



**Financial Services
Commission**

Guidance Note

Payment Services Regulations

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1 Introduction

This paper is directed to firms who will be caught within the scope of the Payment Services Directive (“PSD”, “the Directive”). This includes banks, building societies, e-money issuers, money transfer operations and non-bank credit card issuers.

This paper aims to provide assistance to firms impacted by the PSD when interpreting the regulations in order to ensure that they are able to comply with the requirements set out by the Directive. The paper also aims to provide firms with details of the practical understanding of the new requirements.

The aim of the PSD is to foster a single market in retail payment services across the European Economic Area (EEA) by:

- Removing barriers to entry and ensuring fair market access to enhance competition in payment services; and
- Establishing the same set of rules across the EEA on information requirements and other rights and obligations that will be applicable to many payment services transactions in the EEA.

The PSD requires payment service providers to be either authorised or registered by the FSC and to comply with certain rules about providing payment services, including specific requirements concerning payment transactions.

The PSD has been transposed into Gibraltar law via the Financial Services (EEA) (Payment Services) Regulations 2010 (“the Regulations”). References throughout this document to specific regulations are in respect of this piece of legislation.

The PSD does the following:

- Sets out an authorisation and prudential regime for payment service providers that are not banks, building societies or e-money issuers (and therefore already authorised by the FSC). Such businesses are known as authorised payment institutions (authorised PIs). Authorised PIs can passport their services to other EEA States – in other words, because of their Gibraltar authorisation, they have the right to establish or provide services across the EEA;
- allows payment service providers operating beneath a certain average monthly turnover threshold to be registered instead of obtaining authorisation (Regulation 26). Such registered payment institutions (registered PIs) are unable to passport;
- exempts certain payment service providers (for example, banks, and authorised e-money issuers) from the authorisation/registration requirements; and
- sets out conduct of business requirements. In this context, this means requirements for information to be provided to payment service users, and specific rules on the respective rights and obligations of payment service users and providers. These requirements are applicable to all payment service providers, whether they are payment institutions, banks, building societies, e-money issuers or any other category. See *Conduct of Business requirements below for further details.*



The PSD introduces two new categories of firms – authorised payment institutions and registered payment institutions.

- *“Authorised payment institutions”* – Institutions which will be authorised to provide one or more payment services, as defined by the Schedule to the Regulations, and will be required to comply with all the PSD requirements. Authorised payment institutions will be able to passport payment services to the EU and EEA, under Regulations 10(9) and 25.
- *“Registered payment institutions”* – Institutions which will be able to carry out certain payment services, without being subjected to all the PSD requirements which apply to authorised payment institutions, as long as they meet the following conditions:
 - Turnover does not exceed €3million of payment transactions per month;
and
 - none of the persons responsible for the management of the business have been convicted of financial crime.

Registered payment institutions will be unable to passport their services out of Gibraltar.



2 Scope

This section sets out a summary of the scope and application of the PSD.

2.1 Payment Institutions

The PSD creates a new class of firms, called payment institutions (PIs). As indicated above a PI can be either authorised or registered to provide payment services.

The types of firms that will require authorisation or registration for their payment services activities include, amongst others:

- Money remitters;
- certain mobile network operators (offering payment services)
- non-bank credit card issuers; and
- merchant acquiring firms.

Not all providers of payment services will require authorisation or registration under the PSD (see “other payment service providers” below).

All payment providers must comply with the conduct of business requirements of the PSD (see Conduct of Business requirements below for details).

PIs may provide payment services through agents, subject to prior registration of the agent’s details with the FSC (see Appointment of Agents below for details of the process to be followed).

It is the PIs responsibility to ensure the agent complies with the conduct of business requirements of the PSD, and that it has the necessary systems and controls in place to effectively oversee their activity.

2.2 Other payment service providers

The following can provide payment services without the need for authorisation or registration under the PSD:

- Banks;
- building societies; and
- authorised e-money issuers.

These entities must, however, comply with the conduct of business requirements of the PSD. In the case of credit institutions and e-money issuers, the relevant application procedure remains as outlined in the Financial Services (Banking) Act 1992.

2.3 What is a payment service?

The payment services covered by the PSD are set out in the table below, along with a number of examples of the sort of payment services expected to fall within the scope of each. The table is high-level and indicative in nature. Appendix B sets out activities which do not constitute payment services, as per Schedule 1 Part 2 to the Regulations.



Payment service	Examples
Services enabling cash to be placed on a payment account and all the operations required for operating a payment account.	<ul style="list-style-type: none"> • Cash deposits on a payment account, over the counter and through an ATM.
Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account.	<ul style="list-style-type: none"> • ATM cash withdrawals and over the counter withdrawals.
Execution of the following types of payment transactions: <ul style="list-style-type: none"> • Direct debits, including one-off DDs; • payment transactions executed through a payment card or similar device; • credit transfers, including standing orders. 	<ul style="list-style-type: none"> • Transfers of funds with the user's payment service provider or with another payment service provider; • Direct debits (including one-off DDs); • Transferring e-money; • Credit transfers, such as standing orders, BACS or CHAPs payments.
Execution of the following types of payment transactions where the funds are covered by a credit line for a payment service user: <ul style="list-style-type: none"> • Direct debits, including one-off DDs; • payment transactions executed through a payment card or similar device; • credit transfers, including standing orders. 	<ul style="list-style-type: none"> • Direct debit using overdraft facilities. • Card payments. • Credit transfers using overdraft facilities.
Issuing payment instruments or acquiring payment transactions.	Card issuing (other than mere technical service providers who do not come into possession of funds being transferred) and card merchants acquiring services (rather than merchants themselves).
Money remittance	<ul style="list-style-type: none"> • Money transfer / remittances that do not involve payment accounts.
Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.	<ul style="list-style-type: none"> • Mobile or fixed phone payments. • Payments made from handheld devices (for example, a Blackberry).



2.4 Scope of the PSD: Jurisdiction and currency

The table below shows the jurisdictional scope of a number of requirements of the PSD. The table sets out how these apply to a firm depending on whether it is based in Gibraltar; whether the activity is undertaken in Gibraltar; and whether the payer and payee are in Gibraltar or elsewhere. The currency element sets out the details of when a requirement will apply, depending on the currency involved in the payment transaction.

