

Ordinance No. 16

of 16 July 2009

on Licensing of Payment Institutions, Electronic Money Institutions and Payment System Operators

(title amended; Darjaven Vestnik, issue 30 of 2011,
effective as of 30 April 2011)

(Issued by the Bulgarian National Bank; published in the Darjaven Vestnik, issue 62 of 4 August 2009; effective as of 1 November 2009; amended, issue 102 of 2009; amended, issue 102 of 2010; amended, issue 30 of 2011, effective as of 30 April 2011; amended, issue 59 of 2011)

Chapter One

SUBJECT

Article 1. This Ordinance shall lay down:

1. (amended; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) the terms and procedure for granting a license and for conducting activities as a payment institution and electronic money institution;
2. the terms and procedure for granting a license and conducting activities as a payment system operator;
3. the requirements to the reports submitted to the BNB by the payment service providers, operators of and participants in the payment systems.

Chapter Two

PAYMENT INSTITUTIONS

Section I

GRANTING A LICENSE FOR A PAYMENT INSTITUTION

Application for Granting a License and Required Documents

Article 2. (1) An application for granting a license for conducting activity as a payment institution shall be filed in writing to the BNB Governing Council through the Governor and the Deputy Governor heading the Banking Department.

(2) The application shall contain the name, registered office and head office addresses of the applicant and a detailed description of the payment services which the applicant intends to carry out.

Required Documents

Article 3. (1) The following documents with respect to the applicant shall be enclosed to the application:

1. a certified copy of the Articles of Association or the company contract; for a company in the process of being formed, a certified copy of the decision of the Constituent Meeting for establishment of the company and the Minutes of Management Bodies Election Meetings;

2. (amended; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) documents certifying that pursuant to Article 8 of the Law on Payment Services and Payment Systems, the capital corresponding to the type of payment services which the applicant intends to perform has been paid-up; where a company is in the process of being formed, a certificate issued by a bank shall be enclosed, certifying that the contributions have been deposited on a cumulative account, and for non-monetary contributions, the documents under Articles 72 and 73 of the Commerce Law shall be enclosed;

3. (amended; Darjaven Vestnik, issue 102 of 2010; amended; Darjaven Vestnik, issue 59 of 2011) a declaration and documents by the shareholders/partners on the origin of funds used for the contributions made against subscribed shares, equity respectively, or for the acquisition thereof;

4. a unified identification code or statement by the Commercial Register issued not later than one month before filing the application with the BNB;

5. a detailed description of the applicant's activity and audited financial statements for the last three years or for the period of the existence of the company, unless it is a company in the process of being formed;

6. a business plan and forecast budget for the first three years of functioning, containing at least the following:

- a) a plan for the development and economic rationale of the activity;
- b) a detailed description of all activities, that the applicant intends to carry out;
- c) rules and procedures for conducting activity encompassing the applicant, its branches and agents;
- d) identifying the risks to which the payment institution is exposed or might be exposed comprising the applicant, its branches and agents;
- e) a forecast budget for the first three years of functioning based on realistic estimates;

f) resource certainty for conducting activity;

7. rules on the management of the payment institution, encompassing the activities of the applicant, its branches and agents, which shall include the following:

- a) managerial structure and levels of responsibility;
- b) systems and procedures for identification, management, control and reporting of risks to which the payment institution is exposed or might be exposed;
- c) internal control mechanisms including reliable and effective administrative and accounting procedures;

d) a programme for the measures against money laundering in discharge of the obligations set forth in the Law on the Measures Against Money Laundering and the Law on the Measures Against Terrorist Financing, as well as in Regulation No. 1781/2006 of the European Parliament and the Council of 15 November 2006 on information on the payer accompanying transfers of funds;

e) a draft of internal rules on measures against money laundering and terrorist financing;

f) measures ensuring continuity and reliability in providing payment services;

g) procedures for the implementation of safeguarding measures under Article 21 of the Law on Payment Services and Payment Systems;

h) organization and management of the information system, including information and customer data protection procedures;

8. a description of the organizational structure of the applicant, including the following:

a) information on the agents and branches to be used by the applicant, where such are foreseen; where, as of the time of filing the application, agents and branches already exist, the information under Article 7 shall be submitted;

b) conditions for assigning activities to subcontractors, if foreseeable;

c) interaction between the applicant and other payment service providers and/or payment systems;

9. a list of shareholders/partners and their shares/equity interests, containing their unified identification code or personal identity data;

10. a list of persons having, directly or indirectly, a qualifying holding in the applicant's capital within the meaning of § 1, paragraph 1, items 6, 6a, 6b, 6c, 6d and 6e of the Law on Credit Institutions;

11. a list of persons with whom the applicant is in close relations within the meaning of § 1, paragraph 1, item 10 of the Law on Credit Institutions;

12. a list of persons managing and representing the applicant, members of the management and supervisory bodies of the latter and persons managing and representing its branches and agents;

13. a list containing the addresses of the premises where the applicant will carry out payment services, including through a branch or an agent;

14. a certificate of compliance of the premises in which payment services shall be carried out, including through branches or agents, with the safety and fire precaution requirements under current legislation;

15. (amended; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) data and documents under Article 5 with respect to the persons managing and representing the applicant and to the members of its management and supervisory bodies, as well as data and documents under Article 6 with respect to the persons having a qualifying holding or with whom the applicant is in close relations.

16. (new; Darjaven Vestnik, issue 59 of 2011) a document of paid fee under Article 49.

(2) The application for a license shall be signed by the persons managing and representing the applicant.

(3) The enclosed documents shall be submitted in Bulgarian language or in a certified translation of the original or in a certified copy verified by the applicant and upon request the latter shall be obliged to submit the original of the document.

(4) (amended; Darjaven Vestnik, issue 59 of 2011) A document under Article 1 may be replaced by a declaration verified by a notary public where the legal system of the foreign country does not provide for the issuance of such a document, which shall be certified by the respective competent authorities of this country by an official document.

(5) The applicant shall immediately notify in writing the BNB of any changes in the information contained in the application and in the enclosed documents which have occurred after filing the application.

(6) The Bulgarian National Bank may require additional documents to be submitted with the purpose of ascertaining all the circumstances required for assessment of available conditions for granting a license.

(7) (new; Darjaven Vestnik, issue 102 of 2009) For the license granted, the BNB shall provide the applicant with a specially designed certificate.

Requirements for Qualification, Professional Experience and Good Reputation

Article 4. (1) The persons managing and representing the applicant and the members of its management and supervisory bodies shall be natural persons who:

1. have higher education;
2. have at least five-year professional experience, of which three years managerial experience in banking or financial sector enterprises or in institutions comparable to a bank within the meaning of § 1, items 2 to 4 of Ordinance No. 20 of 2009 on the Issuance of Approvals under Article 11, paragraph 3 of the Law on Credit Institutions;
3. have not been convicted of a premeditated crime of general character, unless rehabilitated;
4. during the last two years have not been members of a managing or controlling body or partners with unlimited liability with a company when its activity has been terminated because of bankruptcy, if unsatisfied creditors have remained;
5. have not been deprived of the right to hold positions of financial responsibility; and
6. have not been included in the list under Article 5, paragraph 1 of the Law on the Measures Against Terrorist Financing.

(2) The requirements under paragraph 1, items 3 to 6 shall also apply to natural persons having a direct or indirect qualifying holding in the applicant's capital, as well as to persons who by law represent the legal persons having a direct or indirect qualifying holding in the applicant's capital.

(3) The requirements under paragraph 1, items 3 to 6 shall also apply to the persons managing and representing the applicant's branches and agents.

(4) In case of a change of the persons under paragraphs 1, 2 and 3, all requirements under this Article shall be observed and within a seven-day period after the change the payment institution shall notify the BNB thereof and shall enclose the respective documents required for these persons under this Ordinance.

