is expected that Indirect PSPs that complete this questionnaire will have either no direct access to the UK payments systems or limited direct access to them (i.e. these institutions rely on providers to be able to provide some or all of their payment 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 set 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 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.

# Indirect PSP Questionnaire

This questionnaire is designed for Indirect PSPs. There is a separate questionnaire for Provider 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 an Indirect PSP requiring access to the payment systems through a Provider PSP..

It is expected that the Compliance / Financial Crime department / officer of your organisation will complete this Questionnaire. However, it is appreciated that the Provider PSP relationships may also be managed by other employees in your organisation and as such we encourage the Compliance / Financial Crime departments / officer to also capture all relevant organisational views when replying.

## Section 1 – About your Regulatory Environment, your Organisation and your 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 Indirect PSPs and their operations in the UK.

This questionnaire is intended to be completed by the UK entity of Indirect PSP organisations (this includes branches / subsidiaries of overseas parented Indirect PSPs).

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.

The Forum also seeks information on the current situation regarding access to Account Services (both to understand any common features and any different approaches). This will assist the Forum to understand the bigger picture on the availability of Account Services to Indirect PSPs and to place the below feedback into a broader context.

**Questions:**

**The regulatory environment for your organisation**

* 1. In relation to Money Laundering regulations in the UK, who is your principle Supervisor?

[ ] FCA [ ]  HMRC [ ]  Both

Please explain why you are registered with this body:

* 1. In the current environment there are many types of PSPs. Does your organisation believe there is a benefit to a single supervisor for Money Laundering purposes for all PSPs, for example to assist in applying a consistent approach?
	2. Are there other jurisdictions’ laws covering AML / CTF you need to consider that impact your client risk appetite as an indirect PSP in the UK?

[ ] Yes [ ] No

If yes, please name the jurisdictions and laws:

**About your organisation and your Account Services**

* 1. Does your organisation receive Account Services / access to payment systems via a Provider PSP, via an Indirect PSP, or does your organisation receive Account Services from both?

[ ] Through a Provider PSP [ ]  Through an Indirect PSP [ ]  Through both

* 1. Does your organisation have multiple providers (either Provider PSPs or other Indirect PSPs) to provide you with Account Services?

[ ] Single Provider [ ] Multiple Providers

Please name your provider(s):

* + 1. If your organisation has multiple providers, is your organisation reliant on one primary provider for your Account Services? i.e. if they stopped providing these would this be detrimental to your Business.

[ ] Yes [ ] No

If yes, please name the primary provider:

* 1. Has your organisation ever had its Account Services removed or restricted by a provider (either a Provider PSP or another Indirect PSP)?

[ ] Yes [ ] No [ ]  Restricted

If yes, by which provider, and who is your new provider? If restricted, by which provider and what was the restriction?

* 1. Does your organisation provide Account Services to other Indirect PSPs?

[ ] Yes [ ] No

* + 1. If yes approximately how many Indirect PSPs do you provide access to payment systems?

[ ] 1 – 10 [ ] 11 – 20 [ ] 21 - 30 [ ] More than 30

* 1. Do you belong to a Trade Association/Body and if so, which one?

[ ]  Not applicable

[ ]  BBA

[ ]  Association of Foreign Banks

[ ]  Association of British Credit Unions

[ ]  Building Societies Association (BSA)

[ ]  Association of UK Payment Institutions

[ ]  Electronic Money Association

[ ]  Association of Foreign Exchange and Payment Companies

[ ]  International Association of Money Transfer Networks

[ ]  Others? (Please provide further details)

**Risk Appetite and liability for Money Laundering**

* 1. Does your organisation accept or pay out physical cash?

[ ] Yes [ ] No

* 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:

## Section 2 –Industry Guidance

**Overview:**

Depending on the relevant supervisor for Money Laundering, the expectation is that Indirect PSPs will follow either JMLSG Guidance[[3]](#footnote-3) (for those supervised by the FCA) or HMRC Guidance[[4]](#footnote-4) (for those supervised by HMRC).

