

Pursuant to Article 82 item 2) and Article 91 paragraph (1) of the Constitution of Montenegro, the 27th Parliament of Montenegro at the fifth sitting of its second ordinary (autumn) session in 2021 on 29 December 2021, passed the following

LAW ON INTERCHANGE FEES AND SEPARATE BUSINESS RULES CONCERNING PAYMENT CARDS

I. BASIC PROVISIONS

Subject matter

Article 1

This Law shall regulate interchange fees charged when executing payment transactions in Montenegro based on payment cards issued to consumers, where payment service provider of the payer or the payment service provider of the payee have a head office in Montenegro, as well as the separate rules of business operations in relation to the issuing of payment cards or execution of card-based payment transactions.

Exceptions

Article 2

The provisions of this Law shall not apply to services to be provided based on specific payment instruments that can be used only in a limited way and that meet at least one of the following conditions:

- 1) payment instruments allow the holder of the payment instrument to acquire goods or services only in the premises of the issuer or within a limited network of the service providers in accordance with the contract concluded with the issuer of those instruments; or
- 2) payment instruments can be used only to acquire a very limited range of goods or services, or
- 3) payment instruments are valid only in Montenegro and are provided at the request of an undertaking, entrepreneur or public sector entity and regulated by an act of the competent authority, for specific social or fiscal purposes to acquire specific goods or services from suppliers having a commercial contract with the issuer of these instruments.

Application of other law

Article 3

The provisions of the law governing the payment system shall apply to the interchange fees and separate business rules concerning issuing of payment cards, or executing card-based payment transactions that are not regulated by this Law.

Use of Gender Sensitive Language

Article 4

Expressions in this Law used for natural persons in the masculine gender shall include the same expressions in the feminine gender.

Meaning of Terms

Article 5

Terms used in this Law shall have the following meaning:

- 1) acquirer means a payment service provider with head office in Montenegro contracting with a payee to accept and process card-based payment transactions, which result in a transfer of funds to the payee;
- 2) issuer means a payment service provider with head office in Montenegro contracting to provide a payer with a payment instrument to initiate and process the payer's card-based payment transactions;

- 3) consumer means a natural person who concludes a contract on payment services for purposes other than the trade, business or profession of that person;
- 4) debit card transaction means a card-based payment transaction, including those with prepaid cards that is not a credit card transaction;
- 5) credit card transaction means a card-based payment transaction where the amount of the transaction is debited in full or in part at a pre agreed specific calendar month date to the payer, in line with a prearranged credit facility, with or without interest;
- 6) commercial card means any card-based payment instrument issued to undertakings, entrepreneurs, and public sector entities which is limited in use for business expenses where the payments made with such cards are charged directly to the account of those entities;
- 7) card-based payment transaction means a service based on a payment card scheme's infrastructure and business rules to make a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a debit or a credit card transaction, except transactions based on other kinds of payment services;
- 8) net compensation means the total net amount of payments, rebates or incentives received by an issuer from the payment card scheme, the acquirer or any other intermediary in relation to card-based payment transactions or related activities;
- 9) merchant service charge means a fee paid by the payee to the acquirer in relation to card-based payment transactions;
- 10) payee means a natural or legal person who is the intended recipient of funds which have been the subject of a card-based payment transaction (merchant and other);
- 11) payer means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
- 12) payment card means a category of payment instrument that enables the payer to initiate a debit or credit card transaction;
- 13) payment card scheme means a single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions and which is separated from any infrastructure or payment system that supports its operation, and includes any specific decision-making body, organisation or entity accountable for the functioning of the scheme;
- 14) four party payment card scheme means a payment card scheme in which card-based payment transactions are made from the payment account of a payer to the payment account of a payee through the intermediation of the scheme, an issuer (on the payer's side) and an acquirer (on the payee's side);
- 15) three party payment card scheme means a payment card scheme in which the scheme itself provides acquiring and issuing services and card-based payment transactions are made from the payment account of a payer to the payment account of a payee within the scheme, whereat a three party payment card scheme licenses other payment service providers for the issuance of card-based payment instruments or the acquiring of card-based payment transactions, or both, or issues card-based payment instruments with a co-branding partner or through an agent, it is considered to be a four party payment card scheme;
- 16) payment instrument means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;
- 17) card-based payment instrument means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate payment application which enables the payer to initiate a card-based payment transaction which is not a credit transfer or a direct debit within the meaning of the law regulating the payment system;
- 18) payment application means computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders;
- 19) payment account means an account held in the name of one or more payment service users which is used for the execution of payment transactions, including through a specific account for electronic money;
- 20) payment order means any instruction by a payer to its payment service provider requesting the execution of a payment transaction;
- 21) payment service provider means any natural or legal person authorised to provide the payment services or recognised as an electronic money issuer based on an authorization issued in line with the law regulating the payment system;
- 22) payment service user means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;

