

Translation of Liechtenstein Law

Disclaimer

English is not an official language of the Principality of Liechtenstein. This translation is provided for information purposes only and has no legal force. The contents of this website have been compiled with the utmost care to reflect the current situation and the current state of knowledge. However, the provider of this website cannot accept any liability if any of its contents should be found to be inaccurate, incomplete or out of date.

English title:	Payment Services Act (ZDG) of 17 September 2009
Original German title:	Zahlungsdienstegesetz (ZDG) vom 17. September 2009
Serial number (LR-Nr.):	950.1
First published:	30 October 2009
First publication no. (LGBl-Nr.):	2009-271
Last amended:	1 September 2017
Date of last amendment - publication no. (LGBl-Nr.):	2017-166
Translation date:	5 September 2017

Liechtenstein Law Gazette

Year 2009

No. 271

published on 30 October 2009

Payment Services Act (ZDG)
of 17 September 2009

I hereby grant My consent to the following resolution adopted by Parliament:¹

I. General Provisions**A. Object, scope, and definitions**

Article 1

Object and purpose

1) This Act governs:

- a) the authorisation and supervision of payment institutions providing payment services in Liechtenstein as a business activity; and
- b) the rights and duties of payment service providers and payment service users in connection with payment services that are provided to payment service users located in Liechtenstein or by payment service providers located in Liechtenstein.

2) The purpose of this Act is to ensure proper operation of the market for payment services within the European Economic Area as well as protection of the trust of payment service users in the Liechtenstein financial centre.

3) It also serves to implement or carry out the following EEA legislation:²

¹ Report and Application of the Government No. 42/2009 and Opinion of the Government No. 57/2009

² Article 1(3) amended by LGBL. 2015 No. 11.

- a) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (EEA Compendium of Laws: Annex IX-16e.01);
- b) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (EEA Compendium of Laws: Annex XII - 3.01);
- c) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (EEA Compendium of Laws: Annex XII - 3a.01).

Article 2

Scope

1) This Act applies to the provision of payment services by payment service providers as a business activity.

2) In the Prudential Part, the Act sets out provisions governing the transactions and organisation of payment institutions; in the Civil Law Part, the Act sets out transparency requirements for contract terms and information duties relating to payment services, and it establishes rights and duties for the provision and use of payment services.

3) Article 6 describes the scope of the Prudential Part. Articles 45 and 62 describe the scope of the Civil Law Part.

4) This Act does not apply to:

- a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
- b) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
- c) professional physical transport of banknotes and coins, including their collection, processing and delivery;
- d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;

- e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;
- f) money exchange business, that is to say, cash-to-cash operations, where the funds are not held on a payment account;
- g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
 - 1. paper cheques in accordance with the Cheque Act or the Geneva Convention of 19 March 1931 providing a uniform law for cheques or similar paper cheques governed by the laws of a Member State of the European Economic Area (EEA Member State) which is not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
 - 2. paper-based drafts in accordance with the Bills of Exchange and Promissory Notes Act or the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes or similar paper-based drafts governed by the laws of an EEA Member State which is not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
 - 3. paper-based vouchers;
 - 4. paper-based traveller's cheques; or
 - 5. paper-based postal money orders as defined by the Universal Postal Union;
- h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers;
- i) payment transactions related to securities asset servicing, especially dividends, income or other distributions, or redemption or sale, carried out by persons referred to in subparagraph (h) or by investment firms, banks, UCITS and investment undertakings or their management companies, AIFs or their managers (AIFMs), or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;¹

¹ Article 2(4)(i) amended by LGBL 2016 No. 60.

- k) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services;
- l) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;
- m) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- n) payment transactions carried out between payment service providers, their agents or branches for their own account;
- o) payment transactions within a corporate group; or
- p) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services.

5) This Act is subject to the provisions of the Due Diligence Act and Regulation (EC) No 2015/847 on information accompanying transfers of funds.¹

Article 3

Definitions and designations

- 1) For the purposes of this Act, the following definitions shall apply:
- 1. "agent" means a natural or legal person which acts on behalf of a payment institution in providing payment services;
 - 2. "host Member State" means the EEA Member State other than the home Member State in which a payment service provider has an agent or a branch or provides payment services;

¹ Article 2(5) amended by LGBL 2017 No. 166.

3. "authentication" means a procedure which allows the payment service provider to verify the use of a specific payment instrument, including its personalised security features;
4. "durable medium" means any instrument which enables the payment service user to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;
5. "means of distance communication" refers to any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;
6. "money remittance" means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;
7. "funds" means banknotes and coins, scriptural money and electronic money as defined in the E-Money Act;
8. "business day" means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;
9. "group" means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries have a holding as well as undertakings subject to uniform management (on the basis of provisions set out in contracts or articles of association, identical majority of board of directors and/or general management, letters of responsibility issued, and the like), but without a link between them in terms of capital;
10. "home Member State" means either of the following:
 - a) the EEA Member State in which the registered office of the payment service provider is situated, or
 - b) if the payment service provider has, under its national law, no registered office, the EEA Member State in which its head office is situated;
11. "consumer" means a natural person who, in payment service contracts covered by this Act, is acting for purposes other than his trade, business or profession;

12. "unique identifier" means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously the other payment service user and/or his payment account for a payment transaction;
13. "direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, to the payee's payment service provider or to the payer's own payment service provider;
14. "framework contract" means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
15. "reference exchange rate" means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;
16. "reference interest rate" means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;
17. "value date" means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account;
18. "payer" means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
19. "payment order" means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;
20. "payment services" means:
 - a) services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;
 - b) services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;

- c) execution of payment transactions, including transfers of funds on a payment account with the payment service user's payment service provider or with another payment service provider:
 - aa) execution of direct debits, including one-off direct debits;
 - bb) execution of payment transactions through a payment card or similar device;
 - cc) execution of credit transfers, including standing orders;
 - d) execution of the payment transactions referred to in (c) where the funds are covered by a credit line for a payment service user;
 - e) issuing and/or acquiring of payment instruments;
 - f) money remittances;
 - g) execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services;
21. "payment service provider" means:
- a) banks within the meaning of the Banking Act;
 - b) electronic money institutions within the meaning of the E-Money Act;
 - c) postal institutions entitled under the Postal Act or the laws of their home Member State to provide payment services;
 - d) the European Central Bank and other central banks in the European Economic Area when not acting in their capacity as monetary authority or other public authorities;
 - e) the State, the municipalities, municipal associations, and the Administration as well as equivalent central, regional or local authorities under public law in EEA Member States when not acting in their capacity as public authorities;
 - f) payment institutions;
22. "payment service user" means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;
23. "payee" means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;

24. "payment institution" means a legal person that – without falling under point 21(a) to (e) – is entitled to provide and execute payment services as a business activity within the European Economic Area in accordance with Article 8 or in its home Member State in accordance with Article 10 of Directive 2007/64/EC;
25. "payment instrument" means any personalised device(s) and/ or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order;
26. "payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;
27. "payment system" means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;
28. "payment transaction" means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
29. "branch" means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all the places of business set up in the same EEA Member State by a payment institution with a head office in another EEA Member State shall be regarded as a single branch.

2) The designations used in this Act to denote persons and functions include persons of male and female gender.

3) The definitions set out in the applicable EEA legislation, especially Directive 2007/64/EC, Regulation (EC) No 924/2009 and Regulation (EU) No 260/2012 apply *mutatis mutandis* on a supplementary basis.¹

¹ Article 3(3) amended by LGBL 2015 No. 11.

B. Access to payment systems

Article 4

Right of access

1) The rules on access of payment service providers to payment systems must be objective, non-discriminatory and proportionate. The rules may not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

2) Payment systems shall impose on payment service providers, on payment service users or on other payment systems none of the following requirements:

- a) any restrictive rule on effective participation in other payment systems;
- b) any rule which discriminates between authorised payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants; or
- c) any restriction on the basis of institutional status.

3) Paragraphs 1 and 2 shall not apply to:

- a) payment systems within the meaning of the Settlement Finality Act;
- b) payment systems composed exclusively of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities; or
- c) payment systems where a sole payment service provider (whether as a single entity or as a group):
 1. acts or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the system, and
 2. licenses other payment service providers to participate in the system and the latter have no right to negotiate fees between or amongst themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees.

4) The FMA is responsible for monitoring compliance with the provisions of this Article. The provisions governing supervision, legal

remedies, and the arbitration body shall apply, without prejudice to other laws.

C. Confidentiality of payment services

Article 5

Confidentiality of payment services

1) The members of the governing bodies of the payment service providers and their employees as well as any other persons working on behalf of such payment service providers are obliged to maintain the secrecy of facts that have been entrusted or made available to them pursuant to their business relationships with clients. The duty of secrecy shall not be limited in time.