Data on the Persons Managing and Representing the Applicant and on the Members of its Management and Supervisory Bodies

Article 5. The following data shall be submitted with respect to the persons managing and representing the applicant and to the members of its management and supervisory bodies and the persons managing and representing its branches and agents:

1. the name and personal identity data, nationality and permanent and current address;

2. a completed questionnaire: a declaration of qualification, professional experience and good reputation as per the BNB sample form;

3. a certificate showing no previous conviction issued not later than one month before the date of filing the application or an analogous document in case the person is not a Bulgarian citizen;

4. a certified transcript of the diploma for completed education;

5. a declaration certifying compliance with the requirements under Article 4, paragraph 1, items 4 to 6, and that the person has not been convicted of a premeditated crime in a country of which he is not a national;

6. a certificate of no outstanding tax and insurance liabilities;

7. where it is a representative of a legal person – a certified copy of the decision of the competent body on his appointment in a management or supervisory body of the payment institution.

Data on the Persons Having a Qualifying Holding or with Whom the Applicant is in Close Relations

Article 6. (1) For any natural person who owns or has subscribed, directly or indirectly, qualifying holding in the applicant's capital within the meaning of § 1, paragraph 1, items 6, 6a, 6b, 6c, 6d and 6e of the Law on Credit Institutions, the following data shall be submitted:

1. data, documents and declarations under Article 5, items 1, 3, 5, 6 and 7;

2. (amended; Darjaven Vestnik, issue 102 of 2010) data about qualification and professional experience, including:

a) data about completed education, acquired qualification and current profession or occupation;

b) a description of the professional experience of the person in the last five years;

3. a declaration of the origin of funds used for the contributions made against subscribed shares, equity respectively, or for the acquisition thereof;

4. (new; Darjaven Vestnik, issue 102 of 2010) a declaration stating whether:

a) a person over which he has exercised control has been declared insolvent, bankrupt respectively, or in compulsory liquidation in the last five years;

b) a company over which he has exercised control or a company in whose managing or controlling body he has been a member or a procurator:

aa) has been subject to administrative sanctions and/or compulsory administrative measures imposed for violation of legislative acts in the area of the financial sector;

bb) has been refused a license or entry in a register kept by the BNB, the Financial Supervision Commission or analogues bodies of other countries, has been refused a membership in a trade or professional organization, or the issued license has been revoked or the entry has been deleted;

c) the person has been sanctioned for violating tax legislation;

d) the person has been dismissed from a managing or controlling body of a banking and/or financial sector enterprise within the meaning of Ordinance No. 20 of the BNB on the Issuance of Approvals under Article 11, Paragraph 3 of the Law on Credit Institutions, whose activity is subject to a licensing/registration regime as a result of an imposed compulsory administrative measure;

5. (new; Darjaven Vestnik, issue 102 of 2010) a declaration on:

a) his financial situation, the property held, the type and amount of income in the last three years and its sources;

b) the type and amount of assumed obligations, registered pledges and mortgages in favour of third parties, issued guarantees and other similar obligations.

(2) The following information and documents shall be submitted with respect to any legal person having or having subscribed, directly or indirectly, qualifying holding in the capital of the applicant company:

1. (amended; Darjaven Vestnik, issue 59 of 2011) a unified identification code or a statement by the Commercial Register issued not later than one month before the date of filing the application with the BNB; another analogous document shall be submitted for a non-resident;

2. a certified copy of the Articles of Association/company contract and other documents certifying establishment of the company;

3. a detailed description of the legal person's activity and audited financial statements for the last three years or for the period of existence of the company, unless it is a company in the process of being formed;

4. a certificate of no outstanding tax and insurance liabilities;

5. (amended; Darjaven Vestnik, issue 59 of 2011) a declaration and documents of the origin of funds used for the contributions made against subscribed shares, equity respectively, or for the acquisition thereof;

6. data, documents and declarations under Article 5, items 1, 3, 5, 6 and 7 with respect to the persons managing and representing the legal person;

7. (amended; Darjaven Vestnik, issue 102 of 2010) data on qualification and professional experience under paragraph 1, item 2 with respect to the persons managing and representing the legal person;

8. (new; Darjaven Vestnik, issue 102 of 2010) a certified copy of the competent body's decision in compliance with the law, statutes or articles of association on acquisition of shares/equity in the capital of the applicant company;

9. (new; Darjaven Vestnik, issue 102 of 2010) a list of shareholders/partners of the legal person up to an actual owner; a structure and distribution of the capital between shareholders/partners;

10. (new; Darjaven Vestnik, issue 102 of 2010; amended; Darjaven Vestnik, issue 59 of 2011) declarations made by the persons managing and representing the legal entity on the circumstances under paragraph 1, items 4 and 5 in respect to them as natural persons.

(3) The Bulgarian National Bank may also require data and documents under paragraphs 1 and 2 with respect to the persons whose holding in the applicant's capital is not qualifying.

(4) Upon transferring the subscribed shares/equity holding in the payment institution's capital, paragraphs 1 and 2 shall be applied respectively, and the documents shall be submitted before the transfer.

(5) The applicant shall also submit to the BNB the documents under paragraphs 1 and 2 with respect to the persons with whom it is in close relations within the meaning of § 1, paragraph 1, item 10 of the Law on Credit Institutions, as well as upon a change related to these persons within a seven-day period after the change has occurred.

Conducting Activity through an Agent and/or a Branch of a Payment Institution

Article 7. (1) Where the applicant will conduct activity through an agent and/or a branch, he shall submit to the BNB the following information and documents:

1. the name, registered office and address of the applicant, a unified identification code or a statement by the Commercial Register of the applicant issued not later than one month before filing the documents with the BNB, and the number of the license for conducting activity as a payment institution issued by the BNB;

2. the name, registered office and address of the agent or branch;

3. a unified identification code or a statement by the Commercial Register of the agent or branch issued not later than one month before filing the documents with the BNB;

4. a list of the persons managing and representing the agent or branch to whom the enclosed documents under Article 5 refer, certifying compliance with the requirements of Article 4;

5. a declaration that the rules and procedures under Article 3, paragraph 1, item 7 also apply to the agent or branch the applicant wishes to register.

(2) Where the agent is an institution licensed by the BNB, the applicant may submit to the BNB only information on the date and the number of the information that has already been submitted to the BNB pursuant to the requirements of another legislative act, which complies with the content and size of the information required under paragraph 1.

(3) The Bulgarian National Bank shall enter, refuse to enter or delete the branch or agent of the payment institution into/from the register maintained by the BNB on the grounds provided for in Article 26 of the Law on Payment Services and Payment Systems.

(4) (amended; Darjaven Vestnik, issue 102 of 2009) The BNB shall also enter in its register payment institutions that will conduct activity through an agent or a branch on the territory of a Member State upon fulfillment of the requirements of Article 29 of the Law on Payment Services and Payment Systems and this Ordinance.

(5) (new; Darjaven Vestnik, issue 102 of 2009) The BNB shall enter in its register information on payment institutions of other Member States providing payment services in Bulgaria upon fulfillment of the requirements of Article 30 of the Law on the Payment Services and Payment Systems, as well as information on credit institutions providing payment services in Bulgaria through an agent upon fulfillment of the requirements of Article 22 of the Law on Credit Institutions.

Section II

OWN FUNDS OF THE PAYMENT INSTITUTION

General Provisions

Article 8. (1) (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The elements under Article 9, paragraph 1, items 1 and 2 shall be included in the initial capital which the payment institution shall have as of the date of obtaining the license under Article 8 of the Law on Payment Services and Payment Systems.

(2) (former wording of Article 8; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The payment institution shall at all times hold own funds of no less than the higher amount under Articles 8 and 9 of the Law on Payment Services and Payment Systems both on a non-consolidated and consolidated basis.

