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GlobalDenmark Translations, September 2009

Payment Services Act¹⁾

Act no. 385 of 25 May 2009

We Margrethe the Second, by the grace of God Queen of Denmark hereby witness: Folketinget (the Danish Parliament) has adopted and We with Our consent hereby enact the following Act:

Part 1

Scope and Definitions

Scope

1.-(1) This Act shall apply to payment services covered by annex 1, cf. however, subsections (2) and (3) and section 4.

(2) Part 10 shall apply to payments by payment substitutes, cf. section 102, which do not constitute payment services covered by annex 1.

(3) The Minister for Economic and Business Affairs may decide that all or part of this Act shall apply to a specific service or specific types of service. The Minister for Economic and Business Affairs may also lay down supplementary regulations for specific types of service.

2.-(1) Payment services may only be provided in Denmark by the following providers, which have been granted authorisation in Denmark, in another country within the European Union or a country with which the Community has entered into an agreement for the financial area:

- 1) Banks.
- 2) Payment institutions, cf. part 2.
- 3) Electronic money institutions, cf. part 19 of the Financial Business Act.
- 4) Danmarks Nationalbank (Denmark's central bank).
- 5) Public authorities.

(2) Payment services may also be provided in Denmark by undertakings with a restricted authorisation to provide payment services covered by section 38, no. 1 or 2.

3.-(1) Parts 5-8 shall apply to payment services provided in Denmark, if both the payer's and the payee's provider is established in Denmark, in another country within the European Union or a country with which the Community has entered into an agreement for the financial area, and if the service is provided in euro or the currency of another Member State in the event that this is other than euro.

¹⁾ This Act contains provisions implementing Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, (The Payment Services Directive) (Official Journal 2007 no. L 319, p.1).

(2) Section 43, section 44(1), nos. 1, 3 and 4, and (2), sections 45 and 47, section 48(1), no. 1, no. 2, paragraphs a-d and f, and nos. 3-7, sections 49-53, 55, 57-68, 72-74 and section 76(1)-(3), as well as part 8 shall, however, also apply, even though the payee's provider is established in a country outside the European Union with which Community has not entered into an agreement for the financial area, and irrespective of the currency in which the service is provided. Section 76(1)-(3) shall only apply, however, to payment transactions provided in euro or the currency of another Member State in the event that this is other than euro.

(3) Part 10 shall apply to payments with payment substitutes provided in Denmark.

4.-(1) This Act shall not apply to:

- 1) Cash payments directly from the payer to the payee, cf. however, section 56.
- 2) Payment transactions from the payer to the payee through a commercial agent with power of attorney from the payer or the payee.
- 3) Professional physical transport of money.
- 4) Payment transactions consisting of non-professional cash collection and delivery within the framework of a non-profit or charitable activity.
- 5) Services where the payee, following an explicit request by the payer, makes a cash payment to the payer in direct connection with the execution of a payment transaction regarding the purchase of goods or services.
- 6) Money exchange business where the cash is not held on a payment account.
- 7) Payment transactions based on paper-based traveller's cheques, paper cheques, paper bills of exchange, paper-based vouchers or postal money orders.
- 8) Payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses, central banks and other participants of the system, or payment service providers, cf. however section 40.
- 9) Payment transactions related to securities asset servicing, including dividends and similar, or redemption or sale carried out by persons referred to in no. 8 or by investment companies, credit institutions, Danish and foreign collective investment associations or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments.
- 10) Services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred.
- 11) Payment transactions carried out between payment service providers, their agents or branches for their own account.
- 12) Payment transactions between a parent undertaking and its subsidiaries or between subsidiaries of the same parent undertaking.
- 13) Services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer on withdrawing money from a payment account, on condition that these providers do not conduct other payment services as listed in annex 1.
- 14) Payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

5.-(1) This Act may not be derogated from to the detriment of the payment services user, cf. however, subsections (2)-(4).

(2) Part 5, sections 55, 62, 64-66, 68, 73, 74 and 85 as well as part 10 may be derogated from by agreement between the provider and payment services users who are not consumers.

The parties may also agree some other time limit for objections than that mentioned in section 63.

(3) Section 75 and section 76(4) may be derogated from in all customer relationships except for

- 1) payment transactions in euro without currency conversion,
- 2) payment transactions in DKK in Denmark, and
- 3) payment transactions which only comprise a currency conversion between euro and DKK in Denmark, and in the case of a cross-border payment transaction, when the transaction is carried out in euro.

(4) For payment transactions within the European Union or in a country with which the Community has entered into an agreement for the financial area, notwithstanding subsection (3), the time limit laid down in section 75(1) and (3) may be no more than four business days following the date of receipt, cf. section 71.

Definitions

6. For the purposes of this Act the following definitions shall apply:

- 1) *Payment institution:*
A legal person that has been granted authorisation in accordance with part 2 to provide and execute payment services in Denmark, in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area.
- 2) *Payment transaction:*
A transaction, initiated by a payer or by a payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.
- 3) *Payment system:*
A funds transfer system with formal and standardised arrangements and common rules for the processing, clearing or settlement of payment transactions.
- 4) *Payer:*
A natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order.
- 5) *Payee:*
A natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction.
- 6) *User:*
A natural or legal person making use of a payment service in the capacity of either payer or payee, or both.
- 7) *Payment account:*
An account held in the name of one or more users which is used for the execution of payment transactions.
- 8) *Funds:*
Banknotes and coins, scriptural money and electronic money.
- 9) *Payment instrument:*
Any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the user in order to initiate a payment order.

- 10) *Money remittance:*
A payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another provider acting on behalf of the payee, and where such funds are received on behalf of and made available to the payee.
- 11) *Micro payment instrument:*
A payment instrument which, according to the framework contract, concerns only individual payment transactions that do not exceed EUR 30 or that either have a spending limit of EUR 150 or store funds that do not exceed EUR 150 at any time.
- 12) *Business day:*
A day on which the relevant provider of the payer or the provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction.
- 13) *Physical trade:*
Execution of a payment transaction which requires the physical presence of the payer and payee.
- 14) *Durable medium:*
Any instrument which enables the payment service user to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored.
- 15) *Framework contract*
A payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account.
- 16) *Consumer:*
A natural person who, in payment service contracts is acting for purposes other than his trade, business or profession.
- 17) *Provider:*
Companies dealt with in section 2(1) and legal and natural persons with a restricted authorisation, cf. section 38, who provide payment services.
- 18) *Agent:*
A natural or legal person which acts on behalf of a payment institution in providing payment services.
- 19) *Direct debit:*
A payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, to the payee's provider or to the payer's own provider.

Part 2

Payment institutions

Authorisation

7.-(1) Undertakings covered by section 2(1), no. 2 shall be authorised as payment institutions in order to provide payment services. Authorisation may be granted for one or more of the activities mentioned in annex 1.

(2) The Danish FSA shall grant authorisation when

- 1) the undertaking is operated as a limited company, a limited liability company, a cooperative society with limited liability, or an association with financial objects included in the register of associations at the Danish Commerce and Companies Agency, and the undertaking has a board of directors and a board of management,
- 2) the undertaking has its headquarters and registered office in Denmark,
- 3) the undertaking is deemed by the Danish FSA to be able to carry out proper operations,
- 4) the undertaking fulfils the requirements for initial capital in section 12,
- 5) members of the board of directors and board of management and, where relevant, persons responsible for the management of the payment services activities of the undertaking fulfil the requirements of section 18,
- 6) owners of qualifying interests, cf. section 5(3) of the Financial Business Act, will not oppose sensible and proper management of the payment institution.
- 7) there are no close links, cf. section 5(1), no. 17 of the Financial Business Act between the undertaking and other undertakings or persons that could complicate performance of the tasks of the Danish FSA,
- 8) the procedures, administrative conditions, organisation, accounting procedures, auditing arrangements and control and security measures of the undertaking are appropriate, cf. section 19, and
- 9) appropriate measures have been taken to protect the funds belonging to the payment services users, cf. section 22, in the event that, in addition to providing payment services covered by annex 1, the undertaking carries out other business activities, cf. section 11, no. 3.

(3) An application for authorisation as a payment institution shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (2) have been met, including

- 1) information about the legal form of the undertaking with a copy of the memorandum of association, establishment document and articles of association,
- 2) information about the address of the headquarters of the undertaking,
- 3) a list of the current and planned activities of the undertaking, including a description of planned payment services,
- 4) a business plan with a budget for the first three accounting years as well as the most recent audited financial statements, if these financial statements have been prepared,
- 5) information about the structural organisation of the undertaking, its intended use of agents and branches, a description of outsourcing arrangements and of its participation in a national or international payment system, information about planned cross-border payment services activities and establishment in another country within the European Union or in a country with which Community has entered into an agreement for the financial area,

- 6) evidence that the payment institution holds documentation that the undertaking has access to the initial capital provided for in section 12,
- 7) information about the members of the board of directors, members of the board of management and, where relevant, persons responsible for the management of the payment services activities of the payment institution, which documents that the requirements pursuant to subsection (2), no. 5 have been met,
- 8) information about persons holding in the undertaking, directly or indirectly, qualifying holdings, the size of their holdings and evidence of their suitability, taking into account the need to ensure the sensible and proper management of the payment institution, cf. the criteria in section 61a(1) of the Financial Business Act,
- 9) information about close links, cf. subsection (2), no. 7,
- 10) information about the procedures, administrative conditions, organisation, accounting procedures, auditing arrangements and control and security measures of the undertaking, including a description of the internal control mechanisms which the undertaking has established in order to comply with obligations in relation the Act on Measures to Prevent Money Laundering and Financing of Terrorism as well as the Regulation of the European Parliament and of the Council on information on the payer accompanying transfers of funds, and
- 11) a description of the measures taken to safeguard payment service user's funds, if the undertaking carries out other activities, cf. section 11, no. 3.

(4) The information in subsection (3), nos. 5, 10 and 11 shall contain a description of the organisational and audit arrangements which the undertaking has implemented in order to safeguard the interests of users and ensure continuity in connection with execution of payment services.

(5) If, in addition to providing one or more of the payment services stated in annex 1, the undertaking carries out other business activities, cf. section 11, no. 3, the Danish FSA may decide that the payment services activities shall be executed in a separate company.

Notification obligation

8. The payment institution shall notify the Danish FSA if there are changes in relation to the information received by the Danish FSA and forming the basis of the authorisation granted. Notification shall be in advance, if the change can be considered as significant. In other circumstances notification shall be as soon as possible.

