

Hogan Lovells Global Payments Newsletter

November 2016



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Welcome to the Hogan Lovells Global Payments Newsletter. In this monthly publication we provide an overview of the most recent payments, regulatory and market developments from major jurisdictions around the world as well as sharing interesting reports and surveys on issues affecting the market.

For our latest news and commentary on payments innovation, follow us on Twitter [@HLPayments](#).

For more information on our Payment Services team please click the link [here](#).

For more Financial Institutions resources please click the link [here](#).

Key Developments

Key developments of interest over the last month include:

- **UK PSR policy statement on IFR guidance (phase 2):** The UK Payment Systems Regulator has published a policy statement on guidance on its approach as a competent authority for the EU Interchange Fee Regulation. See our client briefing on the PSR's final guidance [here](#).
 - **Australia to regulate Bitcoin exchanges under AML laws:** The Australian government wants to begin drafting legislative proposals to update its anti-money laundering laws to include bitcoin and other digital currency exchanges by the middle of next year.
 - **Singapore and South Korea sign cooperation agreement in FinTech:** The agreement provides a framework for cooperation in FinTech between Singapore and South Korea. Under the agreement, the Monetary Authority of Singapore and the Korean Financial Services Commission will explore potential joint innovation projects on technologies such as big data and mobile payments.
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Regulatory Developments

Global

United Kingdom: FCA to update Approach Document for PSD2

- The FCA has this month published its Feedback Statement on the answers it received to its February Call for Input on the approach to the current payment services regime.
- The Call for Input asked for views on the guidance currently provided by the FCA to firms to help them comply with the payment services regime.
- The FCA have said that they will:
 - take into account market changes and address new technologies and business models;
 - provide guidance recent on regulatory initiatives and relevant legislation; and
 - combine the two approach documents on payment services and e-money into one document.
- The FCA's aim is to issue a consultation on necessary Handbook changes and updated guidance in 2017, and publish the final guidance in advance of the PSD2 implementation deadline in January 2018.

See the feedback statement [here](#).

Read more [here](#).

United Kingdom: Payments UK updates code of conduct for indirect access to UK payment systems

- On 29 September 2016, Payments UK published an updated version of its voluntary code of conduct for indirect access providers (**IAPs**).

- The main aim of the code is to improve the experience of indirect payment service providers by clearly setting out the responsibilities of IAPs.
- Payments UK consulted on revisions to the code in November 2015. It explained in an accompanying press release that the updated code reflects the main themes that arose from the consultation responses. In particular, it provides greater clarity, including revisions to the introduction, to terminology used and to information on the code's scope and purpose
- Payments UK will continue to monitor its effectiveness through compliance monitoring and engaging with stakeholders and the Payment Systems Regulation (**PSR**).

See the code of conduct [here](#).

United Kingdom: Bank of England consults on code of practice and supervisory statement on governance in recognised payment system operators

- On 29 September 2016, the Bank of England (**BoE**) published a consultation paper proposing a draft code of practice and supervisory statement relating to governance in recognised payment system operators (**RPSOs**).
- The BoE has decided to develop a code for payment system operators that have been recognised by HM Treasury under the Banking Act 2009. The code will provide transparency on the minimum requirements that all RPSOs to which the code applies must meet.
- The code will be binding on RPSOs to which it applies. If a RPSO fails to comply with its requirements, the BoE may take enforcement action against the RPSO.
- The BoE has also decided to introduce a Supervisory Statement (**SS**) to complement the code. The SS will set out in more detail how the BoE expects RPSOs to which the

code applies to comply with the provisions in the code. Unlike the code, the provisions in the SS will not in themselves be binding although they will provide RPSOs with guidance as to how the BoE will assess compliance with the code.

- The main focus of the consultation paper is on governance and related issues.

See the full consultation paper [here](#).

United Kingdom: PSR policy statement on IFR guidance (phase 2)

- On 6 October 2016, the PSR published a policy statement on guidance on its approach as a competent authority for the Interchange Fee Regulation (IFR).
- Regulation 13 of the Payment Card Interchange Fee Regulations 2015 states that the PSR may provide guidance on its approach to the IFR. The PSR decided to consult on the contents of this guidance in two phases. It finalised phase 1 in March 2016. The PSR consulted on phase 2 of the guidance in May 2016.
- The policy statement sets out the policy decisions taken on specific issues including:
 - Monitoring compliance with technical separation under Article 7(1)(a) of the IFR.
 - Co-badging under Article 8(2) of the IFR.
 - Unblending under Article 9 of the IFR.
 - The categories of cards for visual and electronic identification under Article 10(5) of the IFR.
- The PSR may revise the guidance from time to time to reflect changes in best practice or the law and its developing experience in monitoring and enforcing compliance with the IFR.

