

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 2 March 2012

To all the persons concerned

CIRCULAR CSSF 12/533

Re: Exemption regime applicable to payment institutions

Ladies and Gentlemen,

Article 48 of the law of 10 November 2009 on payment services (the "Law") establishes an exemption regime according to which legal or natural persons wishing to provide one or several payment services can do so under a less restrictive procedure and in compliance with less restrictive conditions.

This circular aims to lay down the terms and conditions of this exemption regime.

The two substantive conditions to be fulfilled are set out in letters a) and b) of Article 48(1) of the Law. They relate to the business volume and probity of the persons responsible for the management and operation of business:

"Article 48 – Conditions for exemption relating to payment institutions.

(1) Notwithstanding Article 36, the Minister responsible for the CSSF may, after investigation by the CSSF on the conditions required under this paragraph, exempt, on the basis of a written request, natural or legal persons from the application of all or part of the procedure and conditions set out in Section 1 of Chapter 1 and in Article 27 and the CSSF may register these persons with the register of payment institutions provided for in Article 36, when the following two conditions are fulfilled:

- a. the average of the preceding 12 months' total amount of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed EUR 3 million per month. That requirement shall be assessed on the projected total amount of*

payment transactions in its business plan, unless an adjustment to that plan is required by the CSSF; and

- b. none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.*

Once the two conditions are met,

- the activity must be actually carried out in Luxembourg and the central administration must be situated in Luxembourg, and
- payment institutions benefiting from an exemption are not authorised to set up branches in another EU Member State or in a third country, to use agents or to exercise the freedom to provide services in such countries, so that the services may only be provided to Luxembourg customers, and
- an annual report on the activities, on the average total amount of the payment transactions executed, must be provided to the CSSF, and
- they must comply with Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing as well as with the relevant national provisions on combating money laundering and terrorist financing.

For the purpose of processing the exemption request, the following documents and information shall be sent to the CSSF insofar as they are applicable:

- a programme of operations;
- a business plan;
- a description of the internal governance and internal control mechanisms;
- a detailed description of the intended use of agents and branches in Luxembourg;
- the identification of the managers, shareholders and the *réviseur d'entreprises agréé* (approved statutory auditor);
- a detailed description of any intended outsourcing project;
- the procedures demonstrating compliance with the national and international provisions concerning the fight against money laundering and terrorist financing;
- a description of the measures taken in order to safeguard payment service users' funds in accordance with Article 14 of the Law as well as an indication of the safeguarding method chosen;
- the definition and description of operational services and ancillary services referred to in Article 10 of the Law.

The CSSF will proceed with the investigation provided for in Article 48(1) of the Law on the basis of these documents and information, together with the duly completed form for the registration in the register of payment institutions attached hereto.

The registration in the register of payment institution as laid down in Article 36 of the Law will only take place after the requested exemption has been granted by the competent Minister.

Payment institutions benefiting from an exemption must inform the CSSF of any change in their situation which is relevant to the conditions laid down above. Where the conditions are no longer fulfilled, the person concerned shall seek authorisation within 30 calendar days in accordance with the procedure laid down in Article 7 of the Law.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General

Annexe: Form for the registration in the register of payment institutions benefiting from the exemption under Article 48 of the law of 10 November 2009 on payment services