

**LAW No. 04/L-155 ON PAYMENT SYSTEM**

**Assembly of Republic of Kosovo;**

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

**LAW ON PAYMENT SYSTEM**

**PART I  
GENERAL PROVISIONS**

**CHAPTER I  
SCOPE AND DEFINITIONS**

**Article 1  
Scope**

1. In conformity with Law No 03/L-209 on the Central Bank of the Republic of Kosovo, the Central Bank is the sole authority in charge of regulation and oversight of the Republic of Kosovo's payment system, with the aim of ensuring its safety, soundness and efficiency.

2. In order to regulate the payment system this Law shall provide for:

2.1. the conditions under which payment institutions providing payment services are authorized and operators of payment, clearing and securities settlement systems are licensed by the Central Bank;

2.2. the terms and standards under which such services may be provided and payment, clearing and securities settlement systems operated; and

2.3. the means and procedures under which the Central Bank shall exercise its oversight powers.

3. As far as these may affect the rights and obligations of the relevant parties and of third parties and without any prejudice to any powers of the Central Bank under any other laws of the Republic of Kosovo, this Law shall provide for rules on execution of payment transactions and enforceability of clearing and settlement agreements, including in case of insolvency of one of the system participants.

## **Article 2 Definitions**

1. In this Law, except if required otherwise under the context, terms used in this law shall have the following meaning:

1.1. **Agent** - a person acting on behalf of banks or other payment institutions to provide some of their services.

1.2. **Central Bank** - the Central Bank of the Republic of Kosovo.

1.3. **Central counterparty** - an entity that is interposed between the system participants and which acts as the exclusive counterparty of those system participants with regard to their transfer orders.

1.4. **Central securities depository** - an entity in whose register are immobilized securities or other financial instruments and enabling their transactions to be finally processed by book-entry.

1.5. **Clearing** - the process of transmitting, reconciling and/or confirming funds or securities transfer instructions prior to settlement and includes the netting of instructions and the establishment of final positions for settlement.

1.6. **Clearing house** - an entity responsible for the calculation of the net positions of system participants, a possible central counterparty and/or a possible settlement agent.

1.7. **Clearing system** - a set of procedures whereby financial institutions present and exchange information relating to the transfer of funds, securities or other financial instruments to other financial institutions through a centralized system or at a single location and includes mechanisms for the calculation of system participants' positions on a bilateral or multilateral basis with a view to facilitating the settlement of their obligations.

1.8. **Collateral** - all realizable assets provided under a pledge, a repurchase agreement or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system, or provided to the Central Bank.

1.9. **Electronic money** - electronically, including magnetically, stored monetary value as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions and which is accepted as a means of payment by persons other than the issuer.

1.10. **Financial institution** – financial institutions are entities such as bank, exchange money office, insurance companies, pension funds and other entities that exercise financial activities as defined by relevant laws for purposes of this law, for which the Central Bank was given the overseeing authority by this law.

1.11. **Insolvency proceedings** - any collective measures provided for in any applicable law, either to wind-up the system participant or to reorganize it, whether voluntarily or involuntarily, or to suspend its business, including insolvency proceedings where such measure involves the suspending of, or the imposing of limitations on, payment orders and payments.

1.12. **Money remittance** - a payment service where funds are received from a payer, without any account 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

institution acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee.

1.13. **The Republic of Kosovo's payment system** - the national payment system as a whole, and includes any payment, transfer system, securities settlement system, clearing system and any arrangement used in the process of effecting payment transactions.

1.14. **Netting** - the determination of the net payment obligations or the determination of the net termination value of settlement obligations between two or more system participants within the system.

1.15. **Netting arrangement** - an arrangement in writing to convert several claims or obligations into one net claim or one net obligation and includes bilateral netting, multilateral netting, netting by novation, close-out netting, payments netting or a combination of any of these.

1.16. **Close-out netting** - a netting arrangement under which, following the occurrence of certain events specified by the parties to the arrangement, all or any of the transactions referred to in the netting arrangement may be terminated, and where so terminated the termination value becomes due and payable.

1.17. **Netting by novation** - a netting arrangement between the parties to a series of transactions where an account of amounts due is kept and the rights and obligations of the parties in respect of the account are continuously extinguished and replaced by a new single amount payable by one party to the other.

1.18. **Oversight** - the power of the Central Bank to regulate, impose standards, authorize, license, register and monitor through off- and on-site inspections payment services and payment, clearing and securities settlement systems operating in the Republic of Kosovo, according to the specific case, with the objectives of development of an efficient, reliable and safe national payment system, risk control, customers protection, integration and interoperability of systems, and competitive market conditions.

1.19. **Payment institution** - either a bank or a financial institution that has been granted an authorization by the Central Bank in accordance with this Law to provide payment services.

1.20. **Payment instrument** - any instrument or process enabling a holder (user) to issue a payment order, including a card, a tangible or intangible device or any other means of access to an account or payment system. The term does not include cards or other devices issued by merchants for the sole use of their store or chains of stores.

1.21. **Payment order** - any instruction by a payer or payee to his or her payment institution requesting the execution of a payment transaction.

1.22. **Payment service** - any activity, individually or jointly permitting the execution of payment transactions, including the issuance and management of payment instruments, those activities enabling cash deposits and withdrawals, and any other service functional thereto. The term does not include the provision of solely online or telecommunication services.

1.23. **Payment service user** - a physical person or a legal entity making use of a payment service in the capacity of either payer or payee, or both.

1.24. **Payment system** - a system where two or more parties cooperate to enable payments to be effected or to facilitate the circulation of money, and includes any arrangement and/or procedures for processing, exchange, clearing, netting and/or

settlement of payment transactions. This term includes exchanges for payment instruments.

1.25. **Payment transaction** - 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.

1.26. **Settlement agent** - an entity providing to system participants and/or a central counterparty participating into a system, settlement accounts through which transfer orders are settled and, as the case may be, extending credit to such system participants or central counterparty for settlement purposes.

1.27. **Settlement rules** - the rules, however established, that provide the basis upon which payment obligations are calculated, netted or settled and includes rules for the taking of action in the event that a system participant is unable or likely to become unable to meet its obligations to a clearing house, central counterparty or other system participants.

1.28. **Settlement** - the act of discharging obligations by transferring funds, securities or other financial instruments between two or more parties.

1.29. **Securities settlement system** - a system that enables clearing, deposit and/or settlement of securities or other financial instruments.

1.30. **System** - unless otherwise specified, refers either to a payment, clearing or securities settlement system.

1.31. **System operator** - the entity that is in charge of the operation and/or administration of a payment, clearing or securities settlement system.

1.32. **System participant** - a member of a payment, clearing or securities settlement system or a party to an arrangement that establishes a system. This may include indirect participants.

1.33. **Systemic risk** - the risk that the failure of one system participant, or one participant in financial markets generally, to meet its required obligations will cause other system participants or financial institutions to be unable to meet their obligations when due. Such a failure may cause significant liquidity or credit problems and, as a result, might threaten the stability of financial markets.

