

HOW TO SET UP

ELECTRONIC MONEY AND PAYMENT INSTITUTIONS

DESCRIPTION

Electronic Money Institutions (EMIs) and Payment Institutions (PI) are instrumental in making e-commerce and electronic payment possible across EEA and the Single European Payments Area (SEPA). The electronic payments market is growing at a rapid pace with businesses and consumers relying increasingly on electronic payments. The provision of such services are regulated by EU Directives and enforced by Member States' regulators.

PAYMENT INSTITUTIONS

The services offered by Payment Institutions can vary from the provision of payment infrastructures to customers (e.g., for services industries) to services enabling payments between individuals. It also includes facilitation of secure credit and debit card transactions, both nationally and internationally. Other services include automatic currency conversion in sales outlets, the processing of electronic gift tokens or money-off vouchers, as well as recharging mobile phone pre-paid cards.

ELECTRONIC MONEY INSTITUTIONS

Electronic Money Institutions, are institutions issuing electronic money, or "e-money", which is a monetary value representing a claim against an issuer, which is:

- Stored in electronic format, (including on magnetic media),
- Issued against the remittance of funds with the goal of making payments, and
- Accepted by an individual or organization other than the issuer of the e-money.

In addition to issuing electronic money, EMIs are also permitted to supply all services of Payment Institutions, to grant loans (under certain conditions) linked to payment services, to supply operational services and other services closely linked to the issuing of electronic money or to the supply of payment services. Entities with a banking license are automatically permitted to perform PI and EMI functions.

LEGAL FRAMEWORK

Payment institutions and electronic money institutions in Luxembourg are governed by the **law of 10th November 2009** ("the PSL") as amended, which is the result of the transposition of Directives 2007/64/EC of 13 November 2007 on payments services in the internal market, and 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

Since 2007, many changes in the digitalisation of financial services have led to the need for an update to the initial Directive. The second payment services Directive (PSD2) aims to tackle the shortcomings of the first Directive in the modern era. PSD2 will impact PIs and EMIs from 2018 onwards. PSD2 will introduce two new third-party payment service providers: Payment Initiation Services Providers (PISP) as well as Account Information Service Providers (AISP).

AUTHORISATION PROCEDURE

Before taking a formal decision to set up an EMI or PI in Luxembourg, prospective institutions often like to have an informational meeting with the supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF). Such meetings allow the financial services supervisory authority to immediately clarify regulatory aspects to the prospective institutions.

PIs and EMIs are subject to initial assessment, which takes place in form of a detailed application file to the CSSF, **with a filing fee of EUR 10,000**. Before the application review by the CSSF, it invites the prospective institution to a meeting in order to have a formal introduction of the project and to meet the persons in charge. During the application review the CSSF may communicate and request further information to the applicants.

After verification that all the legal requirements are fulfilled, the CSSF informs the Minister in charge of the CSSF of its recommendation to grant the applicant the license.

The institution's head office and central administration must be in Luxembourg. The Company must provide its services to the Luxembourg market and have an office and employees in Luxembourg. Outsourcings of important operational functions is possible, but may not be undertaken in a way such as to materially impair the quality of the company's internal control and the ability of the CSSF to control the company's compliance with the obligations laid down in the Law. Financial service companies can make use of cloud services for data storage under the conditions of CSSF circular 17/654.

Following the delivery of the license, a letter is sent to the supervised entity explaining the various legal reportings to be submitted to the CSSF on a periodic basis.

An annual lump sum fee of EUR 20,000 must also be paid to the regulator by PIs and EMIs.

Luxembourg authorised PIs and EMIs may provide their services in another EEA state, by using a "passport" for cross-border services, or by setting-up an establishment or branch in an EEA country. This is done through a regulatory notification procedure.

SUMMARY OF AUTHORISATION PROCEDURE:

- Initial meeting with the regulator -
- Filing of the application file , **with a filing fee of EUR 10,000** -
- Regulator examines the application file and may come back -
for more information and clarification
- Regulator informs the Ministry of finance -
which grants the license to the entity

In general, successful applications for PI and EMI licenses take in between 4 – 12 months, depending on the complexity of the business and the quality of the application file.

LEGAL FORM

Authorisation may only be granted to a legal person incorporated under Luxembourg law, which must be established in the form of a public limited company (société anonyme – SA).

MINIMUM CAPITAL

The PSL Law requires a minimum capital of at least:

- EUR 20,000 - 125,000 for a Payment Institution, depending on the type of payment services.
- EUR 350,000 for an Electronic Money Institution.

The Company must at all times respect the own funds as set out by the Law.