

March, 2015

ELECTRONIC MONEY INSTITUTIONS (EMIs)

INTRODUCTION

The purpose of this Legal Briefing is to provide an overview of the legal, regulatory and operational framework relevant for Electronic Money Institutions (**EMIs**) established in Cyprus.

The Electronic Money Law of 2012 (the “**Law**”) regulates the issue of electronic money in Cyprus, the issue of electronic money in any other country by a person located, residing, registered or established (as the case may be) in Cyprus, as well as the authorisation and prudential supervision of EMIs by the competent authorities. The Central Bank of Cyprus (**CBC**) is the competent authority for all cases except co-operative societies, in relation to which, the competent authority is the Co-operative Societies Supervision and Development Authority (**CSSDA**).

The CBC acting on the powers vested on it by the Law, has issued the Electronic Money Institutions Directive of 2012 (241/2012) (the “**Directive**”), which defines, *inter alia*, the supporting documentation required for an EMI application, the amount of initial capital and own funds required, methods for safeguarding the funds received by EMIs, the delegation of operational functions of EMIs to third parties, the right to freedom of establishment and provision of services in other member states, as well as the criteria which an agent of an EMI must fulfil in order to be listed in the public register maintained by the CBC.

WHAT ARE EMIs?

The Law defines EMIs as:

- Legal persons authorised to issue electronic money under Part III of the Law; or
- Legal persons authorised to issue electronic money by the competent authorities of another member state, provided the notification procedures specified in section 24 of the Law have been complied with.

ELECTRONIC MONEY

Electronic money means 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 by a natural or legal person other than the issuer.

Electronic money may be issued in Cyprus by persons falling in any of the following categories:

- a) Banks (licensed locally or by in another member state)
- b) Cooperative credit institutions



- c) Institutions providing postal payment services and which issue electronic money by virtue of relevant legislation
- d) The European Central Bank and the national central banks when not acting in their capacity as monetary or other public authorities
- e) Member states or their regional or local authorities when acting in their capacity as public authorities
- f) Electronic money institutions

PERMITTED ACTIVITIES

The persons listed in paragraphs (a)-(f) of the preceding section (and subject to the provisions of the Law, persons acting on their behalf), may engage or appear to engage in one or more of the following activities in Cyprus as a regular occupation or business activity:

- maintain a readily available electronic device, in which monetary value may be stored, for the purpose of placing electronic money in circulation
- maintain a readily available instrument for the distribution of electronic money for the purpose of placing electronic money in circulation
- receive monetary value in exchange for the distribution of electronic money
- distribute electronic money
- place electronic money in circulation
- sell or resell electronic money products
- renew the value of an electronic money product already in the hands of an electronic money holder
- when not acting in their capacity as payers, to distribute electronic money to a person holding or purporting to hold electronic money
- redeem electronic money held by a holder of electronic money
- acting in the capacity of an employee or other capacity on behalf of a third party, approach persons who are holders or potential holders of electronic money.

The Law provides that in addition to the issue of electronic money, EMIs may engage in the provision of payment services covered in their authorisation and the provision of credit in connection therewith, they may operate payment systems as well as engage in commercial activity or business (all without prejudice to the Law and other applicable and relevant laws as well as the directives issued by CBC). EMIs may engage in operational and closely related ancillary services which are related to the issue of electronic money or the provision of payment services.

EMIs shall not accept deposits or other repayable funds. It is noted that the exchange without any delay of funds collected with electronic money does not constitute acceptance of deposits.



AUTHORISATION OF EMIs

An EMI authorisation is only granted to a legal person who has been incorporated in and with head offices in Cyprus. Such person must submit an application to the relevant competent authority accompanied with all documents and information specified in the Directive.

The application consists of three questionnaires (EMD/Q1, EMD/Q2 and EMD/Q3), which are completed by the applicant, the applicant's controllers (legal or physical persons), directors and managers.

