

# TAIWAN ACT GOVERNING ELECTRONIC PAYMENT INSTITUTIONS

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## Consumer Financial Services Alert

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On February 4, 2015, Taiwan promulgated the Act Governing Electronic Payment Institutions (電子支付機構管理條例, the "Act"), and pursuant to the Act, the Financial Supervisory Commission on April 27, 2015 announced a series of enforcement rules of the Act, including the Rules Governing EPI Businesses (電子支付機構業務管理規則, the "Rules"). Both the Act and its enforcement rules have come into effect on May 3 2015. Taiwan's economy has long been powered by active small and medium enterprises, and many people are of the view that the establishment of electronic payment institutions can provide a low cost platform for both sellers and buyers, which can stimulate the economy.

## WHAT IS AN "ELECTRONIC PAYMENT INSTITUTION"?

An "electronic payment institution," or "EPI," is defined under the Act as a company limited by shares (a type of company in Taiwan), that operates an Internet electronic payment platform and serves as an intermediary where the users can register and open an account for recording money transfers and deposits of money value ("Electronic Payment Account"). They can also transmit payment instructions and payment receipts between the payer and the payee online through electronic devices (including desktops, laptops, tablets, mobile phones, and other portable devices) and engages in the following types of businesses (each, an "EPI Business"):

- making or receiving payments of money for real transactions under authorization;
- receiving deposited money;
- transferring money between Electronic Payment Accounts; or
- other types of businesses authorized by the competent authority (i.e., Financial Supervisory Commission or "FSC").

The Act acknowledges the rapid changes in technologies and authorizes the FSC under item (d) of the preceding paragraph to approve new business models should they develop.

The Act focuses on the payment system for real transactions. Therefore, to engage in EPI Businesses (b) to (d), the Act requires that EPI must also engage in the business of making or receiving payments for real transactions under authorization. On the other hand, the Act does not attempt to encompass small operators and therefore excludes them from the definition if they engage in EPI Business (a) only and the total funds they handle does not exceed a prescribed amount. The amount is not specified in the Act and will be determined by the FSC in the future.

Although EPI Businesses seem to cover a variety of money flows, the Rules put several restrictions on how they may work. First, the Rules do not allow transfer between Electronic Payment Accounts under different EPIs whether they are in fact owned by the same user (Section 9 of the Rules). The FSC reasoned that such restriction is to prevent EPIs from operating domestic/foreign money remittance business (a business reserved for banks in Taiwan).

Second, money transfers between EPIs, or between EPI and third party payment platform, shall be made through financial institutions. Money transfers cannot be done by opening accounts at each other's platform, nor shall transfers be made by other EPI or third party platform (Section 10 of the Rules). The FSC reasoned that the settlement still has to be done through the banks to ensure the cash flow and ownership of the money.

Third, EPI is not allowed to provide allowances, subsidies, gifts, or other manner to attract deposited money (Section 11 of the Rules). Therefore, any wealth management product that encourages users to invest their money in the account could be questionable for EPI in Taiwan.

Finally, the Rules also prohibited users from depositing money or transferring money between Electronic Payment Accounts by using a credit card (Paragraph 1, Section 12 of the Rules), which is to prevent users from getting cash through credit cards.

## **SECURITY MEASURES: QUALIFICATIONS AND RESTRICTIONS**

The purpose of the Act is to strengthen confidence and trust in electronic payment systems. Therefore, the Act imposes strict requirements with respect to qualifications for and restrictions on EPIs. The most significant qualifications and restrictions are set out below.