## **PART II REGULATION AND OVERSIGHT OF THE PAYMENT SYSTEM**

### **CHAPTER I AUTHORIZATION AND LICENSING**

#### **Article 3 Provision of payment services**

1. The following entities shall be allowed to provide payment services in the Republic of Kosovo:

1.1. banks as regulated and duly licensed by the Central Bank in accordance with the Law on Banks, Microfinance Institutions and Non-Bank Financial Institutions;

1.2. financial institutions established by the Law on Banks, Microfinance Institutions and Non-Bank Financial Institutions authorized by the Central Bank to be engaged in the payment services specified by an authorization.

2. In order to obtain an authorization, financial institutions shall satisfy the following conditions:

2.1. to have and maintain the paid-in capital as required by relevant law;

2.2. to safeguard funds which have been received from payment service users or through another payment institution for the execution of payment transactions, by not making them commingled at any time with the funds of third parties and making them insulated against the claims of other creditors of the payment institution, in particular in the event of insolvency;

2.3. to have robust governance arrangements for its payment services business, which include a clear organizational structure with well-defined, transparent and consistent lines of responsibility, effective procedure 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;

2.4. to have clear rules to solve disputes associated with payment services;

2.5. to have safe information technology system and adequate interfaces to ensure interoperability and access, as well as efficient contingency and disaster control procedures.

3. In order to comply with the conditions set forth in paragraph 2. of this Article, an applicant for an authorization shall provide the following information:

3.1. description of the nature and scope of the services to be offered and how these services fit in with overall business strategy, together with a business plan including a forecast budget calculation for the first three (3) financial years which demonstrate that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;

3.2. list of products and services to be provided;

3.3. description of legal structure of the scheme to provide the service, including legal definition of relationship with any bank from which it clearly emerges how liabilities are shared and risks avoided or reduced;

3.4. criteria for the selection of agents and/or the outsourcing of parts of the activities, where applicable;

- 3.5. copy of any agency or outsourcing agreement, as appropriate, either individual or standard;
- 3.6. proof of having an adequate number of staff, competent and trustworthy management, adequately trained in respect of business requirements, operational needs and risk management in all circumstances;
- 3.7. a signed document detailing the features and operational modalities of all IT interfaces used, including the operating systems and software;
- 3.8. description of the configuration diagrams of any institution's electronic payment system and its capabilities including all the following conditions:
  - 3.8.1. that electronic payment system is linked to other host systems or the network infrastructure in the institution;
  - 3.8.2. how transaction and data flow through the network, settlement process and timing;
  - 3.8.3. what types of telecommunication channels and remote access capabilities exist; and
  - 3.8.4. what security controls/measures are installed;
- 3.9. a list of software and the purpose of the software and hardware in the electronic payment infrastructure;
- 3.10. details showing how the system is interoperable with other existing electronic payment systems;
- 3.11. detailed descriptions showing how relevant international, national and industry level standards, guidelines and recommendations are applied wherever required;
- 3.12. a signed document of the relevant portion of the security policies and procedures manual containing at a minimum: (1) a description of the institution's security organization; (2) definition of responsibilities for designing, implementing, monitoring and updating information security measures; and (3) established procedures for evaluating policy compliance, enforcing disciplinary measures and reporting security violations;
- 3.13. a signed document describing the contingency and disaster recovery plans for electronic payment facilities and event scenario/problem management plan/program to resolve or address problems, such as complaints, errors and intrusions and the availability of back-up facilities;
- 3.14. proof of ability to comply with the Law on Prevention of Money Laundering and Terrorist Financing;
- 3.15. details of the customer protection measures, including consumer recourse mechanisms and consumer awareness program;

- 3.16. details of data protection policy;
- 3.17. evidence that competent institutions certified the technology infrastructure operating the network;
- 3.18. the identity of persons holding in the applicant, directly or indirectly, qualifying holdings;
- 3.19. the identity of directors and persons responsible for the management of the entity providing services, and, where relevant, persons responsible for the management of the specific payment service activities;
- 3.20. the applicant's legal status;
- 3.21. the identity of external auditors contracted for auditing and audit firms;
- 3.22. any further requirements defined by the Central Bank associated to the requested service in specific.

#### **Article 4 Issuance of electronic money**

1. In addition to the general conditions imposed for the provision of payment services, in particular in relation to the issuance and/or management of a payment instrument, financial institutions issuing electronic money by means of stored-value cards or other devices shall satisfy the following conditions:

- 1.1. electronic money providers shall undertake to submit statistics on e-money loaded and redeemed values in their periodic financial statements. Sufficient and reliable information should also be provided to monitor and control the quantity and velocity of electronic money supply in the economy;
- 1.2. only banks shall participate in the electronic money clearing and settlement mechanisms;
- 1.3. provision of final settlement not more than twenty four hours after a payment instruction has been initiated in the banking system shall be ensured; and
- 1.4. issuers shall be obliged to redeem electronic money value at par, upon request. The management of the underlying float and redemption of electronic money value by the issuer to the holder shall be clearly defined.

#### **Article 5 Operation of systems**

- 1. Banks as duly regulated and licensed by the Central Bank may be allowed to operate a system under a license by the Central Bank.
- 2. In order to operate a system, the following conditions shall be satisfied:

2.1. the system operator should have financial resources sufficient for the proper performance of its functions and for the safe, sound and efficient operation of the relevant system; in particular, the system operator at all times has one hundred thousand (100,000) euro of paid-in capital and at least one hundred thousand (100,000) euro of bank deposits. These amounts are subject to change with appropriate notification from the Central Bank;

2.2. the system operator should have suitable and sufficient technical as well as organizational skills to operate the system, including the proper mechanisms to achieve internal control and risk management as related to the operation of the system. In particular, the system operator has developed:

2.2.1. details of the internal audit function including structure, scope, reporting lines and the regularity of reporting;

2.2.2. overview of the information technology functions, including scope, structure and reporting lines with an attached organizational chart, as well as evidence that competent institutions certified the technology infrastructure operating the system;

2.2.3. human resources plan to ensure adequate resources to the operation of the system;

2.2.4. the system operator has a valid strategy and business plan supported by realistic estimations for the budget's elements and the income list for five (5) years;

2.2.5. the persons proposed as members of the senior management of the system operator should be professionally qualified and persons of probity;

2.2.6. access to the system's facilities is subject to fair, transparent, non-discriminatory and proportionate criteria that are designed to protect the orderly functioning of the system and the interests of system participants;

2.2.7. the liquidity of the settlement of orders accepted by the system is guaranteed, and protected from credit risk;

2.2.8. the system has satisfactory means of protection from technical breakdowns; and

2.2.9. any other conditions deemed as necessary by the Central Bank.

3. A system must have a rule book that establishes:

3.1. clear criteria for access, suspension of access and termination of access that are in conformity with sub-paragraph 2.2.6. of this Article;

3.2. clear and adequate rules on the receipt, irrevocability, settlement and definitive character of transfer orders;

3.3. clear and adequate rules on the settlement and payment mechanisms;

3.4. clear and adequate rules on the management of all relevant risks including in particular rules for managing the default of a system participant;

- 3.5. clear and adequate rules on pricing that are in conformity with this law;
- 3.6. clear and adequate rules on the respective responsibilities and liability of system operator and system participants;
- 3.7. clear and adequate rules on contingencies and business continuity; and
- 3.8. any other element that may from time to time be established by the Central Bank.

