

# Analyzing an EMI’s licensing application

This additional example is part of the CGAP Technical Guide, *Digital Financial Services for Financial Inclusion: Tools for Supervisors*. It provides a practical illustration produced during CGAP’s work with several country supervisors on DFS supervisory frameworks. This document is part of the Technical Guide’s collection of Additional Examples and Guidance. Its utility and applicability to specific country contexts depends on factors such as the availability of data and other resources, the stage of development of DFS markets, experience with risk-based supervision, and institutional arrangements for supervision.

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## 1. Objective of this guidance

This document provides supervisors with general guidance on analyzing applications for licenses (or authorization) for entities to operate as new nonbank e-money issuers (EMIs).

## 2. Applying the guidance

This guidance focuses on analyses pertaining to applications by new EMIs (i.e., those not in operation at the time the application is submitted). While banks are usually not required to obtain EMI licenses to offer e-money, they may create subsidiary companies to operate as EMIs. In such cases, this guidance applies to the proposed bank-owned EMI.

Supervisors can use this document as a starting point to produce their own licensing manual or to improve an existing one. It is not intended as the sole guidance for analyzing licensing applications but should be customized to the local regulatory framework. While the guidance is based on international practice and regulatory frameworks for EMIs, there may be instances where it does not align with local laws, regulations, or supervisory practices.

Supervisors may also use it to create manuals for analyzing the licensing applications of other types of digital financial services (DFS) providers (i.e., licensing categories other than EMIs), such as payment services providers (PSPs) and others. However, each licensing category will have a different focus and scope of activities that aligns with the activities permitted by regulation. Consequently, the sections particularly tailored to EMIs (e.g., the sections on Business Plan Analysis and Trust Account and Reconciliation in Step 3 below) may not fully apply—or may not apply at all. Supervisors using this document to develop licensing manuals for other licensing categories should ensure the manuals are adequately adjusted.

## 3. Single-phase vs. two-phase licensing process

Certain elements of this guidance (e.g., checklist for licensing applications) will vary, depending on whether a single-phase or a two-phase licensing process is required.

In the **single-phase process**, the supervisor needs to make a judgment about the level of detail required for licensing documentation, depending on the level of preparedness expected from the applicant at time of application. The supervisor must clearly communicate which planning or set-up stage an EMI should have attained in order to apply for a license.

The **two-phase process**, on the other hand, entails the following:

- In the first of two phases, the supervisor requires less detailed information from the applicant, typically information about its proposed business, main shareholders, and investors. The applicant may be required to make a presentation about the business and prove that it has set aside the required minimum initial capital. After initial analysis, the supervisor would (potentially) issue the initial authorization or license that would allow the EMI to enter the second phase. In some countries, the initial authorization or license is known as an “in-principle authorization/license” or a “provisory license.”

- In the second of two phases, the applicant gets ready to start operations by setting up the business, buying equipment, hiring personnel, installing systems and networks, formalizing partnerships, and preparing marketing materials, among other activities. If agreed upon with the supervisor, the applicant may run pilots with a limited number of customers during a specified period. By the end of the second phase—the duration of which is either set by regulation or agreed upon with the supervisor—the supervisor issues a final decision on whether to issue the license. The supervisor typically meets at least once with the applicant before the license is issued and may request additional information or documentation, including pilot results. Many supervisors also conduct a facilities inspection prior to issuing a license.

This guidance can be adapted for use in both approaches to licensing.

## 4. Principles and objectives when analyzing EMI licensing applications

### PRINCIPLES FOR EMI LICENSING

- Supervisors should strive to achieve fairness and consistency in licensing decisions and avoid, for example, favorable treatment of well-known or larger applicants.
- Supervisors should strive to achieve proportionality in their licensing requirements and the depth of analysis of licensing applications. The more complex and bigger the applicant EMI, the higher the supervisor's expectations not only in the quality of the licensing application but in the standards the applicant must meet (e.g., risk management procedures, investment plan, qualified executives).