- 23) payment transaction means an action, initiated by the payer or on its behalf or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee;
- 24) processing means the performance of payment transaction processing services in terms of the actions required for the handling of a payment instruction between the acquirer and the issuer;
- 25) processing entity means any natural or legal person providing payment transaction processing services;
- 26) point of sale means the address of the physical premises of the merchant at which the payment transaction is initiated:
- a) in the case of distance sales or distance contracts (i.e. e-commerce), the point of sale shall be the address of the fixed place of business at which the merchant conducts its business regardless of website or server locations through which the payment transaction is initiated;
 - b) in the event that the merchant does not have a fixed place of business, the point of sale shall be the address where the merchant conducts its business and through which the payment transaction is initiated;
 - c) in the event that the merchant does not have a fixed place of business nor a location where it operates, the point of sale shall be the address for correspondence for the payment of its taxes relating to its sales activity through which the payment transaction is initiated;
- 27) payment brand means any material or digital name, term, sign, symbol or combination thereof, capable of denoting under which payment card scheme card-based payment transactions are carried out;
- 28) co-badging means the inclusion of two or more payment brands or payment applications of the same brand on the same card-based payment instrument;
- 29) co-branding means the inclusion of at least one payment brand and at least one non-payment brand on the same card-based payment instrument;
- 30) debit card means a category of payment instrument that enables the payer to initiate a debit card transaction excluding those with prepaid cards;
- 31) credit card means a category of payment instrument that enables the payer to initiate a credit card transaction;
- 32) prepaid card means a category of payment instrument on which electronic money is stored.

II. LIMITATIONS OF INTERCHANGE FEES

Interchange fee

Article 6

Interchange fee means a fee paid for each transaction directly or indirectly (i.e. through a third party) for a payment transaction between the issuer and the acquirer involved in a card-based payment transaction, which includes net compensation or other agreed remuneration that has the same subject and/or effect as interchange fee, received by an issuer from the payment card scheme, the acquirer or any other intermediary in relation to card-based payment transactions or related activities;

Interchange fees for consumer debit card and consumer credit cards transactions

Article 7

Payment service providers shall not offer or request a per transaction interchange fee of more than 0.2 % of the value of the transaction for any debit card transaction.

Payment service providers shall not offer or request a per transaction interchange fee of more than 0.3 % of the value of the transaction for any credit card transaction.

Provision of paragraphs 1 and 2 of this Article shall not apply to:

- 1) transactions with commercial cards;
- 2) cash withdrawals at automatic teller machines or at the counter of a payment service provider; and
- 3) transactions with payment cards issued by three party payment card schemes.

Payment service providers shall submit to the Central Bank of Montenegro (hereinafter: the Central Bank) information on fees referred to in paragraphs 1 and 2 of this Article.

Payment service providers shall submit the information referred to in paragraph 4 of this Article in the manner and within the deadlines prescribed by the Central Bank.

