

# Becoming FCA authorised or registered as an E-Money Issuer or a Payment Services Provider

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## The requirement to be appropriately authorised or registered

Issuing e-money and performing a payment service in the UK are both regulated activities which can only be undertaken by firms which are appropriately authorised, registered (as a small provider) or are exempt. This note looks at how a firm can go about becoming appropriately authorised or registered and what Field Fisher Waterhouse LLP can do to assist in that process.

## Applying to the FCA to become UK authorised or registered

Since 1 April 2013, the UK has had two financial regulators, but the Financial Conduct Authority ("FCA") will be the competent authority for most E-Money Issuers and Payment Services Providers.

### Authorised or registered?

The FCA operates two different tiers of regulation of E-Money Issuers and Payment Services Providers:

- **authorisation**, which is available for any size firm, involves a full application and then enables firms to offer a full range of e-money or payment services (as applicable), subject to any limitations imposed on the firm by the FCA; and
- **registration**, which is suitable for smaller firms, involves a simpler and cheaper application process but firms are slightly restricted in the services they can provide.

We can advise on the differences between full authorisation by, and registration with, the FCA and help decide which is most appropriate in the circumstances. The information required by the FCA during the application process will differ in each case, so this is something to resolve at the outset.

### The application process

Whether applying for authorisation as an E-Money Issuer or a Payment Services Provider, the central feature is the completion of an application pack. The FCA favours adopting a flexible and interactive approach with applicants and seeks to foster a dialogue between applicants, their advisers and the FCA. The steps involved in an application are as follows:

- **STEP 1: assembling the information required to support the application:** This process should include detailed consideration of the activities the applicant will undertake, identifying who will be managing the regulated activities and their qualifications for that role, developing and writing business plans, and gathering the information required to complete the application. At this stage, we would also check whether any of the activities being considered might require additional authorisations under financial services or consumer credit legislation.

We often find that the most cost-effective route is for clients (or specialist external compliance consultants, if engaged by them) to assemble the required information and prepare the necessary documents to support an application. (Where they are used, prior to Step 1 we can review and comment upon the terms by which a firm intends to appoint any external compliance consultants). We then work alongside the in-house team or compliance consultants to review the application prior to submission to, and ensure that it contains the elements required by, the FCA.

- **STEP 2: potentially, meeting or contacting the FCA before submitting the application:** This is not a strict requirement, and is usually only necessary if the circumstances are particularly complex or unusual. We can help a firm's in-house team to prepare for, and accompany them to, meetings with the FCA.
- **STEP 3: completing and submitting the application and accompanying materials to the FCA:** An entity wishing to become authorised or registered must submit to the FCA:
  - a completed application form - copies of the appropriate forms can be found on the FCA's website<sup>1</sup>;
  - detailed additional information listed in the relevant regulations - note that this extra information includes business plans, confirmations regarding finances and regulatory processes and certain additional forms which are to be completed by the applicant. The supporting documentation can vary

<sup>1</sup> For E-money Issuers' forms see <http://www.fca.org.uk/your-fca/documents/forms/application-for-authorisation-as-an-authorized-electronic-money-institution> and <http://www.fca.org.uk/your-fca/documents/forms/application-for-registration-as-a-small-electronic-money-institution>. For Payment Services Providers' forms see <http://www.fca.org.uk/your-fca/documents/forms/application-for-authorisation-as-a-payment-institution> and <http://www.fca.org.uk/your-fca/documents/forms/application-for-registration-as-a-small-payment-institution>.

quite considerably between firms, but the level of detail provided in the application as a whole should reflect the size and complexity of the business; and

- *a cheque, payable to the FCA, for the non-refundable application fee* – currently £1,000 - £5,000 for an E-Money Issuer's application and £500 - £5,000 for a Payment Services Provider's application, depending on the type of application. The FCA will not begin its assessment of the application until the fee is received and the cheque has cleared.
- **STEP 4: consideration by the FCA:** During this time the FCA may, for example, request additional information from the applicant, interview the applicant's management and/or visit the applicant's premises. We can help by reviewing the FCA's requests and liaising with them to resolve their queries.
- **STEP 5: determination by the FCA:** The FCA may grant the relevant permission; grant the relevant permission subject to certain requirements or modifications; or refuse the relevant permission.

### Preparation and timing of the application

Step 1 in the application process can be quite time consuming. Applicants must appreciate that a certain amount of time is required to plan and prepare an application to the FCA and should factor this into any timetables.

Once an application is received, the FCA will acknowledge receipt (for applications relating to payment services activities, an acknowledgement will be sent within 7 days of receipt; the timing for acknowledgement of an e-money application is not specified) and will appoint a case officer, who will contact the applicant shortly afterwards. The FCA aims to make its decision as soon as possible, but is required to make a decision on a complete application (i.e. where enough information/evidence has been received for a decision to be made) within 3 months of receiving it and within 12 months if an application is incomplete.

## Ongoing obligations following authorisation or registration

Becoming authorised or registered is not the end of the regulatory process, as E-Money Issuers and Payment Services Providers are subject to detailed conduct of business requirements, the majority of which are set out in the Payment Services Regulations 2009 (the "**PS Regulations**")

- Issuers of e-money are subject to prudential requirements, must take steps to safeguard funds, and are subject to conduct of business requirements (including obligations under the PS Regulations). The applicable requirements will depend on whether the E-Money Issuer is authorised, registered or exempt.
- Payment Services Providers must supply certain information to users of the payment services, ensure the payment services supplied conform to certain minimum standards and adhere to various additional requirements (e.g. safeguarding funds).

We can guide firms through the legislation which will affect their ongoing business once authorised or registered, for example by explaining safeguarding obligations, reviewing and updating customer documents to reflect regulatory requirements and by ensuring that business models and practices are compliant.

In addition, E-Money Issuers and Payment Services Providers must pay annual fees to the FCA to cover its costs of supervision and ongoing costs, and the annual fees of the Financial Ombudsman Service. In each case, the level of fees are published by the FCA each year. In addition, E-Money Issuers (but not Payment Service Providers) must pay annual levies to the Money Advisory Service.

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## Conclusion

Legislative developments in the payment services and e-money spheres, which will result in fewer firms being able to benefit from exemptions from regulation, mean that an increasing number of firms will be embarking on the process of applying for FCA authorisation or registration. Although deciding to apply for FCA authorisation or registration can be a big step, with some careful pre-planning and assistance from specialists such as Field Fisher Waterhouse LLP, it need not be a daunting or overwhelming experience.

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