### OBJECTIVES FOR EMI LICENSING

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

- Ensure that the EMI's promoters (e.g., board members, significant shareholders, senior management) are fit and proper, of good standing and reputation in the industry, have relevant experience and expertise, and do not have a compromising background.
- Ensure the EMI is ready and capable of complying with minimum entry and operating requirements.
- Ensure the EMI's entry will contribute to all or some of the supervisor's policy objectives (e.g., increasing competition, serving underserved segments, operating in a niche market, increasing efficiency, enhancing consumer protection, increasing safety).
- Ensure the EMI has secured enough resources and is committed to building a solid business on par with the industry's best domestic or international practices.
- Deciding in favor of a new EMI's application to operate is not simply a bureaucratic process. Assembling a licensing package and demonstrating compliance with the minimum entry capital as required by regulation is not grounds for automatic approval. Rather, licensing procedures should include a thorough analysis of whether the

applicant complies with the minimum entry requirements and shows willingness and capacity to comply with ongoing operating requirements.

- Not every detailed standard or requirement set in EMI regulation needs to or can be checked in detail during licensing. However, the supervisor must be satisfied that the applicant has demonstrated resources and expertise to fulfill operating requirements (e.g., internal controls, risk management, governance standards). Full verification of regulatory compliance should be completed via ongoing supervision once the EMI is in full operation, following the risk-based methodology.

## 5. Steps of the licensing process

### STEP 1. IDENTIFY SPECIFIC ENTRY AND OPERATING REQUIREMENTS

As a first step, supervisors should identify all specific requirements laid out in law and regulation for EMIs looking to obtain a license and operate in a country. These requirements should be incorporated into the supervisor's own internal guidance for EMI licensing applications. Entry and operating requirements may include:

- Documentation required for a licensing application in each licensing phase
- Who is eligible to be shareholders and controllers in the EMI
- Minimum entry capital and whether and how it needs to be deposited with the authority during the licensing procedure
- Licensing fees
- Licensing timelines
- Permitted EMI activities
- Operational requirements, including:
  - Use of agents
  - Systems and technological and safety standards
  - Trust account, fund segregation, and reconciliation requirements
- Internal controls requirements
- Risk management requirements
- Recordkeeping and reporting requirements
- Anti-money laundering/combating the financing of terrorism (AML/CFT) control requirements
- Consumer protection and conduct requirements
- Ongoing capital and liquidity requirements

## STEP 2. CHECK THE APPLICATION PACKAGE

This step begins by checking whether the application package presented by the applicants is complete, according to regulatory requirements. It must include all documentation and information listed in regulation that deals with licensing applications, as well as any other guidance the supervisor has issued for new EMIs.

- One way to make the process easier, faster, and more consistent is to create a checklist for the supervisor to follow (see Checklist template, below).
- At this stage the application's contents are not analyzed; this step purely checks the application's formality.
- Checking the payment of licensing fees should be completed by following local practices.
- Checking compliance with minimum entry capital should be completed by following local practices.
- If the application is complete, a notification should be sent to the applicant, informing them that the analysis has officially begun, and, with it, the countdown of days until the decision's deadline. The supervisor should clarify that the timeline will be interrupted if additional information and meetings are called for.
- If the application is incomplete, the supervisor should immediately summon the applicants for a meeting or list the missing items in a notification that sets a deadline for completion.
- The initial process is ideally conducted using an online system that allows the applicant to submit the licensing package in digital format and provides a means of easy communication between the applicant and the supervisor, including requests for additional documentation or resubmitting a particular file.