Communication of the decision

9. Within three months of receipt of an application or, should the application be incomplete, of all the information required for the decision, the Danish FSA shall inform the applicant whether the application can be approved.

Storage of information

10. Payment institutions shall store all information, which may be relevant for assessment by the Danish FSA of the situation of the payment institution with regard to the authorisation granted, for no less than five years.

Other activities

11. Apart from the provision of the payment services covered by the payment institution's authorisation, payment institutions shall be entitled to engage in the following activities:

- 1) provision of operational and closely related ancillary services.
- 2) operation of payment systems, and

3) business activities other than payment services.

Initial capital

12.-(1) Where the undertaking applies for authorisation to provide one or more of the payment services mentioned in annex 1, points 1-5, the initial capital shall amount to no less than EUR 125,000.

(2) Where the undertaking applies for authorisation to provide the payment services mentioned in annex 1, point 6, the initial capital shall amount to no less than EUR 20,000.

(3) Where the undertaking applies for authorisation to provide the payment services mentioned in annex 1, point 7, the initial capital shall amount to no less than EUR 50,000.

(4) Initial capital shall include paid up share capital or cooperative capital, share premium, reserves and retained earnings or losses.

Own funds

13.-(1) Payment institutions shall at all times have as a minimum own funds corresponding to the highest of the following amounts:

- 1) The initial capital, cf. section 12.
- 2) The amount resulting from calculations pursuant to one of the three methods described in annex 2.

(2) The Danish FSA shall lay down more detailed regulations for application of the methods of calculation described in annex 2, including which of these methods of calculation the individual payment institution shall apply in calculating the capital requirement pursuant to subsection (1), no. 2. In this respect account shall be taken of the type of payment services provided and the scope of these. On the basis of a risk assessment of the individual payment institution, the Danish FSA may decide that the own funds of the payment institution shall be up to 20 per cent higher or up to 20 per cent lower than the amount resulting from application of the relevant method of calculation.

(3) The Danish FSA shall also lay down regulations for calculation of the capital requirement in the event that the payment institution is part of a group.

14.-(1) The own funds shall be the reduced core capital, cf. sections 15 and 16, plus the additional capital, cf. section 17.

(2) Core capital and additional capital shall exclude any form of tax that can be foreseen at the time when the amount is calculated, or it shall be adequately adjusted to the extent that tax demands reduce the amount with which said capital may be used to hedge risks or losses.

15. Core capital shall comprise

- 1) paid-up share capital or cooperative capital,
- 2) share premium,
- 3) reserves, and
- 4) retained earnings or losses.

16. The core capital shall be reduced by

- 1) proposed dividends,

- 2) intangible assets,
- 3) deferred tax assets, and
- 4) the current loss for the year.

17.-(1) The additional capital shall consist of revaluation reserves.

(2) The additional capital may not be included at more than 100 per cent of the reduced core capital, cf. sections 15 and 16.

Management and organisation of the undertaking

18.-(1) A member of the board of directors, member of the board of management and, where relevant, persons responsible for the management of the payment services activities of the payment institution shall have adequate experience in carrying out the duties and responsibilities of such a position.

(2) A member of the board of directors, member of the board of management and, where relevant, persons responsible for the management of the payment services activities of the payment institution may not occupy the position as member of the board of directors and member of the board of management of a payment institution or person responsible for the management of the payment services activities of the payment institution, respectively, if

- 1) the person in question is held criminally liable for violation of the Criminal Code or financial legislation, and this violation entails a risk that the duties are not carried out adequately,
- 2) the person in question has filed for suspension of payments or has filed for compulsory composition, bankruptcy or debt restructuring, or is subject to suspension of payments, bankruptcy proceedings, debt restructuring or compulsory composition,
- 3) the financial situation of the person in question or companies owned by the person in question or companies where the person in question participates in their operation has caused losses or risks of losses for the financial undertaking, or
- 4) the person in question has behaved such that there is reason to assume that said person cannot perform the duties of such position adequately.

(3) Members of the board of directors or the board of management are obliged to notify the Danish FSA of the conditions stated in subsection (2).

19. A payment institution shall

- 1) have robust governance arrangements,
- 2) have a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
- 3) have sound administrative and accounting practices,
- 4) have written procedures for all significant areas of activity,
- 5) have effective procedures to identify, manage, monitor and report the risks, the institution is or can be exposed to,
- 6) have the resources necessary for proper carrying out of its activities, and use these appropriately,
- 7) have procedures with a view to separating functions in connection with management and prevention of conflicts of interest,
- 8) have full internal control procedures, and
- 9) have adequate IT control and security measures.

Accounting and statutory audit

20.-(1) The Financial Statements Act shall apply for payment institutions, unless otherwise provided by subsections (2)-(8).

(2) The accounting year shall be the calendar year. The first accounting period may comprise a period which is shorter or longer than 12 months, however up to a maximum of 18 months.

(3) The payment institution shall, at the end of each half year, submit accounts to the Danish FSA in accordance with formats and guidelines in this respect prepared by the Danish FSA. Submissions shall be sent to the Danish FSA in electronic form.

(4) The annual report shall be audited by the external auditors of the payment institution. The auditor or auditors of the payment institution shall be authorised pursuant to the Authorised Auditors and Audit Firms Act.

(5) The auditors of a payment institution shall also be the auditors of the subsidiaries of the payment institution. This shall not apply, however, to parent undertakings and subsidiaries which are not domiciled in Denmark.

(6) Auditors shall immediately notify the Danish FSA of matters which are of material importance to the continued operation of the institution, including matters which may be observed by the auditors while performing their audit in undertakings with which the payment institution is closely linked.

(7) Where the payment institution carries out other activities as dealt with in section 11, the audited annual report of the payment institution shall also include separate financial statements for payment services and other activities respectively. The Danish FSA may, however, grant exemptions from this requirement, if the activities are covered by section 11, no. 1.

(8) The Danish FSA shall lay down more detailed regulations on performance of the audit of payment institutions.

Payment accounts, granting credit, and prohibition of deposits

21.-(1) Payment institutions may only hold payment accounts used exclusively for payment transactions.

(2) Payment institutions, which have been authorised to provide payment services dealt with in annex 1, point 4, 5 or 7, may only grant credit related to these if the following conditions are met:

- 1) credit shall be ancillary to the payment services and granted exclusively in connection with the execution of payment transactions.
- 2) credit granted in connection with cross-border payment services shall be demanded repaid within a period which shall not exceed twelve months.
- 3) the base capital of the payment institution shall at all times be appropriate in view of the overall amount of credit granted.

(3) Payment institutions shall not conduct the business of taking deposits or other repayable funds.

Safeguarding funds

22.-(1) Payment institutions which provide any of the payment services listed in annex 1 and, at the same time, are engaged in other business activities, cf. section 11, no. 3, shall safeguard funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions. If, by the end of the business day following the day when the funds have been received, the funds have not yet been paid to the payee or transferred to another provider of payment services, said funds shall, no later than at this time, be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets. The funds may not thus be made subject to legal proceedings from the payment institution's other creditors.

(2) Instead of the procedure described in subsection (1), the payment institution may decide to provide a guarantee from an insurance company or a credit institution, which does not belong to the same group as the payment institution itself. The guarantee shall be provided as security for the beneficiary payees in accordance with payment services which have not yet been effected, and the guarantee shall cover any amount which otherwise should be deposited in a separate account or invested in secure, liquid low-risk assets pursuant to subsection (1).

(3) The Danish FSA shall lay down more detailed regulations on safeguarding funds pursuant to subsections (1) and (2), including exemptions from the security requirement.

Use of agents

23.-(1) Where a payment institution intends to provide payment services through one or more agents, the Danish FSA shall be informed of this in advance.

(2) The information shall contain the following:

- 1) the name and address of the agent,
- 2) a description of how the agent will comply with obligations in relation the Act on Measures to Prevent Money Laundering and Financing of Terrorism, and
- 3) information on the identity of directors and persons responsible for the management of the agent and evidence that they are fit and proper persons as provided in section 18.

24. The Danish FSA shall register the agent in accordance with section 90(1), no. 1, if the Danish FSA deems the required information to be complete. If this is not the case, the Danish FSA may refuse to register the agent. Hereafter the payment institution may not use the agent in question in connection with provision of payment services.

25.-(1) Payment institutions which use agents shall be fully liable for compliance with the provisions of this Act and they shall take the measures necessary to ensure this. The payment institution shall be liable for claims awarded to payment services users against agents which act in contravention of this Act or regulations issued pursuant to this Act.

(2) The payment institution shall ensure that agents who act on behalf of the institution inform the payment services users that the provider is an agent of the Danish payment institution.

Outsourcing

26. Where a payment institution intends to outsource the operational functions of payment services, the Danish FSA shall be notified of this in advance.

27. Payment institutions which outsource operational functions to third parties shall be fully liable for compliance with the provisions of this Act and they shall take the measures necessary

to ensure this. The payment institution shall be liable for claims awarded to payment services users against third parties, cf. 1st clause, which act in contravention of this Act or regulations issued pursuant to this Act.

28.-(1) Important operational functions may not be outsourced without authorisation from the Danish FSA. Outsourcing may not be undertaken in such a way as to impair the quality of the payment institution's internal control and management reporting or the ability of the Danish FSA to monitor the payment institution's compliance with this Act. An operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the requirements of its authorisation as a payment institution.

(2) Authorisation pursuant to subsection (1) shall require,

- 1) that outsourcing does not involve material impairment of the quality of the payment institution's internal control and management reporting or the ability of the Danish FSA to monitor the payment institution's compliance with this Act,
- 2) that outsourcing does not result in the delegation by senior management of its responsibility,
- 3) that the relationship and obligations of the payment institution towards its payment service users under this Act shall not be altered, and
- 4) that conditions to which the payment institution shall otherwise comply in order to attain and maintain authorisation are not undermined.

29. Where the entity to which the payment institution outsources operational functions has its registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, the Danish FSA shall notify this to the supervisory authority in the relevant country.

Danish payment institutions' activities in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area

30.-(1) Payment institutions which have been granted authorisation in Denmark and which wish to provide cross-border payment services in a country within the European Union, or in a country with which the Community has entered into an agreement for the financial area, shall inform the Danish FSA hereof in advance, indicating the country in which it wishes to initiate the activities and the type of payment services the institution wishes to provide.