(3) (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) Where a payment institution belongs to the same group as another payment institution, credit institution, investment firm, an asset management company or insurance undertaking, the elements which meet the own funds conditions may not be used more than once in calculating their amount. This requirement shall apply also in the cases when the payment institution carries out additional activities under Article 18 of the Law on Payment Services and Payment Systems.

Own Funds Elements

Article 9. (1) Own funds of the payment institution on a non-consolidated basis shall comprise the following elements:

1. (amended; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) paid-in and registered capital which entirely covers the losses arising from ordinary operations or from bankruptcy or liquidation and shall be repaid after satisfying all other claims;

2. 'Reserve' fund within the meaning of Article 246 of the Law on Commerce, excluding the premium reserves related to cumulative preference shares;

3. other general purpose reserves set aside from the profit after tax;

4. retained earnings from previous years;

5. reserves from revaluation of real estates occupied by the payment institution;

6. amounts attracted by the payment institution in permanent debt/capital (hybrid) instruments and other financial instruments, including permanent cumulative preference shares, provided that these instruments meet the following specific requirements:

a) the amounts on them are fully paid;

b) their repayment is not limited by a term;

c) their repayment is not guaranteed in any form by the payment institution;

d) in case of liquidation or bankruptcy of the payment institution, repayment of these funds is admissible after all other creditors' claims have been satisfied;

e) claims on these instruments as regards the principal shall not be deemed payable without the written permission of the BNB;

f) the terms and conditions under which the payment institution has attracted these funds shall entitle it to defer the repayment of the interest income on them in case the payment institution has not generated profit or the profit is insufficient;

7. the amounts attracted as a subordinated term debt, term cumulative preference shares and subordinated term debt/equity (hybrid) instruments, provided that they meet the following specific requirements:

a) the amounts on the instruments are fully repaid;

b) their repayment is not guaranteed in any form by the payment institution;

c) their original term to maturity is at least five years;

d) early repayment shall not be possible without the written permission of the BNB;

e) the contract may not provide for a possibility for early collection of the debt;

f) in case of liquidation or bankruptcy of the payment institution, repayment of the debt is admissible after all other creditors' claims have been satisfied.

8. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) the instruments under Article 9a.

(2) The retained profit under paragraph 1, item 4 may be included in the capital after the annual financial report has been adopted by the general shareholders' meeting, less the dividends and other deductions.

(3) Once included as an element of the own funds, retained earnings from previous years can be used for dividends only upon approval by the BNB.

(4) During the last five years to maturity, the amount of the instruments under paragraph 1, item 7 included in the own funds shall be reduced by 20 per cent per year. After the instruments had matured, they shall be entirely excluded from the own funds calculation.

(5) Paragraph 4 shall apply also to the dates of interest and other agreed income repayment on the instruments under paragraph 1, item 7.

(6) The amounts under paragraph 1, items 6 and 7 may be included in the own funds upon a permission by the BNB based on a written application accompanied by the relevant documents proving compliance with the requirements of this Article. The term of ruling shall be 30 days.

(7) Payment institutions shall not include in their own funds:

1. reserves from cash flow hedges of positions previously measured at amortized cost and cash flow hedges related to forecasted transactions;
2. gains and losses on liabilities measured at fair value;
3. unrealized gains from investment property and from available-for-sale financial instruments.

(8) The amount under paragraph 1 shall be reduced by:

1. the loss for the current and previous years;
2. the balance sheet value of the payment institution own shares;
3. the value of intangible assets;
4. unrealized loss from available-for-sale-financial instruments;
5. the balance sheet value of total investment in shares or in other form of participating interest amounting to more than 10 per cent of the paid-in capital of a payment institution, as well as the investments in debt equity (hybrid) instruments and in subordinated term debt in credit institutions, in which the payment institution holds more than 10 per cent of the paid-in capital for each individual case where they are not consolidated in its balance sheet;
6. the balance sheet value of investments in shares or in other form of participating interest in the capital, in debt/equity (hybrid) instruments and in subordinated term debt in a bank or other financial institution under the Law on Credit Institutions, where their total amount exceeds 10 per cent of the payment institution's own funds prior to the deductions under this item and under item 5 of this paragraph;
7. the balance sheet value of total investment in shares or in other form of participating interest representing 10 or more than 10 per cent of the paid-in capital of a non-consolidated undertaking other than those under item 5.

(9) (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The amounts under paragraph 8, items 5, 6 and 7 shall be deducted at a rate of 50 per cent of the difference between the total amount of the items under paragraph 1, items 1, 2, 3, 4, and 8 and the total amount of the items under paragraph 8, items 1, 2, and 3 and 50 per cent of the total amount of the items under paragraph 1, items 5, 6 and 7,

and where the relevant deduction exceeds the total amount of the items under paragraph 1, items 5, 6 and 7, the excess shall be deducted from the difference between the total amount of the items under paragraph 1, items 1, 2, 3, 4, and 8 and the total amount of the items under paragraph 8, items 1, 2, and 3.

(10) (former paragraph 9; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The own funds of a payment institution on a consolidated basis shall be formed pursuant to paragraphs 1 to 8 by adding, deducting respectively, the following elements:

1. minority interests;
2. goodwill;
3. differences resulting from currency translation of balances;
4. other elements provided by the effective legislation in case of consolidation.

(11) (former paragraph 10; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) Where the elements under paragraph 9, items 2, 3 and 4 are positive (debit), they shall be deducted from the calculation of the consolidated own funds. Where they are negative (credit), they shall be added to the consolidated own funds.

(12) (former paragraph 11; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) Minority interests under paragraph 9, item 1 in subsidiary bank and non-bank undertakings subject to full consolidation, shall be reported under the respective capital element of the payment institution subject to the nature of minority interests.

Requirements to the Instruments Recognized as Own Funds

Article 9a. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The payment institution's own funds may also include undated instruments which meet the following requirements:

1. the provisions governing the instrument allow the payment institution to cancel, when necessary, the payment of interest or dividends for an unlimited period of time, on a non-cumulative basis; the payment institution shall cancel such payments if it does not comply with the capital requirements set out in Article 8, paragraph 2;
2. the provisions governing the instrument shall provide for principal, unpaid interest or dividend to be such as to absorb losses and to not hinder the recapitalisation of the payment institution through appropriate mechanisms, as elaborated by the European Banking Authority;
3. in the event of the bankruptcy or liquidation of the payment institution, the instruments shall rank after the claims on instruments referred to in Article 9, paragraph 1, items 6 and 7.
4. all other conditions under Article 9, paragraph 1, item 6 are satisfied.

(2) The instruments under paragraph 1 may include one or more call options at the sole discretion of the issuer, but they shall not be redeemed before five years after the date of issue.

(3) If the provisions governing undated instruments provide for a moderate incentive for the payment institution to redeem as determined by the BNB, such incentive shall not occur within ten years of the date of issue.

(4) Instruments may be called or redeemed only with the prior written consent of the BNB provided the request is made at the initiative of the payment institution and either financial or solvency conditions of the payment institution are not unduly affected. In that case, the BNB may require the payment institution to replace the instruments by instruments under paragraph 1 of the same or better quality or by shares or interests referred to in Article 9, paragraph 1, item 1.

(5) The Bulgarian National Bank shall require the suspension of the payments under paragraph 1, item 1 based on the financial situation and fulfillment of the own funds requirements of the payment institution. The suspension is without prejudice to the right of the payment institution to replace, after a relevant notification to the BNB, the payment of interest and dividends by shares or interests under Article 9, paragraph 1, item 1 provided this mechanism allows it to preserve its financial resources and the BNB has not made objections in a seven-day period.

(6) The Bulgarian National Bank may grant permission for instruments under paragraph 1 to be called or redeemed in the event that there is a change in the applicable tax treatment or regulatory classification of such instruments which was unforeseen at the date of issue.

(7) The inclusion of the instruments under paragraph 1 in the own funds shall be permitted by the BNB based on a written application accompanied by relevant documents proving compliance with the requirements under this Article. The term of ruling shall be 30 days.