2) This Article is subject to the legal provisions concerning the duty to give testimony or information to the criminal courts, the Financial Intelligence Unit, and the public authorities and supervisory bodies as well as provisions concerning cooperation with the Financial Intelligence Unit and the competent public authorities and supervisory bodies.¹

II. Prudential Part

A. Scope

Article 6

Scope

1) This Part governs the licensing and supervision of payment institutions as well as competence in dealing with prohibited payment services.

2) Supervision of other payment service providers is not an object of this Act.

¹ Article 5(2) amended by LGBL 2016 No. 36.

B. Licensing of payment institutions

Article 7

Licensing requirement

1) Anyone intending to provide payment services as a business activity in Liechtenstein – other than a payment service provider as referred to in Article 3(1)(21)(a) to (e) – requires a licence as a payment institution issued by the Financial Market Authority (FMA), subject to Articles 25 and 27.

2) Payment services may be provided only by payment service providers as referred to in Article 3(1)(21).

Article 8

Scope of licence

1) The licence shall be valid in all EEA Member States and permits the payment institution concerned to provide payment services within the EEA on the basis of the freedom to provide services or the freedom of establishment, provided the payments services concerned are covered by the licence.

2) Apart from the provision of payment services, the licence covers the following activities:

- a) the provision of operational and closely related ancillary services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, data protection, and the storage and processing of data;
- b) the operation of payment systems, subject to Article 4;
- c) business activities other than the provision of payment services, provided that doing so does not violate any other legal provisions.

3) When payment institutions engage in the provision of payment services, they may hold only payment accounts used exclusively for payment transactions. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the

meaning of Article 3(3)(a) of the Banking Act, or electronic money within the meaning of Article 3(1)(b) of the E-Money Act.¹

4) Payment institutions may grant credit related to payment services referred to in Article 3(1)(20)(d), (e) or (g) only if:

- a) the credit is ancillary and granted exclusively in connection with the execution of a payment transaction;
- b) the credit is repaid within a period not exceeding twelve months;
- c) the credit is not granted from the funds received or held for the purpose of executing a payment transaction; and
- d) the own funds of the payment institution are at all times and to the satisfaction of the FMA appropriate in view of the overall amount of credit granted.

5) Payment institutions may not take deposits or other repayable funds within the meaning of Article 3 of the Banking Act as a business activity.

Article 9

Application

1) Anyone intending to act as a payment institution must apply in writing to the FMA.

2) By ordinance, the Government shall set out what information and evidence must accompany the application in regard to the programme of operations, the business plan including a forecast budget calculation, initial capital, safeguarding requirements in accordance with Article 13, governance arrangements and internal control mechanisms, structural organisation, persons with qualifying holdings, general management, audit office, legal form, articles of association, and address of the head office.

3) The payment institution shall without delay notify the FMA of any changes to facts referred to in paragraphs 1 and 2.

¹ Article 8(3) amended by LGBL 2011 No. 156.

Article 10

Licensing conditions and granting of the licence

- 1) The licence as a payment institution shall be granted if:
- a) the applicant is a legal person;
 - b) the registered office and the head office are situated in Liechtenstein;
 - c) sound and prudent management of a payment institution is ensured, the payment institution has robust governance arrangements for its payment services business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures; those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution;
 - d) the shareholders or members that have qualifying holdings satisfy the requirements to ensure the sound and prudent management of a payment institution, and there are not facts giving rise to doubts regarding the personal reliability of these persons;
 - e) any close links between the payment institution and other natural or legal persons as defined in Article 4(1)(38) of Regulation (EU) No 575/2013 do not prevent effective supervision;¹
 - f) the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the payment institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent effective supervision;
 - g) initial capital as set out in Article 11 is freely available in Liechtenstein;
 - h) the information and evidence submitted with the application meet the requirements referred to in Article 9.
- 2) Before a licence is granted, the FMA may, where relevant, consult other competent public authorities.

¹ Article 10(1)(e) amended by LGBL 2014 No. 352.

3) Within three months of receipt of an application or, should the application be incomplete, of all the information required for the licence, the FMA must either grant the licence to the applicant or communicate in writing and with reasons that the application has been refused.

4) The licence may be granted subject to terms and conditions and be restricted to individual payment services. Where a payment institution provides not only payment services, the FMA may require the establishment of a separate entity for the payment services business, where the non-payment services activities of the payment institution impair or are likely to impair either the financial soundness of the payment institution or the ability of the FMA to monitor the payment institution's compliance with all obligations laid down by this Act.

5) At the same time as it grants the licence, the FMA must arrange entry of the payment institution and the authorised payment services in the Payment Institutions Register (Article 36).

Article 11

Capital and initial capital

1) The initial capital is composed of the paid-up capital (with the exception of cumulative preference shares), including any issue premiums and any reserves and any profit brought forward, and must be fully paid-up.

2) The initial capital must at least amount to:

- a) 40,000 Swiss francs or the equivalent in euros for payment institutions providing payment services in accordance with Article 3(1)(20)(f);
- b) 100,000 Swiss francs or the equivalent in euros for payment institutions providing payment services in accordance with Article 3(1)(20)(g);
- c) 250,000 Swiss francs or the equivalent in euros for payment institutions providing payment services in accordance with Article 3(1)(20)(a) to (e).

3) In justified cases, the FMA may order tighter requirements provided they do not contradict EEA legislation.

4) The initial capital referred to in paragraph 2 at the same time constitutes the amount of the payment institution's capital that the payment institution must maintain at all times.

- 5) The Government may provide further details by ordinance.

C. Performance of business activities

Article 12

Own funds

1) Payment institutions must have sufficient own funds at their disposal.

2) Own funds may at no time fall below the amount required under Article 11(2) or under the ordinance referred to in paragraph 5, whichever is higher.

3) If a payment institution belongs to the same group as another payment institution, bank, investment firm, asset management company, or insurance undertaking, then the FMA shall take the necessary measures to prevent the multiple use of elements eligible for own funds. This also applies if a payment institution performs other business activities (Article 8(2)) apart from payment services.

4) If the conditions laid down in Regulation (EU) No 575/2013 are met, the FMA may choose not to apply paragraph 5 to payment institutions which are included in the consolidated supervision of the parent undertaking.¹

5) By ordinance, the Government shall set out further details governing the own funds requirements, especially the calculation methods and the composition of own funds.

6) In justified cases, the FMA may grant facilitating measures or order tighter requirements provided they do not contradict EEA legislation.

Article 13

Safeguarding requirements

1) Payment institutions performing business activities in accordance with Article 8(2)(c) apart from the provision of payment services must

¹ Article 12(4) amended by LGBl. 2014 No. 352.

safeguard funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions.

2) By ordinance, the Government shall set out further details governing safeguarding requirements, especially the permissible safeguarding methods.

Article 14

Record-keeping

Payment institutions must keep all relevant records for ten years, subject to due diligence legislation.

Article 15

Outsourcing of functions

1) Where a payment institution intends to outsource operational functions of payment services within Liechtenstein or abroad, it must inform the FMA accordingly.

2) Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of the payment institution's internal control and the ability of the FMA to monitor the payment institution's compliance with all obligations laid down in this Act.

3) An operational function is important if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the licensing conditions or other obligations under this Act, or its financial performance, or the soundness or the continuity of its payment services. When important operational functions are outsourced, the following conditions must be complied with:

- a) the outsourcing shall not result in the delegation by the general management of its responsibility;
- b) the relationship and obligations of the payment institution towards its payment service users under this Act shall not be altered;
- c) the licensing conditions of the payment institution must continue to be met; and

d) none of the other conditions subject to which the payment institution's licence was granted shall be removed or modified.

4) The provisions of banking legislation shall apply *mutatis mutandis* to the outsourcing of functions.

Article 16

Use of agents

1) When a payment institution intends to provide payment services through an agent, it must communicate the following information to the FMA:

- a) the name and address of the agent;
- b) a description of the internal control mechanisms that will be used by the agent in order to comply with the obligations under due diligence legislation; and
- c) the identity of the general managers and persons responsible for the general management of the agent to be used in the provision of payment services and evidence that they are fit and proper persons.

2) When the FMA receives the information in accordance with paragraph 1, it may list the agent in the Payment Institutions Register provided for in Article 36.

3) Before listing the agent in the Payment Institutions Register, the FMA may, if it considers that the information provided to it is incorrect, take further action to verify the information.

4) If, after taking action to verify the information, the FMA is not satisfied that the information provided to it pursuant to paragraph 1 is correct, it shall refuse to list the agent in the Payment Institutions Register.

Article 17

Liability

1) Payment institutions shall be fully liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced.