Payment services – jurisdictional and currency scope		
Payment service requirement	Jurisdiction	Currency
Authorisation / Registration (including meeting capital and safeguarding requirements).	Firms providing payment services, by way of business in Gibraltar including one leg transactions, unless the firm is in the list of “other payment service providers” described above or is an agent of an authorised or registered firm. One leg transactions are those where either the payer or payee’s payment service provider is located outside the EEA.	All currencies.
Complaints that can be considered by the FSC.	All payment services provided from a Gibraltar establishment, including the Gibraltar end of one leg transactions.	All currencies.
Conduct of business requirements (except regulations 69-73).	Payment services provided from a Gibraltar establishment where both the payer and payee’s payment services provider are in the EEA.	Payment services carried out either in euro or the currency of a member state outside the euro area.
Regulations 69-72 (execution time and value date). Regulation 68 sets out the scope of the above regulations and should be read in conjunction with these.	Payment services provided from a Gibraltar establishment, where both the payer and payee’s payment service provider are in the EEA.	Payment transactions in: <ul style="list-style-type: none"> • Euro; or • within Gibraltar, or the UK in Sterling; or • where there is only one currency conversion between the euro and sterling, provided that • the conversion is carried out in Gibraltar and, • where there is a cross border payment, the cross-border transfer takes place in euro.
Regulation 73 (value date and availability of funds).	All payment services provided from a Gibraltar establishment within the EEA, including the Gibraltar end of one leg transactions.	Payment services are carried out either in euro or the currency of a member state outside the euro area.



3 Applying for authorisation

A Gibraltar firm that provides payment services by way of business in Gibraltar needs to apply to the FSC to become either an authorised PI or a registered PI (unless it is already another type of payment service provider or is exempt).

Being a registered PI is an option available to businesses whose average turnover in payment transactions does not exceed €3 million per month. The registration process is simpler than authorisation and has no ongoing capital requirements.

There are, however, no passporting rights for registered PIs, although the conduct of business requirements still apply, as does access for registered PIs' eligible customers to make a complaint to the FSC.

3.1 Becoming an authorised PI

In order to become an authorised PI a firm needs to submit the relevant application forms as required by the FSC, the required information and the application fee. Application forms are available on the FSC website. The information required, as set out in Regulation 5, can be found below:

- A programme of operations;
- a business plan, including a financial forecast of the first 3 financial years;
- auditor's confirmation of the firm's capital (to comply with Article 6 of the Directive);
- a description of the measures taken for safeguarding users' funds, if applicable;
- a description of the firm's corporate governance arrangements, internal controls, including administrative, internal audit, risk management and accounting procedures;
- a description of how the firm's internal controls ensure compliance with the AML/CFT notes;
- a description of the firm's structural organisation including intended outsourcing arrangements;
- Individual Questionnaires for the firm's directors and managers;
- transparency of the shareholding of the firm;
- auditor details;
- Memorandum and Articles of Association; and
- details of the Head Office.

3.2 Registered payment institutions

The FSC may waive the application of all, or part of, the procedure and conditions (with the exception of Regulations 20, 22, 23 and 24) laid out in Part 1 and 2 of the Payment Services Regulations and allow legal persons to be entered in the register where:

- The average of the previous 12 months' total amount of payment transactions executed by the person concerned does not exceed €3million per month.
- The Head Office is in Gibraltar.

PIs benefitting from a waiver will not have the right of establishment, nor the freedom to provide services, nor will they indirectly exercise those rights when being a member of a payment system.

Under the Directive there is scope for restrictions to be placed on PI's that have been granted a waiver, the effect of which is that they may only engage in certain activities.



A PI benefitting from a waiver is required to notify the FSC of any change in its situation which is relevant to the conditions which are to be met for the waiver to be granted.

Waivers will not be granted on AML/CFT obligations.

3.3 Appointment of Agents

PIs may provide payment services through agents, subject to prior registration with the FSC. An “agent” is any person who acts on behalf of a PI in the provision of payment services.

An authorised PI wanting to use a passport to provide payment services into another Member State may use an agent, established in either Gibraltar or the Host State, to provide those services (an EEA agent), subject to additional notification requirements.

The requirements relating to the use of agents are contained mostly in Regulation 17 and these are described below. In addition, Regulation 18 (2) makes PIs responsible for anything done, or omitted by, an agent. PIs are responsible to the same extent as if they had expressly permitted the act or omission. The FSC will therefore expect PIs to have appropriate systems and controls in place to effectively oversee their agents’ activities.

In general, the information required for the registration of an agent is:

- The name and address of the agent;
- a description of the anti-money laundering (AML) internal control mechanism; and
- in the case of an authorised PI, the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons.

4 Granting of an authorisation

An authorisation will be granted if the information and evidence supporting this, supplied in the application complies with all the requirements set out in Regulation 5, and if the overall assessment of the application is favourable.

Authorisation will be granted only if the PI has robust governance arrangements for its payment services business, which includes a clear organisational structure with well-defined, transparent and consistent lines of responsibility; effective procedures to identify, manage, monitor and report the risks to which it is, or might be, exposed; and, adequate internal control mechanisms, including sound administrative and accounting procedures.

Where the PI provides other business activities, the FSC may require the establishment of a separate entity for the payment services business if the non-payment services may impair the financial soundness of the firm or the ability of the FSC to monitor compliance.

An authorised PI may provide payment services throughout the EEA under the freedom to provide services.

Completed applications submitted to the FSC need to be considered within 3 months of receipt. The FSCs ability to meet this service standard will be dependent on the quality of the submission.



5 Refusing an authorisation

Authorisation will not be granted unless the FSC is satisfied in relation to the conditions specified in regulation 5, 6 and 10.

6 Payment Institution Register

The FSC shall publish a register for both authorised and registered payment institutions.

7 Initial capital

Services Provide by the Firm (as per the Schedule to the Regulations)	Initial Capital Requirement
Money Remittance – Service 6	€20,000
Execution of payment transactions where payer's consent for execution is given via a telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services – Service 7	€50,000
Payment institutions providing other services, that is those covered in Schedule 1 Services 1-5	€125,000

As well as the requirements for initial capital, the PSD requires that authorised PIs maintain adequate own funds on an ongoing basis. Before authorising a PI, the FSC expects the firm to provide evidence that it has systems, resources and procedures to be able to maintain its own funds to meet the maximum ongoing capital requirement projected for its first year of operation.



8 Own Funds requirements

The own funds of a payment institution may not fall below the amount required by the above initial capital figure, or the “own funds” figure, using the calculations below, whichever is the highest.

In order to calculate ‘own funds’, firms will need to use one of the methods outlined in the Directive. The firm will be asked to indicate which calculation method it wishes to use in its application pack. The FSC will, however, ultimately direct (based on the FSC’s evaluation of the firm) which method is to be used.