(8) Instructions on the instruments under Article 3a of BNB Ordinance No. 8 of 2006 on the capital adequacy of credit institutions issued by the BNB Deputy Governor heading the Banking Supervision Department shall apply to this Article on the grounds of § 12 of the Transitional and Final Provisions of BNB Ordinance No. 8 of 2006 on the capital adequacy of credit institutions (published, Darjaven Vestnik, issue 106 of 2006; amended, issue 62 of 2007, issue 38 of 2008, issue 21 of 2009, issues 20, 85 and 102 of 2010).

Limits in Establishing the Amount of Own Funds

Article 9b. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The total amount of the items under Article 9, paragraph 1, items 5, 6 and 7 shall not exceed the difference between the total amount of the items under Article 9, paragraph 1, items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3.

(2) The amounts under Article 9, paragraph 1, item 7 shall not exceed 50 per cent of the difference between the total amount of the items under Article 9, paragraph 1,

items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3.

(3) The total of the items under Article 9, paragraph 1, item 8 shall be subject to the following limits:

1. instruments that must be converted during emergency situations and may be converted at the initiative of the BNB, at any time, based on the financial situation and capital adequacy of the issuer into items referred to in Article 9, paragraph 1, item 1 within a predetermined range must in total not exceed a maximum of 50 per cent of the difference between the total amount of the items under Article 9, paragraph 1, items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3;

2. all other instruments must not exceed a maximum of 35 per cent of the difference between the total amount of the items under Article 9, paragraph 1, items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3, and together with the instruments under item 1 – 50 per cent of the difference between the total amount of the items under Article 9, paragraph 1, items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3;

3. instruments with provisions that provide for an incentive for the payment institution to redeem them must not exceed:

a) 15 per cent of the difference between the total amount of the items under Article 9, paragraph 1, items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3;

b) together with the instruments under item 2 – 35 per cent of the difference between the total amount of the items under Article 9, paragraph 1, items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3, and

c) together with the instruments under items 1 and 2 – 50 per cent of the difference between the total amount of the items under Article 9, paragraph 1, items 1, 2, 3, 4 and 8 and the total amount of the items under Article 9, paragraph 8, items 1, 2 and 3.

Own Funds Reports

Article 10. (1) The payment institution shall prepare a report on its own funds on the basis of the balance sheet on a non-consolidated basis as of the last day of each quarter. This report shall be submitted to the BNB Banking Department by the 15th day of the month following the reporting period.

(2) The payment institution shall submit a consolidated own funds report twice a year by the 30th day following the reporting period.

(3) The Deputy Governor heading the BNB Banking Department shall determine in instructions the form and content of the own funds report.

Additional Information

Article 11. (1) (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The payment institution must notify the BNB of the additional activities under Article 18 of the Law on Payment Services and Payment Systems, which it intends to perform within seven days prior to their commencement.

(2) (former wording of Article 11; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The Deputy Governor of the Bulgarian National Bank heading the Banking Department may require from the payment institution additional information on each item in the own funds report.

Data Accuracy Control

Article 12. The Bulgarian National Bank may conduct examinations of the accuracy in preparing the report under Article 10, including on-site inspections and comparison between the data in the report and that from the accounting and the operational reporting of banks.

Obligation for Submission of Information by the Payment Institution

Article 13. A company licensed to conduct activity as a payment institution shall be obliged to submit to the BNB its annual financial statements certified by a specialized audit company, which is a registered audit enterprise under the Law on the Independent Financial Audit, within a seven-day period after receiving the auditors' report, but not later than 15 April of the calendar year following the year reviewed in the report, as well as the interim financial statements by the end of the calendar month following the reporting six-month period.

Chapter Three

PAYMENT SYSTEMS

Section I

GRANTING A LICENSE FOR PAYMENT SYSTEM OPERATION UNDER CHAPTER SIX, SECTION III OF THE LAW ON PAYMENT SERVICES AND PAYMENT SYSTEMS

Application for Granting a License and Required Documents

Article 14. The application for granting a license to an operator of a payment system shall be filed in writing to the Governing Council of the BNB through the Governor and the Deputy Governor heading the Banking Department. The application shall contain:

1. the name of the payment system;
2. the name, registered office and head office addresses of the applicant;

3. a detailed description of the activity which the applicant intends to carry out;
4. the name, registered office and head office addresses of the participants in the system.

Required Documents

Article 15. (1) The following documents related to the applicant shall be enclosed to the application:

1. a certified copy of the Articles of Association; for a company in the process of being formed, a certified copy of the decision of the Constituent Meeting for establishment of the company and the Minutes of Management Bodies Election Meeting;

2. documents certifying the capital required under Article 95, paragraph 1, item 2 of the Law on Payment Services and Payment Systems has been fully paid-up; for a company in the process of being formed, a certificate issued by the bank shall be enclosed, evidencing that the contributions have been deposited on a cumulative account; for non-monetary contributions – the documents under Articles 72 and 73 of the Commerce Law;

3. (amended; Darjaven Vestnik, issue 59 of 2011) a declaration and documents of the origin of funds used for the contributions made against subscribed shares, equity respectively, or for the acquisition thereof;

4. a unified identification code or a statement from the Commercial Register issued not later than one month before filing the application with the BNB;

5. a detailed description of the applicant's activity and audited financial statements for the last three years or for the period of existence of the company, unless the applicant is a company in the process of being formed;

6. a strategy and a business plan of the applicant in relation to operating the payment system for a period of no less than three years of its functioning, containing the following:

- a) a plan for development and economic rationale of the applicant's activity, based on realistic estimates and proving its abilities to use financial and technical resources, systems and procedures guaranteeing reliable operation of the business for which the applicant wished to acquire a license;

- b) an analysis of the risks to which the payment system operator and/or the participants in the payment system are exposed or might be exposed, risk management principles and measures against financial risks;

- c) a description of the technical equipment and resources necessary to perform the system activities, including adequate computer, information, accounting and recording systems;

- d) a description of the organizational prerequisites for carrying out the system activities, including the organizational chart and the payroll of the company's structure, as well as a list of the contact persons who will receive the notifications forwarded by the BNB;

7. the rules governing the operation of the payment system, including:

- a) governance structure and levels of responsibility;
- b) systems and procedures for identification, management, control and reporting of the risks to which the operator of the payment system or the participants therein are exposed or might be exposed;
- c) internal control mechanisms, including administrative and accounting procedures;
- d) measures ensuring continuity and reliability in providing payment services;
8. a description of the information system organization and management, including the manner of protecting the information and customer data, encompassing the applicant and the participants in the payment system;
9. a description of the organizational structure, responsibilities definition and rules for control;
10. a description of the systems and procedures for identification, management, control and reporting of risks to which the operator of the payment system and/or the participants therein are exposed or might be exposed;
11. a description of the internal control systems and mechanisms, administrative and accounting procedures, which shall include methods and means of effective risk monitoring and control, including of the risk of using the system for money laundering and terrorist financing;
12. rules of the payment system and a draft written agreement containing general rules and standard procedures for executing transfers which will be concluded between all participants in the payment system, or a draft of a bilateral agreement which will be concluded between the operator of the payment system and any other participant therein;
13. a list of shareholders and their holdings of capital shares, containing the shareholders' unified identification code or personal identity data;
14. a list of the persons having, directly or indirectly, a qualifying holding in the applicant's capital within the meaning of § 1, paragraph 1, items 6, 6a, 6b, 6c, 6d and 6e of the Law on Credit Institutions;
15. a list of the persons with whom the applicant is in close relations within the meaning of § 1, paragraph 1, item 10 of the Law on Credit Institutions;
16. a list of the persons managing and representing the applicant and the members of its management and supervisory bodies;
17. a certificate of compliance of the premises in which payment services shall be carried out with the safety and fire precaution requirements under current legislation;
18. documents and data on the persons managing and representing the applicant and the members of its management and supervisory bodies, as well as on the persons having a qualifying holding or with whom the applicant is in close relations.
19. (new; Darjaven Vestnik, issue 59 of 2011) a document of paid fee under Article 49.

