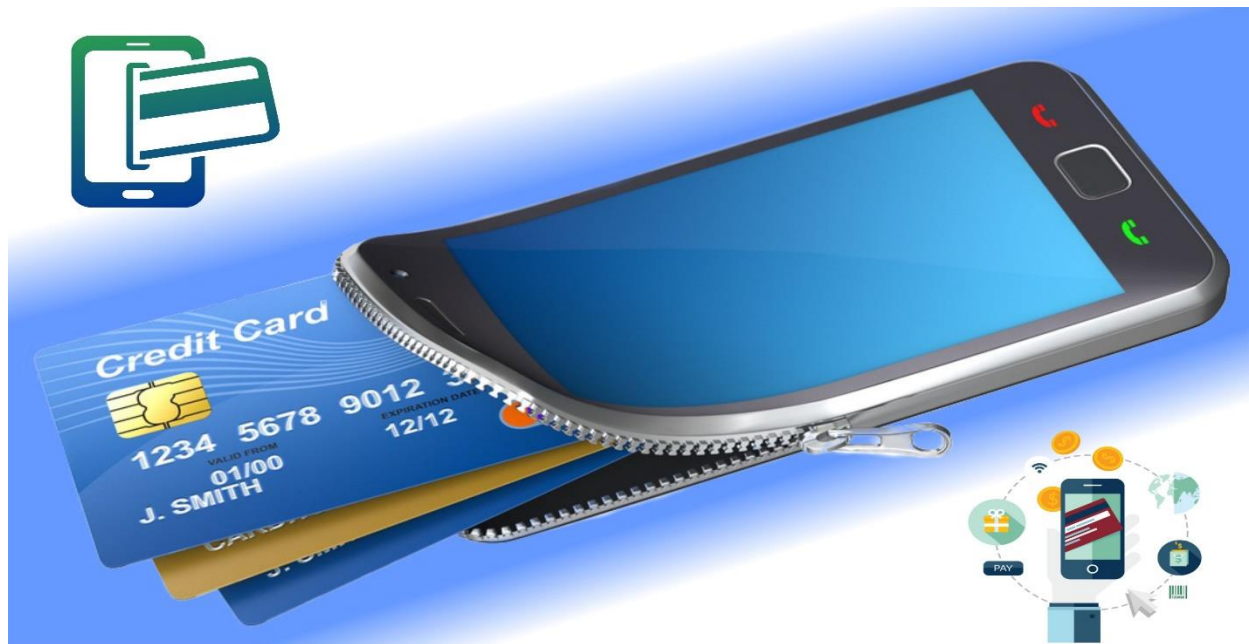


Payment institutions in Morocco

By *Abdelatif Laamrani*¹



Payment institutions are those which offer one or more payment services which may also, in compliance with the regulations in force, carry out exchange transactions (article 15 of Moroccan Banking Law). The 2014 banking law introduced “payment institutions” as a new category of operators. The provision of customers and the management of payment services are now shared between “payment services” which are mainly performed by payment institutions and “payment

banking services” performed by credit institutions.

Today, Morocco has 19 Payment Institutions, of which 15 provide payment services, and 4 exclusively provide money transfer services.

1- PAYMENT INSTITUTIONS, FIELD OF ACTIVITY AND REGULATION

Article 16 of Moroccan Banking Law defines the concept of “payment

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services" as : *"money transfer transactions; cash deposits and withdrawals from a payment account, the execution of payment transactions by any means of remote communication, provided that the operator acts only as an intermediary between the payer and the supplier of goods and services, the execution of permanent or single direct debits, card payment transactions and the execution of transfers, when these relate to funds placed in a payment account.* The payment account is any account held in the name of a user of payment services and which is used exclusively for the purpose of payment transactions.

The advantage that a Payment institution can have by doing business in Morocco is that the Banking law and regulations allow now PI to collect deposits, which are deposited in an aggregated general account, at a credit institution, assigned exclusively to payment transactions.

Are not referred to as "Payment transactions" operations carried out by: a check as governed by the provisions of the commercial code, a bill of exchange as governed by the provisions of the commercial code, a postal order issued and / or paid in cash, any other similar title on paper.

The conditions and modalities governing the practice of payment services are regulated by two circulars of Bank Al-Maghrib Governor, the first

is n ° 7 / W / 16 of June 10, 2016, and the second (n ° 6 / W / 2016) oversees the management of payment institutions.

Payment institutions keep their accounts in accordance with the provisions applicable to credit institutions. They must publish their individual and, where applicable, consolidated financial statements in accordance with the provisions applicable to credit institutions. They also have the obligation to appoint, after approval by Bank Al-Maghrib and according to the terms it imposes, an auditor to carry out the mission provided for in Article 100 of the Banking Law.

Payment institutions are required to have at all times, on an individual and / or consolidated basis, own funds calculated according to the terms determined by Bank Al-Maghrib. In addition, in accordance with the provisions of Article 77 of the Banking Law, they must have an internal control system adapted to the nature, complexity and volume of their activity. They are therefore subject to the anti-money laundering and terrorism financing system obligations.

In this regard, Moroccan regulations provide for 3 levels of accounts with payment institutions: up to MAD 200, from MAD 200 to MAD 5,000 and from MAD 5,000 to MAD 20,000. For each type, there are conditions relating to the

compliance principles against money laundering and terrorism financing. For example, an account of less than MAD 200 can be opened based on a phone number, from MAD 200 to MAD 5,000 based on Identity card (CIN) copy and an agreement, on the other hand, accounts from MAD 5,000 to MAD 20,000 are opened based on the “*Full know your customer*” principal: an interview with the depositors concerning their real identity and the origin of the funds etc.