See our client briefing on the PSR's final guidance [here](#).

See the full policy statement [here](#).

See the full guidance [here](#).

United Kingdom: Minutes of Payment Services Stakeholder Liaison Group

- On 9 November 2016, the FCA published the minutes of the meeting of the Payment Services Stakeholder Liaison Group on 14 October 2016.
 - Items of interest in the minutes include the following:
 - HM Treasury reported that its consultation document on the UK implementing regulations for PSD2) was being finalised.
 - HM Treasury clarified that the provision relating to Article 36 of PSD2 (access to accounts maintained with a credit institution) will not mandate that credit institutions must provide payment service providers (**PSPs**) with access to payment account services (**PAS**).
- The FCA stated that HM Treasury's interpretation of Article 36 was that credit institutions would need to make available the criteria for assessing applications for PAS to PSPs requesting such access. The FCA and the PSR will monitor compliance with Article 36. Notifications will need to be provided to the FCA when a PSP has refused or withdrawn access to PAS, with reasons provided. The FCA requested input on what should be considered an

"application" for the purposes of Article 36 and invited views on which PAS are critical to providing payment services.

- The FCA invited views on what would be classed as sensitive payments data.
- It was suggested that the definition of online payment account access would be a useful topic for a future meeting.
- The next meeting of the group will take place in December 2016.

See the minutes of the meeting [here](#).

Europe: European Payments Council publishes response to EBA's consultation paper on draft regulatory technical standards on strong customer authentication

- On 21 October 2016, the European Payments Council (**EPC**) published its response to the European Banking Authority's (**EBA**) consultation paper on draft RTS on strong customer authentication and common and secure communication under PSD2.
- The EPC has also published a press release that highlights its main concerns.
- Comments made by the EPC in its response include:
 - The EBA's principles should be technology-neutral and future proof.
 - The exemption to the application of strong customer authentication solutions should cover contact card-based transactions in high-speed environments (such as vending machines) as well as contactless payments.

- The exemptions to the implementation of strong customer authentication solutions should remain optional.
- A PSP should have the option to apply strong customer authentication solutions when there is a risk of payment fraud or other abuses.

- The EBA published its consultation paper in August 2016.

See the full EPC response [here](#).

See the EPC press release [here](#).

Europe: EBA consults on guidelines for authorisation and registration under PSD2

- On 4 November 2016, the EBA published a consultation paper setting out draft guidelines on the information to be provided for authorisation as a payment institution and an e-money institution, and for registration as an account information service provider (**AISP**) under PSD2.
- The EBA is required to produce the guidelines under Article 5(5) of PSD2. PSD2 sets out information requirements when applying for authorisation as a payment institution and registering as an AISP.
- The draft guidelines specify the detailed information and documentation that applicants need to submit to national authorities in the authorisation or registration process.
- Since the information requirements differ depending on the type of PSP, the guidelines address payment institutions, AISPs, and electronic money institutions separately.
- The information required under the guidelines includes:
 - Details on the applicant's programme of operations.

- Business plan.
- Evidence of initial capital.
- Measures taken for safeguarding payment service users' funds.
- Applicant's governance arrangements and internal control mechanisms.
- Procedures to monitor, handle and follow up a security incident and security related customer complaints and to file, monitor, track and restrict access to sensitive payment data.
- Identity, and evidence of the suitability, of persons with qualifying holdings and of persons responsible for the management of the payment institution.

- The consultation closes on 3 February 2017, and the EBA will hold a public hearing on 12 December 2016.

See the consultation paper [here](#).

United Kingdom: FCA invites fintech startups and banks to apply to join its second regulatory sandbox

- Applications for the second cohort of the FCA's regulatory sandbox will open on 21 November and close on 19 January 2017, with testing commencing in May 2017.
- 18 firms have been deemed ready to proceed into the first cohort, with the first short-term and small-scale trials commencing shortly.

See more information [here](#).

See our client briefing [here](#).

