Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/72. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2018 No. 72 may be subject to amendment by EU Exit Instruments made by the Payment Systems Regulator under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 6. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2018/72 of 4 October 2017 supplementing Regulation (EU) 2015/751 of the European Parliament and of the Council on interchange fees for card-based payment transactions with regard to regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements in terms of accounting, organisation and decision-making process (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/72

of 4 October 2017

supplementing Regulation (EU) 2015/751 of the European Parliament and of the Council on interchange fees for card-based payment transactions with regard to regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements in terms of accounting, organisation and decision-making process

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/751 of 29 April 2015 of the European Parliament and of the Council on interchange fees for card-based payment transactions[(1)] and in particular Article 7(6) thereof,

Whereas:

(1) In order to specify the requirements ensuring separation of payment card schemes and processing entities, it is appropriate to define certain terms in relation to the accounting, organisation and the decision making process of payment card schemes and processing entities, irrespective of the legal form adopted by those entities.

(2) Payment card schemes and processing entities should have accounting processes in place that enable them to produce financial information on separated profit and loss accounts and explanatory notes to that financial information. Those requirements should not replace or amend accounting principles and standards or requirements concerning the annual financial statements that already apply to payment card schemes and processing entities.

(3) For that purpose, it is appropriate to specify how expenses and revenues should be allocated under those accounting processes. Those accounting processes should be duly documented, in particular in relation to transfers of funds between payment card schemes and processing entities.

(4) In order to ensure independence, payment card schemes and participating processing entities should produce financial information at least annually and that information

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should be reviewed by an independent auditor. That information as well as its review should be made available to competent authorities upon their request to enable them to ensure enforcement of independence requirements.

(5) Payment card schemes and processing entities that are not separate legal persons should at least be organised as different internal business units. Staff of payment card schemes and staff of the processing entities, including senior management, should be independent and accommodated in separated workspaces equipped with restricted controlled access. To promote the independence of senior managers when two entities are part of the same group and to prevent the practice of 'revolving doors', senior managers should be prohibited from taking on work for the other side of the business for a minimum duration of one year after they have left the entity they were working for.

(6) Staff of payment card schemes should only be allowed to perform tasks related to the design, update or implementation of processing services where specific conditions ensuring compliance with independence requirements are met.

(7) To avoid any incentives for payment card schemes or for processing entities to provide each other, via their staff, with preferential treatment or privileged information not available to their competitors, remuneration frameworks for staff of payment card schemes and of processing entities should not be based directly or indirectly on the economic performance of the processing entities or the payment card schemes. Remuneration policies should be made fully available to competent authorities upon their request.

(8) It is appropriate to specify that when the payment card scheme and the processing entity are part of the same legal entity or group, rules for ensuring compliance of staff with the current Regulation should be laid down in a code of conduct with effective sanctions and enforcement mechanisms that should be made public.

(9) Payment card schemes and processing entities should be allowed to use shared services provided that this usage does not result in sharing sensitive information between them and that the conditions for sharing the services, including the financial conditions under which those services are offered, are duly documented in a single document. That document should be made available to competent authorities upon their request to enable them to ensure the application of independence requirements. Specific conditions for the sharing of the information management system should be introduced. Sharing of sensitive information between payment card schemes and processing entities which may give either the payment scheme or the processing entity a competitive advantage should however be prohibited.

(10) It is appropriate to set out conditions for the composition of the management bodies of the payments card schemes and processing entities, irrespective of their legal form and organisational arrangements, to ensure that potential conflicts of interest for the decision making process between the payment card schemes and processing entities are appropriately mitigated. Those conditions should be made public and subject to review by competent authorities. Furthermore, payment card schemes and processing entities should have separated annual operating plans approved by their relevant management bodies. Those separated annual operating plans should be made fully available to

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independence requirements.

(11) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority ('EBA') to the Commission.

