



Ring-fencing transfer scheme (RFTS) – skilled person application

Notes:

These notes should be read in conjunction with the 'Ring-fencing transfer scheme – skilled person application form' - see www.bankofengland.co.uk/pru/Pages/authorisations/rfts/default.aspx. These notes are not designed to be overly prescriptive but to provide further information to applicants on considerations which the PRA and FCA deem relevant to the review and assessment of the skilled person. Each skilled person application will be considered on its own merits.

The PRA and FCA (the regulators) will work jointly with one another throughout each individual RFTS process in pursuit of the objectives of the regulators and to ensure our decision-making processes are conducted in an appropriately coordinated manner. This engagement will include the PRA consulting the FCA as set out in section 3D of FSMA. Please refer to [Policy Statement 10/15 'The implementation of ring-fencing: the PRA's approach to ring-fencing transfer schemes'](#) and [Finalised guidance 16/01 – Guidance on the FCA's approach to the implementation of ring-fencing and ring-fencing transfer schemes](#) for information on each regulator's approach to RFTS.

If there is insufficient space on any section of the skilled person application form, please continue on a separate sheet of paper and clearly identify the section and question to which the additional information relates.

1. PERSONAL IDENTIFICATION DETAILS OF NOMINEE FOR SKILLED PERSON

This section should include all necessary details to identify the individual being nominated by the applicant to undertake the role of the skilled person.

2. RFTS APPLICATION DETAILS

2.1 RFTS application

The type and number of all the transfers the applicants proposes to undertake as part of its RFTS application for which the nominee is to act as the skilled person should be provided. Details of the proposed transferor(s) and transferee(s) should be provided, along with its respective firm reference number.

Reference should also be made to the intended purpose of the transfer having regard to the purposes as set out in section 106B(3) of Financial Services and Markets Act 2000 (FSMA).

2.2 Outline of the firm's overall RFTS application

In providing an outline of the proposed RFTS application, the firm should include:

- a detailed summary of what specifically, in whole or in part, is being transferred by each transfer, and any notable or unusual features of the RFTS. To the extent the applicant envisages specific matters being excluded from the transfer further information as to the basis for this exclusion should be set out;
- provisional detailed timeline of RFTS(s) milestones, including identification of critical path and associated key dependencies. This should include key operational and regulatory milestones of the RFTS process; and
- any ancillary and/or complementary transfers to be carried out in close proximity to the transfers being

proposed for the RFTS application eg not using section 106B of FSMA.

3. COMPETENCE & SUITABILITY OF NOMINEE

3.1 Selection of nominee

Information provided should detail the process by which, and the rationale for why, the firm has selected its preferred nominee along with details of alternative nominees considered.

Specifically, the firm should provide information on its tendering process, including the firm's governance to select its preferred nominee.

3.2 Knowledge and experience

In reviewing the application the PRA, in consultation with the FCA, will assess how the nominee's knowledge and experience directly correlates to the type of business being transacted. This will include an assessment of the depth, breadth and relevance of the nominee's professional qualifications, including practical and theoretical knowledge (and of their team) eg representation on relevant membership bodies, industry working groups, author of published articles, and descriptions of the experience that makes them appropriate for the skilled person role for this specific RFTS application.

Information provided should highlight the specific suitability of the nominee and pay due regard to:

- the firm and the wider group;
- types of business and any other activities being transferred;
- the application of the areas that may be relevant in the preparation of the Scheme Report, further information of which is contained in both the [Policy Statement 10/15 'The implementation of ring-fencing: the PRA's approach to ring-fencing transfer schemes'](#) and [Finalised guidance 16/01 – Guidance on the FCA's approach to the implementation of ring-fencing and ring-fencing transfer schemes](#);
- ring-fencing legislation and rules; and
- familiarity with the preparation of similar reports eg section 166 skilled person reports for PRA and FCA and scheme reports for other types of business transfers.

An up-to-date full CV for the nominee should be attached to the form, or sent in conjunction with the submission of this application.

3.3 Reliance

Where reliance is being placed on persons other than the nominee, it will be necessary to consider:

- how, and on what basis, the nominee proposes to satisfy him or herself that placing such reliance is reasonable;
- the appropriateness of the arrangements which will be put in place by the nominee to safeguard the quality and independence of the making of the Scheme Report; and
- how the nominee ensures that responsibility rests with them in so far as delegation of tasks may take place to others.

