

Subsidiary Legislation made under s.53 and s.79 of the Financial Services (Banking) Act.

**INTERCHANGE FEES (CARD-BASED PAYMENT
TRANSACTIONS) REGULATIONS 2017**

Repealed by LN.2020/016 as from 15.1.2020

(LN. 2017/085)

Commencement **27.4.2017**

ARRANGEMENT OF REGULATIONS.

Regulation

**PART 1
PRELIMINARY**

1. Title and commencement.
2. Interpretation.
3. Application of EU Regulation.
4. Designation of competent authority.

**PART 2
DEROGATIONS FROM THE EU REGULATION**

5. Derogation for certain three party payment card schemes.
6. Derogation: interchange fees for domestic debit card transactions.

**PART 3
ENFORCEMENT AND SANCTIONS**

7. Sanctions for infringements.
8. Public statement.
9. Cease and desist order.
10. Remediation order.
11. Civil penalty.
12. Criteria for exercise of enforcement powers.
13. Warning notices.
14. Decision notices.
15. Appeals.

1989-47
Repealed

Financial Services (Investment and Fiduciary Services)

**INTERCHANGE FEES (CARD-BASED PAYMENT
TRANSACTIONS) REGULATIONS 2017**

**Subsidiary
2017/085**

16. Interim orders.
17. Publication.
18. FSC's powers.

Financial Services (Investment and Fiduciary Services)

**INTERCHANGE FEES (CARD-BASED PAYMENT
TRANSACTIONS) REGULATIONS 2017**

1989-47
Repealed
Subsidiary
2017/085

In exercise of the powers conferred upon the Minister by section 53 of the Financial Services (Investment and Fiduciary Services) Act and section 79 of the Financial Services (Banking) Act, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and upon the Government by section 23(g)(ii) of that Act and of all other enabling powers, and in order to implement Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, the Minister and the Government have made the following Regulations.

**PART 1
PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Interchange Fees (Card-Based Payment Transactions) Regulations 2017.

(2) These Regulations come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations-

“the EU Regulation” means Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, as amended from time to time; and

“the FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007.

(2) Expressions used in these Regulations that are also used in the EU Regulation have the same meaning in these Regulations as they have in the EU Regulation.

Application of EU Regulation.

3. The EU Regulation has effect in Gibraltar subject to these Regulations.

Designation of competent authority.

4. The FSC is designated as the competent authority for the purposes of the EU Regulation.

PART 2
DEROGATIONS FROM THE EU REGULATION

Derogation for certain three party payment card schemes.

5.(1) Chapter 2 of the EU Regulation does not apply in respect of three party payment card schemes which, by virtue of Article 2(18) of the EU Regulation, are considered to be four party payment card schemes.

(2) This regulation only applies if the card-based payment transactions made in Gibraltar under those payment schemes do not exceed, on a yearly basis, 3% of the value of all card-based payment transactions made in Gibraltar.

(3) In accordance with Article 1(5) of the EU Regulation, this regulation ceases to have effect on 9 December 2018.

Derogation: interchange fees for domestic debit card transactions.

6.(1) This regulation applies in respect of interchange fees for domestic debit card transactions.

(2) Payment service providers may apply a weighted average interchange fee of not more than the equivalent of 0.2% of the annual average transaction value of all domestic debit card transactions within each payment card scheme.

(3) In accordance with Article 3(3) of the EU Regulation, this regulation ceases to have effect on 9 December 2020.

PART 3
ENFORCEMENT AND SANCTIONS

Sanctions for infringements.

7. The FSC may take any of the actions specified in regulations 8 to 11 if it is satisfied that an infringement of the EU Regulation or these Regulations has occurred.

Public statement.

8.(1) The FSC may publish a statement specifying—

- (a) the nature of the infringement; and
- (b) the identity of the person responsible for it.

(2) Publication under this regulation may take any form, or combination of forms, that the FSC thinks appropriate.

Cease and desist order.

9. The FSC may order a person—

- (a) to cease any conduct which constitutes an infringement; and
- (b) to desist from any repetition of that conduct.

Remediation order.

10.(1) The FSC may order a person to take any steps that the FSC considers to be appropriate for securing compliance with the EU Regulation or these Regulations (“a remediation order”).

(2) A remediation order may, in particular, require the person to—

- (a) take a specified action;
- (b) refrain from taking a specified action; and
- (c) review, or take remedial action in respect of, past conduct.

Civil penalty.

11.(1) The FSC may by order impose a penalty for infringement of an amount not exceeding level 5 on the standard scale.

(2) A penalty imposed under this regulation may be enforced in the same manner as a debt owed to the FSC.

Criteria for exercise of enforcement powers.

12. The FSC must ensure that the type and level of any enforcement action is effective, proportionate and dissuasive, taking account of all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person against whom the enforcement power is being exercised;
- (c) the financial strength of the person, for example as indicated by turnover or annual income;

- (d) in so far as they can be determined—
 - (i) the importance of the profits gained or losses avoided by virtue of the infringement;
 - (ii) the losses sustained by others as a result of the infringement;
 - (iii) where applicable, the damage to the functioning of markets or the wider economy;
- (e) the level of cooperation with the FSC by the person;
- (f) previous infringements by the person;
- (g) measures taken after the infringements by the person to prevent its repetition.

Warning notices.

13.(1) Before taking action under these Regulations in respect of an infringement, the FSC must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(2) Sub-regulation (1) does not apply if the FSC is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken;
or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(3) A warning notice—

- (a) must give the recipient not less than 14 days to make representations; and
- (b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the FSC.

Decision notices.

- 14.(1) This regulation applies where the FSC has–
- (a) issued a warning notice, or
 - (b) dispensed with the requirement to give a warning notice in accordance with regulation 13(2).
- (2) After considering any representations made in accordance with regulation 13, the FSC must issue–
- (a) a decision notice stating that the FSC will take the action specified in the warning notice;
 - (b) a discontinuance notice stating that the FSC does not propose to take that action; or
 - (c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.
- (3) A decision notice takes effect, and the specified action may be taken–
- (a) at the end of the period for bringing an appeal if no appeal is brought; or
 - (b) when any appeal is finally determined or withdrawn.

Appeals.

15.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

(2) An appeal must be brought within 28 days of the date of the decision notice.

Interim orders.

16. The FSC may apply to the Supreme Court for permission to take action under these Regulations where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

Publication.

17.(1) This regulation applies where the FSC has issued a decision notice in respect of an infringement.

(2) The FSC may make public, by publication on its website and by any other means that it considers appropriate, any sanction that will be imposed upon a person under a decision notice unless disclosure would –

- (a) seriously jeopardise the financial markets; or
- (b) cause disproportionate damage to the parties involved.

(3) The FSC must ensure that any publication is of proportionate duration and remains on the FSC's website for a minimum of five years after all rights of appeal have been exhausted or have expired; but that personal data is only retained on the website for so long as is necessary, in accordance with the Data Protection Act 2004.

FSC's powers.

18. Part V of the Financial Services (Investment and Fiduciary Services) Act applies to these Regulations as it applies to that Act and the FSC may exercise any power under that Part for the purpose of supervising or investigating compliance with or enforcing the EU Regulation or these Regulations.