

COMMENTARY ON CERTAIN ISSUES CONCERNING THE LAW ON FUND TRANSFERS, ELECTRONIC PAYMENT INSTRUMENTS AND PAYMENT SYSTEMS AND ENACTMENTS REGARDING ITS APPLICATION

The Law on Fund Transfers, Electronic Payment Instruments and Payment Systems (hereinafter referred as LFTEPIPS or just LFT) was published in the State Gazette, issue 31 of 8 April 2005, and its greatest part entered into force six months after its publication in the State Gazette on 8 October 2005, and some of its provisions will enter into force on the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union.

In relation to LFT, the Bulgarian National Bank (BNB) has issued regulations on application of the Law - Regulation No 3 on Fund Transfers and Payment Systems as of 29 September 2005 (published in the State Gazette, issue 81 of 11 October 2005; effective as of 15 October 2005), Regulation No 16 on Electronic Payment Instruments (published in the State Gazette, issue 81 of 11 October 2005; effective as of 15 October 2005), and also Rules on the Activity of the Conciliation Commission for Payment Disputes (published in the State Gazette, issue 84 of 21 October 2005). **The current document also regards Regulation No 13, issued by BNB, on Applying the International Bank Account Numbers and Bank Codes** (published in the State Gazette, issue 36 of 26 April 2005, effective as of 30 April 2005).

LTF has a codification character, as for the first time important issues are regulated on legislative level regarding the relations between banks and their clients. LFT adopts the regulations given by the European Union directives in with the area of the fund transfers and payment instruments, and has been an element of the adaptation and harmonization of the Bulgarian legislation with the legislation of the European Union. The Law gives a high level of normative conclusions and technological neutrality, which is an opportunity for future high-tech achievements and know-how to fall within its scope.

1. The Law uses the general term “fund transfer” (also referred as “transfer” in the Law), which is defined as a transfer of monetary funds in favor of a beneficiary on the grounds of a transfer order, submitted by an ordering customer and accepted by an executing institution. **A non-cash transfer** is defined as a type of a fund transfer done via debiting and crediting of bank accounts.

The parties involved in the fund transfer are also defined – a customer (ordering customer or beneficiary; they may be one and the same person), **an executing institution** (of the ordering customer and of the beneficiary) **and an intermediary institution.**

The Law also regulates the terms for the execution of domestic and cross-border transfers, the fees and charges due in relation to fund transfers, the obligations of the commercial banks for providing information regarding fund transfers, as well as the procedure for correction of errors in case of domestic transfers and/or entries into the bank accounts. **Explicit legal regulation is also provided for fund transfers from non-bank institutions (e.g. WesternUnion, MoneyGram).**

2. Regulation No 3 of BNB introduces:

- **International Bank Account Number (IBAN)** - the bank shall inform the client in writing for his/her IBAN that has been generated upon the account opening.
- **Bank Identifier Code (BIC)**, provided to a bank by S.W.I.F.T. (Society for Worldwide Interbank Financial Telecommunication) under ISO Standard No 9362.

In addition, the new Regulation No 3 of BNB on fund transfers and payment systems introduces new standard forms of payment orders for the execution of fund transfers.

Banks should inform in writing the holders of the existing accounts for the respective IBAN until 1 March 2006, as on the same date they are obliged to provide their clients with IBAN for their accounts as well as with their BIC. IBAN numbers and the new standard forms of payment orders will be mandatory as of 1 June 2006. Till then the current bank numbers, bank accounts and standard forms of payment documents will be used.

3. LFT introduces legal regulation of the Electronic Payment Instruments (EPI) – of the current payment instruments for remote access - debit and credit cards, of the electronic banking payment order in a case of electronic bank services, as well as of the new institutes of electronic money and instruments for electronic money.

LFT explicitly indicates who can issue EPI and who can be an EPI authorized holder. EPI shall be issued only under a contract in writing between the issuer and the authorized holder. EPI may be used in settlements with third parties - merchants, in case the merchant has signed a contract in writing with the EPI issuer, under which the merchant is obliged to accept EPI payments, and the issuer is obliged to pay the merchant the amount due by the authorized holder after the EPI use before the merchant. Minimum contents of the contract and the reasons for which the merchant may refuse to accept a payment with an EPI are provided for in Regulation No 16 of BNB.

4. The generic term “payment system” has been introduced in the Bulgarian legislation for the first time. General provisions concerning payment systems have been provided for in the LFT, and it is envisaged that system operators operate the payments. Regulation No 3 of BNB also governs the types of payment systems and their operation, the procedure for issuance by BNB of a license for carrying out activities as a systems operator of a payment system, as well as the statutory audit and sign-off of the systems operator’s annual financial statements by a specialized audit enterprise.

5. LFT introduces new, alternative ways for out-of-court settlement of disputes, with regard to the disputes arising in relation to payment settlements and EPI use. It establishes a Conciliation Commission on Payment Disputes established at the Commission on Trade and Consumer Protection.

The information provided in this letter presents only a general view of the considered regulation and does not cover all issues governed by the Law on Fund Transfers, Electronic Payment Instruments and Payment Systems and by the regulations of BNB, issued in this regard. Its objective is not to give answers to specific cases, which have to be solved after careful consideration of the particular facts and circumstances.

Should any questions arise, please do not hesitate to contact us at tel. 943 37 00, fax 943 37 07, e-mail address: office@afa.bg or postal address at 38, Oborishte Str., Sofia 1504.