In addition, an application must be submitted along with the following:

- Program of operations
- Business plan
- Evidence of capital as per the prescribed minimum initial capital requirement (see below)
- Description of measures to comply with the fund safeguarding requirements of section 13 of the Law
- Description of governance and internal control mechanisms (including administrative, risk management and accounting procedures)
- Description of internal control for compliance with the obligations in relation to the Prevention and Suppression of Money Laundering Activities Laws of 2007 and 2010 and Regulation (EC) No 1781/2006 of the European Parliament on information on the payer accompanying transfers of funds, as amended or replaced
- Description of the applicants participation in a national or international payment system, the intended arrangements for outsourcing of operational activities, the intended use of agents and branches and the intended use of natural or legal persons for the distribution and redemption of electronic money
- Identity (as well as exact size of participation) of the direct or indirect controllers of the applicant including the natural persons that hold shares or voting rights in one or more legal persons that have control of the applicant
- Identity of directors, managers of the issue of electronic money and where relevant the provision of payment services activities, as well as evidence of their good repute, knowledge and experience. Clean criminal records, non-bankruptcy reports, information on professional and academic qualifications, managerial, board and employment positions as well as past experience in the issuance of electronic money or provision of payment services, must also be provided.
- Identity of auditors
- Articles of Association
- Head office address
- Description of audit and organisational arrangements for the protection of the interests of holders of electronic money and of the users of payment services and to ensure continuity and reliability in the issue of electronic money and the performance of payment services.



The EMI authorisation automatically terminates if it is not used within 12 months of its issue (or partly terminated for the activities for which no use of it was made), if it is expressly renounced by the EMI or if the EMI has not issued electronic money or not provided payment services for a period exceeding 6 months. In addition, the CBC has the power to revoke any authorisation granted in certain circumstances. Such revocation shall be duly justified, notified to the EMI and be made public.

TIME FRAME

The CBC is required to decide within three (3) months from receipt of a duly completed application for authorisation as an EMI and notify the applicant for the approval or rejection of the application.

INITIAL CAPITAL AND OWN FUNDS

A person applying for an EMI authorisation shall maintain at the time of authorisation, an initial capital of at least EUR 350,000.

An EMI is required to maintain own funds throughout its operation, the composition of which is specified by the Directive. The minimum own funds for the issue of electronic money is 2% of the average value of electronic money in circulation. An EMI's own funds may not at any time fall below the level of the initial capital.

If the EMI has not been operating for a sufficient time, the minimum level of own funds is calculated on the basis of the expected electronic money in circulation as documented in the business plan, subject to any amendments to this plan required by the CBC.

AGENTS

An EMI which intends to provide payment services via an agent, must apply for registration of such agent in the special register maintained by CBC. The registration application must be accompanied by all data and documents specified by the Directive – which include the name and address of the agent, the description of its internal control mechanisms to ensure compliance with applicable anti-money laundering laws, the identity of its directors and persons responsible for its management and evidence that they are “fit and proper” persons (copies of clean criminal records and non-bankruptcy certificates in particular).

OUTSOURCING

Outsourcing of operational activities in connection with the issue of electronic money or the provision of payment services to third parties locally or abroad is possible, subject to the competent authority being notified accordingly and provided the conditions specified in the Directive are met. It is noted that the ultimate responsibility for actions of third parties to which operational activities have been outsourced lies fully and unconditionally on the EMI itself.

It is further noted that the outsourcing of “important” operational functions may not be undertaken in such a way as to materially impair the quality of the EMI's internal control or the ability of the CBC to monitor compliance with applicable laws. An operational function is “important” if a defect or failure in its performance would materially impair the financial performance of an EMI or the continuity of the activity of the issue or redemption of electronic money, the continued provision of payment services or its continuing compliance with the requirements of its authorisation and applicable laws.



Further details on the conditions that must be met for outsourcing operational functions can be provided upon request.

SAFEGUARDING OF FUNDS

Funds received for exchange of electronic money and until money is redeemed must be either deposited in a separate account in a credit institution or invested in security and liquid assets of low risk. These funds must be segregated and legally protected against creditors, especially in cases of liquidation or insolvency. Further guidance on what constitutes liquid assets of low risk can be provided upon request.

The funds must also be covered by insurance policy or other comparable guarantee. The insurance company or guarantee provider shall not belong to the same group as the EMI. The insurance (or guarantee as the case may be) must be for an amount equivalent to that which would have been segregated, payable in the event the EMI is unable to meet its financial obligations.

Funds collected in the form of payment by payment instrument may not be safeguarded until they are actually credited in payment account or become available to the EMI in any other way. In any case, EMI shall safeguard such funds -at the latest- as from the 5th working day following issue of e-money.

RECORD KEEPING

Without prejudice to applicable anti-money laundering laws, an EMI must maintain records for at least five (5) years.

The purpose of this legal briefing is to provide a general guideline on the subject and not to be considered, in any way, as legal advice. It is advisable to seek professional and legal advice on this subject before proceeding with any general information provided to you. For further clarifications and advice please contact us at legal@economideslegal.com.