## **Article 6 Authorization and Licensing Procedures**

1. Unless otherwise provided in any implementing measure of this Law, the authorization or licensing procedures shall be as follows:

- 1.1. an application for the granting or the change of a license/authorization shall be submitted in writing to the Central Bank;
- 1.2. upon submission, the applicant will be required to pay a non-refundable fee set by the Central Bank with the completed application;
- 1.3. the Central Bank shall have the opportunity to make requests for clarification and supplementary information as necessary in the process of evaluation within ninety (90) days from reception;
- 1.4. the Central Bank must provide a response in writing to the applicant either granting approval or rejection within ninety (90) days of receipt of a completed application. However, if an application is submitted that is not complete and the Central Bank has made a request for clarification or supplementary information, the procedure is suspended and the applicant will have a period of ninety (90) days to make it complete or the application will be automatically dismissed;
- 1.5. in the event of a decision to deny granting an applicant a license or authorization, the applicant will be informed in writing by the Central Bank of the reasons for the rejection. The applicant shall be able to appeal and resubmit the application;
- 1.6. in issuing an approval, the Central Bank can require additional data regarding the requirements and conditions foreseen by this law;
- 1.7. a license or authorization shall be granted for an indefinite period of time and may not be transferred to any other person, or assigned to a legal successor.

2. In the event that the type of service or system prospected is not covered by an existing general measure by the Central Bank, the timing and sequence of actions set forth in this Article for the obtainment of a license or authorization shall not apply and the Central Bank shall work in close cooperation with the applicant to identify risks and shortcoming of the prospected business scheme and adopt all relevant regulatory measures to permit an efficient and safe provision of such new service.

## **Article 7 Revocation of Authorization or License**

1. The Central Bank may revoke or suspend an authorization / license if:

- 1.1. the financial institution / system operator has not commenced provision of payment service / operation within twelve (12) months after the date of authorization / licensing;
  - 1.2. the financial institution / system operator has ceased provision of payment service / operation for a period of more than one (1) month;
  - 1.3. the financial institution / system operator has obtained the authorization / the license through false statements or any other irregular means;
  - 1.4. the financial institution / system operator does not implement all applicable authorization / license conditions on an on-going basis;
  - 1.5. the financial institution / system operator fails to comply with an order given by the Central Bank pursuant to Article 8 of this Law;
  - 1.6. the financial institution / system operator enters into insolvency proceedings;
  - 1.7. the provision of the payment service or the operation of the system risks the stability of the financial system in Kosovo; or
  - 1.8. the provision of the payment service is no longer in the public interest or in the interests of the system participants.
2. Immediately after taking the decision to revoke or suspend the license, the Central Bank shall notify the concerned financial institution or system operator, and publish a notice in such manner as the Central Bank deems appropriate.

## **CHAPTER II OVERSIGHT**

### **Article 8 General powers of the Central Bank**

1. In order to efficiently and transparently oversee the national payment system as a whole and its relevant parts, the Central Bank:
  - 1.1. will define general standards, rules or guidelines for the provision of payment services and/or the operation of systems by way of regulations or instructions;
  - 1.2. will issue orders and assess and enforce compliance to the stated standards, rules and guidelines, through both on-site and off-site monitoring, including through the imposition of conditions, promote the efficiency and use of electronic payment services, and encourage cooperation and collaboration between relevant stakeholders.
2. The Central Bank shall be entitled to take in particular the following steps:
  - 2.1. to require the payment institution or system operator to provide any information and data needed to monitor compliance;
  - 2.2. to carry out on-site inspections at the payment institution or system operator, at any agent or third party providing services under the responsibility of the payment institution or system operator;

2.3. to issue regulations, instructions and orders, suspend an authorization or a license and/or impose administrative penalties as further specified in this Law.

3. In the implementation of its oversight policy, the Central Bank shall follow as much as feasible international standards, as well as transparency and constant dialogue with the market, in full cooperation with other national and international relevant authorities.

4. The Central Bank shall establish a National Payment Council formed by all major stakeholders of the market as an advisory body to the Central Bank and regulate its functions.

## **Article 9**

### **General Authority to Impose Conditions**

1. Regardless of the general authorization measures of the Central Bank in Article 8 and the remedial measures indicated in Article 20 of this Law, the Central Bank, may adopt or impose in respect of payment institutions or system operators conditions aimed specifically at ensuring respect of the objectives of its oversight policy.

2. Every order issued under this Article shall be communicated to the person to whom it is directed and shall come into effect from the date of its issue. An order is binding on the person to whom it is directed.

3. Immediately after implementing an order and completing any actions required to be taken in connection with it, the person to whom it is given shall notify the Central Bank that the order has been implemented and the action completed.

## **Article 10**

### **Corporate Governance and internal control systems**

1. The Central Bank shall have the authority to approve the chief executive officer and members of board of directors and senior management of a system operator prior to the granting of its license to operate a system in the Republic of Kosovo.

2. The Central Bank shall have the authority to reject a proposal for a chief executive officer or a member of the board of directors or senior management for a system operator based on a determination of insufficient or inappropriate experience, conviction of an offense involving fraud or dishonesty or imprisonment of more than six (6) months.

3. The Central Bank may request the removal of a chief executive officer and of members of the board of directors and senior management of a system operator where said person has failed to apply the provisions of this Law, has been convicted with imprisonment of more than six (6) months.

4. The Central Bank may, request the external auditors of system operators or payment institutions to make specific financial and other (including security) audits with respect to those system operators or payment institutions for the purpose of the oversight established by this Law. The cost of such audits will be carried by the audited system operator or payment institution.

5. System operators must establish and make functional an internal audit which is separate from and independent of the other functions and activities of the system operator and which has the following responsibilities:

5.1. to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of systems and mechanisms and arrangements of the internal auditor;

5.2. to issue recommendations based on the result of work carried out in accordance with sub-paragraph 5.1. of this paragraph;

5.3. to verify compliance with those recommendations; and

5.4. to report to the board of directors of the system operator in relation to internal audit matters.

### **Article 11 Access Regime**

1. The Central Bank may impose an access regime in respect of a payment, clearing or securities settlement system on the person who determines access to the system, regardless of whether he is a system participant, a system operator or a settlement agent, on such terms and conditions as the Central Bank may consider appropriate.

2. In considering whether to impose an access regime under paragraph 1. of this Article, the Central Bank shall take into consideration the following:

2.1. whether the imposition of the access regime in respect of the system would be in the public interest;

2.2. the interests of the current system participants, system operator and settlement agent;

2.3. the interests of persons who, in the future, may require or desire access to the system; and

2.4. such other matters as the Central Bank may consider to be relevant.

3. The Central Bank, in imposing an access regime under paragraph 1. of this Article, shall ensure that the access regime is fair and not discriminatory.

4. The Central Bank will have the authority to make variations to or to revoke an access regime based on assessment of the aforementioned items as stated in paragraph 2. of this Article.

### **Article 12 Outsourcing of activities**

1. Banks and other authorized payment institutions and system operators shall be permitted to outsource part of their payment activities to third parties under their responsibility and under special authorization by the Central Bank.