8.1 Method A

The PI’s own funds shall amount to at least 10% of its fixed overheads of the preceding year. If there has been a material change to the business since the preceding year, the FSC may adjust this requirement. Examples of material changes include the sale of parts of the business, or a business acquisition and rapid growth (typically of a new business).

8.2 Method B

The PI’s own funds are based on a scaled amount, representing the firm’s average monthly payment volume (PV), on which a scaling factor is then applied, relevant to the type of payment services carried out. Under this calculation method, the firm’s ongoing capital requirement is the product of this scaling factor and the scaled average monthly PV. The scaled average monthly PV is one twelfth (1/12) of the total amount of the PI’s payment transactions executed in the previous year scaled in the following manner:

- a) 4.0% of the slice of PV up to €5m
plus
- b) 2.5% of the slice of PV above €5m up to €10m
plus
- c) 1.0% of the slice of PV above €10m up to €100m
plus
- d) 0.5% of the slice of PV above €100m up to €250m
plus
- e) 0.25% of the slice of PV above €250m.

8.3 Method C

The PI’s own funds is based on the firm’s income over the preceding year with a scaling factor applied. It shall amount to at least the relevant indicator (as defined below) multiplied by the multiplication factor (defined below) and by the scaling factor (which is dependent on the services provided by the firm):

Relevant Indicator (RI) is the sum of the following from the previous financial year’s results:

- Interest income;
- Interest expenses;
- Commissions and fees received; and
- other operating income.



Multiplication factor shall be:

- 10% of the slice of the RI up to a value of €2.5m
- 8% of the slice of the RI from €2.5m up to €5m
- 6% of the slice of the RI from €5m up to €25m
- 3% of the slice of the RI from €25m up to €50m
- 1.5% above €50m

The scaling factor applied to methods B and C is based on the type of service provided, and is the higher of the following:

Services Provide by the Firm (as per the Schedule to the Regulations)	Scaling Factor
Money Remittance – Service 6	0.5
Execution of payment transactions where payer’s consent for execution is given via a telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services – Service 7	0.8
Payment institutions providing other services, that is those covered in Schedule 1 Services 1-5	1

9 Safeguarding

All authorised PIs are required to comply with the safeguarding requirements set out in Regulation 9. Registered PIs can choose to comply with the safeguarding requirements in order to offer the same protection over customer funds as authorised PIs must provide. If a registered PI does choose to safeguard it will need to apply the same level of protections as are expected of an authorised PI. If a registered PI chooses to safeguard funds, it will need to advise the FSC of this in its application for registration as well as in the reporting returns.

9.1 Purpose of safeguarding

The PSD imposes safeguarding requirements to protect customer funds where they are held by a PI overnight or longer. It does this by ensuring that those funds are either segregated from the PI’s working capital and other funds, or are covered by an appropriate insurance policy or third party guarantee.

9.2 What funds need to be safeguarded?

The requirement to safeguard applies to “relevant funds”. These are sums received:

- From, or for the benefit of, a payment service user for the execution of a payment transaction; and
- From a payment service provider for the execution of a payment transaction on behalf of a payment service user.

This means that safeguarding extends to funds that are not received directly from a payment service user, but includes, for example, funds received by a PI from another payment service provider for the PI’s payment service user.



10 Conduct of Business requirements

All payment service providers must meet the conduct of business (CoB) requirements. Broadly, the requirements apply to all payment transactions where the payment service provider of both the payer and payee are located in the EEA, and where the transactions are in Euro or in the currency of a Member State that has not adopted the euro, such as GBP). The exception is Regulation 73 which applies to all transactions, including one leg transactions, i.e. those where the payment service provider of either the payer or the payee is located outside the EEA.

The CoB requirements fall into two main categories:

- Information to be provided to the customer before and after execution of a payment transaction; and
- The rights and obligations of both payment service provider and customer in relation to payment transactions.

The information requirements differ depending on whether the transaction is carried out as part of an ongoing relationship under a “framework contract” or as a single payment transaction, and whether the value of the transaction is a low value transaction.

In some cases, the PSD allows different requirements to be agreed upon between the customer and payment service provider, or for a “corporate opt-out” arrangement to be entered into, so that payment service providers can reach agreements with certain classes of business customers to apply different requirements.

The PSD contains an overarching provision allowing payment service providers to offer more advantageous terms to their customers than those set down in the Regulations.

10.1 Information requirements

The information that payment service providers are required to provide to customers is separated into two scenarios:

(i) Transactions under framework contracts – that is, a contract governing the future execution of individual and successive payment transactions. This is where there is an ongoing relationship, for example where a current account or other payment account is held by the payment service provider.

(ii) Single payment transactions – this is typically where there is no ongoing relationship between the customer and the payment service provider – the transaction is a “one-off”, and the contract between the payment service provider and the customer relates solely to the particular transaction in question. A single payment transaction may also occur if there is a framework contract that does not include the particular payment service involved.

For both scenarios, the PSD sets out the information to be provided before the contract is entered into, at the time the payment order is made, and after execution of the transaction.

10.1.1 Form in which information must be provided

All the specified information must be provided to the payment service user on paper or other durable medium; in good time; and in easily understandable words, in a clear and comprehensible form.



10.1.2 Corporate opt-out

For some customers, different arrangements may be made by agreement. It is important to note that the PSD provides that the agreement may be that “any or all of the provisions do not apply”. For the customer to “agree” it must be made clear to them which provisions are being disapplied.

Payment service providers are allowed to agree different terms with certain classes of their business customers. This is known as the “corporate opt-out”. However, this is only where the customer is not:

- A consumer;
- a micro-enterprise; or
- a charity with an annual income of less than £1 million.

10.1.3 Framework contract

10.1.3.1 Before the framework contract is entered into (Regulation 41)

In good time before the contract is concluded (or immediately after the execution of the transaction if the contract has been concluded by means of distance communication, such as telephone, where it is not practicable to do so), the payment service provider must provide to the customer the information in the table below. This may be done by providing the customer with a copy of the draft contract.