**Checklist template** including examples of items usually required by EMI regulation

Document/information	Related regulatory provision	Yes	No
<b>Application letter</b>			
Purpose of the application, purpose of the business, documentation being submitted, contact details for the person responsible for the application, signature of competent persons			
<b>Articles of incorporation</b>			
Documentation showing the existence of the company created to operate as an EMI			
<b>Minimum initial capital</b>			
Proof that minimum initial capital has been paid, or otherwise—according to regulation			
<b>Origin of funds</b>			
Proof of the origin of funds for minimum initial capital and an explanation about the sources of initial and further investment in the EMI:			
<ul style="list-style-type: none"> <li>• SWIFT message (foreign) or proof of bank transfer (domestic)</li> <li>• Bank account statements for the EMI and investor(s)</li> <li>• Financial statements of shareholders</li> <li>• Further explanations</li> </ul>			
<b>Business plan (BP)</b>			
<i>Strategic plan</i>			
<ul style="list-style-type: none"> <li>• Market analysis (business opportunities, competition, target market segments, positioning strategy, marketing)</li> <li>• Details of nature and functionality of EMI's operations</li> <li>• Details of products/services to be offered</li> <li>• Geographical coverage</li> </ul>			
<i>Operational plan</i>			
Revenue sources: Range of fees and charges			
Staffing and agents:			
<ul style="list-style-type: none"> <li>• Hiring and retention strategy</li> <li>• Remuneration policy, including for agents</li> <li>• Detailed organizational chart showing reporting lines, staff numbers, and major functions</li> <li>• Description of customer onboarding process</li> <li>• Workflow of e-money transactions</li> <li>• Explanation of how notifications and receipts are made available to customers</li> <li>• Detailed description of technical platform to be used, including its reputation, trust and use in the market, record keeping features, and scalability</li> <li>• Description of major reliance on third parties such as cloud computing providers and agent network managers</li> <li>• Description of agent onboarding and network growth strategy</li> <li>• Description of plans and technical capacity to connect to national payment system</li> </ul>			

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### *Financial projections*

- Projected key performance indicators (KPIs) for BP period, possibly considering three alternative scenarios: optimistic, probable, or pessimistic. Minimum items include:
  - Number of accounts (registered and active)
  - Total e-float
  - Number of agents
  - Number of agent network managers
  - Total revenue
  - Total expense, itemizing agent fees
  - Total overhead costs
  - Total commercial/marketing costs
  - Capital expenditure, including investment in the technology platform
  - Result (profit/loss)
- Key assumptions impacting funding cost and performance (e.g., inflation, GDP, interest rates, etc.)
- Projected yearly financial statements (e.g., balance sheet, income statement)
- Projected monthly cash flow for first year of operation

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### **Regulatory compliance**

- Policies and procedures for data security, with descriptions of data infrastructure and security features
- Policies, procedures, and systems to avoid, identify, and address internal and external fraud
- Internal control policies and procedures
- Business continuity and disaster recovery plan (BCP)
- Policies and procedures, as well as information systems for registering, addressing, and storing customer and agent complaints

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### *AML/CFT*

- AML/CFT policies and procedures, including customer and agent due diligence
- Description of systems and procedures for ensuring compliance with daily and monthly transaction and balance limits, including cases where aggregate balances of multiple accounts are held by a single customer or agent

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### **Fit and proper**

- Identification details
- Description of professional experience
- Description of roles/jobs person has in other companies
- Description of duties to be assumed at EMI
- Certifications by police authorities

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### *Owners*

- Allotment of EMI shares
  - Profile of holding company and individual final owners
  - Detailed organizational chart of economic group
  - Recent financial statement of holding company
  - Tax returns of individual owners
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**Agents**

- Services to be provided through agents
- Geographical coverage over initial growth period
- Policies and procedures for services through agents
- Standard agency agreement (model)
- Assessment of risks of using agents and risk management procedures
- Description of agent monitoring procedures
- Use of third parties (e.g., agent network managers)
- Description of systems used to manage agents (e.g., agent database)

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**Trust account and fund segregation requirements**

- Information about planned trust (or similar) account arrangement with one or more banks
- Model trust agreement
- Investment strategy for funds kept in trust account
- Planned use of interest earned from trust account

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*Reconciliation of trust account*

- Detailed description of reconciliation process with details of any integration between trust account and EMI operational accounts, and accounts of agents and agent network managers

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**Consumer protection**

- Model consumer agreement for e-money accounts
- Draft marketing and other consumer communication and marketing materials
- Description of how customers will be given access to transaction history and account statement
- Description of fee disclosures at transaction points
- Print screens of customer interaction platforms
- Description of complaints handling procedures

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**Letters of no objection**

If EMI is owned by a company regulated by another domestic authority (e.g., a telecommunications regulator) or a foreign authority (e.g., a payments regulator):

