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PROSPECTS OF M-PAYMENTS IN HUNGARY VIA NFC SOLUTIONS

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Earlier this year, our Firm took part in a survey as part of IBA's research on the current legal framework applicable to the potential use of mobile phones as payment instruments, similar to debit or credit cards. This would be made possible via Near Field Communication (NFC) solutions. NFC is basically a wireless communication technology which operates at a short-range high frequency and allows the contactless exchange of data between devices, thus enabling the mobile phone to act as a debit or credit card. Payments can be made simply by waving the mobile phone over a special device that reads the outputs of the mobile phone (more precisely, the outputs of the smartcard inserted into the mobile phone). This article aims to summarize the applicable legal framework in Hungary.

Currently, mobile phones are widely used in Hungary for payments via the SMS system where payment is either debited on the phone bill of the customer or on a separate virtual account, or phones can also be used as payment instruments via a downloadable and installed WAP application through which the customer can have direct access to the bank account.

The possibility of using mobile phones as m-payment solutions in Hungary is not expressly regulated in the laws of Hungary, but according to the following rules of Act CXII of 1996 on Credit Institutions and Financial Services ("**Bank Act**") it does not seem to be excluded either.

According to the Bank Act there are three types of cash substitute payment instruments: (i) cheques; (ii) electronic money instruments; (iii) any other device that enables its holder to access his/her account at a financial institution, withdraw cash from such account and to effect payment from such account to a payee for goods or services.

According to the Bank Act, electronic money instruments are cash-substitute payment instruments, including primarily a stored-value card or a computer memory, on which value units are stored electronically, enabling its holder to effect payment transactions directly. On the basis of the above definition, it can not be excluded that these categories could cover

mobile phones, since electronic money instruments can take the form of any kind of computer memory, and not just the form of a card. In principle a smartcard which would be inserted into the mobile phone, could qualify as computer memory.

We are not aware of any legal concerns as to why a mobile phone could not be equipped with a smartcard (computer memory), thereby enabling it to effectuate payments. However, it must be emphasized that only credit institutions are entitled to issue cash substitute payment instruments (e.g. an electronic payment instrument), therefore the merger of mobile phones and payment instruments must be carried out in cooperation with a credit institution that can activate a smartcard, which may be placed into a mobile phone, as an electronic payment instrument.

In case there would be a technical solution for having a mobile phone integrated with multiple accounts at several different banks, we believe that a mobile phone could also serve as a debit or credit card for multiple bank accounts if it can be assured that the mobile phone is able to handle multiple access to different bank accounts securely, and assuming that the reading terminal is able to differentiate between the different smartcards (computer memories) per issuer banks respectively.

Since this is a relatively new method of effectuating payments, there are no special provisions on security of data transfer when making payments via mobile phones, nevertheless the general rules on data management and bank secrecy together with the issuer's policy should apply. Credit institutions shall adopt and employ a strict security policy in connection with the handling of confidential information.

With respect to the above, we believe that there is no specific legal obstacle of using a mobile phone as an e-money instrument, since an electronic e-money instrument does not necessarily have to be a card, it can also take the form of a computer memory (such as a smartcard placed in a mobile phone).

The contents of this article are intended to provide only a general overview of the subject matter. Specialist advice should be sought for specific matters.

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