Details about the payment service provider	<ul style="list-style-type: none"> • The payment service provider’s name, Head Office address and contact details. If different, the address and contact details of the branch or agent from which the service is being provided and details of the payment service provider’s regulator(s), including any reference or registration number (for example the provider’s FSC licence number).
Details of the payment service(s) to be provided	<ul style="list-style-type: none"> • Description of their main characteristics. • Specification of the information or unique identifier to be provided by the customer for a payment order to be properly executed. For example, for a Gibraltar bank transfer, the payee bank’s sorting code and account number might be specified as the unique identifier. • What the payment service provider will take as consent for the execution of a payment order, and the procedure by which such consent may be given. For example, consent could be given in writing, verified by a signature, by means of a payment card and PIN number, over a secure password-protected website, by telephone or by use of a password. Whatever means are to be used; they must be detailed in the framework contract. The contract must also say how the customer may withdraw consent. • Details of when a payment order will be deemed to have been received. If the payment service provider has a cut-off time after which payment orders are deemed to have been received on the next business day, this must be specified. This is very important because of the requirements in the PSD on execution time of payments. It is recognised that there may be different cut-off times for different payment channels. • The maximum time after receipt of a payment order, by which the funds will have been received by the payee’s payment service provider. • Where applicable, the fact that a payment instrument attached to the account has a spending limit (for example, a maximum daily withdrawal limit on an ATM card).
Charges and interest	<ul style="list-style-type: none"> • Details of all charges payable by the customer to the payment service provider and, where applicable, a breakdown of them (sufficient detail should be provided so the customer can understand to which payment transaction the charge relates.) • Details of the interest or exchange rates to be used (where relevant). In line with Commission guidance, this will include changes to interest rates on the underlying payment account unless the use of reference interest rates has been agreed (as set out below). If a reference exchange or interest rate is to be used, details of where the reference rate can be found and how the actual rate will be calculated must be given (including the relevant date and index or base for determining the reference rate). The aim is to enable the customer to verify that the interest charged or paid is correct. • Agreement, if relevant, that changes in reference interest or exchange rates will take effect immediately (otherwise they will take effect in line with Regulation 42(c)). • Agreement, if relevant, of how changes in interest or exchange rates will be notified, in line with Regulation 42(c). If no alternative method or frequency is agreed, immediate notification will be required.



Transmission of information	<ul style="list-style-type: none"> • How information relating to the account will be transmitted (for example, in writing, by e-mail or using a secure website), how often it will be provided or made available and what language will be used. Any technical requirements for the customer's equipment to receive information or notices must be stated. The contract must also include the customer's right to obtain a copy of the contract at any time during its term.
Information about safeguards and corrective measures	<ul style="list-style-type: none"> • What steps the customer must take to keep a payment instrument safe. (Note that 'payment instrument' has a wide definition and will include payment cards, e-banking and telephone banking arrangements.) • Details of how to notify the payment service provider of the loss, theft or misappropriation of the payment instrument. In what circumstances the payment service provider would be able to stop or block the payment instrument. These are limited to reasons related to: <ul style="list-style-type: none"> • the security of the payment instrument; • the suspected unauthorised or fraudulent use of the payment instrument; and • where the payment instrument has a credit line (for example, a credit limit on a credit card), a significantly increased risk that the payer may be unable to fulfil their ability to pay. <p>Payment service providers may wish to include wording advising that the payment instrument might be blocked or stopped due to national or Community legal obligations of the payment service provider.</p> <ul style="list-style-type: none"> • In what circumstances and to what extent the customer might be liable for unauthorised payment transactions. • That the customer must notify the payment service provider of any unauthorised or incorrectly executed payment transactions as soon as they become aware of them, how such notification should be made and that the notification should be no later than 13 months after the debit date in order to be entitled to have the error corrected (no such limit will apply unless the customer has received this information). It is open to the payment service provider to offer better terms in this area. • The payment service provider's liability for unauthorised or incorrectly executed payment transactions (for example that the payment service provider will be liable for unauthorised or incorrectly executed payment transactions, as long as the claim is made within the time limits specified above). If Direct Debits are offered as a payment service on the account, reference should be made to the rights under the Direct Debit Guarantee scheme. • The conditions under which a refund is payable in relation to a transaction initiated by or through a payee (for example, a direct debit)
Information about the length of the contract, variation of terms and termination	<ul style="list-style-type: none"> • The duration of the contract, customer and payment service provider termination rights, and the terms under which the firm can unilaterally vary the contract.
Information on applicable law and disputes	<ul style="list-style-type: none"> • Details of the law applicable to the contract, the competent courts,) and the possibility (where relevant) to submit complaints to the FSC.

10.1.3.2 Changes to the framework contract (Regulation 44)

Any changes to the framework contract, or to the information that has to be disclosed before the framework contract is entered into, must be communicated at least two months before they are due to take effect.

Some account terms and conditions will contain provisions relating to other, non-payment services, for example overdraft facilities. In such accounts, the obligation to notify changes under Regulation 44 does not extend to non-payment services that are outside the scope of the pre-contract disclosure requirements.

The framework contract may contain a provision that changes are to be made unilaterally unless the customer notifies the payment service provider to the contrary. It may also state that rejection of proposed changes will amount to rejection of the contract and notice of termination. If the contract contains such a provision, the advice of change must state:

- that the customer will be deemed to have accepted the changes unless they notify the payment service provider before the proposed date of the change; and
- that the customer has the right to terminate the contract immediately and without charge before that date.

The addition of new payment services to an existing framework contract, which do not change the terms and conditions relating to the existing payment services, will not be treated as a change and so will not require two months notice.

Changes to the actual interest or exchange rates arising from changes to the reference interest and/or exchange rates must be notified to the customer as soon as possible, unless another frequency has been agreed with the customer. The manner in which this information is to be provided, or made available, may be agreed with the customer.

10.1.3.3 Termination of the framework contract (Regulation 45)

The contract may be terminated by the customer at any time, unless a period of notice (not exceeding one month) has been agreed. If the contract has been running for 12 months or more and is for a fixed period of more than 12 months or for an indefinite period, then no charge may be made for termination. Regular service charges for the running of the payment services may be charged, but any advance payments in respect of such service charges must be returned on a pro-rata basis. Any charge that is made for termination must reasonably correspond to the payment service provider's actual costs.

The payment service provider must give at least two months notice of termination on a framework contract that is not for a defined term.

The parties retain their usual legal rights to treat the framework as unenforceable or void, including any rights arising out of breach of contract.

10.1.3.4 Transaction information under a framework contract

10.1.3.4.1 Before execution (Regulation 46)

Where the payment order is given directly by the payer customer to his payment service provider, the payment service provider must, at the customer's request, inform the customer of:

- the maximum execution time for the transaction concerned; and
- any charges payable, (including a breakdown of those charges), where applicable.