III. BUSINESS RULES

Separation of payment card scheme and processing entities

Article 8

A separate unit of payment card schemes and processing entities:

- 1) shall be independent in terms of accounting, organisation and decision-making processes;
- 2) shall not present prices for payment card scheme and processing activities in a bundled manner and shall not cross-subsidise such activities;
- 3) shall not discriminate in any way between their subsidiaries or shareholders on the one hand and users of payment card schemes and other contractual partners on the other hand and shall not in particular make the provision of any service they offer conditional in any way on the acceptance by their contractual partner of any other service they offer.

The Central Bank may require a separate unit of a payment card scheme to provide an independent report confirming its compliance with paragraph 1 of this Article.

Payment card schemes may allow for the possibility that authorisation and clearing messages of single card-based payment transactions be separated and processed by different processing entities.

Provisions of paragraphs 1, 2 and 3 of this Article shall not apply to three party payment card schemes.

Co-badging and choice of payment brand or payment application

Article 9

Issuer shall be entitled to use co-badging to include two or more payment brands or payment application on the same card-based payment instrument.

Payment card scheme rules and co-badging licensing agreements or other appropriate measures cannot prevent or limit an issuer from acting in line with paragraph 1 of this Article.

When entering into a contractual agreement with a payment service provider, the consumer may require two or more different payment brands on a card-based payment instrument provided that such a service is offered by the payment service provider.

In good time before the contract on the provision of payment service is signed, the payment service provider shall provide the consumer with clear and objective information on all the payment brands available and their characteristics, including their functionality, cost and security.

Any difference in treatment of issuers or acquirers in scheme rules and rules in licensing agreements concerning co-badging of different payment brands or payment applications on a card-based payment instrument shall be objectively justified and non-discriminatory.

A separate unit of payment card schemes shall not impose reporting requirements, obligations to pay fees or similar obligations with the same object or effect on card issuing and acquiring payment service providers for transactions carried out with any device on which their payment brand is present in relation to transactions for which their scheme is not used.

Any routing principles or equivalent measures aimed at directing payment transactions through a specific channel or process and other technical and security standards and requirements with respect to the handling of two or more different payment brands and payment applications on a card-based payment instrument shall be non-discriminatory and shall be applied in a non-discriminatory manner.

Payment card schemes, issuers, acquirers, processing entities and other technical service providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of payment brand or payment application, or both, by the payer or the payee when using a co-badged payment instrument.

Payees may retain the option of installing automatic mechanisms in the equipment used at the point of sale which make a priority selection of a particular payment brand or payment application but payees shall not prevent the payer from overriding such an automatic priority selection made by the payee in its equipment for the categories of cards or related payment instruments accepted by the payee.

Unblending

Article 10

Each acquirer shall offer and charge its payee merchant service charges individually specified for different categories and different brands of payment cards with different interchange fee levels unless payees request the acquirer, in writing, to charge blended merchant service charges.

Acquirers shall include in their agreements with payees individually specified information on the amount of the merchant service charges, interchange fees and scheme fees applicable with respect to each category and brand of payment cards, unless the payee subsequently makes a different request in writing.

“Honour All Cards” rule

Article 11

Payment card schemes and payment service providers shall not apply any rule that obliges payees accepting a card-based payment instrument issued by one issuer also to accept other card-based payment instruments issued within the framework of the same payment card scheme.

Provisions of paragraph 1 of this Article shall not apply to card-based payment instruments issued to consumers of the same brand and the same category of prepaid card, debit card, or credit card that are the subject of interchange fees referred to in Article 7 of this Law.

Provisions of paragraph 1 of this Article is without prejudice to the possibility for payment card schemes and payment service providers to provide that cards may not be refused on the basis of the identity of the issuer or of the cardholder.

Payees that decide not to accept all cards or other payment instruments of a payment card scheme shall inform consumers of this, in a clear and unequivocal manner, at the same time as they inform consumers of the acceptance of other cards and payment instruments of the payment card scheme.

Information referred to in paragraph 4 of this Article shall be displayed prominently at the entrance of the shop and at the till.

In the case of distance sales (electronic trade or other), information referred to in paragraph 4 of this Article shall be displayed on the payee's website or other applicable electronic or mobile medium, whereat the information shall be provided to the payer in good time before the payer enters into a purchase agreement with the payee.