- Letter of no objection from such authority
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### STEP 3. ANALYZE THE APPLICATION

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

1. Fit and proper requirements
2. Business plan
3. Regulatory compliance

The analysis may combine several techniques, including:

- Examining documentation submitted in the application package
- Examining documentation requested by other authorities
- Consulting databases (e.g., courts, police)



- Examining third-party sources (e.g., media reports, academic institutions, reports by other authorities)
- Examining applicant's website(s)
- Conducting meetings with applicant, proposed board members, and proposed senior management
- Exchanging messages for clarifications or other purposes

### **3.1 Initial meeting**

After preliminary analysis of the licensing package, an initial meeting (and potentially multiple meetings) should be organized with the applicant, including the analyses described below. In the meeting, the applicant should present:

- A complete overview of the proposed EMI business in line with the BP
- An overview of the risks and challenges, threats and opportunities the EMI will face
- Detailed explanations of the operational strategy and systems to be used

Demonstrations of products and customer interfaces can also be performed. The meeting is the first opportunity for the supervisor to clarify questions and issues raised in the preliminary analysis and those not clarified through remote communications. Meeting the applicant is also the main way the supervisor can “get a feeling” for the applicant, their commitment to the project, their knowledge about the application and the regulatory framework, and their expertise and intentions. These subjective aspects cannot be covered by document analyses. Additional meetings and calls should be set up as needed.

### **3.2 Analysis of fit and proper requirements**

#### **1. Professional experience and expertise**

- Check whether the CEO and senior management have the required professional experience and profiles to undertake their roles by comparing their CVs with descriptions of their EMI roles.
- Analyze CVs to confirm that at least one board member has experience with e-money issuing, payment services, or some type of transactional financial services, and at least one has experience with technology services applied to financial services.
- Perform an internet search on the CEO, board members, and senior management, as well as the companies they have worked for. Check that information provided about professional experience matches information found on the internet.
- In cases where the veracity of information may be suspect, get in touch with the academic institutions and companies mentioned on the CVs.

#### **2. Potential conflicts**

- If the EMI is part of an economic group, check whether roles the CEO and other members of senior management would play conflict with their EMI roles (e.g., limited capacity to perform roles due to time constraints and distance) or pose functional

conflicts (e.g., combining responsibility for consumer complaints at the EMI and commercial business units that are also sources of consumer complaints).

- Evaluate whether information in documentation or an internet search could indicate conflicts of interest or impediment.

### 3. Reputation

- If the CEO, senior managers, and board members played roles in financial institutions within the country, evaluate whether previous performance or reputation would in any way negatively impact the EMI—or even the market. Attempt the same analysis for those whose experience has been abroad. If necessary, require additional information and reference contacts.
- Evaluate whether roles played in other companies as well as details found on the internet about the CEO, senior managers, board members, and the economic group the EMI participates in could raise reputational issues.
- Check information with other authorities, if necessary.
- Check for inconsistencies in information provided about professional experience, academic records, and knowledge required for proposed EMI roles.

### 4. Financial strength of owners

- By analyzing the financial statements (if a holding company) or tax returns (if individuals) of the EMI's owners, an assessment must be made regarding their financial strength to cover initial investment in the EMI (including minimum entry capital), plus losses projected for the first years and future investments (as foreseen in the investment portion of the BP).

## 3.3 Business plan analysis

The business plan is at the core of EMI application analysis. Through the BP, the supervisor looks for regulatory requirements and an overall understanding of the applicant's intentions and strategy. It also points to the strength of the proposed business. The BP is a full description of the business strategy, policies, resources, infrastructure, funding strategy, and expected financial results. In general terms, the analysis focuses on deciding whether a BP is complete and coherent and whether plans and projections are realistic.

