



Hogan Lovells Global Payments Newsletter

October 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:

- **United States judge rules that bitcoin is money:** *"Bitcoins are funds within the plain meaning of that term. Bitcoins can be accepted as a payment for goods and services or bought directly from an exchange with a bank account. They therefore function as pecuniary resources and are used as a medium of exchange and a means of payment."*
 - **Bank of England sets 2020 deadline for overhaul of its Real-Time Gross Settlement system:** A consultation paper has been issued by the BoE that lays out five key requirements of the RTGS system. The BoE will have to rebuild the current technology platform to achieve this.
 - **Singapore and Switzerland to expand cooperation on FinTech:** The Monetary Authority of Singapore and the Swiss Financial Market Supervisory Authority have signed a cooperation agreement to foster greater cooperation on FinTech.
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Regulatory Developments

Global

United Kingdom: Bank of England sets 2020 deadline for overhaul of its Real-Time Gross Settlement system

- On 16 September 2016, the Bank of England (BoE) issued a consultation paper laying out its plans for modernisation of the RTGS system.
- In this consultation, the BoE explains that RTGS is where banks hold their sterling bank accounts. They can store balances on these accounts or use them to make payments. On an average day, RTGS settles around £500 billion between banks.
- There are five key requirements of the RTGS system, including that the service must be capable of responding to the changing structure of the financial system, and that it must have the capacity to support the future evolution of regulatory and monetary policy tools.
- The BoE will have to rebuild the current technology platform to achieve this.
- Responses to the consultation must be submitted by 7 November 2016.

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

United Kingdom: Payment Systems Regulator issues designation decision on alternative switching services under Payment Account Regulations

- On 14 September 2016, the Payment Systems Regulator (PSR) published a decision designating the Current Account Switch Service operated by Bacs Payment Schemes Limited as an alternative arrangement under the Payment Accounts Regulations 2015 (PARs).
- The PSR has the power to issue a designation certificate declaring a switching service to be an alternative arrangement under Regulation 15 and paragraph 3(1) of Schedule 4 to the PARs.

- The PSR explained that switching services (or switching schemes) allows consumers to move their payment accounts from one payment service provider to another.
- To be designated as an alternative switching scheme, the scheme must meet certain criteria set out in the PARs, including that it must clearly be in the interests of consumers.

See the full PSR decision [here](#).

United Kingdom: HM Treasury releases policy paper on the Payment Accounts Directive

- On 18 September 2016, HM Treasury published a policy paper containing information about how the UK government has met its obligation to implement the Payment Accounts Directive (PAD) by that date.
- The policy paper summarised the position of PAD, including that:
 - The FCA and the PSR have been appointed as competent authorities under the PARs;
 - The PARs require payment service providers to offer customers a switching service between payment accounts; and
 - The government has designated the nine largest providers of current accounts in the UK under the PARs, meaning the nine banks are legally required to offer basic bank accounts to eligible customers from 18 September 2016.

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

United Kingdom: PSR receives super-complaint from Which? on safeguards in push payments market

- On 23 September 2016, the PSR published a press release announcing that it has received a super-complaint from Which? relating to concerns around consumer safeguards in the market for push payments.
- Which? is concerned that when consumers are tricked into transferring money to a fraudster through a "push" payment (*e.g.* when the consumer instructs their bank to send money), there is not an appropriate level of protection compared to other types of payment.
- In particular, Which? believes an investigation is needed to address the following:
 - The extent to which banks could change their conduct to reduce consumer harm from scams that trick people into authorising push payments to a fraudster; and
 - Possible changes to legislation or regulation in order to change the incentives on banks and payment system operators, and to ensure that more is done to manage the risks from these types of scams and to protect consumers from harm.
- This is the first super-complaint that the PSR has received. The PSR must respond to a super-complaint within 90 calendar days.

See more information [here](#).

Europe: EBA publishes consultation paper on draft technical standards under PAD

- On 22 September 2016, the EBA published a consultation paper on draft technical standards on fee terminology and disclosure documents under PAD.
- In the paper, the EBA set out:
 - Draft regulatory technical standards setting out the standardised terminology for services that are common to at least a majority of member states; and
 - Draft implementing technical standards relating to a standardised presentation format for:
 - the fee information document (**FID**) and its common symbol; and
 - the statement of fees (**SoF**) and its common symbol.
- The draft technical standards aim to standardise eight terms for services that are to be used by payment service providers (**PSPs**), as well as consumer-friendly definitions of these terms in all EU official languages.
- PSPs will have to use the proposed standardised terminology in two disclosure documents: the pre-contractual FID and the post-contractual SoF.
- The consultation closes on 22 December 2016.
- The EBA will be holding a public hearing on the consultation paper on 21 November 2016.