(12) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes the requirements to be complied with by payment card schemes and processing entities to ensure the application of Article 7(1)(a) of Regulation (EU) 2015/751.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'management body' means a payment card scheme's or processing entity's body appointed in accordance with national law, which is empowered to set the entity's strategy, objectives and overall direction and which oversees and monitors management decision-making, and includes the persons who effectively direct the business of the entity;

(2) 'senior management' means those natural persons within a payment card scheme or processing entity who exercise executive functions and who are responsible and accountable to the management body for the day-to-day management of the payment card scheme or processing entity;

(3) 'remuneration' means all forms of fixed and variable remuneration, including payments made or benefits, monetary or non-monetary, awarded directly by or on behalf of the payment card scheme or processing entity to employees;

(4) 'shared services' means any activity, function or service performed by either an internal unit within a payment card scheme or processing entity or a separate legal entity and executed to the benefit of both the payment card scheme and the processing entity;

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(5) 'group' means a parent undertaking and all its subsidiary undertakings as defined in Article 2(11) of Directive (EU) 2013/34 of the European Parliament and of the Council[(3)].

CHAPTER II

ACCOUNTING

Article 3

Financial information

1 Payment card schemes and participating processing entities, shall have accounting processes in place that enable them to produce financial information on separated profit and loss accounts and explanatory notes to that financial information.

2 The financial information referred to in paragraph 1 shall comply with the applicable accounting framework for preparing financial statements of payment card schemes and processing entities.

Article 4

Allocation of expenses and revenues

1 The financial information referred to in Article 3(1) shall be based on an allocation of expenses and revenues between the payment card scheme and the processing entity in accordance with the following rules:

a expenses and revenues that are directly attributable to the provision of processing services shall be allocated to the processing entity;

b expenses and revenues that are directly attributable to the payment card scheme shall be allocated to the payment card scheme;

c expenses and revenues that are not directly attributable to the provision of processing services or to the payment card scheme shall be allocated on an activity-based costing ('ABC'), which involves allocating indirect costs and revenues according to the actual consumption by the processing services entity or by the payment card scheme;

d expenses and revenues that are not directly attributable and cannot be allocated on ABC shall be allocated according to an accounting methodology documented in a supporting note.

2 The supporting note referred to in paragraph 1(d) shall indicate for each allocated cost and revenue under that methodology:

a the basis for the allocation;

b the rationale for that basis.

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Article 5

Documentation of transfer of financial resources between payment card schemes and processing entities

1 Payment card schemes and processing entities shall produce specific explanatory notes for any transfer of financial resources between them for the provision of services or the use of shared services as referred to in Article 12. Those explanatory notes shall specify the prices of and fees for those services, irrespective of any underlying obligations and organisational arrangements that may exist between them. Those explanatory notes shall be included in the financial information referred to in Article 3(1).

2 Where payment card schemes and processing entities belong to the same legal entity or group, the specific explanatory notes referred to in paragraph 1 shall provide evidence that the prices and fees for the provision of services between them or the use of shared services do not differ from prices and fees for the same or, in absence thereof, comparable services charged between payment card schemes and processing entities that do not belong to the same legal entity or group.

Article 6

Review and frequency of financial information

1 The financial information produced in accordance with Articles 3, 4 and 5 shall be reviewed by an independent and certified auditor.

2 The review referred to in paragraph 1 shall be provided in the form of a report ensuring:

a a trustworthy and fair view of the financial information produced by payment card schemes and processing entities;

b consistency and comparability of the financial information with the accounting frameworks for preparing financial statements of payment card schemes and processing entities;

c consistency of the financial information with previous years' allocation policies or, where such consistency is lacking, an explanation as to why the allocation policy has been changed and a restatement of previous years' figures.

3 The financial information referred to in Articles 3, 4 and 5 shall be submitted to the auditor referred to in paragraph 1 annually and shall be made fully available to competent authorities upon their request, together with the review by the independent auditor.

CHAPTER III

ORGANISATION

Article 7

Functional separation

Payment card schemes and processing entities that are not established as two separate legal entities shall be organised in two separate internal business units.