10.1.3.4..2 After execution (Regulations 47 and 48)

As soon as reasonably practicable after each individual transaction, the payment service provider must provide his customer with certain information. If agreed in the framework contract, this may be provided, or made available, at least once a month. For example, for most banks and building societies this may be by means of issuing (or making available) a statement. For accounts operated by use of a passbook, the transaction information is available to the customer when they present their passbook to be made up and this is sufficient to fulfil the obligation to “make available”. If it is not so agreed, the information must be separately provided in relation to each transaction. However, it is important to note that this provision does not require monthly statements to be posted out for all accounts. Where there are no transactions (or the only transactions relate to the payment of interest) there is no obligation to provide the information.

10.1.4 Single payment transactions

10.1.4.1 Before the transaction (Regulation 36)

Before the contract is concluded [or immediately after the execution of the transaction if the contract has been concluded by some means of distance communication (i.e. by telephone) where it is not practicable to do so], the payment service provider must make available to the customer the information set out below. This may be done, for example, by providing the customer with a copy of the draft contract or payment order.

- The information (or unique identifier) the customer needs to provide for the payment order to be properly executed (the payment routing information).
- The maximum time the payment service will take to be executed (i.e. how long until the funds are received).
- Details of any charges, including a breakdown where applicable.
- If applicable, the exchange rate to be used (or the reference exchange rate on which the actual exchange rate will be based).

10.1.4.2 After the receipt of the payment order (Regulation 38)

The payer’s payment service provider must immediately after receipt of the payment order, provide or make available to his customer:

- a reference to enable the payer to identify the transaction (and if appropriate the information relating to the payee, for example, in a money remittance, what the payee will need to do to collect the funds);
- the amount of the payment transaction in the currency used in the payment order;
- details of any charges (including, where applicable, a breakdown of those charges);
- where the transaction involves a currency exchange and the rate used differs from the rate provided before the transaction, the actual exchange rate used (or a reference to it) and the amount of the payment in the other currency; and
- the date the payment order was received.



10.1.4.3 Information for the payee after execution (Regulation 39)

The payee's payment service provider must, immediately after execution of the payment transaction, provide or make available the following to the customer:

- A reference to enable the payee to identify the transaction and where appropriate, relevant information transferred with it (for example, name of the payer and invoice number). In deciding what is appropriate and relevant, the payment service provider should take into account other obligations, such as those of customer confidentiality, or the security of the payment system through which the payment was made (for example, technical information relating to the payment system that is received with a payment, may not be relevant or appropriate to be provided to the customer);
- the amount of the transaction in the currency in which the funds are being put at the payee's disposal;
- details of any charges (including a breakdown of those charges);
- the exchange rate used (if relevant) and the amount of the payment before it was applied; and
- the credit value date.

10.2 Rights and obligations in relation to the provision of payment services

The CoB provisions on rights and obligations contain rules on:

- Charging;
- Authorisation of payment transactions;
- Execution of payment transactions;
- Execution time and value date; and
- Liability.

These provisions apply to payment transactions under framework contracts and single payment transactions.

10.2.1 Charges (Regulation 52)

Payment service providers may only charge their customers for carrying out their obligations, as set out in Part IV of the Regulations, (those concerning rights and obligations), where the Regulations specifically allows it. Those charges must be agreed with the customer and must reasonably correspond to a provider's actual costs.

Unless there is a currency conversion as part of the payment transaction, the rule on charging is that:

- The payee must pay any charges levied by their payment service provider; and
- the payer must pay any charges levied by their payment service provider.

This is also known as a SHARE arrangement.

The effect of SHARE is that arrangements where previously the payer paid both his and the payee's payment service providers' charges, or vice versa, will no longer be possible under the above Regulation. The above SHARE arrangement will apply, unless the payment transaction involves a currency conversion.



10.2.2 Authorisation of payment transactions

10.2.2.1 Consent (Regulation 54)

The form and procedure for consent for execution of a transaction to be given by the payer must be set out in the information provided before entering into a framework contract. This should cover both individual transactions and a series of payment transactions (for example, a standing order or direct debit mandate). The PSD allows that, where agreed with the customer, consent may be given after the payment transfer has been executed. Otherwise it must be given in advance.

Regulation 66 sets out the rules on the point from which consent for a particular transaction may not be revoked by the customer. This will depend on the particular circumstances of the payment transaction in question. Up to the agreed point, the customer has the right to withdraw consent to a transaction.

If consent has been given to a series of payment transactions (for example, a standing order or direct debit mandate) the customer has the right, at any time, to withdraw consent in respect of future transactions in the series, subject to the time limits for revocation of the next payment transaction in the series, set out in Regulation 66.

10.2.2.2 Limits on the use of payment instruments (Regulation 55)

Before blocking or stopping a payment instrument (for example a credit or debit card, or an e-banking service), the payment service provider must have agreed in the framework contract that it can do so, and must contact the customer to advise them of its intentions and its reason for doing so. Stopping or blocking a payment instrument must only be done on reasonable grounds relating to its security, suspected unauthorised or fraudulent use of the payment instrument, or (where the instrument has a credit line) a significantly increased risk the payer may be unable to pay. If the payment service provider is unable to contact the customer beforehand, it must do so immediately after, using the means of communication agreed in the framework contract. However, if providing this information would compromise reasonable security measures, or would be unlawful, (for example if it would constitute 'tipping off' under anti-money laundering legislation), this requirement does not apply.

10.2.2.2 Obligations of the customer in relation to payment instruments (Regulation 56)

The customer is obliged by the PSD to abide by the terms and conditions for the use of the payment instrument and, in particular, to notify the payment service provider, in the agreed manner and without undue delay, should they discover that the payment instrument has been lost or stolen, or that someone else has used (or attempted to use) the payment instrument without the customer's authority.

The PSD obliges the customer to take all reasonable steps to keep the personalised security features of the payment instrument safe. This would include the personalised identification number (PIN) or password for the instrument or other piece of information known only to the issuing payment service provider and the customer.



10.2.2.3 Obligations of the payment service provider in relation to payment instruments (Regulation 57)

The payment service provider issuing a payment instrument must do the following:

- Make sure that any personalised security features cannot be accessed by anyone other than the customer involved (subject to the duty of the customer in Regulation 57 to keep it safe). In addition, if the payment service provider sends a payment instrument, PIN, password, etc. to the customer, any risk involved in the sending of the item will remain with the payment service provider;
- have appropriate means available at all times (subject to the force majeure provisions of Regulation 79) to allow the customer to notify them if the payment instrument is lost, stolen or misappropriated, or to request that an instrument be unblocked. The payment service provider must also be able to provide the customer with some way of proving that they have made the notification for 18 months after it has been made. This could be, for example, by means of providing a reference and/or by confirming receipt in writing; and
- prevent all use of the payment instrument after having been notified that it has been lost, stolen or misappropriated. Where it is not practically possible in some circumstances to prevent all use of the instrument, transactions generated through the use of the payment instrument should not be debited to the underlying account.