(2) The Danish FSA shall forward the information mentioned in subsection (1) and a declaration stating that the activities planned are covered by the payment institution's authorisation, to the supervisory authorities in the host country no later than one month after receipt of the information mentioned in subsection (1).

31.-(1) Payment institutions which have been granted authorisation in Denmark and which wish to provide payment services in a country within the European Union, or in another country with which the Community has entered into an agreement for the financial area, on establishing a branch, shall inform the Danish FSA hereof in advance, indicating the name and address of the branch, the country in which it wishes to initiate the activities, the names of the persons responsible for management of the branch, its organisational structure and the type of payment services the institution wishes to provide.

(2) The Danish FSA shall forward the information mentioned in subsection (1) and a declaration stating that the activities planned are covered by the payment institution's authorisation, to the supervisory authorities in the host country no later than one month after receipt of the information mentioned in subsection (1) with a request for a statement prior to registration of the branch.

(3) Where the supervisory authorities in the host country state that they have reasonable grounds to believe that the intended establishment of a branch will increase the risk of contravention of the regulations of the host country on money laundering and terrorist financing, the Danish FSA may refuse to register the branch or cancel registration of the branch, if registration has already taken place. Hereafter the payment institution may not use the branch in question in connection with provision of payment services.

(4) The payment institution shall ensure that payment services users are informed that the provider is a branch of the payment institution.

32.-(1) Payment institutions which have been granted authorisation in Denmark and which wish to provide payment services in another country within the European Union, or in a country with which the Community has entered into an agreement for the financial area through an agent, shall notify the Danish FSA hereof in advance, indicating the information stated in section 23(2) and the type of payment services the institution wishes to provide through the agent.

(2) The Danish FSA shall forward the information mentioned in subsection (1) and a declaration stating that the activities planned are covered by the payment institution's authorisation, to the supervisory authorities in the host country no later than one month after receipt of the information mentioned in subsection (1) with a request for a statement prior to registration of the agent.

(3) Where the supervisory authorities in the host country state that they have reasonable grounds to believe that cooperation with the agent in question will increase the risk of contravention of the regulations of the host country on money laundering and terrorist financing, the Danish FSA may refuse to register the agent or cancel registration of the agent, if registration has already taken place. Hereafter the payment institution may not use the agent in question in connection with provision of payment services.

(4) The payment institution shall ensure that agents who act on behalf of the institution inform the payment services users that the provider is an agent of the payment institution.

Foreign payment institutions which have been granted authorisation in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area

33. A foreign payment institution which has been granted authorisation in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, may begin providing cross-border payment services in Denmark when the Danish FSA has received information hereon from the supervisory authorities of the home country with information about the type of payment services the institution wishes to provide and that these services are covered by the institution's authorisation in the home country.

34.-(1) A foreign payment institution which has been granted authorisation in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, may begin providing payment services in Denmark through a branch when the Danish FSA has received information hereon from the supervisory authorities of the home country with information about the name and address of the branch, the names of the persons responsible for management of the branch, its organisational structure and the type of payment services the institution wishes to provide through the branch and that these services are covered by the institution's authorisation in the home country.

(2) Where the Danish FSA states that it has reasonable grounds to believe that the establishment of a branch will increase the risk of contravention of the Act on Measures to Prevent Money Laundering and Financing of Terrorism or the regulations issued pursuant to this Act, the supervisory authorities of the home country may refuse to register the branch or cancel registration of the branch, if registration has already taken place. Hereafter the branch may not provide payment services in Denmark.

(3) The branch shall inform the payment services users that the provider is a branch of the foreign payment institution.

35.-(1) A foreign payment institution which has been granted authorisation in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, may begin providing payment services in Denmark through an agent when the Danish FSA has received information hereon from the supervisory authorities of the home country with information about the type of payment services the institution wishes to provide through the agent and that these services are covered by the institution's authority in the home country.

(2) Where the Danish FSA states that it has reasonable grounds to believe that cooperation with the agent in question will increase the risk of contravention of the Act on Measures to Prevent Money Laundering and Financing of Terrorism or the regulations issued pursuant to this Act, the supervisory authorities of the home country may refuse to register the agent or cancel registration of the agent, if registration has already taken place. Hereafter the payment institution may not use the agent in question in connection with provision of payment services.

(3) Agents which act on behalf of the institution shall inform the payment services users that the provider is an agent of the foreign payment institution.

36. Where the payment institution outsources operational functions to an entity which has its registered office in Denmark, the supervisory authorities in the home country shall notify this to the Danish FSA.

Part 3

Restricted authorisation to provide payment services

37.-(1) The Danish FSA may grant restricted authorisation to an undertaking to provide payment services in Denmark when

- 1) the undertaking has its headquarters and registered office in Denmark. The Danish FSA may also grant restricted authorisation to provide payment services covered by section 38, no. 1 to undertakings with headquarters and registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, cf. however, subsection (5),
- 2) the undertaking has procedures for all significant areas of activity,
- 3) members of the board of directors and board of management of the undertaking and, where relevant, management responsible for the payment services activities of the undertaking, fulfil the requirements of section 18. Where the undertaking is operated as a partnership or sole trader, section 18 shall apply correspondingly for the individual(s) who is/are personally liable for the undertaking, and
- 4) the conditions of section 38 are met.

(2) An application for restricted authorisation to provide payment services shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met, including

- 1) information about the members of the board of management and the management responsible for the undertaking and, where relevant, management responsible for the payment services activities of the payment institution, which documents that the requirements pursuant to section 18 have been met,
- 2) information on which of the activities mentioned in section 38 the undertaking intends to carry out,
- 3) if the applicant intends to carry out activities covered by section 38, no. 1: a description of the scope for the payment instrument and reason for the service being covered by section 38, no. 1, and
- 4) if the applicant intends to carry out activities covered by section 38, no. 2: a business plan with a budget prognosis for the first three accounting years as well as the most recent audited financial statements, if these financial statements have been prepared.

(3) An authorisation to provide activities covered by section 38, no. 2 shall lapse the first time the average of the undertaking's payment transactions for the preceding 12 months executed by the undertaking concerned, including any agent for which the undertaking assumes full liability, exceeds EUR 3 million per month.

(4) The Danish FSA may lay down regulations regarding safeguarding the funds received from users for undertakings with restricted authorisation to provide payment services, which execute activities covered by section 38.

(5) The Danish FSA may grant exemption from the requirement for authorisation to provide payment services covered by section 38, no. 1 to undertakings with a similar authorisation in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area. These undertakings shall, however, be notified to the Danish FSA and registered before the activities may commence.

38. A restricted authorisation to provide payment services in Denmark may cover the following activities:

- 1) payment services based on payment instruments with limited application for the purpose of acquiring goods or services, or
- 2) payment services covered by annex 1, if the preceding 12 months' average total amount of payment transactions executed by the undertaking concerned, including any agent for which the undertaking assumes full liability, does not exceed EUR 3 million per month.

39.-(1) An undertaking with restricted authorisation, cf. section 38, shall notify the Danish FSA as soon as possible, if there are changes in relation to the information received by the Danish FSA and forming the basis of the authorisation granted.

(2) An undertaking with restricted authorisation, cf. section 38, no. 2, shall notify the Danish FSA when the preceding 12 months' average payment transactions exceed EUR 3 million per month.

(3) An undertaking with restricted authorisation shall, once a year, submit a declaration to the Danish FSA that the undertaking fulfils the conditions for authorisation according to section 37. The declaration shall be signed by the board of directors and board of management of the undertaking. Where the undertaking is not operated in the form of a company, the declaration shall be signed by the daily management.

(4) Danish FSA may lay down regulations regarding which changes are to be notified according to subsection (1).

Part 4

Access to payment systems

40.-(1) Terms for access to payment systems for providers of payment services shall be objective, non-discriminatory and proportionate so that these terms do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

(2) Subsection (1) shall not apply to

- 1) payment systems designated by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems,
- 2) payment systems composed exclusively of providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities, and
- 3) payment systems in which a sole provider
 - a) acts or can act as the provider for both the payer and the payee and is exclusively responsible for operation of the system, and
 - b) licenses other providers to participate in the system without the latter having influence on setting fees in relation to the payment system.

Part 5

Information requirements

General provisions

41.-(1) Sections 43-46 shall only apply to single payment transactions.

(2) Sections 47-54 shall only apply to framework contracts and payment transactions covered by a framework contract.

(3) Where a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the provider shall not be obliged to provide or make available information which is already given to the user or which will be given to the user according to that framework contract.

42.-(1) Providers may not demand payment for information which shall be supplied pursuant to the provisions of this part.

(2) If, at the request of a user, a provider supplies additional information, more frequent information, or offers transmission of this information by means of communication other than those specified in the framework contract, any payment shall be reasonable in relation to the actual costs incurred by the payment services provider.

Single payment transactions

Prior information

43.-(1) No later than at the same time as a contract to execute a payment service is established, the provider shall make information and conditions pursuant to section 44(1) and (2) available to the user in an easily accessible manner. At the user's request, the provider shall provide the information and conditions on paper or on another durable medium.

(2) The information shall be given in easily understandable words and in a clear and comprehensible form, in Danish or in any other language agreed between the parties.

(3) If, at the request of the user, the contract has been concluded using a means of distance communication which does not enable the provider to comply with the provisions of subsection (1), the information shall be given to the user immediately after the conclusion of the payment transaction.

44.-(1) A provider shall ensure that the following information and conditions are provided or made available to the user:

- 1) The type of information or the type of unique identifier that has to be provided by the user in order for a payment order to be properly executed.
- 2) The maximum execution time for the payment service to be provided.
- 3) The charges payable by the user to the provider and, where applicable, a breakdown of the amounts of any charges.
- 4) Where applicable, the actual or reference exchange rate to be applied to the payment transaction.

(2) Where applicable, the other information specified in section 48(1) shall be made available to the user in an easily accessible manner.

(3) For consumer contracts on payment services established for distance sales, the provider shall also give information to the consumer pursuant to section 13(1) of the Consumer Contract Act, cf. section 11(1), nos. 3-7, as well as section 13(1), nos. 3-5 and 8. With regard to the information requirement of section 11(1), no. 3, information shall only be provided that there may be other charges or costs which shall not be paid by the enterprise or imposed by it.