### Determine whether the business plan is complete

The first step is to determine whether the BP submitted provides a complete picture. The necessary content can essentially be divided into three elements:

1. **Strategic plan.** A strategic plan includes explanations of EMI objectives, a market analysis showing the current state of the e-money and payments market, business opportunities to be explored, challenges and success factors of the EMI business, positioning strategy, and EMI targets (e.g., market share, KPIs). A SWOT analysis (strengths, weaknesses, opportunities, and threats) is also useful.
2. **Operational plan.** A BP's core is its operational plan: a detailed explanation of how the strategy will be implemented, including details about products and services, geographical coverage, revenue sources, major costs, a staffing and retention plan,

organizational and governance structure, risk management framework, main IT systems, agent network strategy, other channels, complaints handling mechanisms, marketing, branding, etc.

- 3. Financial projections.** Financial projections result from strategic and operational plans. They must be complete—including projected balance sheet, income statement, first year’s cash flow—and cover a minimum period of three years. Ideally, they are in electronic form (e.g., Excel) so the supervisor can review the formulas used.

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

- Background about promoters and why they are investing in the EMI
- An overview of the EMI’s business
- Objectives and goals of the EMI via mission, vision, and goals statements
- An explanation of the EMI market and descriptions of market segments, competition, and the specific business opportunity (e.g., unmet demand by competitors) to be explored (market analysis)<sup>1</sup>
- Explanation of the target market, distribution and market strategy, products, pricing
- Specific targets (e.g., market share, growth)
- An organizational chart of the EMI and the economic group it fits into, relationship between the EMI and other businesses in the group, EMI governance framework, staffing strategy
- Remuneration policy for senior management and agents (e.g., agent fees/commissions)
- Main IT platform, other major IT systems (e.g., complaints handling, agent database), description of major operational processes, continuity and disaster recovery plan
- Business risks and mitigation mechanisms, including internal controls
- Revenue model, including fees from customers and third parties (e.g., partnerships with insurers, banks, nonbank lenders)
- Strategic partnerships planned
- Growth and expansion plan backed by explanations of funding and capitalization
- Projections for financial KPIs
- Key assumptions to support financial projections and funding costs (e.g., inflation, GDP growth, central bank rate, maximum bank lending rate)

<sup>1</sup> Good market analyses are usually based on market surveys and studies. Although it is not necessary to submit the studies, the licensing team may request them if they have specific doubts about the solidity of a business proposition.

- Financial projections for at least three years, in line with growth plan and KPIs, including income statement and balance sheet (ideally monthly cash flow for the first year also)<sup>2</sup>

### **Analytical procedures**

#### *Quality of the business plan*

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

The main objectives of asking for and analyzing a BP include:

- Checking the BP’s consistency with other licensing documentation
- Assessing whether the BP is realistic and generally in line with market practices, including other applications under analysis or already finalized
- Assessing whether financial projections are realistic, given market conditions
- Judging by the quality of the BP and meetings conducted with the applicant, assessing whether the applicant is committed to the long-term success of the EMI business, including facing projected losses during its first years of operation
- Ensuring that the BP describes business practices, organizational structure, staffing, and strategy that align with the broader goals of competition, consumer protection, and systemic stability, and comply with EMI regulatory requirements

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

The analysis should determine whether the BP presents a coherent proposal, including its projections. For instance, the strategic plan’s objectives must be consistent with the EMI’s mission statement and the market analysis. Products and services to be offered must also be a response to the market opportunity described in the market analysis, which should provide a view of how the EMI will enter the market and compete with existing players, acquire and retain customers, have funds to cover losses, and grow to achieve the KPIs listed in its financial projections. A good portion of BP analysis involves understanding the business and identifying inconsistencies across various elements of the BP, as the following examples illustrate:

- If market analysis indicates the main opportunity is to focus on rural populations, it is inconsistent to offer a product whose marketing focuses on urban youth.
- The projected fee revenue in the financial projections does not align with the projected growth of active e-money accounts or the target market share (i.e., percent

2 The complexity of financial projections varies across different applicants, demonstrating either or both their preparedness and business acumen and how serious they are about submitting a quality application. For instance, very complete and high-quality financial projections may provide scenario analyses that present projections that differ according to changes in key variables (e.g., inflation rate), resulting in three (or more) potential scenarios.

of total market to be covered by the applicant) does not align with the projected number of accounts.