2. Outsourcing of important operational functions may not be undertaken in such way as to impair materially the quality of the payment institution's or system operator's internal control and the ability of the Central Bank to monitor the payment institution's or system operator's compliance with all obligations laid down in this Law.

3. For the purposes of the paragraph 2. of this Article, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a payment institution or a system operator with the requirements of its authorization or license, or its financial performance, or the soundness or the continuity of its activities.

4. The Central Bank shall ensure that when a payment institution or a system operator outsources important operational functions, it complies with the following conditions:

4.1. the outsourcing shall not result in the delegation by senior management of its responsibility;

4.2. the relationship and obligations of the payment institution or the system operator towards its payment service users or system participants shall not be altered;

4.3. the conditions with which the payment institution or the system operator is to comply in order to be authorized or licensed and remain so in accordance with this Law shall not be undermined; and

4.4. none of the other conditions subject to which the license was granted shall be removed or modified.

### **Article 13 Use of Agents**

1. Banks and other authorized payment institutions shall be permitted to use agents under special authorization by the Central Bank.

2. When a payment institution intends to provide payment services to customers through an agent, it shall communicate the following information to the Central Bank:

2.1. the name and address of the agent;

2.2. a description of the internal control mechanisms that will be used by agents in order to comply with the obligations in relation to the Law on Money laundering and Terrorist Financing; and

2.3. the identity of directors and persons responsible for the management of the agent to be used in the provision of payment services and evidence that they are fit and proper persons.

3. When the Central Bank receives the information in accordance with paragraph 2. of this Article, and following grant of the relevant authorization, then it lists the agent in a register available to the public.

4. Before granting authorization and listing the agent in the register, the Central Bank should, if it considers that the information provided is incorrect, take further action to verify the information.

5. Payment institutions shall ensure that agents acting on their behalf inform payment service users of this fact.

### **Article 14 Liability**

1. When payment institutions or system operators rely on third parties for the performance of operational functions, those payment institutions or system operators shall take reasonable steps to ensure that the requirements of this Law are complied with.

2. Payment institutions and system operators shall remain fully liable for any acts of their employees, any agent or any entity to which activities are outsourced.

#### **Article 15 Record-keeping**

1. Payment institutions and system operators shall keep all appropriate records for the purpose of this Law for at least five (5) years.

2. Records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the Central Bank and in such a form and manner that the following conditions are met:

2.1. the Central Bank must be able to access them readily and to reconstitute each key stage of the processing of each payment/settlement;

2.2. it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and

2.3. it must not be possible for the records otherwise to be manipulated or altered.

#### **Article 16 Operation of systems and provision of services by the Central Bank**

1. The Central Bank may organize, participate in and operate one or more payment systems and provide facilities to such systems and their system participants, including intra-day credit collateralized by negotiable government securities. It may make the participation into its system compulsory when this is in the public interest.

2. The Central Bank shall also be able to act as a settlement agent, central counterparty, clearing house and central securities depository.

3. The licensing process of this chapter does not apply to payment, clearing and security settlement systems owned or operated by the Central Bank.

4. Notwithstanding paragraph 3. of this Article, the payment, clearing and security settlement systems owned or operated by the Central Bank shall comply with the requirements adopted by the Central Bank that apply to similar licensed systems.

#### **Article 17 List of systems**

The Central Bank shall publish a list of the licensed systems and system operators, as well as the systems owned or operated by the Central Bank.

### **CHAPTER III FINALITY, ENFORCEABILITY OF NETTING AND INSOLVENCY**

**Article 18**  
**Finality and enforceability of netting**

1. Notwithstanding anything to the contrary:

1.1. the settlement rules of a system are valid and binding on the clearing house, the system participants, the central counter-party and the Central Bank. Any action may validly be initiated or any payment may be made in accordance with such settlement rules;

1.2. the obligation of a system participant, a clearing house or a central counter-party to make payments to a system participant, and the right of a system participant, a clearing house or a central counter-party to receive payments from a system participant, clearing house or central counter-party, shall be netted, and a net settlement or close-out amount shall be determined in accordance with the settlement rules of the system; and

1.3. where the settlement rules of a system provide that the settlement of a payment obligation through an entry to, or a payment out of, an account of a system participant, a clearing house or a central counter-party at the Central Bank is final and irrevocable, the entry or payment shall not be reversed, repaid or set aside.

**Article 19**  
**Winding-up, insolvency or administration of a system operator or a system participant**

1. Payment orders which have been registered into a system and their netting shall be legally enforceable and binding on third parties. In case of the commencement of insolvency proceedings against a system participant, the payment orders which were registered into the system prior to the commencement of such insolvency proceedings shall be legally enforceable and binding on third parties.

2. Payment orders have been registered into a system after the commencement of insolvency proceedings and are carried out on the day of the commencement of insolvency proceedings, such payment orders shall be legally enforceable and binding on third parties, provided that the system operator, at the time of execution of the order, was not aware nor could have been aware of the commencement of such proceedings.

3. The specific moment of entry of a payment order into a system shall be determined by the rules of that system.

4. A system participant against whom a judgment or order is issued, or who has passed a resolution for voluntary winding-up the activities on the day it is received or issued such act with no delay shall advise the Central Bank and the operator of the system.

5. Insolvency proceedings shall not have any retroactive effect on the rights and obligations of a system participant, arising from the clearing and settlement of payment obligation on a designated system prior to the time of commencement of such proceedings.

6. An entry to or a payment out of the account of a system participant, a clearing house or a central counter-party at the Central Bank to settle a payment obligation in a system shall not be the subject of any provision or order that operates as a stay of that activity.

7. The rights and liabilities of a system participant, a clearing house, a central counter-party or the Central Bank, with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a system, may not be affected by insolvency proceedings. In particular, such rights and liabilities may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and liabilities with respect to the collateral.

8. The amount exceeding the claim or the debit balance resulting from the operations of the system described above shall be paid to the insolvency proceedings. The claim not satisfied at the outcome of the realization or the credit balance may be enforced against the insolvency proceedings according to the provisions ordinarily applicable thereto.

9. The rights and remedies of an operator, a system participant, a clearing house, a central counterparty or the Central Bank with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a system shall not be affected by insolvency or bankruptcy proceedings or any other law similar in purpose and effect. In particular, such rights and remedies may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

## **CHAPTER IV INFRINGEMENTS, REMEDIAL MEASURES AND PENALTIES**

### **Article 20 Infringements and Remedial Measures**

1. The remedial measures and penalties provided for infringements foreseen in this Article shall be imposed by the Central Bank. The action shall be based upon the seriousness of the infringement, its effect on systemic risk, the stage at which it was detected, whether it was voluntarily reported by the perpetrator, and what measure is appropriate to remedy or terminate the infringement.

2. The Central Bank shall take one of the following administrative actions or impose the administrative penalties if it determines that an infringement was committed consisting of the violation of a provision of this Law or any measure of the Central Bank issued pursuant to this Law:

2.1. shall issue written warnings;

2.2. shall issue written orders to undertake remedial action;

2.3. shall impose restrictions or fines on the perpetrator in amounts from one hundred (100) euro to one thousand (1,000) euro per day for each day that the infraction continues;

2.4. shall suspend temporarily or dismiss officers, managers or employees of perpetrators from their positions; or

2.5. shall suspend or revoke the license or authorization.