2) Where payment institutions rely on third parties for the performance of operational functions, those payment institutions shall

take reasonable steps to ensure that the requirements of this Act are complied with.

3) Payment institutions shall ensure that agents or branches operating on their behalf inform payment service users of this fact.

Article 18

Accounting

1) The accounting provisions of the Banking Act and of the Law on Persons and Companies applicable to banks and investment firms shall apply to payment institutions *mutatis mutandis*.¹

2) The payment institutions shall provide separate accounting information for payment services and activities referred to in Article 8(2), which shall be subject to an auditor's report. This report shall be prepared, where applicable, by the statutory auditors or an auditing company.

Article 19

External audit requirement

1) Each year, payment institutions must submit to an audit of their business activities by an independent audit office recognised by the FMA.

2) At all times, payment institutions must grant the audit office access to the books, receipts, business correspondence, and minutes of the board of directors and the general management, they must keep all documents available that are usually required to determine and assess the assets and liabilities, and they must provide all information necessary for fulfilling the audit requirement.

¹ Article 18(1) amended by LGBL 2014 No. 352.

D. Expiration, withdrawal, and revocation of licences

Article 20

Expiration of the licence

Licences shall expire if:

- a) business activities have not been initiated within one year;
- b) business activities have no longer been undertaken for at least six months;
- c) the licence is renounced in writing;
- d) bankruptcy proceedings are legally initiated; or
- e) the business is removed from the Commercial Register.¹

Article 21

Withdrawal of the licence

1) Licences shall be withdrawn if:

- a) the conditions for granting them are no longer met;
- b) the payment institution systematically and in a serious way violates the legal obligations;
- c) the payment institution does not meet the FMA's demands to restore a lawful state of affairs;
- d) the payment institution would constitute a threat to the stability of the payment system by continuing its payment service business.

2) Withdrawal of a licence must be communicated to the payment institution with a decree justified in writing, and upon entering into effect it shall be published in the official publication organs at the expense of the payment institution.

Article 22

Revocation of the licence

1) Licences shall be modified or revoked if:

¹ Article 20(e) amended by LGBl. 2013 No. 6.

- a) the payment institution obtained the licence dishonestly by providing false information or in any other manner;
- b) the FMA was unaware of significant circumstances.
 - 2) Article 21(2) shall apply *mutatis mutandis*.

Article 23

Termination and liquidation

- 1) Expiration, withdrawal, and revocation of the licence shall entail termination and removal from the Commercial Register. The costs shall be borne by the payment institution.¹
- 2) The FMA shall take the measures necessary for liquidation and settlement of the current transactions, and it shall issue the requisite instructions to the liquidator.
- 3) The FMA shall monitor the liquidator.
- 4) In urgent cases the FMA may take the necessary measures without prior warning and without imposing a deadline.

E. Relationship with the European Economic Area

1. Establishment of branches and freedom to provide services

Article 24

Liechtenstein payment institutions in other EEA Member States

- 1) A payment institution licensed in Liechtenstein wishing to establish a branch or become active for the first time in exercise of the freedom to provide services in the territory of another EEA Member State shall notify the FMA in writing.
- 2) In the case of establishment of a branch, the notification pursuant to paragraph 1 must include the following information:
 - a) the name and address of the payment institution;

¹ Article 23(1) amended by LGBL 2013 No. 6.

- b) the EEA Member State in whose territory the branch is to be established;
- c) the kind of payment services the payment institution intends to provide;
- d) the names of those responsible for the management of the branch;
- e) the organisational structure of the branch.

3) In the case of provision of payment services in exercise of the freedom to provide services, the notification pursuant to paragraph 1 must include the following information:

- a) the EEA Member State in whose territory the activities are to be performed;
- b) the information referred to in paragraph 2(a) and (c).

4) Within one month of receiving all the documentation, the FMA shall transmit the information referred to in paragraphs 2 and 3 to the competent authority of the host Member State.

5) If the conditions set out in paragraphs 1 and 2 are met, the FMA shall enter the branch in the Payment Institutions Register (Article 36).

6) If the competent authority of the host Member State has reasonable grounds to suspect that, in connection with the intended establishment of a branch, money laundering or terrorist financing within the meaning of Directive 2005/60/EC is taking place, has taken place or been attempted, or that the establishment of such branch could increase the risk of money laundering or terrorist financing, and communicates this to the FMA, the FMA must refuse to register the branch, or must withdraw the registration, if already made, of the branch.

Article 25

Payment institutions from other EEA Member States in Liechtenstein

1) The establishment of a branch or the first-time activity of a payment institution from the European Economic Area in Liechtenstein in exercise of the freedom to provide services requires notification to the FMA by the competent authority of the home Member State.

2) In the case of establishment of a branch, the notification pursuant to paragraph 1 must include the following information:

- a) the name and address of the payment institution;

- b) the kind of payment services the payment institution intends to provide;
- c) the names of those responsible for the management of the branch;
- d) the organisational structure of the branch.

3) In the case of provision of payment services in exercise of the freedom to provide services, the notification pursuant to paragraph 1 must include the information set out in paragraph 2(a) and (b).

4) Upon receipt of all information referred to in paragraphs 2 and 3, the FMA shall confirm to the payment institution that it may establish the branch and take up business operations or commence provision of the services in question.

5) The FMA shall inform the payment institution of the conditions to be observed when performing the activities in Liechtenstein on grounds of public interest.

6) The payment institution must notify the FMA of any change to the information referred to in paragraphs 2 and 3 at least one month before the changes are carried out or, to the extent this is not possible, immediately once the obstacle to notification is removed.

7) Article 24(6) shall apply *mutatis mutandis*.

2. Engaging of agents

Article 26

Engaging an agent in another EEA Member State

1) When a payment institution wishes to provide payment services in another EEA Member State by engaging an agent, it shall follow the procedures set out in Article 24. In that case, before the agent may be entered in the Payment Institutions Register (Article 36), the FMA shall inform the competent authorities of the host Member State of its intention to register the agent and take their opinion into account.

2) Article 24(6) shall apply *mutatis mutandis*.

Article 27

Engaging an agent in Liechtenstein

1) When a payment institution authorised in another EEA Member State wishes to provide payment services in Liechtenstein by engaging an agent, the procedure set out in Article 25 shall apply *mutatis mutandis*.

2) Article 24(6) shall apply *mutatis mutandis*.

3. Cooperation with the competent authorities of EEA Member States

Article 28

Cooperation and exchange of information

1) In the context of supervision, the FMA shall work together with the competent authorities of the other EEA Member States, the European Central Bank, and the national central banks in their capacity as monetary and oversight authorities in accordance with this Act, and it may also exchange information for that purpose, Article 30h of the Banking Act applying *mutatis mutandis*.

2) The FMA shall work together with the competent authorities of the host Member State in order to carry out the necessary inspections and actions in the territory of another EEA Member State in relation to agents, branches, or entities of a payment institution to which activities are outsourced.

3) Whenever the competent authorities of the home Member State intend to carry out on-site inspections in Liechtenstein, the procedure shall be governed by Article 30i of the Banking Act.

4) The FMA shall provide the competent authorities referred to in paragraph 2 with all information essential and/or relevant for carrying out their supervisory duties, in particular in the case of infringements or suspected infringements by an agent, a branch or an entity to which activities are outsourced. In this regard, the FMA shall communicate, upon request, all relevant information and, on its own initiative, all essential information.

5) The Government may provide further details by ordinance.

F. Relationship with third countries

Article 29¹

Establishment of branches by undertakings with registered offices outside the European Economic Area

Undertakings with registered offices outside the European Economic Area wishing to provide payment services in Liechtenstein by way of establishing a branch shall require a licence issued by the FMA. Article 30p(2) and (4) to (7) of the Banking Act shall apply *mutatis mutandis*.

Article 30²

Cooperation and exchange of information

In the context of supervision, the FMA shall work together with the competent authorities of a third country in monitoring, on-site inspections, investigations, or exchanging of information, Articles 30q and 30r of the Banking Act applying *mutatis mutandis*.

G. Supervision and audit

1. General provisions

Article 31

Organisation and implementation

The following bodies are mandated to implement this Act:

- a) the Financial Market Authority (FMA);
- b) the audit offices;
- c) the Office of Justice (Article 32(2));³
- d) the FMA Complaints Commission;
- e) the Court of Justice;

¹ Article 29 amended by LGBL 2011 No. 244.

² Article 30 amended by LGBL 2011 No. 244.

³ Article 31(c) amended by LGBL 2013 No. 6.

f) the arbitration body.

Article 32

Cooperation of domestic authorities and bodies

1) in the context of supervision, the competent domestic authorities and bodies shall work together to the extent necessary for the fulfilment of their responsibilities.