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

The supervisor should be able to judge whether the BP is realistic. While an EMI's viability is not the most important concern in BP analysis (as it would be for a bank, for instance), it is relevant to form a view about it. The supervisor can do so by considering the country's market conditions, including microeconomic factors (e.g., number and focus of competitors, unmet demand) and macroeconomic factors (e.g., inflation, central bank rate, GDP growth). If available, information about foreign EMI markets and how they grew over time may be of value.

It is not uncommon that applicants who want to enter a market present an overly optimistic BP as they believe it will please the regulator or simply because unmet demand exists. (The applicant may even have another, more realistic BP for internal use.) Many EMIs fail because they lack focus, have an unclear positioning strategy, or lack shareholder commitment to cover losses. Some applicants believe it is necessary to show a profit by the final year of the financial projections they present to the supervisor—regardless of how unrealistic that may be for a new EMI. A good BP does not necessarily need to show a profit by the end of the projection period.

An incomplete or low-quality BP does not necessarily mean the EMI has a poor business strategy or does not have the right skills and resources for success. It may simply be a reflection of misunderstandings related to licensing requirements. In extreme cases, the applicant may be dismissive of the need to present full information and a quality BP. Applicants with existing nonfinancial, nonregulated businesses and those with no previous experience being regulated may be wary of sharing too much information with the supervisor. However, a poor BP is sometimes a reflection of real inability and inadequacy on the part of the applicant. The supervisor should differentiate these two types of situations. The best way to do so is to address questions and issues in meetings with the applicant, followed by internal discussions within the supervisory team and, potentially, other teams.

Analysis of the operational plan includes questions such as:

- Are organizational and governance structures proportional to the EMI's current and projected complexity and size? Are they aligned with good corporate governance principles?
- Are there indications the EMI will have effective risk management?
- Are there indications the EMI will follow good business conduct standards?

Analysis of financial projections include questions such as:

- Does the EMI use trusted sources of macroeconomic variables?

- Are the sources and cost of funding realistic, given the reality of the applicant and current and projected market conditions (e.g., if there is a bank credit crunch and the EMI projects a large bank loan in the first year)
- If the BP has analyzed alternative scenarios, is the business resilient to changes in key variables?
- Do formulas in the Excel file make sense? Are the results correct?

#### *Consistency with other information provided or gathered*

The supervisor should also compare the BP's consistency with other information in the licensing package, information from meetings, or information gathered in other ways. For instance, an inconsistency exists if the policies and procedures for consumer complaints handling state there will be a dedicated team to address consumer complaints yet the BP's organizational chart does not show a unit with that function. Another inconsistency would show up if the strategic plan describes products offered in a certain way but the marketing materials submitted describe them another way.

### **3.4 Regulatory requirements**

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

#### **Minimum capital and origin of funds**

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

- Check whether funds were transferred directly from the applicant to the EMI via SWIFT receipts, credit notices, or bank statements on both sides. If not transferred directly, the applicant must present additional bank documentation that traces funds back to the applicant. Additional clarifications may be needed.
- Check whether the amount transferred is consistent with the applicant's financial situation by looking at their financial statements or tax returns. If there is an indication that the owner did not have enough funds or if fund origins cannot be established, clarifications must be sought.

#### **Dedicated company and permitted activities**

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

- Opening and maintaining e-money accounts
- Cash-in/cash-out (CICO) transactions to/from e-money accounts
- Transfers between e-money accounts and to/from bank accounts

- Domestic payments (e.g., person-to-government [P2G], person-to-business [P2B], business-to-business [B2B])

The analysis of the scope of activities includes the following:

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

If further clarification is required, note questions raised and address them in a meeting with the applicant. If the information indicates the EMI plans to offer something not explicitly permitted by regulation, a decision must be made on whether to allow additional services. The supervisor can use its prerogative to expand the list of permitted activities or request the applicant drop such plans and adjust its BP.

### **Trust account and reconciliation**

Most regulations require an EMI to set up one or more trust (or similar) accounts with one or multiple banks where it keeps, at all times, at least the equivalent of total e-money issued. A trust account agreement between the trustee and the bank is necessary to set the account's terms. The trust agreement does not establish a partnership between the EMI and the bank for the purpose of the EMI's business, and hence does not include clauses intended to do so. For instance, a trust agreement does not give the bank the right to access EMI client data.