(2) If the operator of the payment system providing settlement finality intends to carry out, in the course of business, other activities in addition to the governance

of a payment system, the application for granting a license shall include a detailed description of all additional activities.

(3) Article 3, paragraphs 2 to 6 shall apply to the application and to the documents enclosed thereto.

(4) Upon granting a license, the BNB shall provide the applicant with a specially designed certificate.

Requirements for Qualification, Professional Experience and Good Reputation

Article 16. (1) Natural persons may participate in the management and supervisory bodies of the payment system operator if they have:

1. higher education;
2. at least five-year professional experience, of which three years managerial experience in banking or financial sector enterprises or in institutions comparable to a bank within the meaning of § 1, items 2 to 4 of Ordinance No. 20 of 2009 on the Issuance of Approvals under Article 11, Paragraph 3 of the Law on Credit Institutions;
3. no previous conviction for a premeditated crime of general character, unless rehabilitated;
4. not been members of a managing or controlling body, or partners with unlimited liability in a company where the company has been terminated because of bankruptcy, if unsatisfied creditors have remained;
5. not been deprived of the right to hold positions of financial responsibility; and
6. not been included in a list under Article 5, paragraph 1 of the Law on Measures Against Terrorist Financing.

(2) The requirements under paragraph 1, items 3 to 6 shall also apply to natural persons having, directly or indirectly, a qualifying holding in the applicant's capital, as well as to the persons who by law represent the legal persons having, directly or indirectly, a qualifying holding in the applicant's capital.

(3) In case of a change of the persons under paragraphs 1 and 2, all requirements under this Article shall be observed and within a seven-day period after the change the payment institution shall notify the BNB thereof and shall enclose the respective documents required for these persons under this Ordinance

Data on the Persons Responsible for the Management and Supervision of the Applicant

Article 17. The documents and information under Article 5 shall be submitted with respect to the persons managing and representing the applicant and to the members of its management and supervisory bodies.

Data Related to Persons Having a Qualifying Holding or with Whom the Applicant is in Close Relations

Article 18. (1) The documents and data under Article 6 shall be submitted with respect to any natural or legal person having, directly or indirectly, a qualifying holding in the capital of the applicant company within the meaning of § 1, paragraph 1, items 6, 6a, 6b, 6c, 6d and 6e of the Law on Credit Institutions.

(2) The Bulgarian National Bank may require the data and documents under Article 6, paragraphs 1 and 2 also with respect to the persons, whose holding in the applicant's capital is not qualifying.

(3) Upon transferring the subscribed shares in the capital of the payment institution's operator, paragraphs 1 and 2 shall be applied respectively, and the documents shall be submitted before the transfer.

(4) The applicant shall also submit to the BNB the documents under Article 6, paragraphs 1 and 2 with respect to the persons with whom it is in close relations within the meaning of § 1, paragraph 1, item 10 of the Law on Credit Institutions, as well as upon a change related to these persons within a seven-day period after the change has occurred.

Section II

TECHNICAL, ORGANIZATIONAL AND FUNCTIONAL REQUIREMENTS

Conformity with the Requirements

Article 19. To ensure smooth provision of services by the payment system, a payment system operator shall meet the specific technical, organizational and functional requirements throughout the whole period of its activity.

Premises

Article 20. (1) The payment system operator shall ensure appropriate premises for carrying out its activity. The premises shall be appropriate if they are technically equipped in a manner ensuring the reliable performance of all business processes involving the provision of services by the functioning of a payment system.

(2) Where the payment system operator uses rented premises, the rental contract shall be with a fixed term of no less than three years.

Technical Equipment

Article 21. (1) The payment system operator shall possess appropriate technical equipment.

(2) The technical equipment shall be appropriate if it allows for a constant, reliable and stable management of the business processes related to the provision of payment system services.

Operational Procedures

Article 22. (1) The payment system operator shall define and ensure operational procedures which are to be carried out at individual stages of acceptance and processing of orders, settlement of claims and obligations, transmission of information to the payment system participants and settlement agent, as well as rules and procedures for action in contingency situations.

(2) The employees involved in operational procedures shall be notified thereof and trained with a view to duly carrying out these procedures.

Internal Control and Risk Management System

Article 23. (1) The payment system operator shall ensure adequate functioning of the internal control and risk management system.

(2) The functioning of the internal control and risk management system shall be adequate if the functions related to risk management, internal control and to carrying out daily operations are independent and separated from each other while the responsibilities of the employees involved in individual working procedures are clearly defined.

Section III

REQUIREMENTS TO THE RISK MANAGEMENT RULES

Scope

Article 24. (1) The rules of procedure for each payment system shall clearly and explicitly determine the manners of risk management and control of the payment system, as well as the rights and obligations of its participants and of the payment system operator both in normal and in contingency situations.

(2) In the rules under paragraph 1, the payment system operator must:

1. determine the principles of risk management for the relevant payment system;
2. determine the criteria for participation in the system;
3. ensure possibilities for carrying out settlement in compliance with the terms under Articles 64 to 66 of the Law on Payment Services and Payment Systems;
4. ensure that the assets used for settlement of the orders accepted by the system are exposed to the least possible risk;
5. cover technical and organizational criteria, including:
 - a) measures for prevention of abuses and information leakage;
 - b) high security level and operational reliability, as well as ability to counteract to unauthorized impacts;
 - c) measures ensuring the timely cut-off of processing of orders accepted by the system, including in a contingency situation;
 - d) measures on the prevention of the use of the payment system for the purpose of money laundering and terrorist financing.

Financial Risk Management

Article 25. (1) Financial risks are settlement risk and systemic risk.

(2) Settlement risk is the risk that the settlement in the payment system shall not be carried out due to inability of a participant in the payment system to meet his obligations. The settlement risk may arise as credit risk or as a liquidity risk.

(3) Credit risk is the risk that a payment system participant shall be unable to entirely meet his obligation neither when it becomes payable, nor later.

(4) Liquidity risk is the risk that a payment system participant shall be unable to entirely and in due time meet his obligation without being insolvent as he will be able to meet his obligation later.

(5) The payment system shall have a clearly defined method for determining claims and obligations between the participants in the system both in normal and in contingency situations so that the settlement risks inherent to the system to be clearly set out, as well as the exposure of the payment system participants to these risks.

(6) Systemic risk is the risk that a payment system participant being unable to meet his functions and obligations in respect of other participants in due time shall make it impossible for other participants to meet their obligations. The systemic risk may arise as a settlement risk or as an operational risk.

Operational Risk Management

Article 26. (1) Operational risks are the risks arising from the use of information and other technologies, as well as from the use of equipment, personnel and organizational procedures by the operator and the payment system participants.

(2) The payment system operator shall set in details the goals and appropriate measures for ensuring the system's security and operational reliability of the system components, while taking into account the effective standards in the relevant field.

(3) The payment system operator shall ensure secure and reliable means of transmitting payment system participants' orders, determining mutual claims and liabilities between the participants and notifying these participants and the settlement agent of the results thereof. The payment system operator shall define the set phases in operational rules aimed at the payment system participants.

(4) The payment system operator and payment system participants shall ensure adequate reserve technical means of timely cut-off daily processing even in case of main equipment failure.

(5) The reserve technical means and procedures shall be subject to regular checks by the payment system operator, as well as by the payment system participants.

(6) A contingency processing plan including action scenarios in case of operational problems related to the functioning of the payment system shall be an integral part of the operational rules of the system.

(7) The payment system participants shall be acquainted with the rules and procedures under paragraphs 3 and 4, while being informed in advance of any amendments thereof.