Bank Al-Maghrib ensures permanent control over payment institutions which must communicate to it: any changes affecting their statutes as well as any conclusion or termination of agreements with foreign companies specializing in the transfer of funds.

Payment institutions may mandate legal persons or natural persons having the status of merchant (payment agents), with the purpose of offering customers, under their responsibility and on their behalf, the payment services for which they have been licensed. For this purpose, payment institutions ensure: - the integrity of payment agents and their professional experience or, where applicable, of their managers; - the adequacy of their human, technical and financial resources; - their ability to comply with regulatory provisions.

Moreover, it should be noted that, payment institutions can mandate primary payment agents or payment

agents, retailers. Principal payment agents may only offer payment services on behalf of a single payment institution and within the framework of its authorization. Principal payment agents may mandate retail payment agents to offer payment services in accordance with the provisions of Articles 14 to 18 of Circular of Bank Al-Maghrib Governor No. 6 / W / 16 of June 10, 2016.

Furthermore, Payment institutions are required to notify Bank Al-Maghrib of any mandate concluded directly or indirectly with a main payment agent or retailer, according to the terms it sets. The mandates must comply with the laws and regulations applicable to them. In addition, to offer payment services backed by a payment account, retail payment agents are required to have, in advance, an Agent payment account in their name, opened with the payment institution concerned. The retail payment agent can only carry out these operations within the limit of the available balance of the said account.

The agreements concluded between payment institutions and payment agents must include at least the clauses relating to: the payment services covered by the agreement; their financial and legal responsibility; to the obligation of compliance, by these payment agents, with the regulatory provisions set by the above mentioned circular and those provided for by the circular of Wali of Bank Al-Maghrib n °

7 / W / 2016 fixing the terms of practice of the payment services; the deadlines for settlement by the payment institution of advances made by their payment agents.

Furthermore, Payment agents are required to display their capacity as agent. They are required to offer the payment services for which they are mandated in accordance with the conditions set by the payment institution.

At another level, Payment institutions carrying out fund transfer activities and, where applicable, their main payment agents must have dedicated premises equipped with appropriate security means in accordance with the requirements of the competent authorities.

Without prejudice to the prerogatives devolved by banking law to Bank Al-Maghrib in terms of control of credit institutions and similar bodies, payment institutions are required to ensure that their payment agents, *principal* and *retailers*, comply with the regulations regarding the provision of payment services. Failure to comply with these provisions must result in the termination of the agreement between the payment institution and its agent and be brought to the attention of Bank Al-Maghrib and the professional association of payment institutions.

In accordance with the provisions of article 154 of the Banking Law, payment institutions and their payment agents

are required to make available to the public, at the level of their entire network, all information on the conditions that they apply to their operations. Public information must be provided at least on paper and by posting on the premises of payment institutions and their payment agents. The information must be legible (clear) and the media selected must be placed in places easily accessible to the public. Payment institutions must also have an internal system allowing efficient processing of complaints made by their customers (article 157 of the Banking Law).

In addition, in accordance with the provisions of article 158 of the banking law, payment institutions must adhere to a mediation system aimed at the amicable settlement of disputes between them and their customers.

Finally, companies having carried out, as their usual profession, intermediation operations in terms of transfer of funds before the entry into force of the Banking Law (of 2014) and approved under article 195 of the said law as a payment institution, have had a period of one year from the date of publication of the circular to comply with the chart of accounts applied to credit institutions (i.e. from March 2, 2017 date

of publication of the Minister of Finance Decision n ° 2810-16 of September 20, 2016 approving the said circular in the Official Bulletin n ° 6548).

2- PAYMENT INSTITUTIONS, CENTRAL BANK LICENCE

With regard to the legal form, both Article 1 of the Banking Law and Article 38 provide that credit institutions are legal persons. Unlike French law which enacts that the only legal form that a credit institution cannot choose is the form of personal business, institutions thus have great freedom to choose the legal form they wish to adopt. In Morocco, credit institutions headquartered in Morocco can only be established in the form of a public limited company with fixed capital or a cooperative with variable capital, with the exception of those which the law has given a special status. This is the case, for example, for *Payment institutions which must be set up in the form of a public limited company (PLC) (Société anonyme) or limited liability company (LLC) (SARL) (article 35, paragraph 2 of the banking law)*. In addition, the law specifies that the chosen form must be in line with the activity of the credit institution.

In terms of technical and financial means, the Payment institution requesting approval (BAM licence) must have the technical means allowing it to implement the planned activity. To do this, it must first have staff with the skills

and experience required to perform the operations inherent to this activity. It must also prove that it has an appropriate organization to ensure internal control of the operations it intends to carry out.

Finally, the company applying for BAM licence must have paid-up capital or an endowment of a minimum amount set by circular of Bank Al Maghrib Governor, an amount which varies according to the category of approval sought (Article 36 Banking Law.).

Authorities have increased the capital or minimum endowment required for two types of credit institutions : the Payment institutions which must always justify in their balance sheets a paid-up capital or a fully paid endowment of MAD 6,000,000.00 (six million Dirhams) and other companies approved to offer other payment services provided for in article 16 of the banking law, which must prove a minimum capital or endowment of MAD 10,000,000.00 (ten million Dirhams).

For the issuance of an authorization of a Payment institution, other conditions may be applied by Bank Al-Maghrib, for example when the request of license comes from a credit institution headquartered abroad either for the creation of a subsidiary or for the opening of a branch in Morocco, this request must be accompanied by the "opinion" of the original authority empowered to issue such an opinion.

Bank Al Maghrib will pay particular attention to ensure that the legislative and regulatory provisions that are applicable in the country of origin of the Payment institution are not likely to

hinder the supervision of the subsidiary or branch of which creation or opening is planned in Morocco.



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