Information for the payer after receipt of the payment order

45. Immediately after the payer's provider has received the payment order, said provider shall provide or make available to the payer, in the same way as stipulated in section 43(1), the following information:

- 1) A reference enabling the payer to identify the payment transaction and, where applicable, information relating to the payee.
- 2) The amount of the payment transaction in the currency used in the payment order.
- 3) The amount of any charges payable by the payer and, where applicable, a breakdown of the amounts of such charges.
- 4) Where applicable, the exchange rate used in the payment transaction by the payer's provider or a reference thereto, when different from the rate notified in accordance with section 44(1), no. 4, and the amount of the payment transaction after that currency conversion.
- 5) The date of receipt of the payment order.

Information for the payee after execution

46. Immediately after the payment transaction has been concluded, the payee's provider shall provide or make available to the payee, in the same way as stipulated in section 43(1), the following information:

- 1) A reference enabling the payee to identify the payment transaction and, where applicable, the payer and any other information relating to the payment transaction.
- 2) The amount of the payment transaction in the currency available to the payee.
- 3) The amount of any charges payable by the payee and, where applicable, a breakdown of the amounts of such charges.
- 4) Where applicable, the exchange rate used in the payment transaction by the payee's provider, and the amount of the payment transaction before that currency conversion.
- 5) The credit value date.

Payment transactions on the basis of a framework contract

Prior information

47.-(1) No later than at the same time as a framework contract is established, the provider shall make information and conditions pursuant to section 48(1) available to the user on paper or on some other durable medium.

(2) The information and conditions shall be given in easily understandable words and in a clear and comprehensible form, in Danish or in any other language agreed between the parties.

(3) If, at the request of the user, the contract has been concluded using a means of distance communication and this does not enable the provider to comply with the provisions of subsection (1), the information shall be given to the user immediately after the conclusion of the framework contract.

(4) For micro payment instruments, notwithstanding subsection (1), the provider shall provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, the obligations of the payer, charges levied and other material information needed to take an informed decision. The provider shall state where the information mentioned in section 48(1) has been made available in an easily accessible manner.

48. A provider shall provide the following information and conditions to the user:

- 1) On the payment service provider:
 - a) name and address, including the email address of the provider and, where applicable, the address of a branch and agent in the country in which the payment service is provided, and
 - b) relevant supervisory authority, the public register in which the authorisation of the provider has been registered, and the registration number or similar identification.
- 2) On use of payment services:
 - a) the most important characteristics of the payment service,
 - b) the type of information or the type of unique identifier that has to be provided by the user in order for a payment service to be properly executed,
 - c) the form of and procedure for giving consent to execute a payment transaction and withdrawal of such consent,
 - d) description of the point of time at which a payment order is considered as received,
 - e) the maximum execution time, and

- f) an optional possibility to agree on spending limits for the use of the payment instruments.
- 3) On charges, interest and exchange rates:
 - a) the amount of any charges payable by the user and, where applicable, a breakdown of the amounts of such charges,
 - b) where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate, and
 - c) any agreement on immediate application of changes in the reference interest or exchange rate and how these changes are to be notified, cf. section 50(4).
 - 4) On communication:
 - a) where applicable, the means of communication, including the technical requirements for the user's equipment for the transmission of information or notifications under this Act,
 - b) the manner in and frequency with which information under this Act is to be notified,
 - c) the language in which the framework contract is to be concluded and the language in which communication is to be undertaken, and
 - d) the right to receive information under section 49.
 - 5) On safeguards and corrective measures:
 - a) where applicable, a description of safety measures that the user shall observe when using payment instruments, including how to notify for the purposes of section 59(1), no. 3,
 - b) if agreed, the conditions under which the provider reserves the right to block a payment instrument, cf. section 58,
 - c) the procedures to notify unauthorised or incorrectly executed transactions as well as regulations on liability for unauthorised payment transactions, cf. sections 61 and 62,
 - d) the liability of the provider for execution of payment transactions, and
 - e) the conditions for refunds for payment transactions initiated by or through a payee, cf. sections 65 and 66.
 - 6) On changes in the framework contract:
 - a) if agreed, information that the conditions of the framework contract may be changed, unless the user notifies that he does not accept the changes before the date of their proposed date of entry into force,
 - b) the duration of the contract, and
 - c) the right of the user to terminate the framework contract.
 - 7) On redress:
 - a) any contractual clauses on the law applicable to the framework contract, and
 - b) the out-of-court complaint and redress procedures and access to appeal to the relevant supervisory authorities.

(2) For consumer contracts on payment services established for distance sales, the provider shall also give information to the consumer pursuant to section 13(1) of the Consumer Contract Act, cf. section 11(1), nos. 3-7, as well as section 13(1), nos. 3-5 and 8. With regard to the information requirement of section 11(1), no. 3, information shall only be provided that there may be other charges or costs which shall not be paid by the enterprise or imposed by it.

49. At any time during the contractual relationship a user shall have a right to receive, on request, the framework contract as well as the information and conditions specified in section 48 on paper or on another durable medium.

50.-(1) Changes in the framework contract as well as the information specified in section 48, which are to the detriment of the user, shall be notified no later than two months before their proposed date of application.

(2) Section 47(1) and (2) shall apply correspondingly to changes pursuant to subsection (1). This shall not apply, however, to changes to a framework contract on micro payment instruments, if the framework contract states that changes may be notified without application of section 47(1) and (2).

(3) If it is agreed that the conditions of the framework contract may be changed as stated in section 48(1), no. 6, paragraph a, notification pursuant to subsection (1) shall contain information that the user shall be deemed to have approved the changes, if the user, no later than the date of application of the changes, omits to notify the provider that the user cannot approve the changes. Notification shall contain information that the user has the right to terminate the framework contract immediately and without charge before the date of the application of the changes.

(4) Changes in the interest or exchange rates may, notwithstanding subsection (1), be applied immediately, provided that this is stipulated in the framework contract and that the changes are based on the reference interest or exchange rates agreed, cf. section 48(1), no. 3, paragraphs b and c, or provided the changes are to the advantage of the user. The user shall be informed of the change in the interest rate at the earliest opportunity in the same way as provided for in section 47(1) and (2), unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available.

(5) Changes in interest or exchange rates shall be implemented and calculated in a neutral manner that does not discriminate against the users.

(6) If changes in the framework contract as well as the information specified in section 48(1), are not implemented in accordance with this provision, the changes shall not have any effect for the user.

51.-(1) The user may terminate a framework contract without notice, unless the parties have agreed on a period of notice. The period of notice may not exceed one month.

(2) In connection with establishment of a framework contract it may be agreed that the provider may terminate the framework contract with no less than two months' notice by applying section 47(1) and (2).

(3) No charges may be demanded from the user for terminating a framework contract, if the framework contract is concluded for a fixed period exceeding six months or for an indefinite period, and if the framework contract is terminated after the expiry of six months.

(4) A charge in connection with termination of a framework contract shall be in reasonable proportion to the costs.

(5) If charges for payment services are levied on a regular basis, the provider of a payment service may only demand charges for the period up to the termination of the contract. Charges paid in advance shall be reimbursed proportionally.

(6) The payer may have any remaining value of payments made in advance reimbursed, if a demand is submitted within one year after termination of the framework contract, unless the costs of reimbursing said remaining value exceed the remaining value.

Execution of payment transactions covered by a framework contract

52.-(1) When a payer has initiated a payment transaction under a framework contract, the payment service provider shall, at the payer's request, provide information on the maximum

execution time and the charges payable by the payer and, where applicable, a breakdown of the amounts of any charges.

(2) Subsection (1) shall not apply to funds from micro enterprises, cf. section 6, no. 11.

53.-(1) When a payment transaction is debited from the payer's account or, where the payer does not use a payment account, after the receipt of the payment order, the payer's provider shall provide the payer with the following information without undue delay in the same way as laid down in section 47(1) and (2):

- 1) a reference enabling the payer to identify the payment transaction and, where applicable, information relating to the payee and any other information relating to the payment transaction.
- 2) the amount of the payment transaction in the currency in which the payer's account is debited or in the currency used for the payment order.
- 3) the amount of the total charges for the payment transaction or the interest payable by the payer and, where applicable, a breakdown of the amounts of the charges.
- 4) where applicable, the exchange rate used in the payment transaction and the amount of the payment transaction after that currency conversion.
- 5) the debit value date or the date of receipt of the payment order.

(2) It may be agreed that the information referred to in subsection (1) is to be provided or made available no less than once a month and in a manner which allows the payer to store and reproduce the information unchanged.

(3) With respect to the use of funds from micro enterprises, it may be agreed that, notwithstanding subsections (1) and (2), the provider shall only provide or make available a reference enabling the payer to identify the payment transaction, the amount of the payment transaction and charges. In the case of several payment transactions of the same kind made to the same payee, only information on the total amount and charges for those payment transactions shall be provided. Furthermore, subsections (1) and (2) shall not apply if the funds from micro enterprises are applied anonymously or if it is not technically possible for the provider to provide this information. The provider shall, however, at all events enable the payer to monitor the balance of the funds from micro enterprises.

54.-(1) When a payment transaction has been concluded, the payee's provider shall provide the payee with the following information in the same way as laid down in section 47(1) and (2) without undue delay:

- 1) a reference enabling the payee to identify the payment transaction and, where applicable, the payer and any other information relating to the payment transaction.
- 2) the amount of the payment transaction in the currency in which the payee's account was credited.
- 3) the amount of any charges for the payment transaction or the interest payable by the payee and, where applicable, a breakdown of the amount of such charges.
- 4) where applicable, the exchange rate used by the payee's provider, and the amount of the payment transaction before that currency conversion.
- 5) the credit value date.

(2) It may be agreed that the information referred to in subsection (1) is to be provided or made available no less than once a month and in a manner which allows the payee to store and reproduce information unchanged.

(3) With respect to the use of funds from micro enterprises, it may be agreed that, notwithstanding subsections (1) and (2), the provider shall only provide or make available a reference enabling the payee to identify the payment transaction, the amount of the payment

transaction and charges. Subsections (1) and (2) shall also apply if the funds from micro enterprises are applied anonymously or if it is not technically possible for the provider to provide this information.

Part 6

Rights and obligations in relation to the use of payment services

General provisions

55. A provider may not charge the user for fulfilment of its information obligations or corrective and preventive measures under this part, except for in the circumstances mentioned in section 67(2), section 72(3) and section 73(5). The charge shall be in reasonable proportion to the provider's costs.