Issuers shall ensure that their payment instruments are electronically identifiable and, in the case of newly issued card-based payment instruments, also visibly identifiable, enabling payees and payers to unequivocally identify which brands and categories of prepaid cards, debit cards, credit cards or commercial cards are chosen by the payer.

Steering rules

Article 12

Licensing agreements, payment card schemes and agreements entered into between card acquirers and payees shall prohibit any rules that prevent payees from:

- 1) steering consumers to the use of any payment instrument
- 2) treating card-based payment instruments of a given payment card scheme more or less favourably than others
- 3) informing payers about interchange fees and merchant service charges.

Provisions of paragraph 1 of this Article shall be without prejudice to the application of the provision on charges, reductions or other steering mechanisms regulated by laws governing payment system and consumer protection.

Information to the payee on individual card-based payment transactions

Article 13

After the execution of an individual card-based payment transaction, the acquirer shall provide the payee with the following information:

- 1) the reference enabling the payee to identify the card-based payment transaction;
- 2) the amount of the payment transaction in the currency in which the payee's payment account is credited; and
- 3) the amount of any charges for the card-based payment transaction, indicating separately the merchant service charge and the amount of the interchange fee.

With the payee's prior and explicit consent, the information referred to in paragraph 1 of this Article may be aggregated by brand, application, payment instrument categories and rates of interchange fees applicable to the transaction.

Contracts between acquirers and payees may include a provision that the information referred to in paragraph (1) of this Article shall be provided or made available periodically, at least once a month, and in an agreed manner which allows payees to store and reproduce information unchanged.

IV. COMPETENT AUTHORITIES AND OUT OF COURT SETTLEMENT OF DISPUTES

Competent authorities

Article 14

The Central Bank shall perform supervision of the operation of credit institutions, payment institutions and electronic money institutions in accordance with this Law, in the manner and according to the procedure prescribed by the law governing the operations of credit institutions and the law governing payment system.

If the supervision procedure referred to in paragraph 1 of this Article finds that the supervised entity referred to in that paragraph acted contrary to this Law or regulations adopted on the basis of this Law, the Central Bank shall take measures against this entity in line with the laws governing business operations of credit institutions and payment system operations.

The Central Bank shall, by applying accordingly the provisions of the law governing payment system that refer to the supervision of payment institutions, supervise operations in accordance with this Law and supervise the card payment schemes, processors and other providers of technical services that support the execution of payment transactions subject to this Law, or persons responsible for the operations of these entities.

While performing supervision as referred to in paragraph 3 of this Article, the Central Bank may impose the following measures:

- 1) order the harmonisation of business operations with this Law;
- 2) temporarily prohibit the provision of one or more services, for a maximum of one year, and
- 3) order the undertaking of specific activities necessary for the harmonisation of business operations with this Law.

Out-of-court settlement of disputes

Article 15

In the event that the issuer or the acquirer fail to comply with the obligations towards the payment service user determined in accordance with the provisions of this Law or regulations adopted on the basis of this Law, the payment service user shall be entitled to object to the issuer or acquirer.

The payment service user referred to in paragraph 1 of this Article shall be entitled to protection of his rights and interests through out-of-court settlement of disputes, in accordance with the law governing business operations of credit institutions, the law governing payment system transactions and the law governing the protection of consumers using financial services.

Oversight

Article 16

Oversight over the application of the provisions of this law and inspection related to merchants as payees shall be performed by the competent authorities determined by the Law governing consumer protection.

