

## General Direction 5

# Conflict of interest (FSBRA) (2020)

March 2020

# General Direction 5: Conflict of interest (FSBRA) (2020)

## 1 Recitals

### **Whereas:**

- 1.1 The PSR gave General Direction 5 under the Financial Services (Banking Reform) Act 2013 (FSBRA). It came into force on 30 April 2015.
- 1.2 The PSR has reviewed General Direction 5 and, following consultation, has decided to retain the fundamental obligation for regulated interbank payment system operators to take all reasonable steps to ensure that none of their directors also act as a director of a central infrastructure provider to their payment system. We have also removed application to the operator of CHAPS.
- 1.3 The PSR has decided to give a new General Direction 5, replacing the General Direction we gave in 2015.

## 2 Powers exercised and purpose

- 2.1 The PSR gives this general direction in accordance with sections 54(1) and (3) of FSBRA.
- 2.2 The PSR has had regard in particular to sections 49 to 53 of FSBRA (General duties of the Regulator).

## Direction

### **NOW the PSR gives the following general direction:**

## 3 Governance direction on governing board composition

- 3.1 An operator of a regulated interbank payment system must take all reasonable steps to ensure that any person acting as a director of that operator is not simultaneously acting as a director of the system's central infrastructure provider.

**3.2** General Direction 5 applies where:

- a central infrastructure provider is currently supplying that regulated interbank payment system, or
- a central infrastructure provider is participating in a tendering exercise or is otherwise bidding to supply that regulated interbank payment system

**3.3** As soon as an operator is considering organising a tendering exercise or otherwise inviting bidding to supply central infrastructure to a regulated interbank payment system, it must take all reasonable steps to ensure that any person acting simultaneously as a director of both the operator and a potential central infrastructure provider resigns from one or other of those positions.

**3.4** Operators must notify us if they believe that they are not compliant with this obligation as soon as possible, and inform us of the steps they are taking to become compliant.

## 4 Application

This General Direction applies to the operators of regulated interbank payment systems.

## 5 Revocation of 'day one' General Direction 5

Our original General Direction 5, which we gave in 2015, is revoked.

## 6 Commencement

This general direction comes into force on 5 April 2020.

## 7 Citation

This general direction may be cited as General Direction 5: Conflict of interest (FSBRA) (2020).

## 8 Interpretation

**8.1** The headings and titles used in this General Direction are for convenience and have no legal effect.

**8.2** The Interpretation Act 1978 applies to this General Direction as if it were an Act of Parliament, except where words and expressions are expressly defined.

**8.3** References to any statute or statutory provisions must be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.

**8.4** In this General Direction, the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

**8.5** In this General Direction, the following definitions and abbreviations apply:

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<b>central infrastructure</b>	package of systems and services, comprising hardware and software, provided under contract to an operator for the purposes of operating the relevant payment system, including the processing of funds transfers
<b>central infrastructure provider</b>	an infrastructure provider, as defined in section 42(4) of FSBRA, when providing central infrastructure
<b>director</b>	in relation to an unincorporated association or a body corporate, any person appointed to direct its affairs, including a person who is a member of its governing body
<b>operator</b>	as defined in section 42(3) of FSBRA
<b>PSR</b>	the Payment Systems Regulator, the body corporate established under Part 5 of FSBRA  references to 'we', 'us' and 'our' mean the PSR
<b>regulated interbank payment system</b>	an interbank payment system designated by the Treasury under section 43 of FSBRA, excluding CHAPS

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**Made on 5 March 2020**

**Chris Hemsley**

Managing Director

Payment Systems Regulator

## Status of Directions

Directions give rise to binding obligations. Breaching a direction is a compliance failure which makes a party liable to regulatory sanction.

