

PAYMENT SERVICES LAW OF 2009

Directive issued by virtue of sections 5, 7, 8, 9, 10, 11, 12, 19, 20, 23, 91 and 93

128(l) of 2009
Official Journal
of the EU: L 319
5.12.2007, p. 1 and L 187,
18.7.2009, p. 5.

The Central Bank of Cyprus, exercising the powers vested in it by virtue of the Payment Services Law of 2009, issues this Directive for the purposes of harmonisation with the European Community act entitled "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" as this act has been corrected.

PART I GENERAL PROVISIONS

Short Title.

1. This Directive may be cited as the Payment Institutions and Access to Payment Systems Directive of 2009.

Interpretation.
128(l) of 2009.

2. For the purposes of this Directive the definitions in section 2 of the Payment Services Law of 2009 are applicable, unless the content otherwise requires.

PART II THE TAKING UP AND PURSUIT OF THE BUSINESS OF PAYMENT INSTITUTION

Application for authorisation.

3. (1) Every application for authorisation as a payment institution shall be submitted together with the following:-

- (a) a programme of operations, setting out in particular the payment services envisaged;
- (b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ such systems, resources and procedures so as to operate soundly;
- (c) evidence that the applicant holds the required initial capital;
- (d) a description of the measures taken to comply with the requirements of section 10 of the Payment Services Law of 2009;
- (e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements and control mechanisms are appropriate and adequate;
- (f) a description of the internal control mechanisms which the applicant has established in order to comply with the requirements of the Prevention and Suppression of Money Laundering Activities Law of 2007 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, as it may further be amended or replaced;
- (g) a description of the applicant's participation in a national or international payment system as well as the applicant's structural organisation, including, where applicable, a description of the intended outsourcing arrangements and/or use of agents and branches;
- (h) the identity of persons who have, directly or indirectly, control of the applicant within the meaning given to the term "control" by section 2 of the Banking Laws of 1997 to 2009,

128(l) of 2009.

188(l) of 2007.
Official Journal of the EU:L
345, 8.12.2006, p. 1.

66(l) of 1997
74(l) of 1999

94(l) of 2000
119(l) of 2003
4(l) of 2004
151(l) of 2004
231(l) of 2004
235(l) of 2004
20(l) of 2005
80(l) of 2008
100(l) of 2009.

Chapter 116.

77(l) of 1977.

or who are partners in the applicant partnership, within the meaning of the General and Limited Partnerships and Business Names Law, as well as details on the size of their holdings and evidence of their suitability in view of the need to ensure the sound and prudent management of the payment institution;

- (i) the identity of all directors as well as of the persons responsible for the management of the payment services activities; evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services, in particular a copy of criminal record, a non-bankruptcy report, a description of professional and academic qualifications, of the positions of manager or director that they hold in other legal persons and of their previous employments;
- (j) the identity of auditors;
- (k) the applicant's memorandum and articles of association;
- (l) the address of the applicant's head office.

(2) For the purposes of points (d), (e) and (g) of subparagraph (1), the applicant shall provide a description of its audit and organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of the payment service users and to ensure continuity and reliability in the performance of payment services.

Public Register.

128(l) of 2009.

4. A payment institution which has been granted authorisation by the Central Bank of Cyprus shall be entered in the register referred to in section 8 of the Payment Services Law of 2009; the entry shall identify the payment services for which the authorisation has been granted, as well as the branches and agents of the payment institution. The register shall be accessible by electronic means.

Initial capital and own funds.
128(l) of 2009.

5. (1) For the purposes of section 9 of the Payment Services Law of 2009, the term "initial capital" is deemed to include:

- (a) the issued and paid up capital plus share premium accounts but excluding cumulative preferential shares;
- (b) reserves, excluding revaluation reserves;
- (c) profits and losses brought forward as a result of the application of the final profits or losses of the previous year.

Regulation No 463/2006
Regulation No 328/2007.

(2) For the purposes of section 9 of the Payment Services Law of 2009 and with the reservation of sub-paragraph (3) of this paragraph, the term "own funds" has, mutatis mutandis, the meaning given to it in paragraphs 3 to 8 and 10 of Unit A of the Central Bank of Cyprus Directive to banks for the calculation of capital requirements and large exposures of 2006 and 2007 as it may further be amended or replaced; the term "bank" in those provisions, or any grammatical variation thereof, shall be deemed to refer to the payment institution.

(3) Own funds shall exclude:

- (a) participations in other undertakings;
- (b) every item included in the own funds of a person which is obliged to maintain own funds during its operations, as long as that person and the payment institution belong to the same group, and
- (c) every item which is intended for use in a trading or business activity other than the provision of payment services.

