

Guidance Notes – CBM Directive No. 19 on the use of cheques and bank drafts

1. Introduction

The aim of this Directive is to introduce a set of rules and regulations on the use of paper-based instruments in Malta to regulate the use of such instruments due to their inefficient nature, high processing costs and Anti-Money Laundering (AML) risks. With the publication of this Directive, the Central Bank of Malta (Bank) aims to minimise the risks associated with such instruments, while shifting consumers' behaviours towards more efficient and traceable electronic payment instruments. This Directive forms part of other national legislative and operational actions aimed at achieving an efficient local payments market.

2. Subject Matter and Scope

This Directive regulates the use of cheques and bank drafts, excluding money orders given that these are governed by the Universal Postal Union, as well as the Postal Services (General) Regulations (S.L. 254.01). Furthermore, this Directive applies to all local credit and financial institutions which are licensed by the Malta Financial Services Authority (MFSA), institutions which exercise their passporting rights to provide their services in Malta, post office giro institutions and the Bank when acting as a payment service provider. The provisions of this Directive shall apply only when both the drawee institution and the payer institution are located in Malta.

This Directive applies also to natural and legal persons making use of cheques and bank drafts. Natural persons refer to individuals while legal persons refer to companies or other persons set up through legislative provisions.

3. General Rules

Paragraph 8 outlines the details that should be present on paper-based instruments, including the sum to be paid, a specified payee and the authentication of the drawer. Furthermore, the drawer should ensure that the date on the paper-based instrument reflects the date when the instrument is made available to the beneficiary. Nevertheless, the drawee institution or payer institution shall still encash or deposit any post-dated paper-based instruments upon presentation. The instrument shall also bear on the face of it the word "Only", meaning that the instrument is non-transferable and can only be negotiated by a payment service provider.

Paragraph 9 requires payment service providers to encash or deposit a paper-based instrument only when this is presented by the named payee, i.e. the person to whom the instrument is addressed, even when the instrument bears on its face the word “Or Order”, as paper-based instruments are no longer transferable to third parties.

As from **1 January 2022**, institutions shall discontinue the issue of “Or Order” cheques. Holders of chequebooks with cheques marked “Or Order” can continue to use their chequebook, however, service providers will only honour these cheques by paying the beneficiary named by the drawer. Beneficiaries of cheques which have been negotiated by third parties and who therefore are not the named payee of the cheque, will need to encash or deposit the cheque before the **31 December 2021**, as from the next day, payment service providers will not be able to pay them the value of the cheque.

Paragraph 10(i) outlines the duties of a drawer when issuing a cheque. The drawer should write in a clear manner on the face of the cheque: (a) the date when the cheque is issued; (b) the name of the payee who is to receive the funds; (c) the amount payable, in words and figures which should agree; and (d) the signature or any other means of authentication which would allow the drawee institution to verify that the cheque was issued by the account holder.

Paragraph 10(ii) stipulates a minimum limit of twenty euro (€20) for the issue of paper-based instruments and instruments below this limit should not be honoured by payment service providers.

Paragraph 11 sets a maximum monetary limit of five thousand euro (€5,000) for which paper-based instruments can be encashed. Paper-based instruments with a payable sum exceeding this amount shall be deposited in full in the payee’s account, which can also be a joint account where the named payee is one of the account holders. Should there be consecutive cheques issued by the drawer to the same payee, for amounts lower than or up to five thousand euro (€5,000), the drawee institution may refuse to pay such cheques in cash.

In the event that the payee does not hold an account with the drawee institution, the latter is only obliged to encash paper-based instruments for which the payable sum is equal or less than five thousand euro (€5,000).

Paragraph 12 outlines that, where the payee is a natural person, the payee must endorse the paper-based instrument by signing at the back of the cheque and include the ID card number, passport number, or the number of an officially issued identification document before presenting it to the drawee institution or payer institution for negotiation.

Furthermore, the drawee institution or the payer institution is required to authenticate the identity of the payee through:

- (a) a valid officially-issued identification document, when the payee presents a paper-based instrument for negotiation over the counter; or
- (b) a check with the related payee's account mandate personal information (such as: ID card number, or account holder signature), when the instrument is deposited through an ATM network or a drop-box in the branch.

Additionally, the drawee institution or the payer institution is also obliged to record the date of negotiation on the paper-based instrument. This can be done through an automated cheque clearing process.

Moreover, it outlines that, where the payee is a legal person, the payee must deposit all paper-based instruments in the account of the named payee meaning that instruments payable to legal persons cannot be encashed. The drawee institution or payer institution is also obliged to record the date on the paper-based instrument when the service is provided.

Paragraph 13 obliges the drawee institution or the payer institution to ensure that the paper-based instrument is negotiated only for the named payee.

Paragraph 14 allows a payer institution to refuse to pay in cash a paper-based instrument where the named payee does not hold an account with it.

Paragraph 15 states that the drawee institution shall ensure the validity and authentication of the paper-based instrument before affecting settlement and debiting the drawer's account with the payable amount.

Paragraph 16 outlines that the validity period of paper-based instruments is six (6) calendar months. This is in line with the current market practice.

Paragraph 17 requires institutions to retain physical or electronic copies of paper-based instruments for at least five (5) years from the date when such instrument has been encashed or deposited.

Paragraph 18 obliges the drawee institution to discontinue the cheque issuance facilities to a drawer if, during the preceding twelve (12) calendar months, six (6) authenticated valid paper-based instruments presented for settlement could not be paid due to insufficient funds, or any other reason which by the drawer's action would have rendered the instrument as invalid. Cheque issuance facilities should remain unavailable for at least twenty-four (24) months from the date of suspension.

4. Penalties

Paragraph 19 stipulates that when a payment service provider fails to comply with the requirements set out in this Directive, the Bank may impose penalties in accordance with article 56 of the Central Bank of Malta Act (Cap. 204 of the Laws of Malta) and CBM Directive No. 12 on Administrative Measures and Penalties for Infringements under the Central Bank of Malta Act. In such case, the Bank may publish any administrative penalties imposed.

Paragraph 20 deals with cases where the administrative penalty is imposed on a payment service user, where such penalty shall not exceed two hundred euro (€200). Such penalties may be imposed for each paper-based instrument issued which contravenes this Directive. If two or more payment service users are involved in a transaction that contravenes this Directive, the Bank may impose an administrative penalty on every party involved in the transaction.

5. Dispute Resolution

Paragraph 21 stipulates that a payment service user who is considered an eligible customer, under the Arbiter for Financial Services Act, may resort to the Office of the Arbiter for any complaints and settlement of disputes with a payment service provider, concerning the requirements emanating from this Directive.

Furthermore, a payment service user who is not considered an eligible customer and other interested parties, may direct any complaints concerning the requirements emanating from this Directive to the Bank.

Date of publication: 7th July 2021