- EPIs should only engage in EPI Businesses unless otherwise approved by the FSC: Only banks, post offices and electronic stored-value card issuers are expressly allowed to engage in EPI Businesses with FSC approval (Section 5 of the Act);
- Minimum paid-in capital requirement: NT\$500 million (approximately US\$16 million), unless the EPI only engages in EPI Business (a), then the minimum paid-in capital is NT\$100 million (approximately US\$3 million) (Section 7 of the Act);
- A foreign institution must establish a domestic company (a local branch is not allowed) and apply for a license. Institutions from the People's Republic of China are subject to the requirements and restrictions under the Act Governing Relations between the People of the Taiwan Area and the Mainland Area when engaging in EPI Businesses (Section 14 of the Act);
- Without approval of the FSC, no person shall cooperate with or assist a foreign institution to engage in EPI Businesses in Taiwan (Section 14 of the Act);
- Stored money value cannot exceed NT\$50,000 (approximately US\$1,600) per user (Section 15 of the Act);
- Money transfers between accounts cannot exceed NT\$50,000 per transfer (Section 15 of the Act);

- Reserve shall be made when receiving an amount of stored money exceeding the prescribed amount (Section 19 of the Act);
- Deposited money shall be put into trust, or the EPI should obtain a performance guarantee from a bank (Section 20 of the Act). To ensure that EPIs put deposited money into trusts, or obtain a performance guarantee from a bank, a repayment security fund will be established through contributions by EPIs. This will allow them to repay users when any EPI fails to perform its obligations to the users due to financial distress and to assume the credit from the users with respect to such EPI (Section 38 of the Act); and
- Utilization of the deposited money is restricted, and the EPI has the obligation to make up any deficit between the original value and the value after utilization (Section 21 of the Act).

## **OPERATION: FOCUS ON REAL TRANSACTIONS**

The Act focuses on electronic payments in real transactions. Several features reflect this focus.

First, the money it takes must be either payment on authorization (whether credited as paid or not) or stored money for the transfer between the users (other than the EPI itself). The Act also requires that the EPI must follow the payment instructions of the user and cannot delay any payments. Upon receipt of the instructions, the EPI must confirm them with the users again. Otherwise, an administrative fine from NT\$600,000 to NT\$3,000,000 (approximately US\$19,000 to US\$95,000) may be imposed.

Second, an EPI is not a money exchange business. Money exchanges should comply with the foreign exchange regulations imposed by the Central Bank of China (Taiwan). Therefore, when an EPI receives a payment from the user, it must deposit the money into its specific-purpose bank account in the same currency. If the user deposits money in a foreign currency, the EPI should not accept it unless the user makes a wire transfer of funds from his/her foreign exchange account at the bank using the same currency.

Payments and settlements between users in Taiwan shall be completed in New Taiwan dollars only. Payment and settlement of an EPI's cross border transactions involving users in Taiwan can be completed in either New Taiwan dollars or a foreign currency and must be completed in a foreign currency for payment, receipt, and settlement of offshore payments. EPIs engaging in cross border businesses should disclose the reference exchange rate and the cooperating bank. The money exchange, however, will still be handled by the banks.

Finally, EPIs should not draw on, or instruct the bank to draw on, the payment money unless it is for the transfer of payment money as instructed by the user or for withdrawal of payment money by the user. EPIs can invest a certain portion of the stored money in low-risk investments such as bank deposits, government bonds, treasury bonds, transferable certificates of deposit, and other financial products approved by the FSC. However, the EPI has the obligation to make up any deficit between the original value and the value after such utilization evaluated based on generally accepted accounting principles.

## **ANTI-MONEY LAUNDERING MEASURES**

The Act also includes several measures to reduce the risk of money laundering:

- the EPI must make payments to users by wiring the money into the user's bank account in the same currency, rather than paying in cash
- the EPI must establish a mechanism to confirm the user's identity, which can confirm the identity and store the data obtained from the user during registration and information updates. Such data should be retained for at least five years after termination of the Electronic Payment Account. In addition, the Rules require that governance measures shall be established to oversee irregular account applications in order to prevent nominee accounts.
- EPI should retain the records regarding accounts, transaction categories, dates, amounts, currencies, and other necessary transaction records of the Electronic Payment Account of users, for at least five years after the completion or cancellation of the relevant transaction, unless the law prescribes a longer period.

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