



BANK ĊENTRALI TA' MALTA
EUROSISTEMA
CENTRAL BANK OF MALTA

PROPOSAL FOR A

CENTRAL BANK OF MALTA

DIRECTIVE NO 13

in terms of the

**CENTRAL BANK OF MALTA ACT
(CAP. 204)**

APPROVAL OF PAYMENT SYSTEMS

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APPROVAL OF PAYMENT SYSTEMS

Issued on [DATE]

1. INTRODUCTION

(1) In terms of article 34(5) of the Central Bank of Malta Act (Cap.204), (hereinafter referred to as the “Act”), the Central Bank of Malta (hereinafter referred to as the “Bank”) is empowered to issue directives in respect of, inter alia, the regulation of domestic payment systems. For the purposes of this Directive, terms used in this Directive shall have the same meaning as is assigned to them under the Act.

(2) This Directive sets out the parameters as well as the applicable terms and conditions for the approval of payment systems prior to commencement of operations. Moreover, this Directive also sets out the procedure for the suspension of operation and closure of payment systems in terms of article 34(2) of the Act.

2. DEFINITIONS

In this Directive, unless the context otherwise requires -

“operator” means the person or entity legally responsible for the operation of a payment system;

“operating rules” or “rules” refer to the rules governing or proposed to govern the membership in and operation of a payment system.

“systemically important payment system” means any payment system which:

- (a) is the only payment system in Malta, or is the principal payment system in terms of aggregate value of payments; or
- (b) handles mainly payments of high individual value; or if it is used for settlement of financial market transactions or for the settlement of other payment systems in the same currency; and
- (c) has been designated as a systemically important payment system under paragraph 5 and Annex I of Central Bank of Malta Directive No 2 on Payments and Securities Settlement Systems.

3. APPROVAL OF A PAYMENT SYSTEM AND ITS RULES

(1) In terms of article 34 of the Act, the Bank is empowered to oversee and regulate the operation of, and participation in, payment systems. No person is authorised to set up and operate a payment system unless the payment system and its rules are approved by the Bank in accordance with the application procedure provided in this Directive.

(2) Any operator proposing to organise and establish a new payment system shall submit an application to the Bank, attaching thereto the rules of the said proposed payment system, for the Bank's approval of the payment system and its rules. The application for the approval of the establishment and operation of a payment system and its rules is available on the Bank's website and may be accessed through this link: [.....].

(3) When receiving an application for the operation of a new payment system, the Bank shall ensure that any proposed payment system and its rules, in addition to other requirements specified in the application, meet the following criteria –

- (a) adequate financial resources are provided for its proper operation;
- (b) appropriate default arrangements are maintained;
- (c) aspects of operation, including the point of entry of a payment transfer order into the payment system and the point after which it cannot be revoked, entry and exit criteria, amongst others, are stipulated;
- (d) adequate arrangements to monitor and enforce the compliance of its rules are kept.

(4) In addition to these criteria, when the Bank determines that a proposed payment system can be classified as a systemically important payment system, the Bank shall ensure that such proposed payment system implements appropriate mechanisms to mitigate systemic risk.

(5) The Bank shall decide to approve or refuse the establishment and operation of a proposed payment system and its rules as specified in this Directive, and where the Bank decides to approve the establishment and operation of a proposed payment system, the Bank may -

- (a) approve the proposed payment system and its rules, subject to conditions and/or requirements as it deems fit; and
- (b) impose or vary conditions and/or requirements at any time after approval, as it deems fit.

4. APPROVAL OF A PAYMENT SYSTEM AND ITS RULES SUBJECT TO CONDITIONS AND REQUIREMENTS

(1) Whenever the Bank approves a payment system and its rules subject to conditions and/or requirements, the operator of an approved payment system shall –

- (a) change the rules in a specified way so as to achieve a specified purpose in accordance with any condition set out by the Bank and provide a copy of the amended rules to the Bank for its approval; and

- (b) following an approval granted by the Bank, refrain from further amending the rules without the prior approval of the Bank.

(2) The Bank may subject the approval to other conditions and/or requirements which it may deem necessary for the proper operation of such a payment system. Such conditions and/or requirements may also be imposed by the Bank from time to time in respect of the operation of any payment system and/or on its operator or participants, after approval has been granted.

5. REFUSAL OF APPROVAL

(1) The Bank shall not refuse to approve a payment system and its rules unless the Bank deems that the approval would not be in the interest of the proper and orderly regulation of such a payment system and/or may contribute towards the triggering or spreading of systemic risk.

(2) Whenever the Bank decides against the approval of a proposed payment system and its rules, the Bank shall –

- (a) notify the applicant in writing of its refusal by stating the reasons for such refusal; and
- (b) consider any representation made by the applicant within twenty one (21) calendar days following the date of service of the notification and decide whether to approve the proposed payment system or otherwise, imposing any conditions and/or requirements as it deems fit.

6. FAILURE TO COMPLY WITH ANY DECISION OF THE BANK

(1) When the Bank is of the opinion that an operator of an approved payment system is in breach of the approval granted by the Bank and/or is failing or has failed to comply with any condition and/or requirement set out by the Bank or with any decision taken by the Bank in accordance with this Directive, the Bank may order the suspension of the operation of the payment system, for a time period specified by the Bank and/or until the operator complies with the requirements and/or conditions set out by the Bank.

(2) When the Bank decides to suspend the operation of a payment system, the Bank shall notify the operator in writing and shall give reasons for the suspension.

(3) When the operation of the payment system is suspended -

- (a) the operator shall comply with any conditions and requirements which the Bank may recommend from time to time, until all conditions prompting the suspension of the operation of the payment system are rectified;
- (b) upon suspension, the operator shall, as soon as possible notify the Bank of the measures which are being taken by the payment system to discharge any liability of the payment system and of the participants thereof, in full.

(4) The Bank shall publish a notice of suspension of operation of the payment system on its website for public access.

(5) When the Bank is of the opinion that notwithstanding the suspension of the operation of the payment system, the operator is still in breach of the approval granted by the Bank and/or is still failing or has failed to comply with any condition and/or requirement set out in the approval and/or with any decision taken by the Bank in accordance with this Directive, the Bank may order the revocation of the approval given to the payment system and its rules, in terms of article 34(2) of the Act.

(6) When the Bank decides to revoke the approval of a payment system and its rules, the Bank shall notify the operator in writing of such revocation. The operator may, within a period of twenty one (21) calendar days after the date of service of the notification, make representations in writing to the Bank in relation to such action.

(7) The Bank shall consider any representation made by the operator and decide whether its decision to revoke the approval of the payment system and its rules should remain or it may otherwise re-instate its approval.

(8) The Bank shall publish a notice of revocation on its website for public access.

(9) The Bank shall proceed to order the closure of the payment system in accordance with article 34(2)(b) of the Act, once the Bank's approval of the payment system and its rules has been revoked as stipulated under this Directive.

7. MISCELLANEOUS

(1) The operator of any proposed or approved payment system shall have the duty to transmit any document and any other information which is requested by the Bank from time to time and to comply with any request made by the Bank under article 23 of the Act, without invoking any professional or other secrecy restrictions.

(2) Any approved payment system and its rules shall be subject to the Bank's oversight function in accordance with article 34 of the Act, and the operator of any approved payment system shall comply with any recommendation, request for information or any other instruction as requested by the Bank.

(3) In case of breach of this Directive, the Bank shall have the right to impose sanctions in accordance with article 56 of the Act and the provisions of Central Bank of Malta Directive No. 12 on Administrative Measures and Penalties for Infringements under the Act.