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

Europe: EBA consults on guidelines on minimum professional indemnity insurance under PSD2

- On 22 September 2016, the EBA published a consultation paper on draft guidelines on the criteria competent authorities should follow when stipulating the minimum monetary amount of the professional indemnity insurance

(PII) or comparable guarantee for undertakings that apply to provide payment initiation services or account information services under PSD2.

- As well as setting out the proposed criteria, the EBA also:
 - Explains its proposal to use a formula for the calculation of the minimum monetary amounts;
 - Explains when and how the lowest tier (that is, a default value) should be used;
 - Provides details on indicators for the criteria set out in PSD2 and the calculation method proposed for some of the indicators; and
 - Provides practical examples of calculations of the minimum amount of PII or comparable guarantee.

— The consultation closes on 30 November 2016.

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

United States: Blockchain Support Bill passes vote in US Congress

- On 12 September 2016, a non-binding resolution was passed by the US House of Representatives, calling on the US Government to craft a national policy for technology, with specific mentions for digital currencies and blockchain.
- Rep. Michael Burgess, a Republican from Texas, said "*there's no doubt that blockchain innovations are on the cutting edge today*".
- It remains to be seen whether the next session of Congress will take up a more substantive bill that focuses on bitcoin and blockchain specifically.

More information can be found [here](#).

United States: Judge rules that bitcoin is money

- The defendant in a case argued that two of the eight criminal charges he faced in connection with his alleged operation of the virtual currency exchange Coin.mx should be dismissed because Bitcoin does not qualify as "funds". In contrast, the prosecutors in the case called Coin.mx an "unlicensed bitcoin exchange".
- The Manhattan US District Judge rejected the defendant's argument, stating: "*Bitcoins are funds within the plain meaning of that term. Bitcoins can be accepted as a payment for goods and services or bought directly from an exchange with a bank account. They therefore function as pecuniary resources and are used as a medium of exchange and a means of payment.*"

See more information [here](#).

Singapore: Drawing a Line in the Sandbox – Boundaries for FinTech Regulation in Singapore

- Singapore is set to create new opportunities for businesses and consumers by establishing a "regulatory sandbox" (the **Regulatory Sandbox**).
- The Monetary Authority of Singapore (MAS) has released a consultation paper on the proposed guidelines for the Regulatory Sandbox that will enable financial and non-financial institutions to experiment and develop new FinTech solutions in a safe environment.
- The Regulatory Sandbox is a compromise space between the MAS and innovators, where original solutions can be tested against relaxed regulatory rules that are defined on a case-by-case basis.
- Actual regulation will only commence when FinTech companies grow to a size that could pose risks to consumers and the wider financial system.

- Public consultation on the Regulatory Sandbox closed on 8 July 2016, and the final guidelines are expected from the MAS in the coming months.

More information can be found [here](#).

Singapore and Switzerland: Expanding cooperation on FinTech

- On 12 September 2016, the MAS and the Swiss Financial Market Supervisory Authority signed a cooperation agreement to foster greater cooperation on FinTech.
- The initiative was launched at the second Financial Dialogue between the MAS and the State Secretariat for International Finance.
- The annual Dialogue aims to deepen bilateral cooperation and exchange views on domestic and international financial market developments and policies.

More information can be found [here](#).

Singapore: Financial regulator sets out strategies for electronic payments in Singapore Payments Roadmap

- The “Singapore Payments Roadmap” is a collaborative effort by the MAS and KPMG, and was published in August 2016.
- More than 2,500 stakeholders in Singapore and across the world were surveyed to understand the current state of payments systems, focusing on how businesses and consumers make payments.
- KPMG found that Singapore had the necessary components to be a best-in-class jurisdiction in the area of payments but would need to take several steps to improve the landscape, notably:
 - Streamline and strengthen the regulatory framework;
 - Establish a new governance model for payments; and
 - Enhance the adoption of electronic payments.

The payments roadmap report can be found [here](#).

Thailand: FinTech sandbox to be established

- Thailand is the latest country preparing to open a FinTech regulatory sandbox. The central bank is poised to invite firms to participate in early 2017.
- The sandbox will enable developers working on lending, payment and money-transfer services and products to experiment for up to a year.
- Participants will be guided on how to develop products and services that comply with regulations, enabling them to quickly receive licences.

See more information [here](#).

Global: Committee on Payments and Market Infrastructures task force on wholesale payments security

- On 16 September 2016, the Bank for International Settlements published a press release announcing that the Committee on Payments and Market Infrastructures (CPMI) had established a task force to review the security of wholesale payments involving banks, financial market infrastructures, and other financial institutions.
- The first phase of the task force's work will be to review current practices in this area. Based on its findings, the CPMI will decide on the next steps to take.
- This initiative builds on previous CPMI work on cyber security and operational risk and, more generally, existing procedures to continuously test and strengthen infrastructure.

See the press release [here](#).