V. PENALTY PROVISIONS

Penalties

Article 17

A payment service provider - legal person shall be fined between 5,000 euros and 20,000 euros if it:

- 1) offers or demands interchange fee contrary to Article 7 paragraphs 1 and 2 of this Law;
- 2) at the request of the consumer, refuses to issue two or more payment brands on a card-based payment instrument, where such a service was offered to the consumer when entering into a contractual agreement (Article 9 paragraph 3).
- 3) fails to provide the consumer with clear and objective information on all the payment brands with which the service is linked, and their characteristics, including their functionality, cost and security, before the contract on the provision of payment service is signed (Article 9 paragraph 4);

- 4) inserts automatic mechanisms, software or other devices on the card-based payment instrument or at equipment applied at the point of sale which limit the choice of payment brand or payment application, or both, by the payer or the payee when using a co-badged payment instrument (Article 9 paragraph 8);
- 5) fails to offer and charge its payee merchant service charges individually specified for different categories and different brands of payment cards with different interchange fee levels unless payees request the acquirer, in writing, to charge blended merchant service charges (Article 10 paragraph 1).
- 6) fails to include in their agreements with payees individually specified information on the amount of the merchant service charges, interchange fees and scheme fees applicable with respect to each category and brand of payment cards, unless the payee subsequently makes a different request in writing (Article 10 paragraph 2).
- 7) obliges payees accepting a card-based payment instrument issued by one issuer also to accept other card-based payment instruments issued within the framework of the same payment card scheme (Article 11 paragraph 1).
- 8) fails to ensure that their payment instruments are electronically identifiable and, in the case of newly issued card-based payment instruments, also visibly identifiable, enabling payees and payers to unequivocally identify the brands and type of cards (Article 11 paragraph 7).
- 9) prevents payees from steering consumers to the use of any payment instrument, from treating card-based payment instruments of a given payment card scheme more or less favourably than others, or from informing payers about interchange fees and merchant service charges (Article 12 paragraph 1).
- 10) after the execution of an individual card-based payment transaction, fails to provide the payee with the information referred to in Article 13 paragraph 1 of this Law.

For a misdemeanour referred to in paragraph 1 of this Article, the responsible person of the payment service provider - legal person as referred to in paragraph 1 of this Article shall also be fined between 1,000 euros and 2,000 euros.

Article 18

A payee - legal person shall be fined between 2,000 euros and 10,000 euros if it:

- 1) prevents the payer from making a priority selection of a particular payment brand or payment application different from an automatic priority selection made by the payee in its equipment for the categories of cards or related payment instruments accepted by the payee (Article 9 paragraph 9);
- 2) fails to inform the consumer, in a clear and unequivocal manner, that it does not accept all cards or other payment instruments of a payment card scheme, at the same time as it informs consumers of the acceptance of other cards and payment instruments of the payment card scheme (Article 11 paragraph 4);
- 3) fails to display information referred to in Article 11 paragraph 4 of this Law prominently at the entrance of the shop and at the till (Article 11 paragraph 5);
- 4) in the case of distance sales (e-commerce or other), fails to display information referred to in Article 11 paragraph 4 of this Law on its website or other applicable electronic or mobile medium, or if it fails to provide information to the payer in good time before the payer enters into a purchase agreement with the payee (Article 11 paragraph 6).

For a misdemeanour referred to in paragraph 1 of this Article, the responsible person of the legal person referred to in paragraph (1) of this Article shall also be fined between 200 euros and 1,000 euros.

For a misdemeanour referred to in paragraph 1 of this Article, the payee - entrepreneur shall be fined between 500 euros and 3,000 euros.

VI. TRANSITIONAL AND FINAL PROVISIONS

Deadline for the adoption of regulations

Article 19

Regulations for the implementation of this Law shall be adopted within two years from the day of entry into force of this Law.

Validity of card-based payment instruments

Article 20

Card-based payment instruments, issued by the date of application of this Law, shall be valid until the expiration of the validity period indicated on those payment instruments.

Compliance

Article 21

Payment service providers shall bring their business operations to compliance with the provisions of this Law by the date of application of this Law.

Cessation of application

Article 22

Provisions of this Law shall apply until the day of Montenegro's accession to the European Union.

Entry into force

Article 23

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro, and it shall apply after the expiry of two years following its entry into force.

Number: 09-1/21-2/4

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Podgorica, 29 December 2021

Parliament of Montenegro 27th sitting

President,

Aleksa Bečić, m.p.