



Payment Institutions: a new payment provider

In order to enhance competition among the domestic markets throughout the EU territory, the range of payment services providers is increased by the regulation of a new type of entity, the Payment Institution

The partial transposition of the Payment Services Directive was approved on November 2009 by the Spanish Payment Services Law.

Once the Payment Services Directive is fully implemented, the provision of payment services within the European Union ("EU") will be carried out without the existing national barriers and considering the cost differences mainly based on the efficiency of the service provided.

Nowadays there are some regulations pending of approval, which will complete the applicable regulation of payment services in Spain.

Main objectives of the Payment Service Directive and Law

The main objectives of the Payment Services Directive and Payment Services Law are as follows:

- ◆ To guarantee that payments made within the area of the EU, specifically transfers, direct debits and payment operations affected using cards, may be made with the same ease, efficiency and security as domestic payments within the Member States.
- ◆ To increase transparency in the payment services market, by strengthening the applicable information requirements.
- ◆ To establish a common system of rights and obligations for providers and consumers regarding the provision and use of payment services.
- ◆ To stimulate the competition between national markets and ensure equal opportunities to compete. In this sense, it is allowed a new category of financial intermediaries, which will be entitled to provide payment services within the Member States (by means of a branch, tied agents or under the freedom to provide services).

Payment Institutions

Although the Spanish legislation on payment services is to be developed (nowadays there are two implementing rules pending of approval), the main characteristics of this new type of financial intermediary are contained in the Payment Services Directive and Payment Services Law.

Payment Institutions are, together with Credit Institutions, the only entities authorized to provide payment services (transfers, direct debits, payments transactions through payment cards, money remittance, etc.). As Payment Institutions are not Credit Institutions they are not allowed to take deposits or other repayable funds from the public.

Notwithstanding the above, Payment Institutions are entitled to carry out other activities different than the rendering of payments services. In these cases, it would be necessary to adopt separation measures among the different activities.

The authorization of Payment Institutions competes to the Ministry of Economy and Finance and their supervision is carried out by the Bank of Spain.

In order to obtain the authorisation and subsequent registration in the Registry of Payment Institutions at the Bank of Spain, Payment Institutions must comply with the requirements listed below:

- ◆ To take the form of a limited liability company.
- ◆ To have the following share capital:
 - ✓ Euros 20,000, when their business is only the money remittance.

- ◆ Euros 50,000, when their business is the execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device.
- ◆ Euros 125,000, when they provide any other payment service.
- ◆ To make a deposit in cash or national debt in favour of the Spanish Public Treasury, equal to 20% of the Payment Institution's capital.
- ◆ To establish appropriate measures for the protection of the Client's funds.
- ◆ To show commercial professional honorability among their shareholders and/or Directors.
- ◆ To have appropriate human and technical resources sufficient for carrying out their business.
- ◆ To comply with the legislation on anti money-laundering and data protection.

Establishing a Payment Institution in Madrid

It is necessary to make a difference between the Institutions authorised in another Member State and the ones authorised in a non-Member State.

◆ Institutions authorised in another Member State

A Payment Institution authorised to operate in another Member State may operate in Spain by setting up a branch, appointing tied agents or under freedom of services:

- ✓ Opening branches of Payment Institutions authorised in another Member State or the appointment of tied agents will not require prior authorisation, nor specific provision of funds.
- ✓ Once the Bank of Spain has received a notification from the Home State Regulator, the branch/tied agent will be entered in the appropriate special Register of the Bank of Spain, at which point the branch/tied agent may commence its business activity in Spain.
- ✓ Payment Institutions authorised to operate within another Member State may commence

their activity in Spain under freedom of services as soon as the Bank of Spain has received a notification from its Home State Regulator indicating which activities it intends to perform in Spain.

◆ Institutions authorised in a non-Member State

Further, foreign Payment Institutions may choose to set up a Payment Institution in Spain, in which case they should meet all the requirements laid down for incorporation and prior authorisation from the Ministry of Economy and Finance. In order to be able to obtain such authorisation, it is essential to comply with a series of requirements relating to organisation: minimum capital, shareholders, board of directors, administrative structure, procedures for control, feasibility of the project, etc.

Tax obligations of Payment Institutions

◆ Direct taxation of Payment Institutions

Payment Institutions are subject to Corporation Tax at a rate of 30%.

◆ Indirect taxation of Payment Institutions

Payment Institutions, as is the case with all other entities, are subject to the tax obligations set forth in the Value Added Tax legislation, since they are subject to tax under this law.

Financial operations in general, with certain exceptions, are tax exempt. Such operations include, among others, cash deposits and the transfer of deposits, granting of loans and credits and the transfer of loans, the provision and transfer of sureties, bonds and other personal and real guarantees, transfers, giros, cheques, bills, promissory notes, bills of exchange, credit cards, financial swaps, foreign exchange operations, share operations and mediation services relating to the above operations.

The main financial operations which are not exempt from Value Added Tax are, among others, the handling of the collection of loans, bills of exchange and debits, the services of management and deposit of securities and management and advisory services for investment portfolios and financial consulting.

With regard to the Transfer Tax and Stamp Duty (ITP and AJD) on incorporation, Payment Institutions are subject to the company operations regime and this tax amounts to 1% of the nominal value of the capital including share premium.

◆ **Taxation of the Branch of a Payment Institution**

Foreign Payment Institutions have the option of offering their services in Spain by opening a Branch. Since the Branch is considered to constitute a permanent establishment for tax purposes, it will be subject to Non-Resident Income Tax.

Nevertheless, under the provisions of the regulations on Non-Resident Income Tax, permanent establishments are taxable under the provisions of Corporation Tax, except where specific exceptions are applicable.

In this respect, the payments which the Branch makes to its parent company and other permanent establishments in foreign countries as royalties, commissions for technical assistance services, or for the use or transfer of goods and fees, are not deductible. Furthermore, a reasonable part of the management and general administration expenses corresponding to the permanent establishment are deductible, subject to the fulfilment of certain requirements.

However, setting up a Branch in Spain when the parent company has its registered office and effective management headquarters in a Member State of the EU other than Spain, or where at least the registered office is located in a Member State of the EU other than Spain, will not be subject to the Company Operations section of the Transfer Tax and Stamp Duty.

Otherwise, Branches are required to pay 1 % of the capital assigned by their parent company under the regime of company operations under the Transfer Tax and Stamp Duty (ITP and AJD).

Useful Contacts:

Bank of Spain (Banco de España): www.bde.es

Tax Authority (Agencia Tributaria):

www.agenciatributaria.es

Main relevant legislation:

- ◆ Law 16/2009, of 13 November, on payment services
- ◆ Royal Legislative Decree 4/2004, of 5 March, Approving the Consolidated Text of the Law on Corporation Tax
- ◆ Royal Decree 1777/2004, of 30 July, Approving the Corporation Tax Regulations
- ◆ Royal Legislative Decree 5/2004, of 5 March, Approving the Consolidated Text of the Law on Non-Resident Income Tax
- ◆ Law 37/1992, of 28 December, on Value Added Tax
- ◆ Royal Decree 1624/1992, of 29 December, Approving the Value Added Tax Regulations
- ◆ Royal Legislative Decree 1/1993, of 24 September, Approving the Consolidated Text of the Law on Transfer Tax and Stamp Duty