3. Decisions of the Central Bank or its agents under this Law may be subject to judicial review only as stipulated in the Central Bank Law.

### **Article 21 Offences and Penalties**

1. Any person who contravenes the provisions of Articles 3., 4. and 5. of this Law is guilty of an offence and upon conviction may be subject to imprisonment for up to seven (7) years and a fine of up to thirty thousand (30,000) euro.

2. If the chief executive officer, a director or an employee of a payment institution or a system operator or a system participant:

2.1. obstructs the proper performance of an auditor in accordance with this Law or inspection of the Central Bank by an inspector duly authorized by the Central Bank;

2.2. damage, destroy, alter or falsify accounts, books or records of a payment institution, system operator or system participant; or

2.3. with intent to deceive, makes false entries or fail to enter material items in the accounts of payment institution, payment system, or system participant, is guilty of an offence and upon conviction may be subject to imprisonment for up to five (5) years and a fine of up to twenty thousand (20,000) euros.

3. Any person who otherwise contravenes or obstructs the provisions of this Law commits an offence and upon conviction may be subject to imprisonment for up to three (3) years, a fine of up to ten thousand (10,000) euro, or both.

### **PART III EXECUTION OF PAYMENT TRANSACTIONS**

#### **CHAPTER I GENERAL DUTIES OF PAYMENT INSTITUTION**

##### **Article 22 Definitions**

1. For purposes of this Part the terms used shall have the following meaning:

1.1. **Card** - any card, including an ATM, POS, debit, credit or stored value card, used by a customer to effect a fund transfer, and excluding a card issued by merchants for the sole use of their store or chains of stores;

1.2. **Credit transfer** - a payment transaction originated by the payer, who issues a payment order to its institution instructing it to transfer funds from the payer's account to the payee or to the payee's account;

1.3. **Customer** - a physical person or a legal entity using payment instruments or payment services provided by a payment institution;

1.4. **Debit transfer** - a payment transaction originated by the payee's payment order, based on the payer's authority, instructing the payee's institution to collect money from the payer's account;

1.5. **Electronic consent** - any sound, symbol, or process which is:

1.5.1. related to technology (1) having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, including (but not limited to) mobile telephony, facsimile and internet and (2) which may only be accessed through a security access code; and

1.5.2. logically associated with a legally binding agreement or authorization and executed or adopted by a person with the intent to be bound by such agreement or authorization.

**1.6. Electronic fund transfer system** - a payment system executing fund transfers either electronically or by any other non-paper-based means, supporting fund transfers executed by any of these channels or a combination thereof:

1.6.1. point-of-sale (POS) terminals;

1.6.2. automated teller machines (ATM);

1.6.3. cable, internet and other communication channels;

1.6.4. telephonic instruments, including mobiles;

1.6.5. stored value, credit and debit cards.

**1.7. Framework contract** - a contract which governs the future execution of individual and successive transfers and which may contain the obligation and conditions for setting up an account to execute such transfers;

**1.8. Payee** - the person who is the intended final beneficiary of funds;

**1.9. Payee payment institution** - the payment institution in a payment order which is to make payment to a payee:

1.9.1. by crediting the account of the payee; or

1.9.2. any other manner, where the payment order does not provide for crediting an account.

**1.10. Payer** - a person who holds an account and allows a payment order by debiting that account; or, where there is no account, a person who originates a fund transfer to the benefit of a payee;

**1.11. Receiving institution** - the institution to which the sender's instruction is addressed;

**1.12. Security Access Code** - a personal identification number (PIN), password, code or any other device providing a means of certified access to a customer's account for the purposes of, inter alia, initiating a fund transfer by electronic means;

**1.13. Security procedure** - a procedure established by agreement of a customer and a receiving institution for the purpose of:

1.13.1. verifying that a payment order or communication amending or revoking a payment order is that of the customer; or

1.13.2. detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, call-back procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer.

**1.14. Sender** - the person giving the instruction to the receiving institution, this being either a payer or a payee as the case may be. A sender shall also be the receiving

institution instructing in turn to another receiving institution for the purposes of executing the funds transfer.

### **Article 23**

#### **Transparency and right to be adequately informed**

1. The payment institution shall have a general duty to inform customers and the public in general of the terms of its services and act in full transparency.
2. To this end, when this Law stipulates a general obligation of a payment institution to provide to a customer specific information, this must provide the information without the need for a specific request of the customer in a manner that does not require special activities of the customer in order to obtain the information and become acquainted with them.
3. When by this Law is expressly stipulates that a payment institution ensures the requested information to the customer in a specific manner and this must comply. However, it shall always act in a manner that permits the customer to receive full and reliable information.

### **Article 24**

#### **Terms and Conditions**

1. A payment institution shall have standard terms and conditions in relation to the carrying out of payment transactions and the issuance and management of payment instruments.
2. These shall be in writing and in clear, readily understandable and user friendly manner.
3. The standard terms and conditions shall be shown by an institution to a customer before the payment instrument is first used or the transaction carried out.
4. The standard terms and conditions shall include:
  - 4.1. the customer's liability for any unauthorized transfer and duty to report to the institution promptly any loss, misuse, theft or unauthorized use of, access code or a card or other payment instrument;
  - 4.2. the telephone number and address of the department in charge of the institution to be notified in the event the customer believes that an unauthorized transfer has been or may be affected;
  - 4.3. the customer's right to stop payment of a preauthorized transfer and the conditions and procedures to initiate such stop payment order;
  - 4.4. the maximum execution time for any kind of transfer to be executed;
  - 4.5. all charges payable by the customer and, where applicable, the breakdown of the amounts of any charge;
  - 4.6. where applicable, rules for calculation of exchange rate to be applicable to any kind of transfers to be executed;

4.7. information relating to lodgment of complaints, investigation and resolution procedures; and

4.8. the customer's right to receive relevant documents in relation to individual transactions.

5. The instruction of a customer to stop payment of a preauthorized transfer as mentioned under subparagraph 4.3. of this Article shall operate immediately unless agreed otherwise by the customer and the institution whereby a date or time is predetermined.

6. For the purposes of this Article, "**preauthorized transfer**" means any prior arrangement or agreement between a customer and an institution to authorize it to

6.1. make payments to a third party out of the funds standing in the account of the customer; or

6.2. transfer funds from one account of the customer to another account of the customer maintained with the institution or another institution.

7. A payment institution shall make available copies of the standard terms and conditions at its offices or agents.

8. Terms and conditions shall be approved by the Central Bank when it gives authorization to the payment institution to initiate its activities. In the case when from payment institutions is not being required to apply for a specific authorization for the provision of payment services, terms and conditions shall be submitted for approval to the Central Bank duly in advance from their entry into force for a specific payment instrument. This provision shall not imply by any means that the Central Bank has any obligation to approve pricing policies, which shall not be the object of authorization.

## **Article 25** **Changes in the terms and conditions**

1. A payment institution may vary or modify the standard terms and conditions governing carrying out of payment transactions and the issuance and management of payment instruments in relation to

1.1. imposing or increasing charges;

1.2. increasing the customer's liability for losses; or

1.3. adjusting the transaction limits on the use of a card, provided it gives fifteen (15) days prior notice to the customer.