2) The Office of Justice shall notify the FMA of all changes to entries in the Commercial Register concerning a payment institution. The Office of Justice shall grant the FMA electronic access to the data concerning payment institutions. The Government may provide further details by ordinance.¹

Article 33

Data processing

1) The competent domestic authorities and bodies may process all data, including personal profiles and sensitive data, that is necessary for the fulfilment of their responsibilities.

2) The competent domestic authorities and bodies may disclose data to each other to the extent necessary for the fulfilment of their responsibilities.

Article 34

Official secrecy

1) The authorities and bodies mandated to implement this Act, any other persons consulted by these authorities and bodies, and all representatives of public authorities shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) The information subject to official secrecy may not be transmitted to others, subject to other special legal provisions.

¹ Article 32(2) amended by LGBl. 2013 No. 6.

3) If liquidation or bankruptcy proceedings have been initiated by a court decision against a payment institution, then confidential information that does not relate to third parties may be used in civil or commercial proceedings, as long as it is necessary for the proceedings in question.

4) Without prejudice to the criminal law cases, the FMA, all other administrative authorities and bodies, and other natural and legal persons may use confidential information that they receive in accordance with this Act only for purposes of fulfilling their responsibilities and tasks within the scope of this Act or for purposes for which the information was given, and/or in the case of administrative and judicial proceedings that specifically relate to the fulfilment of these tasks. If the FMA or another administrative authority or office or person providing the information gives their consent, however, then the authority receiving the information may use it for other purposes relating to financial market supervision.

5) The FMA is permitted, in compliance with domestic law, to transmit confidential information received from a non-competent authority of an EEA Member State to other competent authorities of EEA Member States.

2. FMA

Article 35

Responsibilities and powers

1) The FMA shall monitor execution of the provisions of this Act and the ordinances issued in connection herewith, and it shall take the measures necessary for execution directly, in cooperation with other supervisory bodies, or by filing charges with the Office of the Public Prosecutor.

2) The FMA shall have all necessary powers to fulfil its responsibilities and may in particular:

- a) demand from all persons and entities subject to this Act and to the FMA's supervision and from their audit offices all information and materials necessary for execution of this Act;
- b) order or carry out extraordinary audits;

- c) issue decisions and decrees for action, cease and desist, and declaration;
- d) following prior warning, publish final decisions and decrees if the party concerned refused to comply with those;
- e) impose temporary prohibitions to practice a profession;
- f) request the Office of the Public Prosecutor to apply for measures for securing the forfeiture of assets in accordance with the provisions of the Code of Criminal Procedure;¹
- g) issue guidelines and recommendations and, where appropriate, binding administrative rules;
- h) in urgent cases, make all necessary arrangements, take all necessary measures, and issue all necessary orders without prior warning and without imposing a deadline.

3) The costs incurred due to misconduct shall be borne by those responsible in accordance with Article 26(2) of the Financial Market Authority Act.

4) The FMA shall in particular be responsible for:

- a) issuing, withdrawing, and revoking licences;
- b) maintaining the Payment Institutions Register in accordance with Article 36;
- c) verifying audit reports;
- d) punishing administrative contraventions in accordance with Article 93.

5) If the FMA learns of violations of this Act or of other abuses, it shall issue the orders necessary to bring about a lawful state of affairs and to remedy the abuses.

6) If there are grounds to assume that an activity subject to this Act is being conducted without a licence, the FMA may demand information and materials from the persons concerned as if these persons were subject to this Act. In urgent cases, the FMA may order immediate cessation and termination without prior warning and without imposing a deadline.

7) The FMA may assign an expert as its observer to a payment institution if the claims of creditors appear endangered by serious abuses. The auditor appointed by law may be entrusted with this responsibility. The costs shall be borne by the payment institution. The observer shall

¹ Article 35(2)(f) amended by LGBL 2016 No. 161.

monitor the activities of the managing governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on an ongoing basis. The observer shall enjoy the unrestricted right to inspect the business activities and the books and files of the payment institution.

8) If the FMA receives complaints from persons and organisations regarding alleged violations of provisions of this Act for which the FMA is not competent, it shall alert these persons and organisations, where appropriate and without prejudice to the right to take legal action, to the possibility of invoking the arbitration body in accordance with Article 91.

Article 36

Payment Institutions Register

1) The FMA shall maintain a publicly available register of the payment institutions authorised in Liechtenstein, their agents and branches, as well as of audit offices authorised to audit payment institutions (Payment Institutions Register).

2) Payment services for which the payment institution is authorised shall also be entered in this register.

3) The register may be accessed at the FMA or via the FMA's website, and it shall be updated on a regular basis.

4) The Government may provide further details regarding maintenance of the register by ordinance.

Article 37

Supervision taxes and fees

The supervision taxes and fees shall be in accordance with financial market supervision legislation.

3. Audit offices

Article 38

Recognition

1) Audit offices and audit associations that audit payment institutions shall require a licence issued by the FMA for such activities.

2) The licence shall be granted to audit offices if:¹

- a) their general management, lead auditors, and organisation guarantee that the audit mandates are performed continuously and properly;
- b) they are organised as limited companies and dispose of adequate share capital; and
- c) they and their lead auditors have a licence under the Auditors and Auditing Companies Act.²

3) The audit offices shall dedicate themselves exclusively to audit activities and immediately related transactions such as inspections, liquidations, and reorganisations. They may not engage in payment services, banking transactions, investment services, or asset management.

4) The audit offices must be independent of the payment institutions to be audited.

5) The audit office must maintain secrecy concerning all facts it has learned about in the course of its audit, except vis-à-vis the competent bodies of the payment institution and the FMA.

6) The Government may provide further details by ordinance.

Article 39

Responsibilities and audit report

1) The audit offices shall verify whether:

- a) the business activities of the payment institution conform to the law, the articles of association, and the regulations;
- b) the conditions for granting the licence are continuously met; and

¹ Article 38(2) amended by LGBl. 2011 No. 11.

² Article 38(2)(c) amended by LGBl. 2016 No. 224.

c) the form and content of the annual report and the consolidated annual report conform to the requirements of the law, articles of association, and regulations.

2) The audit office shall summarise the results of the audits under paragraph 1 in a written audit report. The audit report shall be signed by the lead auditor and the audit office.¹

2a) Repealed.²

3) The audit report shall be submitted simultaneously to the board of directors of the payment institution, the FMA, and, where applicable, to the audit office under the provisions of the Law on Persons and Companies.

4) The Government shall set out the other basic principles of the audit of payment institutions by ordinance. The FMA shall provide details in a guideline.³

Article 40

Deficiencies

1) If the audit office finds violations of legal provisions or other abuses, it shall impose an appropriate deadline on the payment institution to bring about a lawful state of affairs. If the deadline is not met, the audit office shall report to the FMA.

2) The audit office shall notify the FMA immediately if the imposition of a deadline appears useless, if it finds that the general management has committed punishable offences, or if other serious abuses exist that conflict with the purpose of this Act.

3) Irrespective of paragraph 1, a duty to report within the meaning of paragraph 2 shall subsist:

- a) in the case of serious violations of the law and articles of association by the general management, especially in the case of violations of the conditions for granting a licence and the provisions applicable to the exercise of business activities;
- b) in the case of facts or decisions that might adversely affect the continuation of the activities of the payment institution;

¹ Article 39(2) amended by LGBL 2014 No. 352.

² Article 39(2a) repealed by LGBL 2014 No. 352.

³ Article 39(4) amended by LGBL 2014 No. 352.

c) in the case of facts or decisions that might lead to a rejection of the annual report or the consolidated annual report or to reservations in the audit report.

4) A duty to report shall also subsist where, in the course of its audit activities, the audit office makes determinations in accordance with paragraph 3 with respect to undertakings closely linked with the payment institution subject to the audit.

5) Audit offices bringing fact patterns to the attention of the FMA in good faith shall not thereby be deemed in breach of any contractual or legal restrictions on passing on information. Meeting the information requirement in this sense does not entail any adverse consequences for the audit office or person passing on the information.

Article 40a¹

Supervision of audit offices

In its supervision of audit offices, the FMA may in particular carry out quality controls and accompany the audit offices in their audit activities at payment institutions.

Article 41

Audit costs

1) The payment institution shall bear the costs of the audit. The costs of the audit shall be calculated according to the rate issued by the Government by ordinance.

2) Agreement on lump-sum remuneration or a specific expenditure of time for the audit is prohibited.

¹ Article 40a inserted by LGBL 2011 No. 11.

H. Procedures and legal remedies

Article 42

Procedures

1) To the extent not otherwise specified in this Chapter, the provisions of the National Administration Act shall apply to the procedure.

2) In urgent cases, the decisions, decrees, and measures of the FMA may be imposed without prior warning and without imposing a deadline.

