

December 2014

In focus: Law on Payment Services

Introduction

On December 18th 2014, the National Assembly of the Republic of Serbia adopted the Law on Payment Services (hereinafter: the “**Law**”) which entered into force on December 26th 2014. Implementation of the Law is scheduled for October 1st 2015, except for provisions for which the Law provides shall become applicable after accession of the Republic of Serbia to the European Union.

With the date of implementation of the Law, the provisions of the Law on payment transactions (hereinafter: the “**Former Law**”) shall cease to apply, with the exception of provisions relating to enforced collection from the client’s account and penal provisions related to them.

The reason for adoption of the Law is the necessity to regulate the most important payment services such as issuance, acceptance and payment via credit cards, remittances, payments through telecommunication, IT and other operators, as well as the need to introduce new categories of payment service providers, as well as regulations related to the work of payment systems, create favorable conditions for further development of the

payment system and provide greater protection to users of payment services.

New payment service providers

The Law introduces two new categories of payment service providers – payment institutions and e-money institutions.

In accordance with the Law, a payment institution may only be a company which has obtained a permit from the National Bank of Serbia (hereinafter: “**NBS**”) to provide payment services as a payment institution and which, depending on the type of payment services it intends to operate, provides start-up capital in the amount of 20.000,00 EUR to 125.000,00 EUR. In addition to payment services, a payment institution may perform operational and support directly activities related to the provision of payment services.

The Law provides for the operation of so-called hybrid payment institutions or companies that, in addition to the provision of payment services, also perform other business activities not related to the provision of payment services. A payment institution, which fulfills conditions stipulated by the Law, may provide payment services through a branch or representative, as well as delegate certain operational tasks to another person.

E-money institutions may only be companies which have obtained a permit from NBS for issuing electronic money and have a start-up capital in the amount not less than 350.000,00 EUR. In addition to issuing e-money, such institutions may perform other activities such as providing payment services, short-term loans associated with payment services, operational and support activities directly related to the issuance of e-money or the provision of payment services, managing of the payment system and other commercial work unrelated to the issuance of e-money or the provision of payment services. E-money institutions may issue electronic money and provide payment services through its branch, and are authorized to delegate certain operations in connection with the issuance of e-money and payment services to another person. The issuance of e-money through a representative is not allowed.

Payment services and e-money

The Law for the first time systematically regulates all types of payment services, including the latest from the field of electronic and internet banking, as well as the execution of remittances and payment transactions carried out using modern telecommunication and information technology devices via telecommunication operators.

The Law introduces the institute of “e-money” into the legal system of Serbia, defining it as an electronically (including magnetically) stored monetary value which represents a money claim against the issuer of the money, and is issued upon receipt of funds for the execution of payment

transactions and is accepted by a natural and/or legal person who is not the issuer of the money.

In the Republic of Serbia, e-money may be issued exclusively by NBS, banks, e-money institutions, the public postal operator and the Treasury or other public authorities in the Republic of Serbia.

Mutual relations between the issuer and holder of e-money to whom the e-money is issued are regulated by an agreement, particularly in connection with the issuance and repurchase of electronic money, as well as any fees which the issuer of e-money charges the holder of e-money when issuing and repurchasing the money.

Agreements on payment services and informing users of payment services

The Law provides that an agreement on payment services is concluded as:

1. a framework agreement on payment services, which governs the future execution of individual payment transactions, as well as the conditions for opening, maintaining and closing the payment account, if the same is opened with the payment service provider;
2. an agreement for a single payment transaction, which regulates the execution of a certain payment transaction not covered by a framework agreement.

For both agreements, the Law elaborates in detail specific rules related to informing users of payment services, both in the pre-contractual stage and during the

implementation of the agreement, which should all contribute to legal security and protection of the rights of users of payment services.

It is the obligation of banks to, at least one month prior to implementation of the Law, provide users of payment services (with whom they have concluded an agreement on opening and maintaining accounts, agreement on issuance and use of payment cards or other agreement on payment services with permanent commission) with either a proposal for a framework agreement, which would be applied from the effective date of the Law, or a notification that they have harmonized general business conditions with the provisions of the Law and make those conditions available to these users.

Payment accounts

The Law introduces the possibility of keeping a joint payment account, i.e. a payment account which the payment service provider maintains for two or more users of payment services, with the proviso that, unless otherwise provided by the agreement, each individual holder of a joint payment account may dispose of the entire funds from that account.

Another novelty provided by the Law is the obligation of NBS to keep a singular register of current and other accounts of not only legal, but also natural persons. It is expected that this novelty shall contribute to the more efficient operation of state authorities who have the right to obtain

information on these accounts through appropriate procedures.

Payment systems

The Law regulates payment systems which represent systems that encompass the processing of transfer orders, netting and/or settlement on the basis of a transfer order, as related payment systems which consist of two or more payment systems whose operators concluded an agreement on the transfer of funds of one participant in the payment system to a participant in another payment system.

The Law lists those who may be participants, respectively payment system operators, and provides work rules and conditions for participation in the payment system. Work of an individual payment system operator, as the legal entity that controls operation of the payment system, requires a permit from NBS (except for the payment system operated by NBS). A legal entity applying for the granting of this permit shall be obliged to, in addition to submitting data and documentation in accordance with the Law, provide start-up capital which may not be less than 100.000,00 EUR. An operator, under the conditions stipulated by the Law, can entrust to another person the performance of certain operational activities related to the work of the payment system.

The Law also recognizes the category of important payment systems, and provides that NBS may determine that a payment system is important if such a system, in addition to meeting other requirements

prescribed by the Law, has at least three participants (not including the system operator, settlement agent and indirect participant) least one of which has its head office in the Republic of Serbia and if he is vital for the stability of the financial system.

Provisions applicable after accession of the Republic of Serbia to the European Union

The Law specifically singles out provisions whose implementation has been delayed until accession of the Republic of Serbia to the European Union, and which provisions, among other things, regulate issues concerning the business activities of payment service providers in EU member states and third countries, cross-border payment transactions and payment transactions in euros or other currency of a member state, respectively the deadline for their execution, the provision of payment services by a payment institution in the territory of another member state directly, through a branch or representative, the issuance, distribution and repurchase of e-money and provision of payment services by e-money institutions, cooperation with the competent authorities of the European Union and other member states, etc.

Transitional and final provisions

Companies, respectively legal entities, may submit to NBS an application for granting of a permit for the provision of payment services, issuance of e-money and operation of a payment system at the earliest two months before implementation of the Law.

Legal entities (except NBS) which, up to the effective date of the Law, have managed

the operation of a payment system in accordance with the provisions of the Former Law and regulations adopted under that Law, are obligated to submit to NBS an application for granting of a permit for operation of a payment system by the effective date of the Law.

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