France: Lemaire Law – New exemptions from licence requirements for electronic money institutions and payment institutions

- Article 94 of the law "for a numerical Republic" (*loi pour une République numérique*) introduces new exemptions from the requirement to hold a licence as an electronic money institution and / or a payment institution. These exemptions, which benefit network and electronic communication services providers, are introduced by two new articles in the French Monetary and Financial Code (**MFC**).
- Article L. 525-6-1 of the MFC provides that network and electronic communication services providers can, in addition to providing electronic communication services, issue electronic money for customers of the relevant network or services. However, the exemption only concerns limited transactions, one example of which is transactions relating to the purchase of digital content or voice services, regardless of the payment device used for the purchase or the consumption of the digital content, or for making donations. The amount of each single transaction must not exceed EUR 50 and the amount of monthly transactions must be less than EUR 300.
- A similar exemption has been introduced by article L. 521-3-1 of the MFC for payment services activities.
- However, entities wishing to benefit from these exemptions are subject to a prior declaration obligation to the French regulator. It can take the French regulator up to three months from receipt of the declaration to notify the declarant whether or not the requirements associated with the exemption(s) have been met.

See the legislation [here \(in French\)](#).

France: Law proposal – Supervision of prepaid cards use

- A proposed law aiming at regulating the use of prepaid and anonymous cards was tabled in the National Assembly on 7 October 2016.
- The objective of the proposal is to fight against fraud, money laundering and terrorism.
- This law proposal would:
 - amend article L. 315-9 of the MFC by limiting the maximal amount stored on prepaid cards to EUR 500, and the maximum amount of each (re-)loading, refund and withdrawal to EUR 100;
 - amend article L. 561-15-1 of the MFC by making it compulsory to declare any transactions involving the transfer of funds by means of cash payment or electronic money in excess of EUR 100 to the French Financial Intelligence Units.

See the proposal [here \(in French\)](#).

Switzerland: Swiss lawmakers take steps towards Bitcoin regulation

- The country's Federal Department of Finance has outlined its plans to regulate fintech, with an eye to introduce legislation sometime next year.
- Key elements include plans for a new kind of licence geared specifically toward fintech companies, and a so-called regulatory "sandbox" for experimental firms.
- Under the proposed regime, the Financial Market Supervisory Authority would become the primary regulator of fintech firms working in Switzerland.

See more information [here](#).

Asia: Singapore and South Korea sign cooperation agreement in FinTech

- On 24 October 2016, the Monetary Authority of Singapore (**MAS**) and the Korean Financial Services Commission (**KFSC**) signed a cooperation agreement to foster greater cooperation in FinTech.
- The agreement provides a framework for cooperation in FinTech between Singapore and South Korea. Under the agreement, MAS and KFSC will explore potential joint innovation projects on technologies such as big data and mobile payments.
- MAS and KFSC will also discuss issues of common interest, and share information on FinTech trends and how it may impact existing regulations.
- Sopnendu Mohanty, Chief FinTech Officer, MAS, said: *"this agreement lays the groundwork for deeper FinTech collaboration between Singapore and South Korea."*

See more information [here](#).

Singapore: Singapore hosts first EU- Asia-Pacific forum on financial regulation

- On 14 October 2016, MAS hosted regulators from the European Union (**EU**) and the Asia-Pacific Region at the inaugural EU-Asia-Pacific Forum on Financial Regulation (**the Forum**).
- The Forum seeks to enhance information exchange between regulators from the EU and the Asia-Pacific region on a number of key aspects related to cross-border cooperation.
- These include the current regulatory framework governing financial services at EU level and in the jurisdictions of the Asia-Pacific region; future regulatory developments at EU and at Asia-Pacific level; issues and challenges that may arise in cross-border coordination for regulatory purposes; and forward-looking and emerging policy priorities for the global regulatory agenda.

See more information [here](#).

Australia: Australia to regulate bitcoin exchanges under AML laws

- The Australian government wants to begin drafting legislative proposals to update its anti-money laundering laws to include bitcoin and other digital currency exchanges by the middle of next year.
- The proposed plan was released months after the Australian government released a broad policy statement on fintech, which included proposals to reduce the tax burden on bitcoin activity in the country and explore other legislative options related to the technology.
- The Australian Attorney-General's Department wrote: *"the AML/CTF Act should be amended to regulate activities relating to convertible digital currency, particularly activities undertaken by digital currency exchange providers."*

See more information [here](#).