Payment Market Developments

Global

Germany: N26 enables money transfers via Siri and iMessage

- German bank N26 has introduced services allowing users to transfer money to friends by talking to Siri, or request money from their N26 contacts using iMessage.
- The service allows transactions of up to 25 EUR per transaction and 100 EUR per day.

See more information [here](#).

France: BNP Paribas extends crowdfunding blockchain programme

- BNP Paribas Securities Services is expanding its blockchain platform for private stocks to help unlisted companies issue minibonds via crowdfunding platforms.
- Marc Younes, head of business management at BNP Paribas Securities Services' innovation and digital lab, said: "*Blockchain technology is particularly suited to the fundraising needs of private companies as transactions volumes are typically lower than for listed companies. This technology could also serve to standardise processes around the trade lifecycle of minibonds.*"

See more information [here](#).

France: PayPal launches a free money transfer service between private individuals

- PayPal has launched a free money transfer service for use by private individuals.
- The service is free of charge, provided that the transfer is performed in euros between two PayPal accounts within the European Economic Area. This is irrespective of the means of payment used to initiate the transaction (*e.g.*, payment card, bank account or directly through a PayPal account).
- The payment can be initiated through the PayPal mobile app or PayPal website.

See more information [here](#).

India: Intex Technologies and mRupee to introduce mobile wallet service

- The service, called "Intext MyWallet", will allow users to make all payments with integrated payment functionalities within the device, including shopping, money transfers and booking train tickets.
- Intex wallet customers will be rewarded for accessing content and other utilities in order to boost service usage. This will help customers earn loyalty bonuses, which can be redeemed for talk time and recharges.

See more information [here](#).

Africa: Ericsson and Vodafone M-Pesa bid to simplify safe water payments in Africa

- The service will connect M-Pesa with the growing network of Grundfos safe water kiosks throughout Kenya and Tanzania, with other countries to follow. Grundfos' intelligent and connected water kiosks dispense safe drinking water in the developing world.
- The integrated payment service simplifies payment for safe water and will address the issue of 50,000 failing rural water supply points by using efficient cash collection to reduce the risks of cash management and overhead costs for a scalable safe water solution.

See more information [here](#).

Africa: Visa takes on M-Pesa with Kenyan mobile payments service

- Visa is working with Kenyan banks to offer a new mVisa service that will enable consumers to access all the funds in their bank accounts to pay merchants and people. Transactions run through the Visa network, meaning the consumers and merchants do not need to be customers of the same bank or mobile operator.

- The Co-Operative Bank, Family Bank, KCB and NIC Bank have all signed up to the service.
- mVisa first launched last year in India, where 30,000 merchants and several banks have now signed up to it.

See more information [here](#).

Surveys and Reports

Europe: Major rise in card payments by 2021

- A new study by Retail Banking Research (RBR) shows that consumers are increasingly turning to cards to make purchases, as indicated by the number of card transactions growing nearly twice as fast as the number of new cards – at 15 and 9 per cent respectively.
- The number of card payments worldwide will rise to a projected 417 billion (a 55 per cent increase) between 2015 and 2021. Comparatively, card numbers are predicted to grow by 28 per cent over the same period.
- According to RBR, the strongest growth in card payment volume will be in the Middle East, Africa, central and eastern Europe and Asia-Pacific.

See more information [here](#).

United States: Nearly 6 in 10 US adults bank by mobile at least once a month

- A survey from the American Bankers Association (ABA) has found that more than one third of Americans manage their bank account using a mobile device more than three times per month, and more than half do so at least once a month.
- The ABA also found that nearly three-quarters of mobile banking users were highly satisfied with their bank's app.
- Nessa Feddis, ABA Senior Vice President and Deputy Chief Counsel for Consumer Protection and Payments, noted *"a large majority of bank apps are grading well, but there's always room for growth, and we expect to see even more improvements in design and functionality as banks increase investment in this space."*

See more information [here](#).

United States: Asset managers expect to be using blockchain in five years

- A survey by Roubini ThoughtLab has found that nearly two-thirds (64 per cent) of asset managers expect to be using blockchain technology within the next five years.
- 45 per cent of respondents stated that they were targeting blockchain in the short term, which indicates they expect the technology to become a bigger part of their business by 2021.
- Respondents also expected artificial intelligence and virtual reality use to grow the fastest over the next five years.

See more information [here](#).



Africa: consumers prefer smartphones over any other devices

- A MasterCard Impact of Innovation study has shown that consumers in Africa prefer to use smartphones over any other device.
- 1,000 internet users in Egypt, Kenya and South Africa were surveyed. They were between the ages of 20 and 50.
- The study found that 95 per cent of Kenyans were using their smartphone as their primary device, and 95 per cent of South Africans used their smartphone more than any other device.
- Two thirds of those surveyed in Egypt stated that they would rather use their mobile device to make payments over the use of a traditional card payment.

See more information [here](#).

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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