56. The payee shall be obliged to receive cash payment, if the payee receives payment instruments covered by this Act, cf. however, section 2 of the Act on Measures to Prevent Money Laundering and Terrorist Financing. The provision of the 1st clause shall not apply to distance sales or to payment transactions in unmanned self-service environments.

57.-(1) A payment transaction shall only be authorised if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to, or, if agreed between the payer and his provider, after, the execution of the payment transaction.

(2) Consent shall be notified in the manner and following the procedures agreed between the payer and his provider.

(3) Consent may not be withdrawn after the time consequential upon section 73.

Obligations in connection with the use and provision of payment instruments

58.-(1) A term in a framework contract on access to block a payment instrument shall have objectively justified reasons related to the security of the payment instrument or suspicion of unauthorised use. In the case of a payment instrument with a credit line, it may be agreed that the payment instrument may be blocked if there is a significantly increased risk that the payer may be unable to fulfil his liability to pay.

(2) The provider shall inform the payer of the blocking of the payment instrument and the reasons for it before the blocking or, if this is not possible, immediately thereafter, unless giving such information would compromise security.

(3) When reasons for blocking no longer exist, the provider shall unblock the payment instrument or replace it with a new payment instrument.

59.-(1) A payer who receives a payment instrument shall

- 1) on receipt of the payment instrument, take all the measures necessary to protect the personalised security features of the payment instrument,
- 2) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument, and
- 3) notify the provider without undue delay on becoming aware of loss, misappropriation or other unauthorised use of the payment instrument.

(2) It may be agreed that subsection (1), no. 3 shall not apply to micro payment instruments, if, because of the nature of the payment instrument, it is not possible to block the use of it.

60.-(1) A provider issuing a payment instrument shall

- 1) take appropriate measures to make sure that the personalised security features of the payment instrument are not accessible to parties other than the payer entitled to use the payment instrument,
- 2) ensure that a payer may at all times make a notification pursuant to section 59(1), no. 3 or request unblocking, cf. section 58(3),
- 3) ensure that the payer, for a period of 18 months after notification, cf. no. 2, is able to document having made such notification, stating the date of notification, and
- 4) prevent all use of the payment instrument once notification pursuant to section 59(1), no. 3 has been made.

(2) Payment instruments may not be sent unsolicited, except for in the event of replacement of a payment instrument which has already been given to a payer.

(3) Risks attached to sending a payment instrument or the personalised security features of the payment instrument shall rest upon the provider.

(4) It may be agreed that subsection (1), nos. 3 and 4 shall not apply to micro payment instruments, if, because of the nature of the payment instrument, it is not possible to block the use of it.

Liability regulations

61.-(1) The payer's provider shall be liable for losses consequential upon unauthorised payment transactions, cf. section 57, unless otherwise provided by section 62. In the event of an unauthorised transaction, the payer's provider shall immediately repay the amount to the payer.

(2) It may be agreed that subsection (1) shall not apply to micro payment instruments applied anonymously or if, because of the nature of the payment instrument, the payer's provider is unable to prove that the payment transaction was authorised.

62.-(1) The payer's provider shall be liable towards the payer for losses caused by the unauthorised use of a payment instrument by others, unless otherwise provided by subsections (2)-(6). The payer shall only be liable pursuant to subsections (2)-(6), if the transaction is correctly recorded and entered in the accounts. In the event of unauthorised use of a payment instrument, the payer's provider shall immediately repay the amount to the payer. The payer shall be liable without limit, however, for losses arising as a consequence of the payer having acted fraudulently or having failed with intent to fulfil his obligations under section 59.

(2) Unless greater liability is provided by subsection (3) or (6), the payer shall be liable for up to DKK 1,100 for losses consequential upon unauthorised use of the payment instrument by others, if the personalised security features of the payment instrument have been applied.

(3) Unless greater liability is provided by subsection (6), the payer shall be liable for up to DKK 8,000 for losses consequential upon unauthorised use of the payment instrument by others, if the payer's provider confirms that the personalised security features of the payment instrument have been applied, and

- 1) that the payer has omitted to notify the payer's provider as soon as possible after becoming aware that the payment instrument is missing, or that the unauthorised person has become acquainted with the personalised security features,

- 2) that the payer has surrendered the personalised security features to the person who has executed unauthorised use and the matter is not subject to subsection (6), or
- 3) that, through grossly inappropriate conduct, the payer has made the unauthorised use possible.

(4) The payer shall be liable for up to DKK 8,000 for losses consequential upon unauthorised use of the payment instrument by others, if the payment instrument has been read physically or electronically and in this connection the unauthorised person has used a false signature and the payer's provider justifies

- 1) that the payer, or a person to whom the payer has entrusted the payment instrument, has omitted to notify the payer's provider as soon as possible after becoming aware that the payment instrument is missing, or
- 2) that the payer, or a person to whom the payer has entrusted the payment instrument, through grossly inappropriate conduct, has made the unauthorised use possible.

(5) If the payer is liable pursuant to subsections (3) and (4), the total liability of the payer shall not exceed DKK 8,000.

(6) The Payer shall be liable without limit for losses consequential upon unauthorised use of the payment instrument by others in the event that the personalised security features of the payment instrument have been applied and the payer's provider confirms that the payer has notified the personalised security features to the person who has carried out the unauthorised use, and that this has taken place under circumstances in which the payer realised, or should have realised, there was a risk of misuse.

(7) Notwithstanding subsections (2)-(6), the payer's provider shall be liable for unauthorised use which takes place after the provider has been notified that the payment instrument is missing, that an unauthorised person has become acquainted with the personalised security features, or that for some other reason the payer wishes to have the payment instrument blocked.

(8) Notwithstanding subsections (2)-(6), the payer's provider shall be liable for unauthorised use, if the provider has not taken appropriate measures, cf. section 60(1), no. 2.

(9) Notwithstanding subsections (2)-(6), the payer's provider shall also be liable, if the payee knew, or should have known, that unauthorised use of the payment instrument existed.

(10) It may be agreed that subsections (1)-(6) shall not apply to micro payment instruments applied anonymously or if, because of the nature of the payment instrument, the payer's provider is unable to prove that the payment transaction was authorised. It may also be agreed that subsections (7) and (8) shall not apply to micro payment instruments, if, because of the nature of the payment instrument, it is not possible to block the use of it.

(11) Subsections (1)-(6) shall apply to E-money unless it is not possible for the payer's provider of E-money to block the payment account or the payment instrument.

63. Objections against unauthorised or incorrect payment transactions shall be received by the provider as soon as possible and no later than 13 months after debiting the payment transaction in question. For objections from the payee, the time limit shall be 13 months after the date of crediting. If the provider has not notified information or made information available pursuant to part 5, the time limit shall be calculated from the date on which the provider notified the information or made it available.

64.-(1) The provider shall have the burden of proof that a payment transaction has been correctly recorded, entered in the accounts and has not been affected by a technical

breakdown or some other deficiency. When using a payment instrument, the provider shall also have the burden of proof that the personalised security features of the payment instrument have been applied in connection with the payment transaction. Recording use of a payment instrument shall not in itself constitute proof that the payer has approved the transaction, that the payer has acted fraudulently, or that the payer has omitted to meet his obligations, cf. section 59.

(2) It may be agreed that subsection (1) shall not apply to micro payment instruments applied anonymously or if, because of the nature of the payment instrument, the provider is unable to prove that the payment transaction was authorised.

65.-(1) A payer shall have the right of refund from his provider of the full amount of a concluded payment transaction which was initiated by or through the payee, provided

- 1) the payer has not approved the exact amount of the payment transaction, and
- 2) the amount of the payment transaction exceeded the amount the payer could reasonably have expected, amongst other things taking into account his previous spending pattern and the conditions in his framework contract.

(2) Changes in the exchange rate, when this is calculated on the basis of a reference exchange rate, may not be invoked when subsection (1), no. 2 is applied.

(3) It may be agreed in the framework contract between the payer and the payer's provider, that the payer has no right to a refund in accordance with subsection (1) where he has given his consent to execute the payment transactions covered by subsection (1) directly to the payer's provider and, where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer at least four weeks before the due date by the provider or by the payee.

(4) For direct debits, the framework contract between the payer and the payer's provider may state that the payer has right to a refund from his provider even though the requirements in subsection (1) are not met.

66.-(1) A request for refund, cf. section 65, shall be received by the provider no later than eight weeks after debiting the payment transaction in question.

(2) The payer's provider shall, no later than ten business days after receiving a request for a refund, cf. section 65, either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the possibilities for appeal.

67.-(1) A payment order, executed in accordance with the unique identifier stated on the payment order, shall be considered as correctly executed.

(2) The payer's provider shall take all reasonable measures to reimburse the funds involved in a payment transaction in which the user has notified an incorrect unique identifier. The framework contract may state that the provider of payment services may demand payment for reimbursing this amount.

68.-(1) If a payment order is initiated by the payer, the payer's provider shall be liable to the payer for direct losses consequential upon non-execution or defective execution of the payment transaction unless he can prove that the payee's provider has received the amount in accordance with section 75. After the payee's provider has received the amount, he shall be liable to the payee for direct losses consequential upon non-execution or defective execution of the payment transaction. The payer's provider shall, however, always make efforts to trace the payment transaction and notify the payer of the outcome.

(2) If a payment order is initiated by or through the payee, the payee's provider shall be liable to the payee for direct losses consequential upon non-execution or defective transmission of the payment order to the payer's provider, cf. section 75. Furthermore, subsection (1) shall apply correspondingly. The payee's provider shall, however, always make efforts to trace the payment transaction and notify the payee of the outcome.

(3) A provider, who has compensated for a loss, cf. subsections (1) or (2), consequential upon conditions at another provider or third party, may demand the compensation refunded by the person in question.

69. If a payment is missing or delayed under the circumstances mentioned in section 68(1) and (2), remedies for breach may not for this reason be made applicable to the payer, except for demands for interest. If the amount has been debited to the payer's account, payment shall be in full satisfaction of all claims for the payer.

70. Liability under the regulations of this part may not be imposed in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, despite all efforts to the contrary by the person in question.

Execution of payment transactions

71.-(1) A payment order shall be considered as received on the business day on which the payer's provider receives the payment order. A provider may decide that payment orders received near the end of a business day shall be deemed to have been received on the following business day.

(2) If the user agrees with the provider that the payment order is to be executed at a later date, the payment order shall be deemed to be received on the agreed date, if it is a business day, and otherwise on the following day.