Payment Market Developments

Global

United Kingdom: Transport for London supports contactless payments for black cabs

- Transport for London (TfL) has announced that all black cabs are now using contactless technology, allowing passengers to pay for any journey using a compatible credit or debit card.
- In February 2016, TfL announced it would require all black cab drivers to accept card payments by October 2017. At that time, only half of all London's 22,500 licensed taxis accepted cards

See more information [here](#).

Europe: Circle formally launches social payment apps in Spain and Ireland

- The app enables customers in Spain and Ireland to connect any Spanish or Irish bank account to Circle.
- This will enable the customer to send and receive P2P payments, with native Euro support, to friends and family within their countries and across borders instantly, at the best exchange rate available to consumers, with zero fees.

See more information [here](#).

United States: Walmart to accept Chase Pay in-app and in-store

- Walmart has plans to enable its customers to make payments via the mobile payment service online and in-app as well as in-store, by integrating Chase Pay within its own Walmart Pay QR code-based mobile payment service.
- The service will launch for mobile payments at participating merchant registers and a form of payment in merchant apps later in 2016, according to JPMorgan Chase.

See more information [here](#).

India: Cellum teams up with M-Snap to launch mobile commerce platform

- The mobile transaction service, to be marketed as PAYSNAP, will provide merchants and end-users with an open and interoperable platform delivering a uniform transaction experience across payment channels. It will also support various funding sources, including India's national payment system UPI, as well as credit and debit cards.
- The customer-facing app for Android and iOS will allow users to recharge prepaid phone balances, pay utility bills and send money and gift cards to other users, as well as to make purchases both in-store, on-the-go and online.
- The joint venture will aim to reach at least 50 million smartphone users in India within five years.

See more information [here](#).

United Arab Emirates: Etisalat to launch mobile wallet

- Etisalat says the wallet will enable subscribers to use their smartphone to pay utility bills, top up airtime, pay for parking in different cities, purchase a broad range of goods and services, and perform money transfers.
- Rashed Al Abbar, vice president of consumer innovations at Etisalat, said: *"UAE is at the forefront of digital payment development so it was critical for Etisalat to provide its subscribers with innovative m-commerce and m-banking services."*

See more information [here](#).

Latin America: Uber partners with Bankaool to launch Latin American debit card

- Uber Bankaool card is the first debit card to be launched in Latin America by Uber.
- According to Francisco Meré, the CEO of Bankaool, *“this reflects how Fintechs with an open IT architecture can work together with IT companies, bringing innovative and disruptive solutions to an increasing number of markets.”*

See more information [here](#).

Japan: Multiple Japanese banks join blockchain consortium

- A Japanese bank consortium planning to build a new real-time payments platform using technology from blockchain joint venture SBI Ripple Asia has expanded to 42 banking members.
- The consortium will promote discussion from both technical and operational perspectives on activities required in domestic and foreign exchange services *“to utilise blockchain and other new technologies, consolidate domestic and foreign exchange services, and build 24-hour and real-time remittance infrastructure”*.
- The group has set a March 2017 deadline for delivery of a proof-of-concept, ahead of a full commercial build.

See more information [here](#).

Africa: eCurrencyMint to launch digital currency in Africa

- On 4 November 2016, eCurrency Mint Limited announced that it had partnered with Banque Régionale de Marchés (**BRM**) to provide a digital currency, eCFA, in the West

African Economic and Monetary Union (**WAEMU**).

- eCFA is a secure digital instrument that can be transacted across all existing payment platforms and will be equivalent in value to physical legal tender.
- eCFA can only be issued by an authorised financial institution. It uses high security cryptographic protocols to ensure that it cannot be counterfeited or compromised.
- BRM will issue eCFA in compliance with the e-money regulations of Banque Centrale des Etats de l’Afrique de l’Ouest (the Central Bank of WAEMU). BRM announced the eCFA distribution will begin in Senegal and will be extended in a second phase to Cote d’Ivoire, Benin, Burkina Faso, Mali, Niger, Togo and Guinea-Bissau.
- With only 20 per cent of Africa’s population having access to basic banking services, a secure electronic means of transacting will enable far more people to access banking services.

See more information [here](#).

Global: Samsung Pay teams up with MasterCard to expand online payments

- Malaysia, Russia and Thailand will be the next three countries on the Samsung Pay roadmap. This will bring the total number of nations supporting the m-payment service to 10 by the end of 2016.
- The new service will make Samsung Pay available on laptops and PCs, as well as mobile handsets.