Section IV
AUDIT OF PAYMENT SYSTEM OPERATORS

Audit Report

Article 27. (1) The audit report on carrying out audit of the payment system operator transactions shall be prepared by a specialized audit undertaking which is a registered auditor under the Law on Independent Financial Audit.

(2) The payment system operator shall send its audited annual statements and audit report, as well as its report under paragraph 1 to the BNB within seven days from the receipt of the audit reports but not later than five months after the end of the calendar year which the reports refer to.

Appendix to the Audit Report

Article 28. (1) The appendix to the audit report of the payment system operator transactions with the content under paragraphs 2 to 9 shall be an integral part of the report.

(2) The appendix shall include a report on abiding to the rules on risk management. The explanatory notes to the individual risk categories shall contain at least:

1. setting out individual types of risks to which the payment system operator is exposed due to the nature of its activity;
2. the opinion of the auditor on the management of any individual types of risks;
3. shortcomings established on individual types of risks and opinion of the auditor on the system of internal control adequacy;
4. explanations on the implementation of the auditor's recommendations from the previous year;
5. recommendations of the auditor for improving the procedures and policy on management of individual types of risks.

(3) The auditor shall analyze the management of individual risks and to this end he shall establish whether the payment system operator has launched a policy on risk management, internal procedures for identification and evaluation of risks, procedures for monitoring the implementation of risk management measures, as well as whether the competence on operations related to individual risks has been treated in adequate internal acts.

(4) The appendix shall include a report on functioning of the internal control unit of the payment system operator which contains a brief description of the unit's functions together with the auditor's opinion about the unit functioning adequacy, identification of shortcomings, as well as recommendations for improving its activity.

(5) The appendix shall contain explanatory notes on compliance with auditor's recommendations for improving the activity of the internal control unit from previous years.

(6) The appendix shall contain a report on the quality of the information system servicing the payment system activity for which the payment system operator company has been granted a license. The assessment of the auditor shall be supplemented by findings and recommendations in the following areas:

1. effective functioning of the information system;
2. correlation between the activity of the information system and the formulated business goals of the payment system operator company;
3. policy and organization of the security and protection of the information systems and database;
4. adequacy of the general, systemic and other kinds of control; and
5. technological infrastructure.

(7) The appendix shall include the auditor's opinion on the precision of reporting to the BNB under this Ordinance.

(8) The appendix shall contain explanatory notes in relation to all significant business events having occurred after the balance sheet date.

(9) The Deputy Governor of the BNB heading the Banking Department shall issue instructions on the form and minimum scope of the audit report.

Chapter Four

REPORTING REQUIREMENTS

(repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Section I

REPORTING RELATED TO ELECTRONIC MONEY

(repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Article 29. (repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Section II

REPORTING BY PAYMENT SYSTEM OPERATORS

(repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Obligation of the Payment System Operator to Provide Information

Article 30. (repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Obligation of the Payment System Operator for Immediate Notification

Article 31. (repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Section III

REPORTING BY THE PAYMENT SYSTEM PARTICIPANTS

(repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Article 32. (repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Section IV

REPORTING BY THE PAYMENT SERVICE PROVIDERS

(repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Article 33. (repealed; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Chapter Five

ELECTRONIC MONEY INSTITUTIONS

(new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Section I

LICENSING OF ELECTRONIC MONEY INSTITUTIONS

(new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Application for Granting a License and Required Documents

Article 34. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The application for granting a license for conducting activities as an electronic money institution shall be filed in writing to the BNB Governing Council through the Governor and the Deputy Governor heading the Banking Department.

(2) The application shall contain the name, registered office and head office addresses of the applicant and a detailed description of the activity of issuing electronic money which the applicant intends to carry out.

Required Documents

Article 35. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The following documents with respect to the applicant shall be enclosed to the application:

1. a certified copy of the Articles of Association or the company contract; for a company in the process of being formed, a certified copy of the decision of the Constituent Meeting for establishment of the company and the Minutes of Management Bodies Election Meetings;

2. documents certifying that the capital required under Article 77a, paragraph 1 of the Law on Payment Services and Payment Systems has been paid-up; where a company is in the process of being formed, a certificate issued by a bank shall be enclosed, certifying that the contributions have been deposited on a cumulative account, and for non-monetary contributions, the documents under Articles 72 and 73 of the Commerce Law shall be enclosed;

3. (amended; Darjaven Vestnik, issue 59 of 2011) a declaration and documents by the shareholders/partners on the origin of funds used for the contributions made against subscribed shares, equity respectively, or for the acquisition thereof;

4. a unified identification code or statement by the Commercial Register issued not later than one month before filing the application with the BNB;

5. a detailed description of the applicant's activity and audited financial statements for the last three years or for the period of the existence of the company, unless it is a company in the process of being formed;

6. a business plan and forecast budget for the first three years of functioning, containing at least the following:

- a) a plan for the development and economic rationale of the activity;
- b) a detailed description of all activities, which the applicant intends to carry out;
- c) rules and procedures for conducting activity encompassing the applicant, its branches and agents;
- d) identifying the risks to which the electronic money institution is exposed or might be exposed comprising the applicant, its branches and agents;
- e) a forecast budget for the first three years of functioning based on realistic estimates;
- f) resource certainty for conducting activity;

7. rules for the management of the electronic money institution, encompassing the activities of the applicant, its branches and agents, which shall include the following:

- a) a managerial structure and levels of responsibility;
- b) systems and procedures for identification, management, control and reporting of risks to which the electronic money institution is exposed or might be exposed;
- c) internal control mechanisms including reliable and effective administrative and accounting procedures;
- d) a programme for the measures against money laundering in discharge of the obligations set forth in the Law on the Measures Against Money Laundering and the Law on the Measures Against Terrorist Financing, as well as in Regulation No. 1781/2006 of the European Parliament and the Council of 15 November 2006 on information on the payer accompanying transfers of funds;

e) draft internal rules for measures against money laundering and terrorist financing;

f) measures ensuring continuity and reliability in issuing electronic money or in providing payment services;

g) procedures for the implementation of safeguarding measures under Article 77d of the Law on Payment Services and Payment Systems;

h) organization and management of the information system, including the manner of protecting information and customer data;

8. a description of the organizational structure of the applicant, including the following:

a) information on the agents and branches to be used by the applicant, where such are foreseen; where, as of the time of filing the application, agents and branches already exist, the information under Article 39 shall also be submitted;

b) conditions for assigning activities to subcontractors, if foreseeable;

c) interaction between the applicant and other payment service providers and/or payment systems;

9. a list of shareholders/partners and their shares/equity interests, containing their unified identification code or personal identity data;

10. a list of the persons having, directly or indirectly, a qualifying holding in the applicant's capital within the meaning of § 1, paragraph 1, items 6, 6a, 6b, 6c, 6d and 6e of the Law on Credit Institutions;

11. a list of the persons with whom the applicant is in close relations within the meaning of § 1, paragraph 1, item 10 of the Law on Credit Institutions;

12. a list of the persons managing and representing the applicant, members of the management and supervisory bodies of the latter and the persons managing and representing its branches and agents;

13. a list containing the addresses of the premises where the applicant will issue electronic money or provide payment services, including through a branch, as well as the addresses of the premises where the applicant will sell and buy back electronic money products through an agent;

14. a certificate of compliance of the premises in which electronic money will be issued or payment services will be carried out, including through branches, as well as the addresses of the premises where electronic money products will be sold and bought back through agents, along with the safety and fire precaution requirements under current legislation;

15. data and documents under Article 37 with respect to the persons managing and representing the applicant and to the members of its management and supervisory bodies, as well as data and documents under Article 38 with respect to the persons having a qualifying holding or with whom the applicant is in close relations.

16 (new; Darjaven Vestnik, issue 59 of 2011) a document of paid fee under Article 49.

