COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 1 June 2010

To the payment institutions

CIRCULAR CSSF 10/462

Re:

1) DEFINITION AND CALCULATION OF OWN FUNDS FOR PAYMENT INSTITUTIONS

2) PUBLICATION OF THE FORMS TO BE USED IN APPLICATION OF THE LAW OF 10 NOVEMBER 2009 ON PAYMENT SERVICES

The law of 10 November 2009 on payment services (hereinafter the "Law") sets out a new financial institution status, namely that of payment institutions. This category includes, among others, firms that provide payment services only on an incidental basis and which are named "hybrid payment institutions". The Law subjects the payment institutions to authorisation and prudential supervision.

The first purpose of this circular is to define **own funds and the method for calculating payment institutions' own funds requirements** pursuant to the provisions of Article 16(2) of the Law. This Circular also specifies, as provided for in Article 17(4) of the Law, **the application modalities of the own funds calculation methods**.

Annexe I to this circular includes the **"Application form"** that the payment institutions shall submit to the CSSF for the purpose of processing the application file in accordance with Article 7(1) of the Law.

Annexe II to this circular contains the form "**Declaration of an agent in accordance with the requirements of Article 18 of the law on payment services**" that the payment institution shall submit to the CSSF when intending to use agents.

Furthermore, a payment institution which would like to establish one or several branches or to use one or several agents in another Member State, shall first inform the CSSF *via* the form **"Declaration of provision of payment services in another Member State *via* a branch or an agent in accordance with Article 23 of the law of 10 November 2009 on payment services"** which is available in Annexe III of this circular.

If the payment institution intends to use the free provision of services in another Member State, it shall inform the CSSF in advance *via* the form in Annexe IV: **"Declaration of provision of payment services in another Member State through free provision of services pursuant to Article 24 of the law of 10 November 2009 on payment services"**.

1) Definition of own funds

The Law defines own funds of a payment institution with reference to the Luxembourg transposition of Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC, i.e. with reference to the current content of Part IV of Circular CSSF 06/273. The definition of own funds shall thus change with the next transposition of the amendments to Directive 2006/48/EC.

Currently, the following elements are included in own funds:

- subscribed and paid up shared capital;
- share premium;
- reserves within the meaning of the law of 19 December 2002 concerning the trade and companies register, as well as the accounting and annual accounts of companies, including the revaluation reserve and profits brought forward, net of advances on the distribution of reserves and profits brought forward.
- the final net profit or loss of the most recent financial year where pending appropriation, less any foreseeable distribution;
- interim profits, provided that:
    - they are determined after accounting for all charges relating to the period and after allocations to amortisation accounts, provisions and value adjustments;
    - they are calculated net of foreseeable tax charges and interim dividends or proposed dividends; and
    - they are subject to review by the *réviseur d'entreprises* (statutory auditor).

The following are deducted from own funds:

- own shares held, stated at their carrying amount;
- losses brought forward;
- intangible assets irrespective of their nature;
- interim losses for the current financial year, if any;

Payment institutions wishing to include other elements in the calculation of their own funds shall refer to the provisions of Part IV of Circular CSSF 06/273.

2) Application modalities of the own funds calculation methods.

The Law provides for three calculation methods for own funds requirements. These methods shall be observed at all times by the payment institution.

Method A: The own funds shall amount to at least 10% of its fixed overheads of the preceding year.

The overheads taken into account include all operating costs except those which the payment institution determined as directly linked to the business volume.

For "hybrid" payment institutions, only charges related to payment services shall be taken into consideration.

Method B: The own funds shall amount to at least the following amount.

The amount to take into account for the calculation of the capital ratio corresponds to one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year.

Multiplication factors are then applied to the slices composing this amount:
- 4% of the slice up to EUR 5 million.
- 2.5% of the slice above EUR 5 million up to EUR 10 million
- 1% of the slice above EUR 10 million up to EUR 100 million
- 0.5% of the slice above EUR 100 million up to EUR 250 million
- 0.25% of the slice above EUR 250 million.

The result of the preceding calculation is multiplied by the scaling factor k according to the services provided by the payment institution:
- 0.5 where the payment institution provides only the payment service listed in point 6 of the Annexe to the Law (money remittance);
- 0.8 where the payment institution provides the payment service listed in point 7 of the Annexe to the Law;
- 1.0 where the payment institution provides any of the payment services listed in points 1 to 5 of the Annexe to the Law.

Method C: the own funds shall amount to at least the relevant indicator defined below, which is affected by the multiplication and scaling factors similarly to method B.

The applicable indicator corresponds to the sum of the following elements (calculation based on the twelve months of the preceding financial year):
- interest income,
- interest expenses,
- commissions and fees received,
- other operating income.

The multiplication factor shall be:
- 10% of the slice up to EUR 2.5 million;
- 8% of the slice above EUR 2.5 million up to EUR 5 million;
- 6% of the slice above EUR 5 million up to EUR 25 million;
- 3% of the slice above EUR 25 million up to EUR 50 million;
- 1.5% of the slice above EUR 50 million.

The result obtained in this manner is multiplied by the same scaling factor as under method B.

In principle, payment institutions may freely choose one of the three calculation methods referred in the Law. However, they must justify their choice according to the risks associated with the contemplated activities and prove that they can apply the chosen method.

Nevertheless, the CSSF reserves the right to refuse the choice of a method where the use of the method does not allow ensuring sufficient own funds with regard to the nature, volume or risks of the payment institution's activities.

Furthermore, the CSSF may, based on an assessment of the risk-management processes, risk loss data base and control mechanisms of the payment institution, require an amount of own funds which is up to 20% higher or up to 20% lower than the amount which would result from the calculation method chosen by the payment institution.

The payment institution intending to change its calculation method will first have to obtain the consent of the CSSF.

In order to ensure sufficient capital for payment services, the CSSF is entitled to take the measures described under Article 31(4) of the Law.

Payment institutions shall report the own funds calculation laid down in Articles 16 and 17 of the Law on a quarterly basis to the CSSF. The periodic tables to be submitted to the CSSF for this purpose will be published soon on the CSSF website.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Claude SIMON   Andrée BILLON   Simone DELCOURT   Jean GUILL
   Director   Director   Director   Director General

Annexes:

I. **Form to be filled in for the processing file to be submitted to the CSSF for the authorisation of a payment institution pursuant to the law of 10 November 2009 on payment services.**
https://www.cssf.lu/en/document/circular-cssf-10-462-annex-1/

II. **Declaration of an agent in accordance with the requirements of Article 18 of the law of 10 November 2009 on payment services.**
https://www.cssf.lu/en/document/circular-cssf-10-462-annex-2/

III. **Declaration of provision of payment services in another Member State *via* a branch or an agent in accordance with Article 23 of the law of 10 November 2009 on payment services.**
https://www.cssf.lu/en/document/circular-cssf-10-462-annex-3/

IV. **Declaration of provision of payment services in another Member State through free provision of services pursuant to Article 24 of the law of 10 November 2009 on payment services.**
https://www.cssf.lu/en/document/circular-cssf-10-462-annex-4/