2. Notices can be provided by means of electronic mail, if preferred so by the customer.

## **Article 26** **Notification of other changes**

1. A payment institution may notify the customer of any other changes in the standard terms and conditions through:

1.1. notice in the periodic statement of account;

- 1.2. notice at ATM, POS or other electronic terminals;
  - 1.3. notice at its offices; or
  - 1.4. any other mode it deems suitable.
2. Where notification is given under paragraph 1. sub-paragraphs 1.2., 1.3. or 1.4. of this Article and the customer is not notified directly, subsequent advice shall be provided to the customer by the institution.
3. Advices can be provided by means of electronic mail, if preferred so by the customer.
4. Notwithstanding paragraph 1. of this Article, advance notice need not be given when changes are necessitated by an immediate need to restore or maintain the security of a fund transfer, a payment system or an individual account.

### **Article 27**

#### **Information on individual payment transactions and issuance of receipts**

1. Before any individual payment transaction, the payment institution shall, at the customer's request, provide specific information on the maximum execution time and the applicable charges, and, where applicable, applied exchange rates.
2. Unless it is otherwise agreed, at the time of a payment order, the payment institution shall ensure that a receipt is issued to the customer containing all of the following information:
  - 2.1. the amount of the transfer;
  - 2.2. the date and time (if practicable) of the transfer;
  - 2.3. the type of transfer;
  - 2.4. the amount of any charges payable by the payer;
  - 2.5. an indication of the amount being debited or credited;
  - 2.6. data that enable the payment institution to identify the customer and the transfer;
  - 2.7. where possible, the type and general location of any institution equipment used to make the transaction or a number or symbol that enables that institution equipment to be identified;
  - 2.8. the name of the payee, to whom payment was made;
  - 2.9. where possible, and where it is not likely to compromise the privacy or security of the payer, the balance remaining in the account which is debited in the transfers (or, in the case of a deposit, the account which is credited).
3. If a payment order is given by voice communications (including an automated voice response system by telephone), the payment institution shall ensure that the following information is provided to the customer by voice communication at the time of the order:
  - 3.1. a receipt number;
  - 3.2. the amount of the transfer;

- 3.3. the type of transfer;
  - 3.4. an indication of the amounts being debited or credited;
  - 3.5. the name of the payee, to whom the payment was made;
  - 3.6. where possible, and where it is not likely to compromise the privacy or security of the customer, the balance remaining in the account which is debited in the fund transfers (or, in the case of a deposit, the account which is credited).
4. Payment institutions may choose to provide users of the service with the option to specify at the time of each transfer that a receipt is not required.
  5. Receipts can be in electronic format.
  6. A charge may not be imposed on a user for the issuing of a receipt in accordance with paragraphs 1. and 2. of this Article.
  7. In case an institution equipment may not be in a position to print receipts, the user should be notified that receipt shall not be provided on the spot, before processing the transfer, so that the user can make an informed decision whether to continue the transfer without receipt.

**Article 28**  
**Evidentiary value of receipts**

In any legal action, the receipts issued under Article 27 of this Law which indicate that a transfer was made, shall be admissible as evidence of such transfer and shall constitute a proof that this was made.

**CHAPTER II**  
**EXECUTION OF TRANSFERS**

**Article 29**  
**Execution**

1. A receiving institution shall execute a payment order originated by a payer within the end of the following business day unless otherwise instructed by the sender; provided, however, in no event shall the receiving institution be obligated to execute the payment order if there are insufficient funds in the account from which the funds are to be transmitted.
2. The payee institution shall credit the payee's account within the end of the following business day from receipt of a payment order.
3. In case of a payment order initiated by or through the payee, the payee's payment institution shall transmit it to the payer's payment institution within the time limits agreed between the payee and his payment institution, enabling settlement, as far as direct debit is concerned, on the agreed due date.

**Article 30**  
**Receipt of payment orders**

1. The point in time of receipt is the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received by the payer's payment institution.
2. The payer's payment institution may fix a period of cut-off time or times on a business day for the receipt and processing of payment orders. Different cut-off period times may apply to payment orders, or to different categories of payment orders. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders.
3. If a payment order is received after the close of a business day or after the appropriate cut-off time, the receiving institution may treat the payment order as received at the opening of the next business day.
4. The payment institution shall keep the client informed of any cut-off times or times on a business day for receipt and processing of payment orders, and any changes thereto.

### **Article 31 Irrevocability**

1. The payer may not revoke a payment order once it has been received by the payer's payment institution, unless otherwise provided by agreement.
2. Where the payment order 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. However, notwithstanding any refund rights he has, 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.
3. Rules applicable to payment orders shall equally apply to communications canceling or amending a payment order.

### **Article 32 Transmission of payment orders through electronic fund transfers system**

1. If a payment order to be addressed to a receiving institution is transmitted to an electronic fund transfers system, this system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the institution. If there is a discrepancy between the terms of the payment order as transmitted to the electronic fund transfers system by the sender and the terms of the payment order transmitted by this system to the institution, the latter shall prevail, unless otherwise provided by the rules of this system.
2. A payment institution should not avoid any obligation to its customer by reason only of the fact that it is a party to a shared electronic fund transfers system, and that another party to the system had failed to fulfill its obligations under this Law.
3. The respective rights and responsibilities of parties to a shared electronic fund transfers system shall be determined by bilateral or multilateral agreement subject to the Central Bank oversight.

## **CHAPTER III UNAUTHORISED AND ERRONEOUS FUND TRANSFERS**

### **Article 33 Authorization of transfers**

1. A fund transfer is considered to be authorized only if the sender has given consent to execute such transfer.
2. Consent to execute a fund transfer or a series of transfers shall be given in the form agreed between the parties.
3. In the absence of such consent, a transfer shall be considered to be unauthorized.
4. If a payment institution and its customer have agreed that the authenticity of payment orders issued to the payment institution in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving institution is effective as the order of the customer, whether or not authorized, if:
  - 4.1. the security procedure is reasonable method in aspect of commercial provision of security against unauthorized payment orders; and
  - 4.2. the institution proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The institution is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the institution a reasonable opportunity to act on it before the payment order is received.

#### **Article 34 Erroneous payment orders**

1. Where a payment order is initiated by the payer, payer's payment institution shall be liable to the payer for correct execution of the payment transaction, unless the payment institution can prove that the error was made by the payer, or the payment institution can prove to the payer and, where relevant, to the payee's payment institution, that the payee's payment institution correctly received the payment transaction, in which case, the payee's payment institution shall be liable to the payee for the correct execution of the payment transaction.
2. If a payment order was transmitted pursuant to a security procedure for the detection of errors, and the payment order:
  - 2.1. erroneously instructed payment to a payee not intended by the sender;
  - 2.2. erroneously instructed payment in an amount greater or smaller than the amount intended by the sender; or
  - 2.3. was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:
    - 2.3.1. if the sender proves that the sender or a person acting on behalf of the sender complied with the security procedure and that the error would have been detected if the receiving institution had also complied, the sender is not obliged to pay the order to the extent stated in sub-paragraph 2.3.2 and 2.3.3 of this paragraph;
    - 2.3.2. if the transfer is completed on the basis of an erroneous payment order described in sub-paragraph 2.1. or 2.2. of this paragraph, the sender is not obliged to pay the order and the receiving institution is entitled to recover from the payee any amount paid to the payee;

2.3.3. if the transfer is completed on the basis of a payment order described in sub-paragraph 2.2. of this paragraph, the sender is not obliged to pay the order to the extent the amount received by the payee is greater than the amount intended by the sender. In that case, the receiving institution is entitled to recover from the payee the excess amount received.