(2) The application for a license shall be signed by the persons managing and representing the applicant.

(3) The enclosed documents shall be submitted in Bulgarian language or in a certified translation of the original or in a certified copy verified by the applicant, and upon request, the latter shall be obliged to submit the original of the document.

(4) (amended; Darjaven Vestnik, issue 59 of 2011) A document under Article 1 may be replaced by a declaration verified by a notary public where the legal system of the foreign country does not provide for the issuance of such a document, which shall be certified by the respective competent authorities of this country by an official document.

(5) The applicant shall immediately notify in writing the BNB of any changes in the information contained in the application and in the enclosed documents which have occurred after filing the application.

(6) The Bulgarian National Bank may require additional documents to be submitted with the purpose of ascertaining all the circumstances required for assessment of available conditions for granting a license.

(7) For the license granted, the BNB shall provide the applicant with a specially designed certificate.

Requirements for Qualification, Professional Experience and Good Reputation

Article 36. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The persons managing and representing the applicant and the members of its management and supervisory bodies shall be natural persons who:

1. have higher education;
2. have at least five-year professional experience, of which three years managerial experience in banking or financial sector enterprises or in institutions comparable to a bank within the meaning of § 1, items 2 to 4 of Ordinance No. 20 of 2009 on the Issuance of Approvals under Article 11, paragraph 3 of the Law on Credit Institutions (published; Darjaven Vestnik, issue 36 of 2009; amended, issue 10 of 2010);
3. have not been convicted of a premeditated crime of general character, unless rehabilitated;
4. during the last two years have not been members of a managing or controlling body or partners with unlimited liability with a company when its activity has been terminated because of bankruptcy, if unsatisfied creditors have remained;
5. have not been deprived of the right to hold positions of financial responsibility; and
6. have not been included in the list under Article 5, paragraph 1 of the Law on the Measures Against Terrorist Financing.

(2) The requirements under paragraph 1, items 3 to 6 shall also apply to natural persons having a direct or indirect qualifying holding in the applicant's capital, as

well as to persons who by law represent the legal persons having a direct or indirect qualifying holding in the applicant's capital.

(3) The requirements under paragraph 1, items 3 to 6 shall also apply to the persons managing and representing the applicant's branches and agents.

(4) In case of a change of the persons under paragraphs 1, 2 and 3, all requirements under this Article shall be observed, and within a seven-day period after the change the electronic money institution shall notify the BNB thereof and shall enclose the respective documents required for these persons under this Ordinance.

Data on the Persons Responsible for the Management and Supervision of the Applicant

Article 37. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The documents and information under Article 5 shall be submitted with respect to the persons managing and representing the applicant and to the members of its management and supervisory bodies.

Data on the Persons Having a Qualifying Holding or with Whom the Applicant is in Close Relations

Article 38. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) For any natural person or legal entity who owns or has subscribed, directly or indirectly, qualifying holding in the applicant's capital within the meaning of § 1, paragraph 1, items 6, 6a, 6b, 6c, 6d and 6e of the Law on Credit Institutions, the documents and information under Article 6 shall be submitted.

(2) The Bulgarian National Bank may also require data and documents under Article 6, paragraphs 1 and 2 with respect to the persons whose holding in the applicant's capital is not qualifying.

(3) Upon transferring the subscribed shares/equity holding in the electronic money institution's capital, paragraphs 1 and 2 shall be applied respectively, and the documents shall be submitted before the transfer.

(4) The applicant shall also submit to the BNB the documents under Article 6, paragraphs 1 and 2 with respect to the persons with whom it is in close relations within the meaning of § 1, paragraph 1, item 10 of the Law on Credit Institutions, as well as upon a change related to these persons within a seven-day period after the change has occurred.

Agents and Branches of an Electronic Money Institution

Article 39. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) An electronic money institution shall not issue electronic money through agents.

(2) An electronic money institution may distribute and redeem electronic money through agents which are traders acting on behalf of this electronic money institution.

(3) If the applicant intends to carry out activities through a branch or will distribute and redeem electronic money through an agent, it shall submit to the BNB the following information and documents:

1. the name, registered office and address of the applicant, a unified identification code or a statement by the Commercial Register of the applicant issued not later than one month before filing the documents with the BNB, and the number of the license for issuing electronic money issued by the BNB;

2. the name, registered office and address of the agent or branch;

3. a unified identification code or a statement by the Commercial Register of the agent or branch issued not later than one month before filing the documents with the BNB;

4. a list of the persons managing and representing the agent or branch and the documents under Article 37 with regard to these persons certifying compliance with the requirements of Article 36;

5. a declaration that the rules and procedures under Article 35, paragraph 1, item 7 apply also to the branch or agent the applicant wishes to register.

(4) Where the agent is an institution licensed by the BNB, the applicant may submit to the BNB only information on the date and the registration number of the information that has already been submitted to the BNB pursuant to the requirements of another legislative act, which complies with the content and size of the information required under paragraph 1.

(5) The Bulgarian National Bank shall enter, refuse to enter or delete the branch or agent of the electronic money institution into/from the register maintained by the BNB on the grounds provided for in Article 77f of the Law on Payment Services and Payment Systems.

(6) The BNB shall also enter in its register electronic money institutions licensed in the Republic of Bulgaria which will conduct activity directly or through a branch or will distribute and redeem electronic money through an agent on the territory of a Member State, as well as electronic money institutions licensed in other Member States which will conduct activity directly or through a branch or will distribute and redeem electronic money through an agent on the territory of the Republic of Bulgaria upon fulfillment of the requirements under Article 77f of the Law on Payment Services and Payment Systems.

Section II

OWN FUNDS OF AN ELECTRONIC MONEY INSTITUTION

(new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

General Provisions

Article 40. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The elements under Article 9, paragraph 1, items 1 and 2 shall be included in the initial capital under Article 77a of the Law on Payment Services and Payment

Systems which the electronic money institution shall have as of the date of obtaining the license.

(2) The electronic money institution shall at all times hold own funds of no less than the higher amounts under Article 77a or Article 77b, paragraphs 2–6 of the Law on Payment Services and Payment Systems both on a non-consolidated and consolidated basis.

(3) The provisions of Articles 9, 9a and 9b shall apply respectively to the own funds of the electronic money institution.

(4) Where an electronic money institution belongs to the same group as another electronic money institution, credit institution, payment institution, investment firm, an asset management company or insurance or reinsurance undertakings, the elements which meet the own funds conditions may not be used more than once in calculating their amount. This requirement shall apply also in the cases when the electronic money institution carries out additional activities under Article 77e of the Law on Payment Services and Payment Systems.

(5) Where an electronic money institution carries out some of the additional activities under Article 77e of the Law on Payment Services and Payment Systems and the value of outstanding electronic money is unknown in advance, the electronic money institution may calculate the amount of own funds on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that this representative portion can be reasonably estimated on the basis of historical data and in a reliable manner.

(6) Where an electronic money institution has not completed a long period of business, the own funds requirements must be calculated on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan.

Own Funds Reports

Article 41. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The electronic money institution shall prepare a report on its own funds on the basis of the balance sheet on a non-consolidated basis as of the last day of each quarter. This report shall be submitted to the BNB Banking Department by the 15th day of the month following the reporting period.

(2) The electronic money institution shall submit a consolidated own funds report twice a year by the 30th day following the reporting period.

(3) The Deputy Governor heading the BNB Banking Department shall determine in instructions the form and content of the own funds report.

Additional Information

Article 42. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The electronic money institution must notify the BNB of the additional activities under Article 77e of the Law on Payment Services and Payment Systems, which it intends to perform within seven days prior to their commencement.

(2) The Deputy Governor of the Bulgarian National Bank heading the Banking Department may require from the electronic money institution additional information on each item in the own funds report.