(4) For the purposes of subsection (4) of section 9 of the Payment Services Law of 2009, the Central Bank of Cyprus shall define for each payment institution one of the following methods for the calculation of the minimum own funds:

Method A

Calculation shall be made of the 10 % share of the payment institution's fixed overheads of the preceding year. This amount shall be adjusted in the event of a material change in a payment institution's business since the preceding year. Where a payment institution has not completed a full year's business at the date of the calculation, calculation shall be made of the 10% share of the corresponding fixed overheads as projected in the business plan subject to any required adjustment to that plan.

Method B

Calculation shall be made of the sum of the following elements multiplied by the scaling factor defined in subparagraph (5), where "PV" means payment volume and represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year:

- (a) 4,0 % of the slice of PV up to EUR 5 million, plus
- (b) 2,5 % of the slice of PV above EUR 5 million up to EUR 10 million, plus
- (c) 1 % of the slice of PV above EUR 10 million up to EUR 100 million, plus
- (d) 0,5 % of the slice of PV above EUR 100 million up to EUR 250 million, plus
- (e) 0,25 % of the slice of PV above EUR 250 million.

Method C

Calculation shall be made of the product of the relevant indicator defined in point (a) multiplied by the multiplication factor defined in point (b) and by the scaling factor defined in subparagraph (5).

(a) The relevant indicator is the sum of the following:

- interest income,
- interest expenses,
- commissions and fees received, and
- other operating income.

Each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items may not be used in the calculation of the relevant indicator. Expenditure on the outsourcing of services may reduce the relevant indicator if the expenditure is incurred from other payment institutions within the meaning of subsection (1) of section 6 or/and subsection (1) of section 24 of the Payment Services Law of 2009.

The relevant indicator shall be calculated over the previous financial year on the basis of the twelve-monthly observation at the end of the previous financial year. Nevertheless own funds calculated according to this method shall not fall below 80 % of the average of the previous three financial years for the relevant indicator. When audited figures are not available, business estimates may be used.

(b) The multiplication factor shall be:

- (i) 10 % for the slice of the relevant indicator up to EUR 2,5

million;

(ii) 8 % for the slice of the relevant indicator from EUR 2,5 million up to EUR 5 million;

(iii) 6 % for the slice of the relevant indicator from EUR 5 million up to EUR 25 million;

(iv) 3 % for the slice of the relevant indicator from EUR 25 million up to 50 million;

(v) 1,5 % for the slice of the relevant indicator above EUR 50 million.

(5) The scaling factor to be used in methods B and C of subparagraph 4 shall be:

(a) 0,5, where the payment institution provides only the payment service listed in point 6 of the Annex of the Payment Services Law of 2009;

(b) 0,8, where the payment institution provides the payment service listed in point 7 of the Annex of the Payment Services Law of 2009, while it does not provide any of the payment services listed in point 1 to 5 of the same Annex, and

(c) 1, where the payment institution provides any of the payment services listed in points 1 to 5 of the Annex of the Payment Services Law of 2009.

(6) The Central Bank of Cyprus may grant the exemption provided for in subsection (6) of section 9 of the Payments Services Law of 2009 on condition that the terms of paragraph 13 of the Central Bank of Cyprus Directive to banks for the calculation of capital requirements and large exposures of 2006 and 2007, as it may further be amended or replaced, are satisfied mutatis mutandis, or on condition that the terms of paragraph 13 of the CSSDA Committee Regulative Decision to Cooperative Credit Institutions for the calculation of capital requirements and large exposures of 2008, as it may further be amended or replaced, are satisfied mutatis mutandis.

Regulation No 2/2008.

Safeguarding requirements.
128(l) of 2009.

6. (1) For the purposes of section 10 of the Payments Services Law of 2009, when a portion of the funds received by a payment institution, which varies in value or is not known beforehand, is to be used for future payment transactions and the remaining funds are to be used for services other than payment services, the payment institution may apply to the Central Bank for the safeguarding requirements to apply to a representative portion of the funds received by the payment institution. The Central Bank may grant such approval if it is satisfied that this representative portion, which is deemed to be used for payment services, can be reasonably evaluated based on historical data.

(2) A payment institution complies with the requirements of section 10 of the Payment Services Law of 2009 by one of the following means:

(a) The funds received by a payment institution from the payment service users or through another payment service provider for the execution of payment transactions shall not be commingled at any time with the funds of any other natural or legal person; where such funds are still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution.

The payment institution shall take all necessary measures to ensure that the funds received are legally protected, in the interest of the payment service users, against claims of other creditors of the payment institution, particularly in the case of liquidation or dissolution.