3. If (1) the sender of an erroneous payment order described in paragraph 2. of this Article is not obliged to pay all or part of the order, and (2) the sender receives notification from the receiving institution that the order was accepted by the institution or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the institution of the relevant facts within a reasonable time, not exceeding forty five (45) days, after the institution's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the institution for the loss the institution proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

### **Article 35** **Notification of loss, theft or unauthorized use**

1. A payment institution shall provide effective and convenient means by which a customer can notify any loss, misuse, theft or unauthorized use of a card or other electronic device or breach of a security access code.

2. A payment institution shall provide procedures for acknowledging receipt of notifications, including telephone notification, by a customer for any loss, misuse, theft or unauthorized use of a card or other electronic device or breach of access code security.

3. The acknowledgment needs not be in writing provided the institution has a means by which a customer can verify that he had made a notification and when such notification was made.

### **Article 36** **Liability in cases of system or equipment malfunction**

1. A payment institution shall be liable to its customer:

1.1. for a loss caused by the failure of an electronic fund transfer system or equipment to complete a transaction accepted by a terminal, in accordance with the customer's instruction; or

1.2. for computing or book keeping error made by the institution.

2. A payment institution shall inform a customer immediately through:

2.1. notice at ATM, POS or other electronic terminals;

2.2. notice at its offices; or

2.3. any other mode it deems suitable, if it is aware that the system or equipment to carry out fund transfers is not available for use or where there is a malfunction.

3. The payment institution shall inform immediately the customer of any occurred failure in the execution of a payment order for any previously undetected malfunctioning of the system.

4. Where the customer should have been aware that the system or equipment was not available for use or malfunctioning, the institution's responsibilities are limited to the correction of any error in the customer's account, and the refund of any charges or fees imposed on the customer for that transaction.

5. Notwithstanding what established in paragraph 4. of this Article, a payment institution shall not be liable to its customer if the failure to carry out a fund transfer was caused by or resulted from force majeure or other circumstances beyond its control, provided the institution had exercised reasonable care and diligence.

**Article 37**  
**Security of deposits at electronic terminal**

1. The security of a deposit received at an electronic terminal shall be the responsibility of the institution receiving the deposit, from the time the transaction is completed, subject to verification of amount deposited.

2. Where there is a discrepancy between the amount recorded as having been deposited at an electronic terminal and the amount recorded as having been received, the institution shall notify the customer of the difference on the next working day and shall advise the actual amount which has been credited to the customer's account.

**Article 38**  
**Duty of customers to notify errors**

1. A customer shall notify his payment institution of any error in his statement of account or possible unauthorized transaction in relation to his card or security access code.

2. The notification shall be made in writing within thirty (30) days from the date of the statement of account.

3. Where there is a complaint of an unauthorized fund transfer by a customer, the institution should witness to show that the fund transfer was authorized, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.

4. For the purposes of this article, error in statement of account includes:

4.1. an incorrect fund transfer to or from the customer's account; or

4.2. an addition or omission in the periodic statement of a fund transfer affecting the customer's account.

**Article 39**  
**Other duties of customer**

1. A customer shall not:

1.1. directly or indirectly disclose to any person the security access code of his card or any electronic device used to effect fund transfers or give electronic consent; or

- 1.2. fail to take reasonable care to keep the security access code or other electronic device secret.
2. A payment institution is discharged from any liability if it is proven that the customer has breached the duty imposed by paragraph 1. of this Article.
3. A customer shall not be liable for losses resulting from an unauthorized transaction occurring after he has notified the payment institution that his card has been lost, misused or stolen, or that the security access code or other electronic device to permit electronic consent has been breached.

#### **Article 40 Delay in notification**

Where the customer has contributed to a loss resulting from an unauthorized transaction by delaying notification of lost, misused or theft of the card, or someone else knowing the security access code of the card, the customer is liable for the actual loss which occurred, except for that portion of the loss incurred on any one day which exceeds the daily transaction limit applicable to the card, other device or account.

#### **Article 41 Circumstances where customer is not liable**

1. A customer shall not be liable for loss:
  - 1.1. not attributable to or not contributed by the customer;
  - 1.2. caused by the fraudulent or negligent conduct of officers of or agents appointed by:
    - 1.2.1. the institution;
    - 1.2.2. companies and other institutions involved in networking arrangements; or
    - 1.2.3. merchants who are linked to the card or other communication system;
  - 1.3. relating to a card that is forged, faulty, expired; or
  - 1.4. occurring before the customer has received his card or security access code.
2. Where any dispute arises in relation to a customer's card, it is to be presumed that the customer did not receive the card, unless the institution can prove otherwise.

#### **Article 42 Right to refund**

1. A payer shall be entitled to a refund from his payment institution of an authorized fund transfer initiated by or through a payee which has already been executed, if the following conditions are met:
  - 1.1. the authorization did not specify the exact amount of the payment transaction when the authorization was made; and

- 1.2. the amount of the payment 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. At the payment institution request, the payer shall provide factual elements relating to such conditions.
2. The refund shall consist of the full amount of the executed transfer. However, the payer and his payment institution may agree in the framework contract that the payer is entitled to a refund even though the conditions for refund in paragraph 1. of this Article are not met.
3. It may be agreed in the framework contract between the payer and his payment institution that the payer has no right to a refund where he has given his consent to execute the transfer directly to his payment institution and, where applicable, information on the future transfer was provided or made available in an agreed manner to the payer for at least one (1) week before the due date by the payment institution or by the payee.
4. The payer can request the refund referred to in paragraph 1. of this Article of an authorized transfer initiated by or through a payee for a period of sixty (60) days from the date on which the funds were debited.
5. Within ten (10) business days of receiving a request for a refund, the payment institution shall either refund the full amount of the transfer or provide justification for refusing the refund.

## **CHAPTER IV SPECIAL PROVISIONS CONCERNING BANK ACCOUNTS**

### **Article 43 Withdrawals and payments from account**

1. Subject to the terms of the agreement, a credit balance, which constitutes adequate cover in an account, may be withdrawn by a customer or paid by a bank pursuant to a payment order.
2. Paragraph 1. of this Article shall not apply where the credit balance in an account has been subject to a garnishment, seizure or a similar creditor process; where the account has been closed, suspended or frozen; and where, in carrying out payment orders, a bank violates the applicable law.

### **Article 44 Statement of account**

1. A bank shall provide its customer, under their request a statement of the account identifying each credit and debit posted to the account since the last statement and providing for the final account balance.
2. Statements of account can be provided by means of electronic mail, if preferred so by the customer.

### **Article 45 Account confidentiality**

A bank shall be bound by confidentiality and shall not disclose any information concerning the account to anyone except to the customer, unless it is required to do so pursuant to a court order or in accordance with the applicable law or pursuant to the customer's express authorization.