See more information [here](#).

Surveys and Reports

United Kingdom: Cheque use still decreasing

- A new report published by Payments UK has shown that fewer cheques were written last year as a result of increased popularity of debit card and electronic methods of payment amongst consumers and businesses.
- 558 million cheques were written in 2015. This was down by 13 per cent in 2014, when 644 million cheques were written.
- However, the report found that nearly seven in ten of people aged over 65, and 55 per cent of businesses, still use cheques. This contrasts with the report's finding that 88 per cent of 16 to 34 year olds never write cheques.
- The report concluded that the annual rate of decline in cheque volumes is expected to slow as their use becomes more concentrated amongst those who have a strong preference for paying by cheque – for example, older people and smaller businesses.

See more information [here](#).

United States: Online payments estimated to reach \$385 billion in 2016

- BI Intelligence has estimated that US consumers will spend \$385 billion online in 2016, which will rise to \$632 billion in 2020.
- The number of online shoppers has grown by nearly 20 million between 2015 and 2016, and the number of online transactions has risen by 115 million during the same period.
- According to businessinsider.com, the average US retail growth was 16 per cent for ecommerce, compared to just 2 per cent for total retail.

See more information [here](#).

Global: Mobile shopping and purchasing common place worldwide

- According to a new report from the Interactive Advertising Bureau (**IAB**), 75 per cent of smartphone and tablet users have purchased a product or service on their devices in the past six months. Nearly a quarter of these users had bought products on their mobile devices on a weekly basis.
- The IAB report noted that Austria, Peru, and Colombia are the key new adopter markets, with significantly more consumers making their first purchase on mobile within the past year.
- 62 per cent of those surveyed stated that they planned to purchase more products and services using their device in the next six months.

See more information [here](#).



United Kingdom: One fifth of all UK card payments now contactless

- The UK Cards Association revealed that in August 2016, contactless cards were used for 21 per cent of card payments – totalling £2.3 million. This compares to contactless cards being used for just 7.9 per cent of card transactions in August 2015.
- The number of contactless transactions increased from 89 million in August 2015 to 260.7 million in August 2016, while the number of contactless debit cards in circulation increased from 74.5 million to 97 million in the same period.

See more information [here](#).

- The Middle East and Africa and Asia-Pacific were the fastest growing regions for payment cards in 2015, with card numbers increasing by 13 per cent and 10 per cent respectively.

See more information [here](#).

Global: Online commerce growth dependent on mobile retail commerce

- Mahindra Comviva and Aite Group's study found that online commerce market growth is dependent on mobile retail commerce.
- The study predicts that the global online commerce market will grow to USD\$7,114 billion by 2020, with mobile retail commerce playing an important part in this growth.

See more information [here](#).

Global: Debit cards to fuel global payment card expansion

- Retail Banking Research's (**RBR**) new study shows debit cards are growing faster than credit cards.
- The study forecasts that the number of cards worldwide will rise from 13 billion at the end of 2015 to 17 billion by the end of 2021 – an increase of 28 per cent.
- Debit cards will contribute the majority of this growth. They make up 70 per cent of payment cards globally (up from 68 per cent in 2014). RBR forecast that debit cards will represent 72 per cent of all payment cards by 2021.

Our Global Payments Team

Hogan Lovells' global payments practice is made up of financial services and technology lawyers working closely together as a single team from our network of offices, including offices in all the major financial centres.

The practice covers traditional payment services as well as technology driven innovations that affect products, business structures, services and markets.

Our Clients

The team provides strategic advice to all market participants including:

- lenders
- card issuers (including banks and e-money institutions)
- acquirers
- money remitters
- payment schemes
- mobile operators
- retailers
- payment platforms or technology providers
- payment processors
- networks and settlement services

How we can help

In addition to advising on payment specific regulation, the team:

- advises on all related regulation such as money laundering, data and privacy, technology law and IP, e-commerce and consumer protection
- negotiates commercial contracts
- leads or supports on mergers and acquisitions in the payments sector
- engages with Government on new regulation and implementing new legislation
- advises on multi-party arrangements to develop new payment services or networks and on related loyalty and incentive programmes
- negotiates outsourcing of payments processing and settlement
- drafts related customer and commercial documentation

The global payments practice is part of Hogan Lovells market leading Financial Institutions Group, one of the largest practices of its kind with approximately 200 lawyers worldwide.

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