72.-(1) If a payment order is refused by a provider, the user shall be notified about this, about the reason for the refusal and about the procedure for correcting any factual mistakes which have led to the refusal, unless otherwise stated in regulations on duty of confidentiality.

(2) Notification pursuant to subsection (1) shall be as soon as possible and at all events within the time limits stated in section 75.

(3) The framework contract may include that the provider may demand payment for refusals in accordance with subsection (1).

(4) It may be agreed that subsections (1)-(3) shall not apply to micro payment instruments, if the non-execution is clearly apparent from the context.

73.-(1) A payment order may not be revoked after it has been received by the payer's provider, cf. section 71(1), unless otherwise provided by subsections (2)-(5).

(2) A payment order initiated by or through the payee may not be revoked after the payer has issued his payment order or given his consent to execute the payment transaction to the payee.

(3) A payment order in connection with a direct debit may be revoked at the latest by the end of the business day preceding the day agreed for debiting the funds.

(4) Payment orders covered by section 71(2) may be revoked at the latest by the end of the business day preceding the date agreed.

(5) Subsections (1)-(4) may be derogated from by agreement between the user of the payment service and his provider. In the situations referred to in subsections (2) and (3), the payee's consent shall also be required. A provider may demand payment for revocation, if so stated in the framework contract.

(6) In connection with micro payment instruments, notwithstanding subsections (1)-(5), it may be agreed that the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee.

74.-(1) For payment transactions in connection with agreements regarding purchases of goods or services through distance sales initiated using a payment instrument, the payer's provider shall, notwithstanding section 73(1) omit to execute a payment transaction or, if it has been debited, immediately credit the payer's account, if the payer applies one of the following objections:

- 1) that the amount debited is greater than the amount agreed with the payee,
- 2) that the goods or services ordered have not been delivered, or
- 3) that the payer or one of the designated recipients has exercised an agreed or statutory right to annul an agreement by omitting to receive or collect the goods or service ordered.

(2) Prior to an objection in accordance with subsection (1), the payer shall have unsuccessfully contacted the payee with a demand for refund of the amount outstanding or delivery of the outstanding goods or services.

(3) If a payer has made an objection in accordance with subsection (1), the provider may only debit or redebit the payer's account, if the provider can confirm that the objection is unjustified.

(4) Objections in accordance with subsection (1) shall be submitted as soon as possible after the payer becomes aware of, or should have become aware of, the fact that the debit is unlawful.

(5) Section 50(6) shall not apply to changes in rights in the framework contract which have given the user better statutory rights than those pursuant to subsection (1).

Execution time and value date

75.-(1) The payer's provider shall ensure that the amount of the payment transaction is credited to the payee's provider's account no later than at the end of the first business day after the date of receipt, cf. section 71. The time limit in the 1st clause may be extended by a further business day for paper-initiated payment transactions.

(2) A payee's provider shall execute a payment order, initiated by or through the payee, to the payer's provider within the time limits agreed between the payee and his provider, enabling settlement for direct debits and payment instruments to be executed on the agreed due date.

(3) Where the payee does not have a payment account with the provider, the funds shall be made available to the payee by the provider receiving the funds within the period specified above, cf. subsection (1).

(4) Notwithstanding subsections (1)-(3), in connection with micro payment instruments it may be agreed that other execution periods be applied.

76.-(1) The credit value date for the payee's payment account may not be later than the business day on which the payee's provider receives the payment transaction.

(2) Immediately after a payment transaction has been credited to the payee's provider's account, the amount of the payment transaction shall be at the payee's disposal.

(3) The debit value date for the payer's payment account shall be no earlier than the point in time at which the amount is debited to that payment account.

(4) Where cash is placed in a consumer's payment account with a provider in the currency of that payment account, the amount shall be made available and value dated immediately after the point of time of the receipt of the funds. Where the payment is executed on a corporate account, the amount shall be made available and value dated at the latest on the next business day after the receipt of the funds.

Part 7

Charges etc.

77.-(1) Payer's providers, payee's providers and, if applicable their intermediaries, shall transfer the full amount of the payment transaction without deduction of charges.

(2) The payee and his provider may, notwithstanding subsection (1), agree that the provider deduct his charges from the amount transferred before crediting it to the payee. For notification pursuant to sections 46 and 54, the full amount of the payment transaction shall be notified, with the amount of the charge stated separately.

(3) If any charges other than those referred to in subsection (2) are deducted from the amount transferred, the payer's provider shall ensure that the payee receives the full amount of the payment transaction. For payment transactions initiated by or through the payee, the obligation under the 1st clause shall rest upon the payee's provider.

78.-(1) Where a payment transaction does not involve any currency conversion, the payee shall, as a general rule, pay the charges levied by his provider, and the payer shall pay the charges levied by his provider.

(2) The provider shall not prevent the payee from requesting from the payer a charge for the use of a given payment instrument or from offering him a reduction, cf. however, section 80(6).

79. Unreasonable prices and profit margins may not be applied in setting charges etc. in connection with execution of payment transactions with a payment instrument as mentioned in section 6, no. 9. Unreasonable prices and profit margins shall mean prices and profit margins which are greater than those which would apply under effective competition.

80.-(1) Providers may impose on payees the costs of operating a payment system where the transactions are executed using a payment instrument, cf. section 6, no. 9, cf. however, subsection (4). The costs shall be determined pursuant to section 79, cf. however, subsections (2) and (3).

(2) In cases where, in the physical transaction, a payment transaction takes place using a payment instrument with a chip covered by section 6, no. 9, and at the same time the payer uses a signature or personal secret identifier or similar safe identification, the provider may only charge the payee an annual subscription to cover his costs of operating the payment system.

(3) The Minister for Economic and Business Affairs may lay down more detailed regulations on how the annual subscription in subsection (2) is to be calculated.

(4) Payment may be imposed on the payee when use of the payment instrument takes place in the physical transaction and a payment instrument without a chip is used.

(5) If a provider demands a charge from a payer for use by the payer of a payment instrument, the charge shall be set independently of the conditions of the payee.

(6) Notwithstanding section 78(2), the payee may not demand charges from the payer for a payment transaction in the physical transaction, when the payer uses a payment instrument as defined in section 6, no. 9.

(7) If the payee demands charges from the payer for use of a payment instrument in the non-physical transaction, the size of the charge may not exceed the payee's charge for the payment transaction to the payee's provider.

(8) In cases where a payment transaction takes place in the physical transaction using a payment instrument with a chip, cf. subsection (2), the provider of the payment services and the payee may agree on payment for special schemes linked to the individual payment instrument, which are not covered by the subscription scheme.

(9) The Minister for Economic and Business Affairs may lay down more detailed regulations regarding which special schemes can be agreed on pursuant to subsection (8).

(10) The Minister for Economic and Business Affairs may determine that this section shall not apply to international payment instruments. The Minister for Economic and Business Affairs may also lay down supplementary regulations for such payment instruments.

81. The provider may not stipulate that connection of a payee to a payment system be conditional upon the payee also accepting other payment instruments subject to this Act.

Information on currency and charges

82. A payee or another person who, at the place of sale, offers currency conversion to the payer before a payment transaction is initiated, shall provide the payer with all information about charges and the exchange rate used in the currency conversion. The payer shall agree to the currency conversion service on this basis.

83.-(1) A payee who demands charges or offers discounts for using a specific payment instrument shall notify the payer of this before the payment transaction is initiated.

(2) A provider or another person who demands charges for using a payment instrument shall notify the payer of this before the payment transaction is initiated.

Part 8

Good business practice, registration and civil registration (CPR) number

84.-(1) Undertakings which provide payment services shall be operated in accordance with honest business principles and good practice within the field of activity.

(2) The Minister for Economic and Business Affairs shall lay down more detailed regulations on honest business principles and good practice for undertakings which provide payment services.

85.-(1) The Act on Processing of Personal Data shall apply with the amendments consequential upon subsections (2)-(6).

(2) The payer's provider shall ensure that the civil registration (CPR) number of the payer on a payment instrument cannot be read physically or electronically by anyone other than the payer's provider.

(3) Processing of information on where the payers have used their payment instruments and what they have purchased may only take place when this

- 1) is necessary for execution or correction of payment transactions or other functions which the payer's provider has linked to the payment instrument,
- 2) is necessary for court enforcement or in order to prevent misuse, or
- 3) is authorised by other legislation.

(4) Processing of information on where the payers have used their payment instruments may also take place when

- 1) this is necessary for the payer's provider's advice to a payer with a view to appropriate use of payment instruments and when the information produced only relates to what types of payment transactions the payer carries out, or
- 2) processing is necessary for the issuer's adaptation of payment systems so that these are secure, efficient and up-to-date and information is not produced at individual-user level.

(5) The Minister for Economic and Business Affairs may determine that subsection (3) may be derogated from for research purposes.

(6) After obtaining statements from the Danish Data Protection Agency, the Minister for Economic and Business Affairs may lay down regulations on processing the information mentioned in subsection (3) abroad.

Part 9

Supervision etc.

86.-(1) The Danish FSA shall supervise compliance with this Act and regulations laid down pursuant to this Act, cf. however, sections 97 and 98.

(2) The Danish Financial Business Council shall assist in supervision matters under subsection (1) with the powers vested in the Council pursuant to section 345(2), no. 1 of the Financial Business Act with regard to supervision of the provisions of parts 2-4, and with the powers vested in the Council pursuant to section 345(2), no. 2 of the Financial Business Act with regard to supervision of the provisions of parts 5-8. Section 345(8) of the Financial Business Act shall apply correspondingly when the Danish Financial Business Council deals with matters pursuant to parts 5-8. For matters related to supervision of the provisions of parts 2-4, section 345(10) of the Financial Business Act shall apply correspondingly. Section 345(9) of the Financial Business Act shall apply correspondingly to matters covered by this Act.

(3) If the undertaking has established a branch, uses an agent, or has outsourced operational functions to an entity in another Member State, the Danish FSA shall supervise these entities, unless, in accordance with an agreement, supervision is delegated to the competent authority in the host country.

(4) According to section 64 of the Act on Processing of Personal Data, the Danish Data Protection Agency may, in consultation with the Danish FSA, cooperate with foreign authorities.

87.-(1) As part of its supervision, the Danish FSA may require that the undertaking submit all the information necessary for the Danish FSA's activities, including information to determine whether a matter falls under the provisions of this Act.

(2) The Danish FSA may carry out on-site inspections at undertakings subject to this Act, at any agent or branch which provides payment services under the responsibility of an undertaking and which is subject to this Act, or at any entity to which activities are outsourced.

