Poland

ELECTRONIC BANKING
Electronic payment instruments
Electronic Payment Instruments Law implements EU legislation

Law on Electronic Payment Instruments
Passed September 12, 2002; in force October 10, 2003

The Law on Electronic Payment Instruments (EPI Law) implements EU legislation in this area, including specifically Directive 2000/46 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, and Commission Recommendation 97/489 of July 30, 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder.

The EPI Law should improve the rights of the holders of payment cards, mostly consumers, and give them protection, above all else, against banks and other issuers of electronic payment instruments (EPIs), imposing disclaimer clauses limiting the liability of issuers for unauthorised use of EPIs.

When the EPI Law comes into force, it will create the first detailed regulation of EPIs. It will not, however, apply to the EPIs used by banks to effect mutual payments in interbank settlement systems.

The EPI Law regulates, *inter alia*, such issues as:

- form and content of EPI agreements;
- activities of settlement agents and their agreements with acceptants;
- rights and obligations of acceptants of EPIs;
- operation of non-banking issuers of payment cards;
- rights and obligations of issuers of payments cards and their holders;
- e-banking services;
- conditions of operation and supervision of electronic money institutions.

The EPI Law strongly protects holders of EPIs, through the following provisions:

- an EPI issuer can only terminate an agreement with a holder for material reasons;
- a holder is not responsible for use of the EPI without consent;
- an acceptant can only refuse to accept payments made by use of an EPI for the limited reasons enumerated in the EPI Law;
- an acceptant may retain the EPI only for the limited reasons enumerated in the EPI Law;
- a holder may rescind from an agreement for a payment card within 14 days of receipt of the card;
- a bank or other electronic money institution may not contractually limit or exclude its liability toward the EPI holder for failure to execute properly an operation which has been requested because of malfunctioning equipment, the use of which had been accepted by the bank or the electronic money institution.

The regulation of e-banking services included in the EPI Law is provided in addition to general regulation under the Polish banking law, general regulations on the bank account agreement in the Polish Civil Code, and the law on providing electronic services implementing the provisions of Directive 2000/31 on certain legal aspects of information society services, in particular electronic commerce, in the internal market.

The EPI Law specifies necessary elements of the agreement on rendering e-banking services and general obligations of the bank and the account holder. It should also be noted that, as opposed to payment cards, an order for a particular operation may be cancelled by the holder making it as long as the operation has not been effected by the bank. The provisions on e-banking services, however, are mostly very general and the regulation for rendering e-banking services included in the EPI Law cannot be considered as comprehensive.

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Portugal

SECURITIES REGULATION
Collective investment schemes
Public discussion on draft decree-law establishing new regime for collective investment schemes in transferable securities

Portuguese Securities Market Commission

The Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*—CMVM) has published for public discussion a draft decree-law establishing the new regime applicable to undertakings for collective investment schemes in transferable securities (UCITS). The draft adopts Directive 2001/107 amending Directive 85/611 on the co-ordination of laws, regulations and administrative provisions relating to UCITS with a view to regulating management companies and simplified prospectuses, and Directive 2001/108

amending Directive 85/611 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for UCITS, with regard to investments of UCITS. In addition, the draft introduces the possibility of UCITS having a corporate structure—open-ended (SICAVs), or close-ended (SICAFs).[1] Finally, the draft takes the opportunity to make other changes to the current regime.

The draft qualifies as UCITS any scheme to collect assets from the public with the purpose of investing or managing them collectively according to a principle of risk sharing and in the sole interest of the investors.

The draft considers that there is a collection of assets from the public in the following cases: (a) the offer is addressed to at least 30 addressees; (b) it is addressed to undetermined addressees; (c) it is preceded or made simultaneously with promotion or marketing activities. These criteria are also used to determine if certain promotional and sales activity of units in UCITS will qualify as a regulated marketing activity.

The changes resulting from the directives focus on three main areas: (a) management companies; (b) UCITS; and (c) information to be provided to investors.

In relation to management companies, new rules applicable to authorisation requirements and the use of the European passport are introduced. This is made through amendments to the Credit and Financial Institutions Act (*Regime Geral das Instituições de Crédito e Sociedades Financeiras*).

Also in relation to management companies, the draft establishes a classification of its activities: (a) investment management; (b) administrative management; and (c) marketing. This distinction is particularly relevant in relation to the rules of delegation of the different functions.

In relation to UCITS, the investments policy rules have become more flexible, and the core investments now include, in addition to securities, money market products, units in UCITS and financial derivatives. On the other hand, stricter rules are applicable in relation to risk concentration.

In relation to the provision of information, a major change relates to the enhancement of the role of the simplified prospectus. The simplified prospectus can be used to market Portuguese UCITS abroad and to market foreign UCITS in Portugal. In relation to the marketing of foreign UCITS in Portugal, it should be noted that the production of a Marketing Supplement (*Nota Informativa Complementar*) will no longer be required.

Another relevant change relates to the end of the requirement to publish certain information, notably the units' net asset value, in the Euronext Gazette (*Boletim de Cotações da Euronext*). According to the new regime, any publication or announcement of information which is mandatory by law can be made, unless otherwise determined, by one of the following means: (a) the CMVM information spreading system (internet); (b) through a relevant national means of communication; or (c) the official bulletins of the management companies of the Portuguese markets.

According to the draft, Portuguese UCITS must adopt the new rules within 24 months of the entry into force of the new regime, whilst the directives' deadline is February 13, 2007. The new decree-law will come into force on the day after its publication, also shorter than required by the directives, which require that the new regime should come into force by February 13, 2004.

[1] This particular change is not addressed in this note as it was the subject of a note published at [2003] J.I.B.L.R. N–28.

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South Africa

FOREIGN EXCHANGE
Legislation

Gold and Foreign Exchange Contingency Reserve Account Defrayal Bill
B17-2003

The aim of this Bill is to seek parliamentary authority for the defrayal of a loss accrued on the Gold and Foreign Exchange Contingency Reserve Account (GFECRA) as a direct charge against the National Revenue Fund. Balances in the Reserve Bank's Gold Price Adjustment Account, Foreign Exchange Adjustment Account and Forward Exchange Contracts Adjustment Account are transferred to the GFECRA at the end of each financial year. A credit balance in this account is for the benefit of the National Revenue Fund and a debit balance is a loss for government and a charge against the National Revenue Fund. Such a loss must be carried forward in the GFECRA until the Treasury and the Bank deem it desirable to settle the outstanding balance, and a loss will be defrayed from money appropriated from parliament. According to the Memorandum on the Bill, on March 31, 2002 the debit balance in the account was R28,024 million, which