Article 43

Legal remedies

1) Decisions and decrees of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.

2) If no decision is made within three months of receipt of an application for a licence, even though the application contains all necessary information, a complaint may be lodged with the FMA Complaints Commission.

3) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service by way of a complaint to the Administrative Court.

III. Civil Law Part

A. General provisions

Article 44

Non-derogation

1) To the extent this Act does not expressly provide an exception, agreements between payment service providers and payment service users that derogate, to the detriment of the payment service user, from the provisions of this Act, shall be void.

2) To the extent this Part does not provide any special rules, it shall be without prejudice to the other provisions of civil law.

B. Transparency of conditions and information requirements for payment services

1. General rules

Article 45

Scope

1) The provisions of this Section (Articles 45 to 61) shall apply to framework contracts and payment transactions covered by them. When a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the payment service provider shall not be obliged to provide or make available information which is already given to the payment service user on the basis of a framework contract with another payment service provider or which will be given to him according to that framework contract.

2) The parties may agree that the provisions of this Section shall not apply in whole or in part when the payment service user is not a consumer.

3) The provisions of this Section shall apply only where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in the EEA.

4) The provisions of this Section shall apply to payment services made in euro or in the currency of an EEA Member State outside the euro area.

5) This Section is without prejudice to other laws containing additional requirements on prior information. To the extent the Distance Financial Services Act (FernFinG) applies, Articles 50, 51, 54, and 55 take precedence over Article 5(1)(a), (b), (c)(2), (c)(3), (c)(6), (c)(7), and (d)(1) FernFinG. This Section is also subject to the Consumer Credit Act.

Article 46

Charges for information

- 1) The payment service provider shall not charge the payment service user for providing information under this Section.
- 2) The payment service provider and the payment service user may agree on charges for additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request.
- 3) Where the payment service provider may impose charges for information in accordance with paragraph 2, they shall be appropriate and in line with the payment service provider's actual costs.

Article 47

Currency and currency conversion

- 1) Payments shall be made in the currency agreed between the parties.
- 2) Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.
- 3) The payer shall agree to the currency conversion service on that basis.

Article 48

Information on additional charges or reductions

- 1) Where, for the use of a given payment instrument, the payee requests a charge or offers a reduction, the payee shall inform the payer thereof prior to the initiation of the payment transaction.
- 2) Where, for the use of a given payment instrument, a payment service provider or a third party requests a charge, he shall inform the payment service user thereof prior to the initiation of the payment transaction.

Article 49

Derogation from information requirements for low-value payment instruments and electronic money

1) In the case of payment instruments which, according to the framework contract, concern only individual payment transactions that do not exceed 30 euros or the equivalent in Swiss francs or that either have a spending limit of 150 euros or the equivalent in Swiss francs or store funds that do not exceed 150 euros or the equivalent in Swiss francs at any time:

- a) by way of derogation from Articles 54, 55 and 59, the payment service provider shall provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, liability, charges levied and other material information needed to take an informed decision as well as an indication of where any other information and conditions specified in Article 55 are made available in an easily accessible manner;
- b) it may be agreed that, by way of derogation from Article 57, the payment service provider shall not be required to propose changes in the conditions of the framework contract in the same way as provided for in Article 54(1);
- c) it may be agreed that, by way of derogation from Articles 59 and 60, after the execution of a payment transaction:
 1. the payment service provider shall provide or make available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction, any charges or, in the case of several payment transactions of the same kind made to the same payee, information on the total amount and charges for those payment transactions;
 2. the payment service provider shall not be required to provide or make available information referred to in point 1 if the payment instrument is used anonymously or if the payment service provider is not otherwise technically in a position to provide it. However, the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.

2) For domestic payment transactions, the upper limits referred to in paragraph 1 shall be doubled. For prepaid payment instruments, the upper limit shall be 500 euros or the equivalent in Swiss francs.

2. Single payment transactions

Article 50

Prior general information

1) Before the payment service user is bound by any single payment service contract or offer, the payment service provider, in an easily accessible manner, shall make available to the payment service user the information and conditions specified in Article 51. At the payment service user's request, the payment service provider shall provide the information and conditions on paper or on another durable medium.

2) The information and conditions shall be given in easily understandable words and in a clear and comprehensible form, and:

- a) if the payment service is offered in Liechtenstein, in German or in any other language agreed between the parties;
- b) if the payment service is offered in another EEA Member State, in the official language of that State or in any other language agreed between the parties.

3) If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraphs 1 and 2, the payment service provider shall fulfil its obligations under that paragraph immediately after the execution of the payment transaction.

4) The obligations under paragraphs 1 and 2 may also be discharged by supplying a copy of the draft single payment service contract or the draft payment order including the information and conditions specified in Article 51.

Article 51

Information and conditions

1) The payment service provider shall provide or make available the following information and conditions to the payment service user:

- a) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
- b) the maximum execution time for the payment service to be provided;

- c) all charges payable by the payment service user to his payment service provider and, where applicable, the breakdown of the amounts of any charges;
- d) where applicable, the actual or reference exchange rate to be applied to the payment transaction.

2) Where applicable, any other relevant information and conditions specified in Article 55 shall be made available to the payment service user in an easily accessible manner.

Article 52

Information for the payer after receipt of the payment order

Immediately after receipt of the payment order, the payer's payment service provider shall provide or make available to the payer, in the same way as provided for in Article 50(1) and (2), the following information:

- a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
- b) the amount of the payment transaction in the currency used in the payment order;
- c) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of the amounts of such charges;
- d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, when different from the rate provided in accordance with Article 51(1)(d), and the amount of the payment transaction after that currency conversion; and
- e) the date of receipt of the payment order.

Article 53

Information for the payee after execution

Immediately after the execution of the payment transaction, the payee's payment service provider shall provide or make available to the payee, in the same way as provided for in Article 51(1) and (2), the following information:

- a) the reference enabling the payee to identify the payment transaction and, where appropriate, the payer and any information transferred with the payment transaction;
- b) the amount of the payment transaction in the currency in which the funds are at the payee's disposal;
- c) the amount of any charges for the payment transaction payable by the payee and, where applicable, a breakdown of the amount of such charges;
- d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion; and
- e) the credit value date.

3. Framework contracts

Article 54

Prior general information

1) In good time before the payment service user is bound by any framework contract or offer, the payment service provider shall provide the payment service user on paper or on another durable medium with the information and conditions specified in Article 55.

2) The information and conditions shall be given in easily understandable words and in a clear and comprehensible form, and:

- a) if the payment service is offered in Liechtenstein, in German or in any other language agreed between the parties;
- b) if the payment service is offered in another EEA Member State, in the official language of that State or in any other language agreed between the parties.

3) If the framework contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph 1 and 2, the payment service provider shall fulfil its obligations under that paragraph immediately after the conclusion of the framework contract.

4) The obligations under paragraphs 1 and 2 may also be discharged by supplying a copy of the draft framework contract including the information and conditions specified in Article 55.

Article 55

Information and conditions

The payment service provider shall provide the following information and conditions to the payment service user:

- a) on the payment service provider:
 1. the name of the payment service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in the EEA Member State where the payment service is offered, and any other address, including electronic mail address, relevant for communication with the payment service provider; and
 2. the particulars of the relevant supervisory authorities and of the Payment Institutions Register (Article 36) or of any other relevant public register of authorisation of the payment service provider and the registration number, or equivalent means of identification in that register;
- b) on use of the payment service:
 1. a description of the main characteristics of the payment service to be provided;
 2. a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
 3. the form of and procedure for giving consent to execute a payment transaction and withdrawal of such consent in accordance with Articles 65 and 73;
 4. a reference to the point in time of receipt of a payment order as defined in Article 71 and the cut-off time, if any, established by the payment service provider;
 5. the maximum execution time for the payment services to be provided; and
 6. whether there is a possibility to agree on spending limits for the use of the payment instrument in accordance with Article 66(1);
- c) on charges, interest and exchange rates:

1. all charges payable by the payment service user to the payment service provider and, where applicable, the breakdown of the amounts of any charges;
 2. where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate; and
 3. if agreed, the immediate application of changes in reference interest or exchange rate and information requirements related to the changes in accordance with Article 57(2);
- d) on communication:
1. where applicable, the means of communication, including the technical requirements for the payment service user's equipment, agreed between the parties for the transmission of information or notifications under this Act;
 2. the manner in and frequency with which information under this Act is to be provided or made available;
 3. the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken; and
 4. the payment service user's right to receive the contractual terms of the framework contract and information and conditions in accordance with Article 56;
- e) on safeguards and corrective measures:
1. where applicable, a description of steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of Article 67(1)(b);
 2. if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Article 66;
 3. the liability of the payer in accordance with Article 81, including information on the relevant amount;
 4. how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly executed payment transaction in accordance with Article 69 as well as the payment service provider's liability for unauthorised payment transactions in accordance with Article 80;

5. the liability of the payment service provider for the execution of payment transactions in accordance with Article 82, 83 and 85; and
 6. the conditions for refund in accordance with Articles 88;
- f) on changes in and termination of framework contract:
1. if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with Article 57, unless he notifies the payment service provider that he does not accept them before the date of their proposed date of entry into force;
 2. the duration of the contract; and
 3. the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Article 57(1) and (2) and Article 58;
- g) on redress:
1. any contractual clause on the law applicable to the framework contract and/or the competent courts; and
 2. the procedures available to the payment service user in accordance with Articles 43, 90 and 91.