10.2.2.4 Payment service provider's liability for unauthorised transactions (Regulation 60)

If a payment transaction was not properly authorised by the customer, the payment service provider concerned must immediately refund the amount of the transaction to the payer and, if applicable, restore the relevant payment account to the state it would have been in had the transaction not been made.

There is a balance to be struck between a customer's right to an immediate refund for an unauthorised payment transaction, and the need to determine whether the payment transaction was properly authorised, or whether the customer has failed in their own obligations with regard to the payment instrument used, thus rendering any such claim invalid.

It would usually be reasonable to investigate a claim before making a refund if there is prima facie evidence to suggest that either the customer has acted fraudulently, or that he has deliberately or grossly negligently failed to comply with his obligations in relation to the payment instrument. Otherwise, the payment service provider would generally be expected to make the refund and take other correcting actions immediately.

10.2.3 Execution of payment transactions

10.2.3.1 Receipt of payment orders (Regulation 64)

The point in time of receipt of a payment order, from which the execution time requirements of the PSD must be calculated, will generally be the time at which the payment order is received (whether directly or indirectly) by the payer's payment service provider. The exceptions are as follows:

- The time that the payment order is received is not a business day for that payment service provider in respect of the particular payment service concerned. The payment order is deemed to have been received on the following business day;



- The payment service provider has set a time towards the end of the business day after which any payment order received will be deemed to have been received on the following business day (notice of this must be given to the customer). It is recognised that this cut-off time may be different, depending upon the requirements of different payment products.
- The customer has agreed with the payment service provider that the payment order will be executed:
 - on a specific day in the future;
 - at the end of a certain period; or
 - on the day when the payer provides the required funds to the payment service provider in this case, the agreed date (or, if it is not a business day for the payment service provider, the next business day) will be deemed to be the time of receipt.

10.2.3.2 Refusal of payment orders (Regulation 65)

A payment service provider may only refuse to execute a payment order if the conditions in the framework contract have not been met, or alternatively, execution would be unlawful (for example, in line with anti-money laundering legislation).

Where a payment service provider refuses to execute a payment order, it must notify the customer of the refusal, unless it is unlawful to do so (for example, due to restrictions on tipping-off). The notification must, if possible, include the reasons for the refusal and, where appropriate, what the customer needs to do to correct any errors that led to the refusal.

10.2.3.3 Amounts transferred and amounts received – deduction of charges (Regulation 67)

In general, the rule is that the payer and the payee must each pay the charges levied by their own payment service provider and that no charges can be deducted from the amount transferred.

The payee can agree with their payment service provider that it can deduct its charges before crediting the payee, as long as the full amount of the payment transaction and details of the charges deducted are clearly set out in the information provided to the payee. If other charges are deducted, responsibility for rectifying the position and ensuring that the payee receives the correct sum lies with:

- The payer's payment service provider, for payments initiated by the payer; and
- the payee's payment service provider, for payments initiated by or through the payee.

10.2.4 Execution time and value date

10.2.4.1 Applicability (Regulation 68)

The execution time and value dating requirements apply to all:

- Payment transactions in euros;
- national payment transactions in sterling; and
-



- payment transactions involving only one currency conversion between sterling and euro where the currency conversion is carried out in Gibraltar and, for a cross-border transfer (that is, a payment transaction where the payer's and the payee's payment service providers are located in different member states), the transfer is denominated in euro.

10.2.4.2 Payment transactions to a payment account – time limits for payment transactions (Regulation 69)

The default rule is that payments have to be credited to the payee's payment service provider's account by close of business on the business day following the day when the payment order was received.

Up until 1st January 2012, it will be possible for the payer's payment service provider to agree with the payer that this period can be extended to the third business day following the day on which the payment order was received.

An extra day may be added to each of the above periods when the payment order is initiated in paper, rather than electronic form.

The payee's payment service provider shall value date, and make available, the credit to the payee's account following receipt of the funds in its own account in accordance with Regulation 73. Therefore, as soon as the funds are received in the payee's payment service provider's account, it shall make sure that the payee can get access to the funds, and credit value date them no later than the business day on which the payment service provider's account was credited. If the funds are received on a non-business day, the above requirements will apply at the start of the next business day. It is important to note that the extension available by agreement to 3 days (until 1st January 2012) above, does not apply to this leg of the transaction.

10.2.4.3 Absence of payee's payment account with the payment service provider (Regulation 70)

Where the payee does not hold a payment account with the payment service provider (for example, in money remittance services) the payment service provider to which the payment has been sent must make the funds available immediately after they have been credited to its account.

It would appear that Regulation 70 is aimed at money remitters (because the definition of money remittance includes the phrase 'without any payment accounts being created') and therefore this does not require a bank to hold funds received where no account is held, pending collection by the customer. The bank is therefore not precluded from returning the funds to the payer's bank with the reason 'no account held'.

10.2.4.4 Cash placed on a payment account (Regulation 71)

Cash placed by a consumer, micro-enterprise or small charity with a payment service provider for credit to its payment account with that payment service provider must be credited to the account, value dated and made available immediately after receipt by the payment service provider.

This only applies if the account is denominated in the same currency as the cash.

For other customers an extra business day is allowed.



These time limits apply whether or not the branch or agent where the cash is paid in is the account holding branch. A branch for these purposes could be either a bank branch, or a branch of a payment institution.

The time limit will, for example, apply to cash paid in to settle a credit card bill, where the card was issued by the bank where the pay-in was made. In cases where cash is paid into another payment service provider under a clearing arrangement, and where the payment service provider is providing a service to the customer, rather than as agent for the payee payment service provider, the transaction would be subject to the normal execution time provisions under Regulation 69 above.

Where funds are left in a nightsafe, or in a deposit box in the branch i.e. "a daysafe", the point at which cash is deemed to be received can be specified in line with reasonable customer expectations as being the point at which the box is opened (for example, the end of the business day for the daysafe and next business day for a nightsafe).

10.2.4.5 Value date and availability of funds (Regulation 73)

The PSD in effect prohibits value dating that is detrimental to the customer. This means that the value date of a credit to a payment account can be no later than the business day on which the payment transaction was credited to the payee's payment service provider's account. This is the business day on which the payee's payment service provider is deemed to have received the funds. The funds must also be at the payee's disposal immediately after they have been credited to the payee's payment service provider's account.