Where legislation and regulations make mention of ‘industry guidance’ (e.g. POCA, Terrorism Act, Criminal Finances Act) JMLSG or HMRC 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 Guidance**

JMLSG’s Guidance is to[[5]](#footnote-5):

* 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.

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 includes Authorised Payment Institutions and Small Payment Institutions.

**HMRC Guidance**

New HMRC interim Guidance for Money Service Businesses was published on 26 June 2017. Bill payment service providers and telecommunication, digital and IT payment service providers can also use this guidance unless any section indicates it does not apply to them.

HMRC Guidance provides information to assist MSBs with their legal obligations and the 'minimum requirements' to be followed. It also details recommendations of good practice (i.e. what firms registered with HMRC should do), and is the standard that HMRC expects to see. HMRC expects firms registered with it to be able to explain the reasons for any departures from the standard.

**Completing the Questions**

When completing the below questions, please do so in relation to the Guidance you follow. It is appreciated that JMLSG Guidance does not need to be followed by those only supervised by HMRC, however, it is understood that some organisations will follow this in addition to HMRC Guidance.

**Questions:**

 **The Guidance followed by your organisation**

2.1.1. Which guidance your does your organisation follow? (Note, this is not what your organisation is expected to follow, but what your organisation does in practice.)

2.1.2. If your organisation is registered with HMRC, but follows JMLSG Guidance, why do you chose to follow JMLSG Guidance?

2.1.3. Are there any key differences you have recognised between JMLSG Guidance and HMRC Guidance?

[ ] Yes [ ]  No [ ]  No opinion

Please explain your answer:

**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? (Organisations that do not follow JMLSG Guidance may choose not to answer this question if they do not have a view.)

**Guidance Content**

2.3.1 Does your applicable Guidance (HMRC or JMLSG) provide you with sufficient guidance on what your organisation needs to do to satisfy the requirements of Provider PSPs?

[ ] Yes [ ]  No

If not, please provide further details:

2.3.2 Does your organisation believe your applicable 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?

2.3.3 In your view does your Guidance adequately cover what your Provider PSP asks about your customers?

[ ] Yes [ ]  No

If not, please provide further details:

2.3.4 What other external guidance do you refer to in addressing AML and CTF requirements?

**Guidance Format**

2.4 Both HMRC and JMLSG guidance is currently issued as PDFs available on websites. 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?

[ ] Formatting change required [ ]  No change required

If different format, what would you like to see?

**Additional comments**

2.5 In your organisation’s role as an Indirect PSP do you have any other comments or concerns not noted above about the current guidance applicable to your organisation? 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 any 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 does your organisation believe PSR 2017 will impact Provider PSPs provision of Account Services to Indirect PSPs?

3.2 Do you believe PSR 2017 Regulation 105 will ultimately mean your organisation will have access to more Provider PSPs for your Account Services?

[ ] Yes [ ]  No

Please explain your answer:

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 by Provider PSPs 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[[6]](#footnote-6) 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 Is your organisation required to have an external 3rd party firm to conduct a review of your AML controls and processes, with the results provided to your Provider PSP?

[ ] Yes [ ]  No

If so, to which Provider PSPs do you need to provide this to?

5.2 Does your organisation believe there would be a benefit to have an industry wide mechanism to accredit Indirect PSPs, to demonstrate they meet minimum criteria for the services they offer? (The concept is to give Provider PSPs more comfort to assist in enabling them 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/ [↑](#footnote-ref-3)
4. https://www.gov.uk/government/publications/anti-money-laundering-guidance-for-money-service-businesses [↑](#footnote-ref-4)
5. http://www.jmlsg.org.uk/faqs/what-is-the-status-and-purpose-of-the-guidance [↑](#footnote-ref-5)
6. The Payment Systems Regulator is the regulatory authority for regulations 103, 104 and is joint with the FCA for Regulation 105 [↑](#footnote-ref-6)