Article 56

Accessibility of information and conditions of the framework contract

At any time during the contractual relationship the payment service user shall have a right to receive, on request, the contractual terms of the framework contract as well as the information and conditions specified in Article 55 on paper or on another durable medium.

Article 57

Changes in conditions of the framework contract

1) Any changes in the framework contract as well as the information and conditions specified in Article 55, shall be proposed by the payment service provider in the same way as provided for in Article 54(1) and no later than two months before their proposed date of application.

2) Where applicable in accordance with Article 55(f)(1), the payment service provider shall inform the payment service user that he is to be deemed to have accepted these changes if he does not notify the payment

service provider that he does not accept them before the proposed date of their entry into force. In this case, the payment service provider shall also specify that the payment service user has the right to terminate the framework contract immediately and without charge before the date of the proposed application of the changes.

3) Changes in the interest or exchange rates may be applied immediately and without notice, provided that such a right is agreed upon in the framework contract and that the changes are based on the reference interest or exchange rates agreed on in accordance with Article 55(c)(2) and (3). The payment service user shall be informed of any change in the interest rate at the earliest opportunity in the same way as provided for in Article 54(1) and (2), unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available. However, changes in interest or exchange rates which are more favourable to the payment service users may be applied without notice.

4) Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users.

Article 58

Termination

1) The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice. Such a period may not exceed one month.

2) Termination of a framework contract concluded for a fixed period exceeding 12 months or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months. In all other cases charges for the termination shall be appropriate and in line with costs.

3) If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice in the same way as provided for in Article 54(1) and (2).

4) Charges for payment services levied on a regular basis shall be payable by the payment service user only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally.

5) This Article is without prejudice to the general provisions on void or unenforceable contracts or the early cancellation of continuing obligations on important grounds.

Article 59

Information before execution of individual payment transactions

In the case of an individual payment transaction under a framework contract initiated by the payer, a payment service provider shall, upon request for this specific payment transaction, provide explicit information on the maximum execution time and the charges payable by the payer and, where applicable, a breakdown of the amounts of any charges.

Article 60

Information for the payer on individual payment transactions

1) After the amount of an individual payment transaction is debited from the payer's account or, where the payer does not use a payment account, after the receipt of the payment order, the payer's payment service provider shall provide the payer without undue delay in the same way as laid down in Article 54(1) and (2) with the following information:

- a) a reference enabling the payer to identify the existing payment transaction and, where appropriate, information relating to the payee;
- b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;
- c) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payer;
- d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion; and
- e) the debit value date or the date of receipt of the payment order.

2) A framework contract may include a condition that the information referred to in paragraph 1 is to be provided or made available periodically at least once a month and in an agreed manner which allows the payer to store and reproduce information unchanged.

Article 61

Information for the payee on individual payment transactions

1) After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee without undue delay in the same way as laid down in Article 54(1) and (2) with the following information:

- a) the reference enabling the payee to identify the payment transaction and, where appropriate, the payer, and any information transferred with the payment transaction;
- b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
- c) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payee;
- d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion; and
- e) the credit value date.

2) A framework contract may include a condition that the information referred to in paragraph 1 is to be provided or made available periodically at least once a month and in an agreed manner which allows the payee to store and reproduce information unchanged.

C. Rights and obligations in relation to the provision and use of payment services**1. General provisions**

Article 62

Scope

1) Where the payment service user is not a consumer, the parties may agree that Article 63(1), Article 65(3), and Articles 70, 73, 81, 82, 83, 85 and 88 shall not apply in whole or in part. The parties may also agree on a time period different from that laid down in Article 69.

2) With the exception of Article 79, the provisions of this Section (Articles 62 to 89) shall apply only where both the payer's payment service provider and the payee's payment service provider are, or the sole

payment service provider in the payment transaction is, located in the EEA.

3) The provisions of this Section shall apply to payment services made in euro or in the currency of an EEA Member State outside the euro area, subject to Article 75.

4) This Section is subject to the provisions of the Consumer Credit Act.

Article 63

Charges applicable

1) The payment service provider may not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Section, unless otherwise specified in Articles 72(3), 73(5) or 84(3). Those charges shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.

2) Where a payment transaction does not involve any currency conversion, the payee shall pay the charges levied by his payment service provider, and the payer shall pay the charges levied by his payment service provider.

3) The payee's payment service provider shall not prevent the payee from requesting from the payer a charge or from offering him a reduction for the use of a given payment instrument.

Article 64

Derogation for low value payment instruments and electronic money

1) In the case of payment instruments which, according to the framework contract, concern only individual payment transactions that do not exceed 30 euros or the equivalent in Swiss francs or that either have a spending limit of 150 euros or the equivalent in Swiss francs or store funds that do not exceed 150 euros or the equivalent in Swiss francs at any times, payment service providers may agree with their payment service users that:

a) Article 67(1)(a) and Article 68(1)(c) and (d) as well as Article 81(3) and (4) do not apply if the payment instrument does not allow its blocking or prevention of its further use;

- b) Articles 70, 80 and Article 81(1) and (2) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;
- c) by way of derogation from Article 72(1) to (3), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
- d) by way of derogation from Article 73, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee;
- e) by way of derogation from Articles 76 and 77, other execution periods apply.

2) For domestic payment transactions, the upper limits referred to in paragraph 1 shall be doubled. For prepaid payment instruments, the upper limit shall be 500 euros or the equivalent in Swiss francs.

3) Articles 80 and 81 shall apply also to electronic money within the meaning of the E-Money Act, except where the payer's payment service provider does not have the ability to freeze the payment account or block the payment instrument. By ordinance, the Government may limit that derogation to payment accounts or payment instruments of a certain value.

2. Authorisation of payment transactions

Article 65

Consent and withdrawal of consent

1) A payment transaction shall be considered authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.

2) Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider. In the absence of such consent, a payment transaction shall be considered to be unauthorised.

3) Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under Article 73. Consent to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.

4) The procedure for giving consent shall be agreed between the payer and the payment service provider.

Article 66

Limits of the use of the payment instrument

1) In cases where a specific payment instrument is used for the purposes of giving consent, the payer and his payment service provider may agree on spending limits for payment transactions executed through that payment instrument.

2) If agreed in the framework contract, the payment service provider may reserve the right to block the payment instrument for objectively justified reasons related to the security of the payment instrument, the suspicion of unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his liability to pay.

3) In such cases the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter, unless giving such information would compromise objectively justified security reasons or is prohibited by relevant provisions of domestic or EEA law.

4) The payment service provider shall unblock the payment instrument or replace it with a new payment instrument once the reasons for blocking no longer exist.

Article 67

Obligations of the payment service user in relation to payment instruments

1) The payment service user entitled to use a payment instrument must:

- a) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument; and

b) notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.

2) For the purposes of paragraph 1(a), the payment service user shall, in particular, as soon as he receives a payment instrument, take all reasonable steps to keep its personalised security features safe.

Article 68

Obligations of the payment service provider in relation to payment instruments

1) The payment service provider issuing a payment instrument must:

- a) make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 67;
- b) refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
- c) ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Article 67(1)(b) or request unblocking pursuant to Article 66(4); on request, the payment service provider shall provide the payment service user with the evidence to prove, for 18 months after notification, that he made such notification; and
- d) prevent all use of the payment instrument once notification pursuant to Article 67(1)(b) has been made.

2) The payment service provider shall bear the risk of sending a payment instrument to the payer or of sending any personalised security features of it.

Article 69

Notification of unauthorised or incorrectly executed payment transactions

The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, including that

under Articles 82, 83 and 85, and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Section B of the Civil Law Part.

Article 70

Evidence on authentication and execution of payment transactions

1) Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, the payment service provider must prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.

2) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or violated one or more of his obligations under Article 67 wilfully or with gross negligence.

3. Execution of payment transactions

a) Payment orders and amounts transferred

Article 71

Receipt of payment orders

1) The point in time of receipt shall be the time when the payment order transmitted directly by the payer or indirectly by or through a payer is received by the payer's payment service provider. If the point in time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day. The payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day.