(3) Section 346(2)-(5) of the Financial Business Act shall apply correspondingly to undertakings subject to this Act.

(4) The Danish FSA may at all times, on proof of identity and without a court order, gain access to undertakings subject to this Act with a view to obtaining information, including during inspections.

88.-(1) The Danish FSA shall set up a public register of

- 1) undertakings with authorisation as payment institutions in Denmark, cf. part 2, and the agents and branches of these institutions, and
- 2) undertakings with restricted authorisation to provide payment services, cf. part 3.

(2) This register shall contain information on the payment services which the undertakings covered by subsection (1) are authorised to provide.

89. The Danish FSA may order that matters which are contrary to the provisions of this Act be rectified or changed.

90.-(1) The Danish FSA may withdraw an undertaking's authorisation as a payment institution or a restricted authorisation to provide payment services, if the undertaking

- 1) does not make use of the authorisation within a time limit of 12 months, expressly renounces the authorisation, or has not carried out payment institution business or business with restricted authorisation to provide payment services for a period of more than six months,
- 2) has obtained authorisation on the basis of incorrect information or in some other dishonest manner,
- 3) no longer fulfils the conditions for granting the authorisation pursuant to parts 2 or 3,
- 4) may constitute a threat to the stability of the payment system by continuing its payment services business, or
- 5) fails to comply with the Act on Measures to Prevent Money Laundering and Financing of Terrorism.

(2) Withdrawal of an authorisation shall be made public by the Danish FSA.

91. Decisions made by the Danish FSA under this Act or regulations issued pursuant to this Act may be brought before the Company Appeals Board by the person against whom said decision is directed no later than four weeks after notification of such a decision was submitted.

92. Sections 354 and 356 of the Financial Business Act on the duty of confidentiality of the Danish FSA, on prohibiting employees of the Danish FSA from other employment or participating in speculative business, and on exposures or collateralisation of the director general of the Danish FSA shall, subject to necessary changes, apply to this Act. Section 354 of the Financial Business Act shall, however, only apply to information in matters covered by parts 2 and 3.

93.-(1) Decisions made pursuant to section 345(2), no. 1 of the Financial Business Act, cf. section 86(2) of this Act, shall be made public. The 1st clause shall also apply for decisions to turn cases over to police investigation, cf. however, subsection (2). Publication shall include the name of the undertaking.

(2) Publication pursuant to subsection (1) may not, however, take place if it will mean disproportionate damage for the undertaking, or issues relating to investigations make publication inadvisable. Publication may not contain confidential information on customer relationships or information subject to section 12(1) of the Access to Public Administration Files Act. Publication may not contain confidential information which originates from supervisory authorities in other countries within or outside the European Union unless the authorities which have issued the information have given their express consent.

(3) If publication is omitted pursuant to subsection (2), 1st clause, publication pursuant to subsection (1) shall be effected when the considerations necessitating omission no longer apply. This shall only apply, however, for up to two years after the relevant decision was made.

94.-(1) The Danish FSA shall inform the public about cases dealt with by the Danish FSA, the prosecution service or the courts, and which are of public interest or of significance for interpretation of the provisions of this Act, except for parts 2-4.

(2) The Danish FSA shall also make public the name of an undertaking which provides payment services in contravention of section 2.

95.-(1) Only the undertakings and persons covered by section 2 against which a decision has been made by the Danish FSA under this Act or regulations laid down in pursuance of this Act shall be considered a party in relation to the Danish FSA, cf. however, subsection (2).

(2) The following persons and undertakings shall likewise be considered a party in the Danish FSA as regards the parts of the case which concern said persons or undertakings:

- 1) anyone who provides payment services without authorisation, cf. section 2.
- 2) an undertaking or person applying for authorisation to provide payment services, cf. section 7 or section 37.
- 3) a member of the board of directors or board of management of an undertaking or the persons of the undertaking responsible for providing payment services, when the Danish FSA refuses an undertaking authorisation either to carry out business as a payment institution, or to carry out business with restricted authorisation to provide payment services, or withdraws such authorisation, cf. section 90.
- 4) any person natural or legal of whom the Danish FSA requires information to determine whether said person falls within the scope of the provisions of this Act, cf. section 87.

96. Undertakings subject to supervision under this Act shall pay a fee to the Danish FSA in accordance with part 22 of the Financial Business Act.

97.-(1) The Consumer Ombudsman shall supervise that providers of payment services which are executed using payment instruments, cf. section 6, no. 9, and providers of payment services covered by annex 1, no. 7 do not contravene parts 5 and 6, sections 82 and 83,

section 84(1) and section 85 and regulations laid down in pursuance of section 84(2). The Consumer Ombudsman shall also supervise that there is no contravention of part 10.

(2) The Consumer Ombudsman may demand all the information deemed necessary for the Consumer Ombudsman's activities, including information to determine whether a matter falls under the provisions of this Act.

(3) In the event that conditions conflicting with the provisions listed in subsection (1) cannot be changed by negotiation, the Consumer Ombudsman may issue an order on this. The person subject to the order may request that the order be brought before the courts. Such request shall be submitted in writing to the Consumer Ombudsman within four weeks from the date on which the order was notified to the person. The Consumer Ombudsman shall, within one week of the date of receipt of the request, bring the case before the court through civil procedure.

(4) The court may decide that bringing an order before the courts shall effect stay of execution.

(5) Decisions by the Consumer Ombudsman under this Act may not be brought before another administrative authority.

(6) The Consumer Ombudsman may be appointed as group representative in group actions, cf. part 23a of the Administration of Justice Act.

(7) According to section 64 of the Act on Processing of Personal Data, the Danish Data Protection Agency shall, in consultation with the Consumer Ombudsman, be responsible for cooperation with foreign authorities.

98.-(1) The Competition Authority shall supervise sections 77-81. The Competition Authority may issue the orders necessary to fulfil sections 77-81, including orders on,

- 1) that prices and margins stated may not be exceeded, or
- 2) that specific calculation rules shall be applied in calculating prices and margins.

(2) The Competition Authority may demand any information, including accounts, accounting records, printouts of books, other business records, and electronically stored data deemed necessary for the activities of the Competition Authority or for deciding whether a condition is covered by the provisions of sections 77-81.

(3) Decisions by the Competition Authority pursuant to subsection (1) may be brought before the Competition Appeals Tribunal. Section 20 of the Competition Act shall apply correspondingly.

(4) Appeals pursuant to subsection (3) may be brought by

- 1) the person to whom the decision is addressed, or
- 2) a person who otherwise has an individual and significant interest in the case.

(5) Appeals against decisions pursuant to subsection (3) may be ascribed stay of proceedings by the Competition Authority or the Competition Appeals Tribunal.

(6) The Access to Public Administration Files Act shall not apply for cases pursuant to subsection (1). Section 4(2) of the Access to Public Administration Files Act shall, however, apply correspondingly to cases pursuant to subsection 1, 1st and 2nd clauses and shall also

apply when information obtained pursuant to subsection (2) is forwarded to another administrative authority.

(7) Decisions by the Competition Authority pursuant to subsection (1) may be made public, cf. however, subsection (8).

(8) In publication pursuant to subsection (7), information on technical aspects, including research, production methods, products as well as operational and commercial secrets, may not be made public, if it is of financial significance for the person or undertaking to which the information relates. Furthermore, information on individual customer relationships in undertakings supervised by the Danish FSA may not be made public.

(9) Every other year, the Minister for Economic and Business Affairs shall issue to the Danish Parliament (Folketinget) a report on the conditions in the payment card market. The Competition Authority shall be responsible for the secretariat function for the Minister in connection with preparation of the report.

99. The Competition Authority may impose daily or weekly default fines on anyone who omits to

- 1) provide the information which the Competition Authority may demand pursuant to section 98(2), or
- 2) comply with an order issued pursuant to section 98(1).

100.-(1) The costs of administration of this Act by the Consumer Ombudsman and the Competition Authority shall be imposed on providers of payment instruments, cf. section 6, no. 9, providers of payment services covered by annex 1, no. 7, and providers of payment substitutes, cf. part 10, in proportion to turnover.

(2) The Minister for Economic and Business Affairs may lay down more detailed regulations regarding payment and collection by the Consumer Ombudsman and the Competition Authority.

101. The Minister for Economic and Business Affairs shall lay down more detailed regulations on the use of digital communication, including electronic signatures, when exchanging information in accordance with this Act between citizens and undertakings on the one hand and the public administration on the other hand, as well as on storage of information.

Part 10

Payment substitutes

102.-(1) "Payment substitutes" in this part shall mean the following electronic systems to the extent that they can be used to acquire goods or services without this constituting a payment service:

- 1) Cards and other physical means of proof of identity which are linked to specific users and which are intended for electronic reading.
- 2) Codes and biometric values intended as proof of identity of the user.
- 3) Electronically registered claims which the issuer is obliged to pay at the request of the user.

(2) "Payment substitutes paid in advance" in this part shall mean payment substitutes which the user may only use to the extent that, in advance of use of the payment surrogate, funds

have been deposited which are registered by the provider as funds at the disposal of the user, although without this being a deposit account, or where, without charge, the user has received such a value or has received an increase in the value of the payment funds.

103.-(1) Payment substitutes covered by this part shall be secure and effective.

(2) Users of payment substitutes shall be ensured transparency, voluntaryness, protection against fraudulent use as well as confidentiality regarding the users' use of the payment surrogate. The legal, organisational, operational, technical and security measures, which are necessary to ensure that the payment substitute is secure and effective, shall be taken regularly.

104. Issuers shall have a place of business in Denmark in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area.

105.-(1) Issuance of payment substitutes shall be notified to the Consumer Ombudsman by the issuer. A payment surrogate may not be issued before notification has taken place.

(2) The notification shall include information about the name of the issuer, place of business and type of company as well as the information material mentioned in section 47(4).

(3) Changes in the conditions notified shall be notified within eight days after the change has taken place.

(4) If several issuers provide the same payment instrument, and if, to a significant extent, they use the same terms of business, the Consumer Ombudsman may allow or order joint notification.

106.-(1) Section 47(4), 1st clause, section 51, section 53(1), nos. 1 and 2, and sections 62, 68, 70, 78-83 and 85 shall apply correspondingly to payment substitutes.