Similarly, debit transactions must not be value dated before the date on which the amount of the debit was debited to the payer's account. For example, in a card transaction, the card issuer cannot value date the debit to the account before the date on which it receives the payment order through the merchant acquiring process.

10.2.5 Liability

Incorrect unique identifiers (Regulation 74)

As part of the information the payment service provider is required to provide ahead of provision of the payment service, it will specify the 'unique identifier', which is the key information that will be used to route the payment to the correct destination and payee. For Gibraltar bank payments in sterling, this is likely to be the sorting code number and account number of the payee's account. For SEPA payments it will be the BIC and IBAN of the payee. Other information, such as the payee's name or invoice number, may be provided by the payer, but will not be part of the unique identifier, unless it has been specified as such by the payment service provider.

The PSD provides that, as long as the payment service providers process the payment transaction in accordance with the unique identifier, they will not be liable under the non-execution or defective execution provisions of the PSD for incorrect execution if the unique identifier provided is incorrect.

The effect of this is that if the sorting code and account number are quoted as the unique identifier and the account number is incorrect but the account name quoted is correct (so that the funds go to the wrong account), the bank concerned will not be liable under those provisions.



Payment service providers are required to make reasonable efforts to recover the funds involved even where they are not liable, but they may, if agreed in the framework contract, make a charge for such recovery.

Non-execution or defective execution of payment transactions initiated by the payer (Regulation 75)

This provision covers situations where the payer customer has instructed their payment service provider to make a payment and the instruction has either not been carried out, or has been carried out incorrectly.

In these circumstances the payer's payment service provider will be liable to its customer unless it can prove to the payer (and, where relevant, to the payee's payment service provider), that the correct amount, and the beneficiary's details as specified by the payer, were received by the payee's payment service provider on time. If it can prove this, the failure to credit the intended payee will then lie with the payee's payment service provider rather than with itself.

If the payer's payment service provider is liable, it must refund the amount of the defective or non-executed transaction to the payer without undue delay, and, where applicable, restore the debited payment account to the state it would have been in had the transaction not occurred at all. This may, for example, involve the refunding of charges and adjustment of interest.

If the payer's payment service provider can prove that the payee's payment service provider received the correct amount and beneficiary details on time, the payee's payment service provider is liable to its own customer. It must immediately make the funds available to its customer and, where applicable, credit the amount to the customer's payment account.

Liability under this provision will not apply if the failure giving rise to it was due to abnormal and unforeseeable circumstances beyond the control of the relevant payment service provider, or if it arose because of the payment service provider having to comply with other EU or Gibraltar law.

Non-execution or defective execution of payment transactions initiated by the payee (Regulation 75)

This covers situations where the payment order has been initiated by the payee (for example, credit or debit card payments, or direct debits) and the instruction has either not been carried out or has been carried out incorrectly. As above, the payee's payment service provider will be liable unless it can prove it has carried out its end of the payment transaction properly.

Liability of payment service provider for charges and interest (Regulation 75(3))

A payment service provider that is liable for non-execution or defective execution of a payment transaction under the two provisions detailed in the paragraphs above will also be liable to its customer for any resulting charges and/or interest incurred by the customer. This liability will not be incurred if the circumstances giving rise to it were due to abnormal and unforeseeable circumstances beyond the control of the payment service provider.



Right of recourse (Regulation 76)

If a payment service provider has incurred a loss or been required to make a payment under the provisions set out under “incorrect unique identifiers” and “non-execution or defective execution” above, but that liability is due to the actions of another payment service provider or an intermediary, the first payment service provider is entitled to be compensated by the other payment service provider or intermediary.

No Liability “force majeure” (Regulation 78)

Liability under the CoB requirements relating to rights and obligations set out in Part IV (but not to the information requirements in Part III of the Regulations) will not apply where the liability is due to:

- Abnormal and unforeseen circumstances beyond the person’s control, where the consequences would have been unavoidable despite all efforts to the contrary; or
- obligations under other provisions of Community or national law (for example anti-money laundering legislation).



11 Definitions and Glossary of terms

“agent” means a natural or legal person which acts on behalf of a payment institution in providing payment services;

“authentication” means a procedure which allows the payment service provider to verify the use of a specific payment instrument, including its personalised security features;

“branch” means a place of business, other than the Head Office, which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all the places of business set up in a single EEA State by a payment institution with a Head Office in another EEA State shall be regarded as a single branch;

“business day” means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;

“consumer” means a natural person who, in payment service contracts covered by the Regulations, is acting for purposes other than his trade, business or profession;

“Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC;

“durable medium” means any instrument which enables the payment service user to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

“electronic money” means value as represented by a claim on the issuer which is –

- i. stored on an electronic device;
- ii. issued on receipt of funds of an amount not less in value than the monetary value issued;
- iii. accepted as means of payment by undertakings other than the issuer;

“framework contract” means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;



“funds” means banknotes and coins, scriptural money and electronic money;

“means of distance communication” refers to any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment service contract;

“micro-enterprise” means an entity engaged in an economic activity, irrespective of its legal form, including, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity which, at the time of the conclusion of the payment service contract, is an enterprise –

a) which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million; or

b) which employs fewer than 10 persons and whose annual turnover or annual balance sheet does not exceed EUR 2 million;

“money remittance” means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, or where such funds are received on behalf of, and made available to, the payee;

“payee” means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment institution” means a legal person that has been granted authorisation in accordance with Regulation 10 to provide and execute payment services;

“payment instrument” means any personalised device or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment;

“payment order” means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

“payment service” means any business activity listed in the Schedule;



“payment service provider” means the bodies referred to in Regulation 3(1) and legal and natural persons benefitting from the waiver under Regulation 26;

“payment service user” means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;

“payment transaction” means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

“reference exchange rate” means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

“reference interest rate” means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;

“unique identify” means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider, and to be provided by the payment service user to identify, unambiguously, the other payment service user and/or his payment account for a payment transaction;

“value date” means a reference time used by a payment service provider for the calculation of interest on the funds debited from, or credited to, a payment account.



12 Frequently asked Questions

Do you need to be authorised or registered?

If the average total value of payments the firm is carrying out is less than €3 million per month and the firm does not intend to passport services on a cross-border basis, the firm can apply for registration.

If, on the other hand, the average total value of payments is more than €3 million, or you wish to provide payment services in other EU member states, the firm will need to apply for authorisation, to which more rigorous requirements apply.