2) If the payment service user initiating a payment order and his payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal, the point in time of receipt for the purposes of Article 76 is deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

Article 72

Refusal of payment orders

1) Where the payment service provider refuses to execute a payment order, the refusal and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user, unless prohibited by other provisions of domestic or EEA law.

2) The payment service provider shall provide or make available the notification in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Article 76.

3) The framework contract may include a condition that the payment service provider may charge for such a notification if the refusal is objectively justified.

4) In cases where all the conditions set out in the payer's framework contract are met, the payer's payment service provider shall not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by a payer or by or through a payee, unless prohibited by other provisions of domestic or EEA law.

5) For the purposes of Articles 76, 82, 83 and 85, a payment order of which execution has been refused shall be deemed not to have been received.

Article 73

Irrevocability of a payment order

1) The payment service user may not revoke a payment order once it has been received by the payer's payment service provider, subject to paragraphs 2 to 5.

2) Where the payment transaction is initiated by or through the payee, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee.

3) However, in the case of a direct debit and without prejudice to refund rights the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds.

4) In the case referred to in Article 71(2) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day.

5) After the time limits specified in paragraphs 1 to 4, the payment order may be revoked only if agreed between the payment service user and his payment service provider. In the case referred to in paragraphs 2 and 3, the payee's agreement shall also be required. If agreed in the framework contract, the payment service provider may charge for revocation.

Article 74

Amounts transferred and amounts received

1) The payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers are required to transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.

2) However, the payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

3) If any charges other than those referred to in paragraph 2 are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. In cases where the payment transaction is initiated by or through the payee, his payment service provider shall ensure that the full amount of the payment transaction is received by the payee.

b) Execution time and value date

Article 75

Scope

1) Articles 76 to 79 shall apply to:

- a) payment transactions in euro;
- b) payment transactions in Swiss francs within Liechtenstein; and
- c) payment transactions involving only one currency conversion between the euro and the currency of a Member State outside the euro area, provided that the required currency conversion is carried out in the Member State outside the euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in euro.

2) Articles 76 to 79 shall apply to other payment transactions, unless otherwise agreed between the payment service user and his payment service provider, with the exception of Article 79, which is not at the disposal of the parties. However, when the payment service user and his payment service provider agree on a longer period than those laid down in Article 76 for payment transactions within the EEA, such period shall not exceed 4 business days following the point in time of receipt in accordance with Article 71.

Article 76

Payment transactions to a payment account

1) The payer's payment service provider must ensure that, after the point in time of receipt in accordance with Article 71, the amount of the payment transaction is credited to the payee's payment service provider's account at the latest by the end of the next business day. Until 1 January

2012, a payer and his payment service provider may agree on a period no longer than three business days. These periods may be extended by a further business day for paper-initiated payment transactions.

2) The payment service provider of the payee must value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with Article 79.

3) The payee's payment service provider must transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and his payment service provider, enabling settlement, as far as direct debit is concerned, on the agreed due date.

Article 77

Absence of payee's payment account with the payment service provider

1) Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the period specified in Article 76.

2) This Article is subject to derogating provisions under special legislation.

Article 78

Cash placed on a payment account

Where a consumer places cash on a payment account with that payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is made available and value dated immediately after the point of time of the receipt of the funds. Where the payment service user is not a consumer, the amount shall be made available and value dated at the latest on the next business day after the receipt of the funds.

Article 79

Value date and availability of funds

1) The credit value date for the payee's payment account shall be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.

2) The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

3) The debit value date for the payer's payment account shall be no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

c) Liability and refunds

Article 80

Payment service provider's liability for unauthorised payment transactions

Without prejudice to Article 69, in the case of an unauthorised payment transaction, the payer's payment service provider must refund to the payer immediately the amount of the unauthorised payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

Article 81

Payer's liability for unauthorised payment transactions

1) By way of derogation from Article 80 the payer shall bear the losses relating to any unauthorised payment transactions, up to a maximum of 150 euros or the equivalent in Swiss francs, resulting from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features safe, from the misappropriation of a payment instrument.

2) The payer shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by

violating one or more of his obligations under Article 67 wilfully or with gross negligence. In such cases, paragraph 1 shall not apply.

3) The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification in accordance with Article 67(1)(b), except where he has acted fraudulently.

4) If the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under Article 68(1)(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where he has acted with fraudulent intent.

Article 82

Defective execution of payment orders initiated by the payer

1) Where a payment order is initiated by the payer, his payment service provider shall, without prejudice to Article 69, Article 84(2) to (4), and Article 87, be liable to the payer for correct execution of the payment transaction, unless he can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 76, in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

2) Where the payer's payment service provider is liable under paragraph 1, he shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

3) Where the payee's payment service provider is liable under paragraph 1, he shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

4) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, his payment service provider shall, even if he is not liable under this Article, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

Article 83

Defective execution of payment orders initiated by the payee

1) Where a payment order is initiated by or through the payee, his payment service provider shall, without prejudice to Article 69, Article 84(2) to (4), and Article 87, be liable to the payee:

- a) for correct transmission of the payment order to the payment service provider of the payer in accordance with Article 76(3). In this case of liability, the payee's payment service provider shall immediately re-transmit the payment order in question to the payment service provider of the payer;
- b) for handling the payment transaction in accordance with its obligations under Article 79. In this case of liability, the payee's payment service provider shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

2) In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under paragraph 1, the payer's payment service provider shall be liable to the payer. Where the payer's payment service provider is liable under the first sentence he shall, as appropriate and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

3) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, his payment service provider shall, even if he is not liable under this Article, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

Article 84

Incorrect unique identifiers

1) If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

2) If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article

82, 83 and 85 for non-execution or defective execution of the payment transaction.

3) However the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction. If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

4) If the payment service user provides information additional to that specified in Articles 51(1)(a) or 55(b)(2), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

Article 85

Additional financial compensation

Further claims may be determined in accordance with agreements between payment service providers and payment service users. Other provisions of civil law shall apply *mutatis mutandis*.

Article 86

Right of recourse

1) Where the liability of a payment service provider under Articles 82, 83 and 85 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under Articles 82, 83 and 85.

2) Further financial compensation may be determined in accordance with agreements between payment service providers and/or intermediaries and the law applicable to the agreement concluded between them.

Article 87

No liability

Liability in connection with the authorisation and execution of payment transactions shall not apply in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for

the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations covered by provisions of domestic or EEA law.

Article 88

Refunds for payment transactions initiated by or through a payee

1) The payer is entitled to a refund from his payment service provider of an authorised payment transaction initiated by or through a payee which has already been executed, provided that:

- a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and
- b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case.

2) At the payment service provider's request, the payer shall provide factual elements relating to the conditions set out in paragraph 1. The refund consists of the full amount of the executed payment transaction.

3) For direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in paragraph 1 are not met.

4) However, for the purposes of paragraph 1(b), the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider in accordance with Articles 51(1)(d) and 55(c)(2) was applied.

5) It may be agreed in the framework contract between the payer and the payment service provider that the payer has no right to a refund where he has given his consent to execute the payment transaction directly to his payment service provider and, where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or by the payee.

6) The payer must request the refund referred to in paragraphs 1 to 5 of an authorised payment transaction initiated by or through a payee for a period of eight weeks from the date on which the funds were debited.

7) Within ten business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the bodies to which the payer may refer the matter in accordance with Articles 42, 90 and 91 if he does not accept the justification provided.

8) The payment service provider's right under paragraph 7 to refuse the refund shall not apply in the case set out in paragraph 3.

4. Data protection

Article 89

Data protection

1) Payment systems operators and payment service providers are permitted to process personal data, including personal profiles and sensitive data, without the consent of the person concerned and to the extent that they are called upon to publish that data by the competent domestic authorities and supervisory bodies.

2) Data protection legislation shall apply *mutatis mutandis*.

IV. Final Part

A. Judicial and out-of-court redress

Article 90

Court proceedings

1) Proceedings may be brought before the Court of Justice for alleged infringement by payment service providers of the provisions in Chapter III. This also applies to infringements by agents and branches that operate in Liechtenstein pursuant to the right of establishment.¹

2) In addition to payment service providers and payment service users, organisations dedicated nationally and in accordance with their

¹ Article 90(1) amended by LGBl. 2010 No. 185.

articles to the protection of consumers or other topics relating to payment services shall be entitled to bring proceedings.

3) The Court of Justice shall alert complainants as early as possible to the option of invoking the arbitration body.

4) The general provisions of civil procedure shall apply *mutatis mutandis* to proceedings under civil law.

Article 91

Out-of-court arbitration body

1) By ordinance, the Government shall designate an arbitration body to settle disputes between payment service providers and payment service users.