(2) Section 62 and section 80(2)-(4) shall not apply, however, to payment substitutes paid in advance, cf. section 102(2). Section 62 shall, however, apply to payment substitutes paid in advance, if the value of the payment substitute can exceed DKK 3,000, or if it is possible to recharge the payment surrogate automatically at the account of the user.

Part 11

Penalties

107.-(1) Violation of section 2, section 7(1), 1st clause, sections 8 and 10, section 21(1) and (3), section 22(1) and section 39(1)-(3) shall be liable to fines or imprisonment of no more than four months, unless more severe punishment is incurred under other legislation.

(2) Violation of section 18(3), section 21(2), nos. 1 and 2, section 23(1), section 24, 3rd clause, section 25(1), 1st clause and (2), section 26, section 27, 1st clause, section 28(1), 1st and 2nd clauses, section 30(1), section 31(1), (3), 2nd clause, and (4), section 32(1), (3), 2nd clause, and (4), section 40(1), section 42(1), section 43, section 44(1) and (2), sections 45-47, section 48(1), section 49, section 51(3), section 52(1), section 53(1) and (3), section 54(1), sections 55 and 56, section 60(2), section 72(1), section 78(2), section 80(2) and (4)-(7), sections 81-83, section 85(2)-(4), and section 105 shall be liable to a fine.

(3) A provider who omits to comply with an order issued pursuant to section 89, section 97(3), 1st clause, or section 98(1), 2nd clause, or to notify information pursuant to section 87(1), section 97(2) or section 98(2) shall be liable to a fine.

(4) A provider who, in circumstances covered by section 98(1), submits incorrect or misleading information to the Competition Authority or the Competition Appeals Tribunal or fails to disclose matters of significance for the relevant case, or who in circumstances otherwise covered by this Act notifies the Danish FSA incorrect or misleading information, shall be liable to a fine.

(5) Regulations issued pursuant to this Act may stipulate fines for violation of the provisions of the regulations.

(6) Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code.

(7) The period of limitation for violation of the provisions of this Act or regulations issued pursuant to this Act shall be five years.

108.-(1) Anyone who carries out business covered by this Act, or assists in this, may, in a judgment for a criminal offence be disqualified from carrying out the business in question or from carrying it out in specific forms or from assisting in this, if the offence gives reason to believe that there is an immediate danger of fraudulent use from carrying out the business. Section 79(3) and (4) of the Danish Penal Code shall apply correspondingly.

(2) Claims for disqualification pursuant subsection (1) to may be revoked by the appeal authority at the request of the Danish FSA.

(3) The person who carries out business covered by this Act who has been disqualified pursuant to subsection (1), or who, in his business, allows someone who has been disqualified from this to assist in the business as mentioned in subsection (1), shall be liable to a fine unless more severe punishment is incurred under section 131 of the Danish Penal Code.

Part 12

Entry into force, transitional provisions etc.

109.-(1) This Act shall enter into force on 1 November 2009.

(2) At entry into force of this Act, the Act on Certain Means of Payment, cf. Consolidated Act no. 259 of 28 March 2008, shall be repealed.

(3) Executive orders issued pursuant to the Act on Certain Means of Payment shall remain in force until they are repealed or replaced by executive orders issued pursuant to this Act.

(4) Legal persons who have commenced business before 25 December 2007 and who, after entry into force of this Act, will request authorisation as a payment institution, may continue this business in Denmark without authorisation until 30 April 2011.

(5) Notwithstanding subsection (1), from 1 July 2009 legal persons may submit applications to the Danish FSA for authorisation to carry out business as a payment institution from 1 November 2009.

(6) Undertakings which, before 25 December 2007, have commenced business covered by section 38, may continue this business without authorisation until 25 December 2010.

(7) The time limit stated in section 75(1) may, for cross-border payments until 1 January 2012, be extended to no more than three business days by agreement between the payer and the payer's payment services provider. For paper-based payment transactions the time limit in the 1st clause may be extended by one more business day.

(8) Changes in existing agreements, terms etc. which are to bring these in accordance with the requirements of a framework contract, cf. section 48(1) and which are to enter into force no later than 1 November 2009 may, notwithstanding an agreement to the contrary, be executed by notifying the change at one month's notice. Changes in favour of the user may, however, be executed without notice. Section 47(1) and (2) shall apply correspondingly to changes pursuant to the 1st and 2nd clauses. If the user cannot approve the changes in the framework contract which are to the detriment for the user, the user shall notify this to the provider before the date of entry into force of the changes. Notice pursuant to the 1st clause shall contain information on the condition mentioned in the 3rd clause.

110. The following amendments shall be made to the Financial Business Act, cf. Consolidated Act no. 897 of 4 September 2008, as most recently amended by section 1 of Act no. 133 of 24 February 2009:

1. In *the footnote* to the title of the Act »and Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (Official Journal 2007 no. L 247, p. 1) (Mergers and Acquisitions Directive)« shall be amended to: », Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (Mergers and Acquisitions Directive), (Official Journal 2007 no. L 247, p. 1) and parts of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Payment Services Directive), (Official Journal 2007 no. L 319, p. 1)«.

2. In *section 361(1)*, the following shall be inserted as *nos. 24 and 25*:

»24) Payment institutions, cf. the Payment Services Act, shall pay DKK 60,000 each year.
25) Undertakings with restricted authorisation to provide payment services, cf. the Payment Services Act, shall pay DKK 6,000 each year.«

3. *Annex 1, nos. 3 and 4*, shall be worded as follows:

»3) Payment services covered by annex 1 of the Payment Services Act.
4) Issuing and administration of other means of payment (for example travellers' cheques and bankers' drafts) insofar as this activity is not covered by no. 3.«

4. *Annex 2, nos. 4 and 5*, shall be worded as follows:

»4) Payment services covered by annex 1 of the Payment Services Act.
5) Issuing and administration of other means of payment (for example travellers' cheques and bankers' drafts) insofar as this activity is not covered by no. 4.«

111. Act no. 237 of 21 April 1999 on cross-border transfers of funds shall be repealed.

112. The following amendment shall be made to Act no. 451 of 9 June 2004 on certain consumer contracts:

1. In *section 9* the following shall be inserted as *subsection (3)*:

»(3) On conclusion of a consumer contract on distance sale of a financial service covered by the Payment Services Act, the consumer shall have the information consequential upon section 13(1), cf. section 11(1), nos. 3-7, as well as section 13(1), nos. 3-5 and 8. With regard to the information requirement of section 11(1), no. 3, information shall only be provided that there may be other charges or costs which shall not be paid by the enterprise or imposed by it. Furthermore sections 43, 44, 47 and 48 of the Payment Services Act shall apply.«

113. The following amendment shall be made to the Act on Measures to Prevent Money Laundering and Financing of Terrorism, cf. Consolidated Act no. 442 of 11 May 2007, as amended by section 1 of Act no. 512 of 17 June 2008 and section 10 of Act no. 517 of 17 June 2008:

1. *Section 1(1), no. 11*, shall be worded as follows:

»11) Undertakings and persons that commercially carry out activities involving currency exchange.«

2. *Annex 1, no. 4*, shall be worded as follows:

»4) Payment services covered by annex 1 of the Payment Services Act.«

114. This Act shall not extend to the Faeroe Islands and Greenland but may by Royal Decree be extended in full or in part to those parts of the Kingdom of Denmark subject to such modifications as circumstances peculiar to the Faeroe Islands and Greenland may require.

Annex 1

Payment services

1. Services enabling cash to be placed on a payment account, and all the operations required for operating a payment account.
2. Services enabling cash withdrawals from a payment account, and all the operations required for operating a payment account.
3. Execution of payment transactions, including transfer of funds to a payment account with the user's provider or with another provider:
 - a) execution of direct debits, including one-off direct debits,
 - b) execution of payment transactions through a payment card or a similar device,
 - c) execution of credit transfers, including standing orders.
4. Execution of payment transactions where the funds are covered by a credit facility for a payment service user:
 - a) execution of direct debits, including one-off direct debits,
 - b) execution of payment transactions through a payment card or a similar device,
 - c) execution of credit transfers, including standing orders.
5. Issuing or acquiring of payment instruments.
6. Money remittance.
7. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the communication system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

Annex 2

Calculation of requirements for the own funds of payment institutions, cf. section 13(1), no. 2

1. Method of calculation

Method A

Calculation basis: The fixed overheads of the institution.

The payment institution's own funds shall amount to at least 10 % of its fixed overheads of the preceding year.

Where the payment institution has not yet completed a full year's business at the date of the calculation, the fixed overheads which are stated in the undertaking's estimates for the forthcoming year shall be used as the basis for the calculation.

Method B

Calculation basis: The payment volume of the institution.

The payment institution's own funds shall amount to at least the sum of the following elements multiplied by the scaling factor k defined in point 2, where payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year:

- a) 4.0% of the slice of PV above EUR 5 million plus
- b) 2.5% of the slice of PV above EUR 5 million up to EUR 10 million plus
- c) 1% of the slice of PV above EUR 10 million up to EUR 100 million plus
- d) 0.5% of the slice of PV above EUR 100 million up to EUR 250 million plus
- e) 0.25% of the slice of PV above EUR 250 million.

Where the payment institution has not yet completed a full year's business at the date of the calculation, 1/12 of the total amount for the payment services which are stated in the undertaking's estimates for the forthcoming year shall be used as the basis.

Method C

Calculation basis: The net revenues of the institution.

The payment institution's own funds shall amount to at least the sum of the following elements multiplied by the scaling factor k defined in point 2:

- a) 10% of the slice of the relevant indicator up to EUR 2.5 million plus
- b) 8% of the slice of the relevant indicator from EUR 2.5 up to EUR 5 million plus
- c) 6% of the slice of the relevant indicator from EUR 5 million up to EUR 25 million plus
- d) 3% of the slice of the relevant indicator from EUR 25 million up to EUR 50 million plus
- e) 1.5% of the relevant indicator above EUR 50 million.

The relevant indicator is the sum of the net revenues, commissions and charges received, and other operating revenues. Each element shall be included in the sum with its positive or negative sign.

If audited figures are not available, the net revenues stated in the undertaking's estimates for the forthcoming year shall be used as the basis for the calculation.

2. Scaling factor

The scaling factor k to be used in Methods B and C shall be:

- a) 0.5 where the payment institution provides only the payment service

listed in annex 1, point 6.

- b) 0.8 where the payment institution provides only the payment service listed in annex 1, point 7.
- c) 1 where the payment institution provides any of the payment services listed in annex 1, points 1 to 5.