- (b) The funds received by a payment institution from the payment service users or through another payment service provider for the execution of payment transactions shall be covered by an insurance policy or some other comparable guarantee. The insurance policy or other comparable guarantee shall be provided by an insurance company or credit institution not belonging to the same group as the payment institution, for an amount equivalent to that which would have been segregated under point (a), payable in the event that the payment institution is unable to meet its financial obligations.

- (3) For the purposes of sub-paragraph (2):-

(a) "credit institution" means bank within the meaning given to the term by section 2 of the Banking Laws of 1997 to 2009, including a bank that has been licensed in another member state, and cooperative credit institution within the meaning given to the term by section 2 of the Cooperative Societies Laws of 1985 to 2009;

66(l) of 1997
74(l) of 1999
94(l) of 2000
119(l) of 2003
4(l) of 2004
151(l) of 2004
231(l) of 2004
235(l) of 2004
20(l) of 2005
80(l) of 2008
100(l) of 2009.

22 of 1985
68 of 1987
190 of 1989
22(l) of 1992
140(l) of 1999
140(l) of 2000
171(l) of 2000
8(l) of 2001
123(l) of 2003
124(l) of 2003
144(l) 2003
5(l) of 2004
170(l) 2004
230(l) of 2004
23(l) of 2005
49(l) of 2005
76(l) of 2005
29(l) of 2007
37(l) of 2007
177(l) of 2007
104(l) of 2009.

35(l) of 2002
141(l) of 2003
165(l) of 2006
69(l) of 2004
70(l) of 2004
136(l) of 2004
152(l) of 2004
153(l) of 2004
240(l) of 2004
17(l) of 2005
26(l) of 2008
105(l) of 2009.

(b) "insurance company" has the meaning given to it in section 2 of the Insurance Services and Other Related Issues Laws of 2002 to 2009, and

(c) in the event of the dissolution of the payment institution and/or its liquidation, the safeguarded funds shall be separated from the property of the payment institution and be distributed to the beneficiaries of the funds.

- (4) The Central Bank, after investigating each case on its own merits,

shall decide on the adequacy of the method applied by the payment institution for the safeguarding of funds.

Preparation and audit of financial statements.

7. (1) The provisions of sections 142(1) – (3) and 143(1) – (4) of the Companies Law apply, mutatis mutandis, to all payment institutions.

Cap. 113.

9 of 1968
76 of 1977
17 of 1979
105 of 1985
198 of 1986
19 of 1990
14(I) of 1994
41(I) of 1994
15(I) of 1995
21(I) of 1997
82(I) of 1999
149(I) of 1999
2(I) of 2000
135(I) of 2000
151(I) of 2000
76(I) of 2001
70(I) of 2003
167(I) of 2003
92(I) of 2004
24(I) of 2005
129(I) of 2005
130(I) of 2005
98(I) of 2006
124(I) of 2006
70(I) of 2007
71(I) of 2007
131(I) of 2007
186(I) of 2007
87(I) of 2008
41(I) of 2009
49(I) of 2009
99(I) of 2009.

128(I) of 2009.

(2) Every payment institution shall submit to the Central Bank separate accounting information for the payment services referred to in the Annex of the Payment Services Law of 2009 and for the activities referred to in subparagraphs (1) and (2) of section 12 of the same Law. For all payment institutions that, under the provisions of Cyprus and Community law, are required to have their financial statements audited by auditors, the accounting information referred to in this subparagraph shall be subject to such audit.

Activities.

128(I) of 2009.

39(I) of 2001
34(I) of 2002
77(I) of 2002
33(I) of 2004
92(I) of 2007
126(I) of 2009.

8. For the purposes of subsection (4) of section 12 of the Payment Services Law of 2009 and without prejudice to the Consumer Credit Laws of 2001 to 2009, the provisions of Community law and the compatible-with-Community-law provisions of Cyprus law, that relate to the granting of credit to consumers, the payment institution may grant credit only if the following conditions are met:-

- (a) the credit must be ancillary and granted exclusively in connection with the execution of a payment transaction;
- (b) when the payment service, in connection with which the credit is granted, is provided in another Member State, such credit shall be repaid within a short period which shall in no case exceed 12 months;
- (c) such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction, and
- (d) the own funds of the payment institution shall at all times and to

the satisfaction of the Central Bank be appropriate in view of the overall amount of credit granted.

