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# **Retail toolkit on the revised Payment Services Directive (PSD2)**

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**March 2020**

# Retail toolkit

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PSD2 provides one of the biggest regulatory challenges the payments industry has ever faced. Our aim with this toolkit is to ease some of the burden for companies operating in the retail sector by helping them to identify and understand their PSD2 obligations.



## Part 1: Do you need to be authorised or registered as a payment service provider?

1. Completed an analysis on whether your retail platform needs to be regulated as a payment services provider and checked whether you are operating a retail platform which:
  - a. is a payment service provider;
  - b. is funnelling money from customers to suppliers; or
  - c. in possession of funds on behalf of the customer or the supplier?
4. Completed an analysis of whether you fit into the commercial agents exclusion under PSD2.
5. Checked if you do not fall within the exclusion or otherwise have to be regulated and need assistance with applying for FCA authorisation/registration.
6. Thought about altering your contractual and operational structure to ensure that you do not need to be authorised or registered by the FCA, including the use of agency structures.
7. Checked if you are already a regulated payment service provider that provides on-going regulatory, legal and compliance support.



## Part 2: Are you ready for strong customer authentication (SCA)?

1. Understood the obligations and timelines around SCA.
2. Reviewed existing sales channels to assess any compliance gaps ahead of SCA implementation.
3. Checked your contracts with card issuers and payment gateways/acquirers in relation to changes and implementation for SCA readiness.



### **Part 3: Open banking**

1. Checked on partnering with open banking-based payments providers to implement open banking structures as an alternative payment method, i.e. using push payments from customers' bank accounts instead of the card schemes.
2. Completed an application to the FCA for authorisation as a payment initiation service provider (PISP).
3. Provided on-going compliance support for authorised payment initiation service providers.



### **Part 4: Credit, insurance and loyalty cards and loyalty points schemes**

1. Completed a regulatory analysis of whether you need to be authorised to offer credit (e.g. store cards) or insurance to your customers.
2. Reviewed contracts with regulated entities such as lenders or insurers to facilitate such offerings.
3. Completed an analysis of whether your store card offering count as regulated e-money, or whether any loyalty scheme you operate falls within the concept of virtual currency.
4. Thought about structuring contracts and operations so that authorisation is not required or other relevant legal obligations do not apply (e.g. through reliance upon the exclusion for limited networks).
5. Provided guidance on obligations to notify the FCA of use of exclusions in relation to store cards and retailer apps.

## **How Kemp Little can help you...**

Our team draws on the firm's deep expertise in working with innovative fintech businesses and retail companies to advise e-money and payments firms on regulatory, commercial and data protection issues. The firm's specialised work in areas such as cybersecurity and digital media provides the ideal springboard for advising payments firms operating at the interface of technology, retail and the financial services sector.

The team advises payments services (including AISPs and PISPs) and e-money firms, banks, retailers, technology companies and other financial institutions on:

- All aspects of life in the regulated sphere, ranging from applications for authorisation to advising on the implications of PSD2 and Open Banking;
- The technology contracting and data licensing issues that are part and parcel of today's payments landscape;
- The regulatory, contractual and data protection aspects of cryptocurrency;
- Corporate transactions involving payments firms and e-money institutions; and
- Governmental agencies on developing legislation.

# Your key contacts



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