**Article 46**  
**Register of accounts**

1. The Central Bank shall manage a single register of bank accounts in the Republic of Kosovo according to relevant legislation and regulations issued by CBK.
2. For the purposes of the paragraph 1. of this Article, all banks operating in the Republic of Kosovo shall regularly submit and update the basic identification data of individual accounts held with them, as determined by laws and regulations of CBK.

**CHAPTER V**  
**INVESTIGATION AND RESOLUTION PROCEDURE**

**Article 47**  
**Complaints and Investigation**

1. A payment institution shall:
  - 1.1. establish formalized procedures for the lodgment of complaints by customers of matters covered by this Part;
  - 1.2. establish appropriate procedures for the investigation and resolution of any complaint by a customer; and
  - 1.3. set out in standard terms and conditions the means and procedures to lodge a complaint.
2. A customer is required to disclose to the payment institution all relevant information relating to the complaint except his access code.
3. The payment institution shall, as far as possible, settle all complaints as quick as possible.
4. The payment institution's decision in relation to a complaint is to be made on the basis of all relevant established facts and not on the basis of inferences unsupported by evidence.
5. Where a payment institution is unable to settle a complaint immediately as required under paragraph 3. of this Article, it shall inform the customer immediately for the need of fifteen (15) days to resolve the complaint.
6. Where a payment institution is unable to resolve the complaint within fifteen (15) days, it shall notify the customer in writing of the need for an extension of time which shall not in any case exceed thirty (30) days from the date the complaint is lodged.
7. A payment institution shall promptly advise the customer of the outcome of the investigation, together with reasons for the outcome upon completion of its investigation.
8. Where as a result of the investigation of a complaint, a payment institution discovers that the customer's account has been incorrectly credited or debited, it where appropriate, shall immediately:

8.1. make adjustment to the customer's account including applicable interest or charges applicable by the payment institution; and

8.2. notify the customer in writing of the adjustments made to his account.

#### **Article 48**

##### **Duty to inform the customer regarding liability**

1. Where a payment institution is of the view that the customer is liable for loss arising from any loss, misuse, theft or unauthorized use of a card or breach of access code security:

1.1. the payment institution is to make available to the customer, copies of any documents or other evidence relevant to the outcome of its investigation, including information from the log of transactions; and

1.2. the payment institution is also to refer to the systems log to establish whether there was any system or equipment malfunction at the time of the transactions, and advise the customer in writing of the outcome of its inquiry.

2. Provided always that the payment institution will not be required to furnish any information that has a direct relation to or impacts the security of the payment institution or its system.

#### **Article 49**

##### **Information and advice on appeal**

1. The complaint procedure shall contain information relating to:

1.1. the right of a customer to appeal against the outcome of his complaint to the senior management; and

1.2. the right of a customer to refer the complaint to the Central Bank, if he is not satisfied with the outcome of his complaint.

2. The institution shall make known or make available the information in paragraph 1. of this Article to a customer.

#### **Article 50**

##### **Records of complaint**

An institution shall keep a record of complaints and their resolutions, so that aggregate data on the type, frequency and resolution of such complaints can be made available to the Central Bank when required.

#### **Article 51**

##### **Audit trails**

An institution shall ensure that their fund transfers generate sufficient records to enable a transaction to be traced, checked and where any error has occurred, to be identified and corrected.

#### **Article 52**

## **Privacy**

1. An institution shall ensure that all information relating to a fund transfer of its customer shall not be disclosed unless permitted by this Law.
2. No person other than an officer of or agent appointed by the institution that maintains the account, or the customer, may have access through an electronic terminal to information relating to a fund transfer, the affairs or an account of the customer.
3. No electronic terminal shall be capable of providing any information relating to a fund transfer, the affairs or an account of a customer unless:
  - 3.1. the electronic terminal is operated by an authorized officer of, or agent appointed by, the institution; or
  - 3.2. the request for information is preceded by the entry of the correct customer's access code or card.
4. An institution shall not provide any information relating to a fund transfer or the affairs of an account of a customer unless the information is provided:
  - 4.1. pursuant to a legal duty or responsibility; or
  - 4.2. with the consent of the customer.
5. The rules governing the operation of individual accounts will be applicable to fund transfers in relation to disclosure of information to third parties.

## **Article 53**

### **Waiver of rights and greater protection**

1. No agreement in writing between a customer and a payment institution may contain any provision that constitutes a waiver of any right conferred or cause of action created by this Law.
2. Nothing in this Law shall prohibit any agreement, which grants a customer more extensive rights, or remedies or greater protection than those contained in this Law.

## **Article 54**

### **Special regime or derogation**

The Central Bank shall have the power to issue special regimes or derogation for specific categories of payment instruments in relation to their structure and efficiency in order to protect the user.

## **PART IV MISCELLANEOUS PROVISIONS**

## **Article 55**

### **Validity of electronic data**

1. Notwithstanding any law, regulation, or customary practice by which it might otherwise be admissible in any court, information as to any transfer through a system which is contained in any

document, computer print-out, hard copy, microfilm, floppy or hard disc, or any other electronic media or form, shall be admissible as evidence of or relating to the transfer concerned.

2. Photographic images such as film, microfilm, microfiche or computer images of original documents such as cheques or other payment instruments, securities, certificates of deposits, account ledgers and government securities shall be admissible as evidence of the matters or transactions of the original instrument.

3. Payment instructions, messages and funds transfers that are initiated, processed and executed through electronic means including electronic signatures shall be admissible as evidence of the matters or transactions of the original instrument.

4. The entries in ledgers, cash books and other books of account of any financial institution whether captured manually by handwriting or computerized shall be evidence of the matters, transactions and accounts recorded by a director, chief executive officer, partner, manager or other officer of such financial institution or by evidence that such manual or computerized ledgers, cash books and other books of account are or have been the ordinary books of account of the financial institution and that:

4.1. the entries have been made in the usual and ordinary course of business; and

4.2. that the books are in or come immediately from the custody of the financial institution.

#### **Article 56 Transitory Provisions**

1. Banks, financial institutions and all other relevant legal entities conducting business on the effective date of this Law shall conform their (1) organization, (2) administration, and (3) operations to the requirements of this Law within six (6) months from the effective date of this Law.

2. Banks, financial institutions and all other relevant legal entities whose (1) organization, (2) administration, or (3) operations do not conform in one or more material respects with the requirements of any regulations or instructions to be issued by the Central Bank pursuant to this Law, shall conform to the requirements of such measure within the time period to be specified thereof or be terminated.

#### **Article 57 Inapplicable Laws**

All existing laws, regulations, instructions, orders or exemptions from law, regulations or instructions inconsistent with the provisions of this Law, shall be inapplicable with respect to matters provided for by this Law.

#### **Article 58 Abrogative Provisions**

Upon entry into force of this Law, UNMIK Regulation no.2001/26 on Payment Transaction shall be abrogated.

**Article 59**  
**Entry into Force**

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

**Law No. 04/L-155**  
**04 April 2013**

**Promulgated by Decree No.DL-016-2013, dated 24.04.2013, President of the Republic of Kosovo Atifete Jahjaga.**