### **Analysis of trust agreement**

Check that existing or planned trust agreement(s):

1. Clearly establishes a trust relationship between the trustee and e-money accountholders, including agents, businesses, and individuals, in other words, establishes that the trustee holds and manages funds (trust assets) on behalf of accountholders (beneficiaries).
2. Requires the EMI to place all accountholder funds into a licensed bank (the custodian) in:
  - Current account(s), with proper market standard remuneration (and relevant characteristics of a trust account per the legal framework) or
  - A specified asset portfolio, which will be examined and approved by the DFS supervisor (when regulation allows such a situation).
3. Requires the EMI to:
  - Keep at least the balance of total e-float in the trust account
  - Reconcile e-float and trust account balances at least by the minimum reconciliation period required by regulation

- Keep all records concerning e-money accounts according to generally accepted accounting standards.
4. Forbids the EMI to use trust account funds to:
    - Finance its own business operations
    - Extend credit
    - Any other purposes, except repaying e-money accountholders when cashing out their remaining e-money balances or conducting transactions using their account balances.
  5. Clearly states whether interest is paid on the trust account and how it will be paid.
  6. Allows independent auditors and the supervisor access to all the books and records concerning the trust account.
  7. Allows the supervisor to:
    - Monitor and audit the trust account and access any audit report
    - Require amendments to the trust agreement
    - Mandate the termination of the trust agreement
    - Appoint a new trustee
    - Remove a trustee.
  8. Clearly states that in case of termination of the trust agreement, beneficiaries will be repaid the equivalent of their e-money account balances or their balances will be transferred to another float account.
  9. Clearly states that the bank will have no access to individual e-money accountholder information.<sup>3</sup>

### **Analysis of reconciliation procedures**

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

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

### **Analysis of planned e-float balances**

Analyze planned total e-float balances to assess whether the EMI will place them in trust accounts in two or more banks to reduce the risk to the EMI. The EMI supervisor should

3 Only when the bank is the trustee (although not ideal, this does occur in some countries) would the bank have access to information related to individual accounts for the sole purpose of being able to refund customers in the case of failure of the EMI.



discuss with the bank supervisor whether the bank(s) assigned to hold the float account(s) are capable of doing so.

### **Agents, risk management, systems, and internal controls**

For each agent model agreement:

1. Ensure there is no clause requiring agent exclusivity
2. Ensure there is a clause keeping the EMI liable for the actions of agents
3. Check that the obligations of both agents and the EMI are clearly established:
  - A clause must make agents responsible for ensuring customers are informed that agents act on behalf of the EMI, for conspicuously displaying applicable fees and charges, and for abiding by the EMI's policies and procedures, including customer due diligence (CDD) procedures
  - A clause must make the EMI responsible for furnishing agents with necessary communications materials (signage), operational procedures manuals and training, and fee schedule and other disclosures to be displayed at the agent
4. Check whether there are clauses prohibiting certain actions by the agent and establishing consequences should the agent commit them, including:
  - Conducting e-money transactions in the name of the EMI without its permission
  - Charging customers fees in addition to those set by the EMI and disclosed in the fee schedule displayed at the agent
  - Conducting e-money transactions when systems are down

Documentation describing agent network and agent-related policies:

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

### **Analysis of safety, soundness, and efficacy**

Verify policies concerning:

- Data security, including access to consumer data, transactions, authentication processes, and IT standards to check whether main confidentiality policies and mechanisms are clear and reasonable. Enquire whether customer ID information is stored at the EMI—not at agents and not at the banks holding float accounts.
- Fraud detection, mitigation, and notification to the supervisor. Assess whether the EMI adequately describes main procedures, systems, and policies to avoid and address fraud.

- Business continuity and disaster recovery plan (BCP) to check whether, in the case of extreme events, there is a clear description of procedures to resume operations and precautions to avoid loss of transaction information. Verify whether there are back-up sites to keep systems and recovery plans running.