Data Accuracy Control

Article 43. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The Bulgarian National Bank may conduct examinations of the accuracy in preparing the report under Article 41, including on-site inspections and comparison between the data in the report and those in the accounting and operational reporting of the electronic money institution.

Obligation for Submission of Information by the Electronic Money Institution

Article 44. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) A company licensed to conduct activity as an electronic money institution shall be obliged to submit to the BNB its annual financial statements certified by a specialized audit company, which is a registered audit enterprise under the Law on the Independent Financial Audit, within a seven-day period after receiving the auditors' report, but not later than 15 April of the calendar year following the year reviewed in the report, as well as the interim financial statements by the end of the calendar month following the reporting six-month period.

Chapter Six

REPORTING REQUIREMENTS

(new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011)

Payment System Operators' Obligation to Provide Information

Article 45. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) Payment system operators shall ensure control and reporting on each payment order received and processed.

(2) Payment system operators shall provide the BNB with information in compliance with its requirements and in the following form:

1. reports on the payment system operations;
2. reports on the payment system operator's activity;
3. reports on the performed equipment tests;

4. reports on the results from the analyses in relation to the inherent operational and settlement risks of the system;
5. extraordinary reports in case of insolvency or termination of the activity of participants in the system;
6. extraordinary reports in case of problems in the functioning of the payment system;
7. special reports covering specific data required by the BNB with a view to performing oversight over the payment system operations and the system operator's activity.

(3) The Deputy Governor of the BNB heading the Banking Department shall determine in instructions the content, form, periodicity and time limits for submission of the reports under paragraphs 1 and 2.

Obligation of the Payment System Operators, Payment Institutions and Electronic Money Institutions for Immediate Notification

Article 46. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) The payment system operators shall immediately notify the BNB in the following cases:

1. if their solvency is in jeopardy;
2. if they have begun a comprehensive review and/or upgrade of the information systems, or if they have started developing a new package of services which significantly affect the state of the information technology, as well as in case of changes to the system's functionality;
3. in all other events which may be related to the governance of the payment system.

(2) The payment institutions and electronic money institutions shall immediately notify the BNB in the following cases:

1. if their solvency is in jeopardy;
2. if the amount of the payment institution's own funds has decreased below the higher amount under Articles 8 or 9 of the Law on Payment Services and Payment Systems, and correspondingly the amount of the electronic money institution's own funds has decreased below the higher amount under Articles 77a or 77b, paragraphs 2–6 of the Law on Payment Services and Payment Systems.

Reporting of the Payment System Participants

Article 47. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) The Deputy Governor of the BNB heading the Banking Department shall determine in instructions the content, form and time limits for submission of the reports of payment system participants.

Reporting by the Payment Service Providers

Article 48. (new; Darjaven Vestnik, issue 30 of 2011, effective as of 30 April 2011) (1) Payment service providers shall submit to the BNB information about payment services provided by them.

(2) Electronic money institutions shall submit to the BNB information about electronic money issued, delivered and redeemed by them.

(3) The Deputy Governor of the BNB heading the Banking Department shall determine in instructions the content, form and time limits for submission of the reports under paragraphs 1 and 2.

Chapter Seven

FEES

(new; Darjaven Vestnik, issue 59 of 2011)

Article 49. (new; Darjaven Vestnik, issue 59 of 2011) To cover the administrative expenses for the examination of the applications and documents for licenses to be issued under this Ordinance, the BNB shall charge fees as follows:

1. examination of applications for granting a license to conduct transactions as a payment institution – BGN 4000;

2. examination of applications for granting licenses to operate a payment system under Chapter Six, Section Three of the Law on Payment Services and Payment Systems – BGN 50,000;

3. examination of applications for granting a license to conduct transactions as a company for electronic money – BGN 10,000.

Transitional and Final Provisions

§ 1. This Ordinance is issued on the grounds of Article 9, paragraph 5, Article 10, paragraph 2, Article 10, paragraph 4, item 8, Article 22, paragraph 2, Article 25, paragraph 5, Article 94, paragraph 2, Article 95, paragraph 1, item 8 and § 10 of the Law on Payment Services and Payment Systems and is adopted by Resolution No. 86 of the Governing Council of the BNB of 16 July 2009 and shall enter into force as of 1 November 2009.

§ 2. This Ordinance shall repeal Ordinance No. 16 of 2005 on Electronic Payment Instruments (published in Darjaven Vestnik, issue 81 of 2005).

§ 3. The Deputy Governor heading the BNB Banking Department shall issue instructions on the enactment of this Ordinance.

Ordinance
on Amendment to Ordinance No. 16 of 2009
on Payment Institutions and Payment System
Operators Licensing

(published in the Darjaven Vestnik, issue 102 of 2009,
effective as of 1 January 2010)

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Final Provision

§ 4. This Ordinance is issued on the grounds of § 10 of the Transitional and Final Provisions of the Law on Payment Services and Payment Systems and is adopted by Resolution No. 144 of the Governing Council of the BNB of 10 December 2009.

Ordinance
on Amendment to Ordinance No. 16 of 2009 on
Payment Institutions and Payment System Operators
Licensing

(published in the Darjaven Vestnik, issue 102 of 2010)

Transitional and Final Provisions

§ 3. The persons that have submitted an application on issuance of a license for a payment institution on which the BNB has not delivered a decision as of the date of enactment of this Ordinance shall, within a month from this date, submit all data and documents under § 1 and § 2.

§ 4. This Ordinance is issued on the grounds of Article 10, paragraph 2 in connection with § 10 of the Transitional and Final Provisions of the Law on Payment Services and Payment Systems and is adopted by Resolution No. 122 of the Governing Council of the BNB of 21 December 2010.

Ordinance
on Amendment to Ordinance No. 16 of 2009 on
Payment Institutions and Payment System Operators
Licensing

(published in the Darjaven Vestnik, issue 102 of 2010)

Transitional and Final Provisions

§ 3. The persons that have submitted an application on issuance of a license for a payment institution on which the BNB has not delivered a decision as of the date of enactment of this Ordinance shall, within a month from this date, submit all data and documents under § 1 and § 2.

§ 4. This Ordinance is issued on the grounds of Article 10, paragraph 2 in connection with § 10 of the Transitional and Final Provisions of the Law on Payment Services and Payment Systems and is adopted by Resolution No. 122 of the Governing Council of the BNB of 21 December 2010.

Ordinance
on Amendment to Ordinance No. 16 of 2009 on
Payment Institutions and Payment System Operators
Licensing

(published in the Darjaven Vestnik, issue 30 of 2011,
effective as of 30 April 2011)

Additional Provision

§ 11. This Ordinance shall introduce the provisions of:

1. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 95/7/EC (OJ, L 319/1 of 5 December 2007);

2. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ, L 267/7 of 10 October 2009).

Final Provision

§ 12. This Ordinance is issued on the grounds of Article 77, paragraph 3, Article 77a, paragraph 2, Article 77b, paragraph 7 and § 10 of the Transitional and Final Provisions of the Law on Payment Services and Payment Systems and is adopted by Resolution No. 25 of the Governing Council of the BNB of 30 March 2011, effective as of 30 April 2011.

**Ordinance
on Amendment to Ordinance No. 16 of 2009
on Payment Institutions and Payment System
Operators Licensing**

(published in the Darjaven Vestnik, issue 59 of 2011)

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Transitional and Final Provisions

§ 6. The persons that have submitted an application on issuance of a license under the procedure of this Ordinance on which the BNB has not delivered a decision as of the date of enactment of this Ordinance shall, within a month from this date, submit a document certifying paid fee under Article 49.

§ 7. This Ordinance is issued on the grounds of Article 10, paragraph 2, Article 25, paragraph 5, Article 94, paragraph 2, Article 112, paragraph 3 and § 10 of the Transitional and Final Provisions of the Law on Payment Services and Payment Systems and is adopted by Resolution No. 72 of the Governing Council of the BNB of 21 July 2011.