4. MAKING A PROPER REPORT

As part of the PRA's determination, in consultation with the FCA, in respect of the nominee's suitability, the nominee's proposed approach to the making of the Scheme Report will be assessed. This assessment will

include consideration of the nominee's proposed approach, the level of understanding of the business and issues potentially arising, relevant stakeholder groups and their awareness of the key considerations for the making of the report, including how the 'statutory question' set out in FSMA s.109A(4) is to be addressed. In this regard the following will be assessed:

- clarity of the process and timing the nominee expects to undertake to produce the Scheme Report, including interim and/or summary versions;
- the basis upon which the nominee expects to engage with the firm and the regulators in the making of the Scheme Report;
- the information which the nominee is expected to be furnished with to be able to produce the Scheme Report, and how this interacts with other key RFTS dependencies and other regulatory transactions; and
- difficulties or any restrictions that the nominee foresees in the preparation of the Scheme Report; this should have due regard to the RFTS timelines envisaged by the firm and the regulators.

The nominee's proposed approach to the preparation and making of the Scheme Report should therefore include the following:

- an outline of deliverables, associated timelines, and expected engagement strategy with stakeholders eg firm, PRA and FCA;
- key considerations to assess impact of RFTS(s) and the information the skilled person expects to receive to aid analysis; and
- critical success factors to deliver Scheme Report as proposed by firm; to include any potential barriers, difficulties and/or restrictions which may pose a risk to delivery of the Scheme Report as proposed by firm.

5. INDEPENDENCE

5.1 Independence

When considering the skilled person application, the PRA, in consultation with the FCA, will have due regard to the specific circumstances of the case and judge each application on the information presented by the applicant. Considerations will include, whether the proposed nominee, their team or employer, appears to have any professional difficulty or potential conflict of interest, whether direct or indirect, in reviewing the matters to be reported on which would otherwise prejudice their status in the eyes of the court. In making its determination the PRA and FCA will consider the following:

- if the nominee has any financial interest in or association with the transferor, transferee and the wider group or the business being transferred;
- within the last five years whether the nominee and/or their employee has had any direct or indirect interest or connection with either the transferor, transferee and the wider group eg does the nominee hold any non-executive directorships and/or any on-going or previous significant advisory or formal appointments with related entities which could threaten their independence; and
- more specifically, if the nominee is employed by the same firm who act as auditors for the transferor, transferee and/or wider group, an explanation as to what arrangements and safeguards are in place to mitigate potential conflicts of interest, and/or the threat of self-review is required.

In this regard, the nominee should provide a formal declaration of independence, the details of which should highlight their considerations as to why any direct or indirect interest or connection (as outlined above) should not prejudice them in the eyes of the court having regard to Part 35 of the Code of Civil Procedure. If appropriate, this should be supported by independent legal advice and an explanation as to the safeguards deployed or arrangements made to preserve on-going independence throughout the entire RFTS process.

5.2 Fee arrangements

In making its assessment of a nominee's independence, the PRA, in consultation with FCA, will consider

the fee arrangement(s) that have been put in place. It is expected that any remuneration paid to the nominee will not be, for example, conditional on the scheme being approved, or such that the structure of the engagement between the firm and nominee could threaten the skilled person's independence, perceived or otherwise.

Information to be provided by the applicant in relation to its engagement with the nominee should include:

- a draft copy of the letter of engagement between the applicant and the nominee, including terms and conditions;
- details of the hourly rate (as compared with rates ordinarily charged for this type of work) and total estimated fee;
- whether the structure of the fee arrangement is predicated on achieving specific milestones and/or incentive based and/or including any contingent or conditional fee arrangements and/or remunerative bonuses; and
- to the extent relevant, details as to any fee arrangements for work that is outsourced and utilised as part of the making of the Scheme Report.

6. RESOURCE CAPABILITY

As part of its assessment of this application, the PRA, in consultation with FCA, will give consideration as to the approach adopted by the nominee in delivering the making of the Scheme Report. Such consideration will include:

- whether the level and type of resources available to support the nominee are reasonable;
- the potential impact of the nominee's other work, projects and/or contractual commitments and whether there is a risk it might impinge of his or her ability to act suitably as the skilled person – see section on independence; and
- confirmation from the nominee that they will have the access to, and availability of resources necessary to complete each stage of the making of the Scheme Report, including scope, where necessary, to absorb any contingencies should they arise, including:
 - delays in the RFTS timelines;
 - non-availability of key resource; and
 - contingency plans should nominee not be available for a sustained period.

7. SUPPLEMENTARY INFORMATION

In addition to the information specifically requested in Section 7, it should be noted that when disclosing information concerning past criminal convictions, the nominee should provide details concerning matters in the United Kingdom or overseas.