### **Analysis of AML/CFT policies and procedures**

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

- Whether the account opening workflow ensures receipt and checking of customer ID information by the agent or other channels, and how the EMI's back office sends and checks the documentation.
- Whether there are clear procedures to suspend e-money accounts that do not comply with CDD requirements, including timeframe to suspend, and procedures to notify the customer and close these accounts.

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

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

### **Consumer protection**

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

#### **1. Analysis of the model consumer agreement (Terms and Conditions)**

- The EMI must enter into a physical or electronic written agreement with each customer who opens an e-money account.
- The agreement must follow best practices in financial consumer protection and must not have clauses that can be considered abusive, unclear, or misleading and put the customer in disadvantageous situations or limit consumer rights.

##### **i. Conciseness, clarity, and simplicity**

- The agreement must be written in as simple a language as possible to ensure consumers understand it.
- The agreement must be written in a language that is most likely to be read by most customers in the country. Depending on target consumer segments, local languages may be required.
- The agreement must be as concise as possible, not several pages long,

in particular if it is in electronic form. EMIs should be encouraged to offer summary terms and conditions in addition to the complete agreement.

- The agreement shall not use different terms for the same key concepts, such as “e-money account,” “trust account,” “redemption,” “fee,” “services.”

- ii. Completeness.** Despite the need to be concise, the agreement must include all key information for the consumer, including the customer’s identity; applicable fees; transaction, balance, and cash-in/out limits; any fees related to third-party services such as SMS or data services by MNOs; phone number of complaints mechanism; and procedures for complaints submission.
- iii. Erroneous transactions reversal.** The agreement must set fair rules for the customer to request reversal of erroneous transactions.
- iv. Duty to notify consumer prior to changes.** The agreement must make the EMI responsible for providing reasonable notice to the customer prior to effecting changes to the agreement and give the customer the right to rescind the contract. Clauses allowing the EMI to change terms and conditions at its own discretion without prior notice, stating the customer accepts future (unspecified) changes, or clauses making the customer responsible for checking the EMI website for applicable changes shall not be accepted.
- v. Liability and onus of proof on disputed transactions.** There must be fair clauses setting the EMI’s primary responsibility for fraud and fund protection. The onus of proof for failed transactions, suspected fraud, and unauthorized access to customer account must lie with the EMI, not with the customer.
- vi. Obligations.** The agreement must concisely and clearly state balanced obligations for the EMI (e.g., taking measures to protect accounts from unauthorized access, ensuring smooth operations, ensuring availability of funds, etc.) and customer obligations (e.g., not sharing their PIN). Customer obligations must be fair.
- vii. Indemnities.** Clauses requiring the consumer to indemnify the EMI for its legal costs in judicial cases related to the consumer shall not be accepted unless liability is due in case of proven customer fraud or similar cases.
- viii. Data privacy and sharing.** The agreement must state the EMI’s responsibility to keep customer data confidential. Clauses generally stating that the EMI will share customer data with undisclosed third parties for “commercial purposes” are unacceptable.
- ix. Mandatory arbitration.** The agreement shall not make arbitration mandatory. The consumer must retain her/his right to seek court resolution, even if court procedures are burdensome and lengthy in a particular country. When arbitration is offered, it must happen in-country and must not be binding on the consumer.

2. Analysis of marketing materials and website. Marketing materials, including those on the EMI website (if already available) can be analyzed to:

- Check whether it provides key information about e-money services and the EMI
  - Check whether there is information that contradicts information provided in the licensing package
  - Check whether there are any misleading statements to consumers
3. Assessing EMI complaints handling procedures. Minimum aspects of complaints procedures must be checked during the licensing application by comparing policies and procedures related to consumer complaints with regulatory requirements. For instance, this can be done by checking whether placing the complaints handling function in the organizational chart allows for independence and issuance of impartial responses to consumers.
  4. Analysis of SMS or system-generated receipt. Check whether the EMI platform is capable of generating free-of-charge SMS or other types of transaction receipts containing key information about the transaction (e.g., amount and type, fee charged, unique transaction reference number).