Does it apply to payments outside of the EEA?

All firms providing payment services (excluding both credit and E-money institutions already authorised) in Gibraltar must become registered or authorised by the FSC to provide payment services, regardless of where the payment is sent.

The CoB provisions will, however, only apply to payments which are made within the EEA i.e. where both the payer and payee are based in the EEA, with the exception of Regulation 73 which applies to all payment transactions.

What will be the CoB requirements?

Firms are required to provide users with a range of information (e.g. pre-contract information, such as terms and conditions, and post contract information such as amount and currency of payment) and there are various provisions regulating the rights and obligations of payment service users and providers, these can be found in full in Part III and IV of the Financial Services (EEA) (Payment Services) Regulations 2010.

Does the maintenance of payment accounts by a payment institution rather than a credit institution amount to accepting deposits?

No, funds received by payment institutions from payment services users with a view to the provision of payment services shall constitute neither deposits nor e-money.

As an authorised payment institution, any funds held by a firm must only be used in relation to payment transactions. A "payment transaction" for these purposes is defined in Regulation 2 as meaning "an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee". The fact that a payment account operated by a payment institution can only be used for payment transactions distinguishes it from a deposit. A deposit can nevertheless be a form of payment account.

Does the PSD apply to a bank or e-money issuer?

Yes. If a firm is licensed as a bank or e-money issuer, it will be subject to the conduct of business requirements in the PSD Regulations. The authorisation regime applying to Gibraltar banks and e-money issuers remains that imposed by the Financial Services (Banking) Act 1992.



If a firm provides electronic foreign exchange services to its customers/clients, will this be subject to the Regulations?

Not necessarily - the provision of foreign exchange services is not itself a payment service. Foreign exchange transactions may exist as part of, or independent from, payment services. A firm would fall within the scope of the Regulations, if it is providing payment services, by way of business, in Gibraltar. For example, where a customer instructs his bank to make a payment in euros from his sterling bank account to a payee's bank account, the conduct of business requirements in the Regulations would apply to the transfer of funds, including information relating to the relevant exchange rate.

By contrast, the conduct of business provisions would not be expected to apply to a spot or forward foreign exchange transaction itself. That said, the electronic transmission, for example, by a bank on behalf of a customer to a foreign exchange services provider is likely to be subject to the PSD, because this is a transfer of funds executed by the bank.

What is a payment account?

A "payment account" is defined in Regulation 2 as "an account held in the name of one or more payment service users which is used for the execution of payment transactions". When determining whether or not an account is a "payment account" for the purposes of the Regulations, it is appropriate to focus on its underlying purpose. To establish this it is necessary to consider a number of factors including:

- the purpose for which the account is designed and held out;
- the functionality of the account (the greater the scope for carrying out payment transactions on the account, the more likely it is to be a payment account);
- restrictive features relating to the account (for example, an account that has notice periods for withdrawals, or reduced interest rates if withdrawals are made, may be less likely to be a payment account);
- a limited ability to place and withdraw funds unless there is additional intervention or agreement from the payment service provider (this will tend to point more towards the account not being a payment account); and
- the extent to which customers use an account's payment service functionality in practice.

Accordingly, "payment accounts" can include, for example, current accounts, e-money accounts, flexible savings accounts, credit card accounts and current account mortgages.

If a firm satisfies the conditions for registration as a registered payment institution does that mean it has to register as one?

No, there are other options available to the firm. If it registers as a registered payment institution, it cannot acquire passport rights under the Regulations, so the firm may wish to become an authorised payment institution if it wants to take advantage of the passport. It may also choose to become an agent of a payment services provider.



If a firm only wishes to be an agent of a payment institution, does it need to apply to the FSC for registration?

No. If your principal is a payment institution, it is that firm's responsibility to apply for registration on your behalf. Assuming your principal is not an EEA firm, you are required to be registered on the FSC register before you provide payment services, subject to any relevant transitional provisions which may delay or avoid the need for registration.

If your principal is an EEA firm, your principal will need to comply with the relevant Home State legislation relating to your appointment.

Therefore a firm in Gibraltar wishing to become an agent for a payment institution which is not based in Gibraltar will have to apply via the Home State of the payment institution, and it is the responsibility of the payment institution to register the agent.

If a bureau de change provides cash-only forex services and does not have accounts for clients is it outside the scope of the Regulations?

Yes. The Regulations do not apply to money exchange business consisting of cash-to-cash operations where the funds are not held on a payment account. If you allow a customer to pay for foreign currency using a payment card, this does not mean that you will be providing a payment service. The Regulations will apply, however, to the payment transaction made using the payment card and the payment service provided to you by the merchant acquirer. In other words, the Regulations apply to the merchant acquirer's services but yours remain outside the scope of authorisation or registration.

Do the Regulations distinguish between (i) payment transactions between payment service providers and (ii) payment services provided to clients?

Yes. Broadly the object of the Regulations is the payment service provided to specific clients and not the dealings among payment service providers to deliver the end payment arising from that service. A payment transaction may involve a chain of payment service providers. Where a bank, for example, provides a cash withdrawal or execution of payment transaction service to its customer which involves the use of a clearing bank, it will still be providing a payment service to its customer.

The Regulations do not, however, cover inter-bank settlement. More specifically, the Regulations do not apply to payment transactions carried on within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.

Is an independent ATM deployer offering cash dispensing facilities to users, which is not a bank subject to the Regulations?

No, assuming the firm does not provide other payment services listed in Appendix A below. If other payment services are provided, all the payment services (including the ATM cash dispensing facilities) will be subject to the Regulations, to the extent that other exclusions are inapplicable.



13 Appendix A – Payment Services

The following activities, when carried out as a regular occupation or business activity, are payment services:

1. Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account;

Payments of cash into a payment account over the counter and through an ATM

2. Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account;

Withdrawals of cash from payment accounts over the counter and through an ATM

3. The execution of the following types of payment transaction –

i) direct debits, including one-off direct debits;

ii) payment transactions executed through a payment card or a similar device;

iii) credit transfers, including standing orders;

4. The execution of the following types of payment transaction where the funds are covered by a credit line for the payment service user:

i) direct debits, including one-off direct debits;

ii) payment transactions executed through a payment card or a similar device;

iii) credit transfers, including standing orders;

5. Issuing payment instruments or acquiring payment transactions;

Card issuing and card merchant acquiring services

6. Money remittance;

Money transfer/remittances that do not involve payment accounts.

7. The execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment service used and the supplier of the goods or services.

Mobile or fixed phone payments, payments made from handheld devices