2) The responsibility of the arbitration body shall be to mediate as appropriate in disputes between the parties and in that way to achieve a settlement between the parties.

3) The arbitration body also serves as a contact point for complaints by organisations that are dedicated nationally and in accordance with their articles to the protection of consumers or other topics relating to payment services.

4) If no settlement can be achieved between the parties, they shall be referred to ordinary judicial proceedings.

5) In the case of cross-border disputes, the arbitration body shall work together with arbitration bodies of other EEA Member States and third countries concerned.¹

6) By ordinance, the Government shall provide further details, especially the organisational structure, composition, and procedure.

¹ Article 91(5) amended by LGBL 2015 No. 11.

B. Penal provisions

Article 92

Misdemeanours

1) The Court of Justice shall punish with a custodial sentence of up to one year or with a monetary penalty of up to 360 daily penalty units for committing a misdemeanour anyone who:

- a) as a member of a governing body of, an employee of, or any other person acting on behalf of a payment service provider, or as an auditor violates the duty of secrecy;
- b) provides payment services without authorisation;
- c) establishes branches and takes up business operations or provides cross-border payment services before all the conditions set out in Article 25 are met;
- d) engages an agent before all the conditions set out in Article 27 are met;
- e) violates the provisions on own funds set out in Article 12;
- f) accepts deposits or other repayable funds in violation of Article 8(5).

2) The Court of Justice shall punish with a custodial sentence of up to six months or with a monetary penalty of up to 180 daily penalty units for committing a misdemeanour anyone who:

- a) violates terms imposed in connection with a licence;
- b) gives no, false, or incomplete information to the FMA or the audit office;
- c) does not keep account books properly or does not retain account books and receipts;
- d) as an auditor, grossly violates responsibilities, in particular by making untrue statements in the audit report or by withholding material facts, by failing to make prescribed requests to the payment institution, or by failing to submit prescribed reports and notifications;
- e) fails to submit notifications to the FMA or submits them late, makes false statements, or withholds material facts.

3) If the offences are committed negligently, the maximum penalties are reduced by half.

Article 93

Contraventions

1) The FMA shall punish with a fine of up to 100,000 Swiss francs for committing a contravention anyone who:

- a) fails to prepare or publish the annual report, the consolidated annual report, the interim financial statement, or the consolidated interim financial statement as required;
- b) fails to have a regular audit or an audit required by the FMA carried out;
- c) fails to fulfil responsibilities vis-à-vis the audit office;
- d) fails to comply with a decree or order issued against him by the FMA with reference to the penalties under this Article;¹
- e) as an auditor, violates his duties under this Act, especially under Articles 38 to 41.²

2) The FMA shall punish with a fine of up to 90,000 Swiss francs for committing a contravention anyone who breaches the provisions of Regulation (EC) No 924/2009 by:³

- a) in violation of Article 3, levying charges on payment service users in respect of cross-border payments in euro within the EEA that are higher than for corresponding national payments in euro within Liechtenstein;
- b) in violation of Article 4(1), levying charges on a payment service user for the provision of information required under paragraph 3.

3) The FMA shall punish with a fine of up to 15,000 Swiss francs for committing a contravention anyone who breaches the provisions of Regulation (EC) No 924/2009 by failing to, in violation of Article 4:⁴

- a) indicate the payment service user's International Bank Account Number (IBAN) and the payment service provider's Bank Identifier Code (BIC) on the payment service user's statements of account, or in an annex thereto;
- b) communicate to the payment service user, on request, the payment service user's IBAN and the payment service provider's BIC; or

¹ Article 93(1)(d) amended by LGBL 2011 No. 11.

² Article 93(1)(e) amended by LGBL 2014 No. 352.

³ Article 93(2) amended by LGBL 2015 No. 11.

⁴ Article 93(3) amended by LGBL 2015 No. 11.

- c) inform the payment service user in advance of the charges to be levied for the execution of a cross-border payment where the payment service user does not disclose the IBAN of the payee or payer and, if provided for in accordance with Regulation (EU) No 260/2012, the BIC of the payment service provider of the payee or of the payer.

4) The FMA shall punish with a fine of up to 15,000 Swiss francs for committing a contravention anyone who breaches the provisions of Regulation (EU) No 260/2012 by:

- a) in violation of Article 3, not being reachable as a payment service provider;¹
- b) in violation of the first sentence of Article 4(2), failing to ensure the technical interoperability of payment systems;²
- c) in violation of the second sentence of Article 4(2), adopting a business rule restricting interoperability;³
- d) in violation of Article 4(3), hindering the processing of credit transfers and direct debits by a technical obstacle;⁴
- e) carrying out a credit transfer transaction in violation of Article 5(1) or (2);⁵
- f) carrying out a direct debit transaction in violation of Article 5(1) or (3);⁶
- g) levying charges for a read-out process referred to in Article 5(8), in violation of that provision;⁷
- h) in violation of Article 8, levying a multilateral interchange fee per direct debit transaction or other agreed remuneration with an equivalent object or effect.⁸

1 Article 93(4)(a) amended by LGBL 2015 No. 11.

2 Article 93(4)(b) amended by LGBL 2015 No. 11.

3 Article 93(4)(c) amended by LGBL 2015 No. 11.

4 Article 93(4)(d) amended by LGBL 2015 No. 11.

5 Article 93(4)(e) amended by LGBL 2015 No. 11.

6 Article 93(4)(f) amended by LGBL 2015 No. 11.

7 Article 93(4)(g) amended by LGBL 2015 No. 11.

8 Article 93(4)(h) amended by LGBL 2015 No. 11.

Article 94

Responsibility

Where violations are committed in the business operations of a legal person, general or limited partnership, or sole proprietorship, the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person, partnership, or sole proprietorship shall, however, be jointly and severally liable for monetary penalties, fines, and costs.

Article 95

Publicising of penalties; binding effect of convictions

- 1) The FMA may publicise the imposition of final penalties and fines at the expense of those concerned, if doing so gives effect to the purpose of this Act and is proportionate.
- 2) Convictions under this Act are not binding on civil judges in respect of adjudicating liability or unlawfulness or determining damages.

C. Transitional provision

Article 96

Existing payment services

1) Legal persons that took up their activity as a payment institution within the meaning of Directive 2007/64/EC before 25 December 2007 in accordance with Liechtenstein law may continue their activity in Liechtenstein until 30 April 2011 without a licence under Article 10. If no licence is issued by 30 April 2011, the activity must be discontinued.

2) Financial institutions that took up activities referred to in Annex I(4) of Directive 2006/48/EC (money transmission services) before 25 December 2007 in accordance with Liechtenstein law and that meet the requirements set out in Article 24(1)(1)(e) of that Directive may be exempted from the obligation to apply for a licence under Article 10. However, such financial institutions must notify the FMA of these activities by 25 December 2009. The notification must also include information providing evidence that the requirements under Article 9 are met. If these requirements are met, the financial institutions shall be registered. The FMA may exempt the financial institutions from the requirements under Article 9.

3) Legal persons as referred to in paragraph 1 shall automatically receive a licence and be entered in the Payment Institutions Register (Article 36) if the FMA already has evidence that the requirements under Articles 9 and 10 are met. The FMA shall communicate this to the institutions concerned before issuing the licence.

4) Natural and legal persons that took up activities as a payment institution within the meaning of Directive 2007/64/EC in accordance with the Liechtenstein provisions in force before 25 December 2007 and that are eligible for a waiver in accordance with Article 26 of Directive 2007/64/EC are permitted to continue these activities in Liechtenstein for a transitional period not exceeding three years.

D. Final provisions

Article 97

Repeal of law hitherto in force

The following enactments are repealed:

- a) Law of 16 December 1999 on the Execution of Credit Transfers, LGBL. 2000 No. 51;
- b) Law of 18 June 2004 amending the Law on the Execution of Credit Transfers, LGBL. 2004 No. 178;
- c) Law of 20 April 2006 amending the Law on the Execution of Credit Transfers, LGBL. 2006 No. 122.

Article 98

Entry into force

Provided that the referendum period expires without a referendum being called, this Act shall enter into force on 1 November 2019, otherwise on the day after its promulgation.

Representing the Reigning Prince:

signed *Alois*

Hereditary Prince

signed *Dr. Klaus*

Tschüscher

Prime Minister

950.1

Transitional provisions

950.1 Payment Services Act (ZDG)

Liechtenstein Law Gazette

Year 2016

No. 224

published on 7 July 2016

Law
of 11 May 2016
amending the Payment Services Act

...

II.

Transitional provision

Lead auditors that do not hold a licence under the Auditors and Auditing Companies Act but have so far been recognised for audits under this Act may continue to carry out their existing activities until 31 December 2016.

...