



# payments and crypto network

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## **Preparing an Application for Authorisation**

A series of guides addressing common issues in relation to preparing an application for authorisation.

### **Guide 1: What permissions do I need?**

#### **Overview**

Establishing the specific regulatory permissions that will be required is of the utmost importance; if your firm does not receive the correct permissions upon authorisation, its ability to provide the anticipated regulated services will be at risk (including whether future developments can be provided). Holding the correct permissions clears the way for your current service provision, service developments and will add value to the business.

If you want to change permissions at a later date this will involve a 'Variation of Permissions' notification to the FCA – this is not as involved as an application for authorisation but will require a reasonable amount of detail, including service description, business plan and financial forecast, descriptions of outsourcing arrangements, resources, financial crime controls, etc. Time will also need to be allocated to preparing the notification and for the FCA's assessment before the permissions can be used.

It should also be noted that a Payment Institution ("PI") cannot vary its permissions to include e-money - an application for authorisation as an Electronic Money Institution (EMI) would need to be submitted (and the PI authorisation surrendered upon EMI authorisation). If you are applying to become a PI you should be certain that you do not wish to offer an e-money service functionality.

Without being clear on the regulatory permissions that are necessary, the regulatory requirements that will apply, and which need to be described in detail in the application for authorisation, will also be unclear.

So, what would be the best way to determine the regulatory permissions that your firm requires?

The following three steps should help.

- STEP 1: Agree a service description



- STEP 2: Agree near term service development
- STEP 3: Map the regulatory permissions

### **STEP 1: Agree a service description**

The agreement of a written service description is fundamental to the success of an application for authorisation. It is the foundation upon which the application will be built.

You may have the upmost confidence in the services that you intend to provide but have you challenged yourself to clearly document these? Writing a clear and concise service description is often an unanticipated challenge and, whilst this could be perceived as a basic step, many successful businesses with many intelligent employees have stumbled at this first hurdle.

The process will invariably force some serious “thinking” in a number of areas, e.g. the market opportunity that is being targeted, the required service functionality, supporting processes needed, required resources, etc. it is unlikely that everyone involved will reach a consensus on these varied topics immediately. The discussions will be valuable and the conclusions will greatly help the preparation of the application for authorisation.

Working from a clearly articulated service description it should be possible to determine what regulatory permissions will be required.

The service description will form the basis for preparing the application.

### **STEP 2: Agree near term service development**

The services that will be provided in the near term should also be considered when identifying the regulatory permissions that will be applied for. The application for authorisation should describe these near term developments in reasonable detail, building on the service description described in step 1. If there are no anticipated developments this is not a problem, the idea of this step is to differentiate between any developments that should be included in the application versus those that are more aspirational / blue-sky (and which would likely be hard to describe in detail). I would interpret “near term” as being during the first 12 to 18 months following the date of authorisation. Developments that re envisioned beyond 18 months will very likely add uncertainty and confusion to the application for authorisation.

If you can describe developments with reasonable certainty their required regulatory permissions should also be considered.

### **STEP 3: Map the regulatory permissions**

Working from the service description and service development ‘roadmap’ it should be possible to determine the regulatory permissions that will be required. This may involve a little more work, for example, looking into the detail of the flows of funds, transactions and their timing. Again, this work will help the preparation of the application for authorisation, for example, a transaction and funds flow diagram will need to be included in the application package.

Developing an understanding of the flow of funds and transactions and the timing of each will help identify the required permissions, for example:

- if funds are held for a period of time in a wallet type product it is likely that an e-money permission will be required. Issuing ‘prepaid’ payment cards would further indicate the use of an ‘account’ which would suit an e-money authorisation. This functionality would suggest that authorisation as an EMI will be required.
- if the service involves customers sending funds to third parties (who are not customers of your firm) a money remittance permission may be appropriate. If you facilitate customers accept payments, using payment cards or alternative payment methods, an acquiring permission may be required. These are payment service permissions that could be granted to a PI or an EMI.

To complicate matters, an EMI can provide payment services that are either “related” or “unrelated” to the e-money services. Related payment services form part of the e-money service, for example, where acquiring activities are provided as part of the funding transaction for the e-money account / wallet or, conversely, where the e-money account / wallet is used to fund a remittance transaction. Unrelated payment services do not form part of the e-money services – they are provided separately. The distinction is important because it affects a number of regulatory requirements, including the firms’ capital and safeguarding requirements.

On occasion, it may be possible to structure services as a payment service rather than an e-money service, or vice versa. It may be possible to do this depending on the flow of funds (in particular the duration for which customer funds are held). Documenting the service description, and looking into the funds and transaction flows, will help you figure this all out.

Often, the specific payment service permissions that are required are not always clear, at least those beyond the reasonably obvious money remittance or acquiring permissions; it would therefore be prudent to seek professional advice.