

FINANCIAL SERVICES AND BANKING NEWS

EBA publishes final draft standards on the separation of payment card schemes and payment processing entities

SUMMARY

Background

The European Banking Authority (**EBA**) has published the final draft of its Regulatory Technical Standards (**RTS**) for the separation of payment card schemes and payment processing entities.

That separation is required by Article 7 of the Interchange Fee Regulation (**IFR**), which aims to expose schemes to stronger competition from rival processors, by preventing them from cross-subsidising their processing arms.

Although Article 7(6) expressly invited the EBA to develop the RTS, the final draft was not ready before the IFR provisions took effect on 9 June 2016. Nevertheless, this final draft contains some welcome amendments. In particular, there will now be no need to separate assets and liabilities or the balance sheet. One respondent had argued this was *"too costly and unnecessary for preventing cross subsidisation"*.

Some ambiguity remains. The draft must still be adopted by the European Commission, Parliament and Council. There is also a risk that the competent authorities in different Member States interpret the provisions differently, at least until the Commission provides some further guidance.

Summary of the key provisions

- ▶ **Accounting independence.** Accounting processes should be put in place to produce annual information for separate profit and loss accounts (including explanatory notes) (Article 5) but this will not amend or replace current accounting principles, standards and requirements (Article 3). The processes are to be based on rules set out within the RTS, for example, expenses and revenues for both the processing entity and payment card scheme will remain separate and allocated accordingly, on activity-based costing (see Article 4). The financial information should be reviewed by an independent and certified auditor (Article 6.1 and 6.2) and be available to competent authorities (Article 6.3).
- ▶ **Organisational and decision-making independence.** Payment card schemes and processors must, at a minimum, be separated into two internal business units (Article 7) with restricted and controlled access (Article 8). This also includes the separation of staff and senior management (Article 9).
- ▶ **Development of solutions to allow innovative processes** whilst complying with independence requirements, payment card scheme staff may perform necessary tasks related to the design, updating and implementation of processing services provided processing entities are informed and selected on a non-discriminatory basis (Article 10.3). Processing entities may perform tasks related to the design of a single set of rules, practices and standards and implementation guidelines for executing card-based payment transactions, provided they are non-discriminatory and representative (Article 10.4).
- ▶ **Remuneration policies** for processing entities and payment card schemes cannot create incentives based on preferential treatment or privileged information not available to other competitors, although both can participate in general all-employee share plans/benefits arrangements (Article 11).
- ▶ Provision of **shared services** between payment card schemes and processing entities should not imply disclosing sensitive information, should document a list of shared services and conditions should be available to competent authorities on request (Article 12). A shared information management system should ensure staff are separately identified via a authentication procedure and only access what they are entitled to (Article 13).
- ▶ Payment card schemes and processing entities are to define and disclose on their website a **code of conduct** if they are part of the same legal entity/group, to prevent sharing sensitive information (Article 15).
- ▶ Payment card schemes and processing entities are to ensure **the composition of management bodies** mitigates conflicts of interest for decision making processes. The regulations also include a provision to set limits on the number of directorships per person (Article 16.1).
- ▶ There must be separate **annual operating plans** determining budget and made available to competent authorities on request (Article 17).

Contacts

Amanda Hulme
Partner

+44 (0)20 7880 5853



Al Mangan
Managing Associate

+44 (0)20 7544 5352



addleshawgoddard.com

Doha, Dubai, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

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