- Agents.
- 128(l) of 2009.
- 188(l) of 2007.
- Official Journal of the
EU: L 345, 8.12.2006, p. 1.
9. (1) For the purposes of section 19 of the Payment Services Law of 2009, the Central Bank lists an agent of the payment institution in the register provided for in section 8 of the same Law on condition that:-
- (a) the agent has in place internal control mechanisms that ensure compliance with the requirements of the Prevention and Suppression of Money Laundering Activities Law of 2007 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006, on information on the payer accompanying transfers of funds, as it may further be amended or replaced;
 - (b) there is no indication that, in connection with the proposed employment of the agent, terrorist financing or money laundering is attempted or has taken place or been attempted;
 - (c) the employment of the agent could not increase the risk of terrorist financing or money laundering, and
 - (d) the agent has directors and persons responsible for the management of the payment services activities who are fit and proper persons.
- (2) The application of a payment institution for the listing of an agent in the register provided for in section 8 of the Payment Services Law of 2009 shall include the following:-
- (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 requirements of the Prevention and Suppression of Money Laundering Activities Law of 2007 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006, on information on the payer accompanying transfers of funds, as it may further be amended or replaced, and
 - (c) the identity of all directors of the agent and the persons responsible for the management of the payment services activities and evidence that they are fit and proper persons, in particular a copy of criminal record and a non-bankruptcy report.
- Outsourcing of operational functions.
- 128(l) of 2009.
10. (1) An operational function shall be regarded as important if a defect or failure in its performance would materially impair the financial performance or the soundness of the payment institution or the continuity of its payment services or its continuing compliance with the requirements of its licence or its other obligations laid down by the Payment Services Law of 2009.
- (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/or the ability of the Central Bank to monitor the payment institution's compliance with all obligations laid down in the Payment Services Law of 2009.
- (3) Any outsourcing of important operational functions shall meet the following conditions:-
- (a) the outsourcing shall not result in the delegation by senior management of its responsibilities;
 - (b) the relationship and obligations of the payment institution towards its payment service users under the Payment Services Law of 2009 shall not be altered;
 - (c) the conditions with which the payment institution is to comply in order to be authorised and remain so in accordance with the

- Payment Services Law of 2009 shall not be undermined, and
- (d) none of the other conditions subject to which the payment institution's authorisation was granted shall be undermined.

Exercise of the right of establishment and freedom to provide services.
128(l) of 2009.

11. (1) For the purposes of section 23 of the Payment Services Law of 2009, the payment institution shall submit the following to the Central Bank:-
- (a) the names of those responsible for the management of the branch;
 - (b) its organisational structure, and
 - (c) the kind of payment services the payment institution intends to provide in the territory of the host member state.
- (2) The Central Bank may prohibit a payment institution from providing or continuing to provide payment services in another member state if:-
- (a) there are indications that terrorist financing or money laundering is being attempted or has taken place or has been attempted, in connection with the setting up of the branch, or
 - (b) the setting up of the branch could increase the risk of terrorist financing or money laundering.

PART III

ACCESS OF PAYMENT SERVICE PROVIDERS TO PAYMENT SYSTEMS

12. (1) The rules that govern the access of licensed or registered payment service providers, who are legal persons, to payment systems operating in the Republic shall be objective, non-discriminatory and proportionate and shall 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) A payment system operating in the Republic shall not, in particular:-
- (a) impose any restrictive rules on effective participation of payment service providers, payment service users and payment systems in other payment system or systems;
 - (b) impose any rule which discriminates against payment service providers in relation to the rights, obligations and entitlements of participants, or
 - (c) impose any restriction on the basis of institutional status of the payment service providers, the payment service users and the payment systems.
- (3) Subparagraphs (1) and (2) shall not apply to:-
- (a) payment systems designated under the Settlement Finality in Payment and Security Settlement Systems Laws of 2003 to 2006;
 - (b) payment systems where all of the following hold:-
 - (i) the payment system is composed exclusively of payment service providers;
 - (ii) all these payment service providers belong to one and the same group;
 - (iii) this group is composed of entities linked by capital, and
 - (iv) one of the linked entities enjoys effective control over the other linked entities;
 - (c) payment systems where a sole payment service provider, whether as a single entity or as a group:-
 - (i) 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
 - (ii) licenses other payment service providers to participate in

8(l) of 2003
118(l) of 2006.

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.

PART IV
FINAL AND TRANSITIONAL PROVISIONS

- 128(l) of 2009. 13. For the purposes of subsection (3) of section 93 of the Payment Services Law of 2009, a subsidiary company of a bank is listed in the register provided for in section 8 of the same Law on condition that it provides to the satisfaction of the Central Bank all necessary information, data and documents relating to subparagraph (1) of paragraph (3), items (a), (d), (g) to (i), (k) and (l), of this Directive.