

## 專論

- 電子支付機構管理條例三讀通過後的幾點感想

劉昱劭 律師

近年來隨者電子商務的興盛，消費者的消費模式與支付工具有劇烈的改變。很多消費者已經習慣在網路上購買各式各樣以往是在實體零售店購買的商品。在此背景下，付款方式也隨之進化，從早期實體ATM或銀行轉帳，演變成線上刷卡、網路ATM轉帳，若在國外，還要再加上透過paypal等有儲值功能的帳戶進行線上交易等等。

我國近年來的第三方支付業者增加很多，據金管會指出，我國目前第三方支付服務業逾一千五百家，估計整個電子商務（含B2C及C2C）的產值在2014年已達到新台幣八千八百億元的規模。

2015年1月16日立法院三讀通過電子支付機構管理條例，預計在總統公布後三個月施行，對於第三方支付服務業者而言，相較於立法前，最大的差異在於立法前非金融機構的第三方支付業者無法辦理儲值業務；立法後，第三方支付業者設立電子支付機構經許可後，即可辦理儲值業務。

立法前第三方支付業者無法辦理儲值業務的原因，是依據2009年1月23日公布的電子票證管理條例，凡以「電子、磁力或光學形式儲存金錢價值，並含有資料儲存或計

## Focus

- **Comments on the Statute for the Administration of Electronic Payment Institutions, which has been recently ratified in the Legislative Yuan**

Sean Liu

With the prosperous development of electronic commerce in recent years, the consumption patterns and payment tools of the consumers have also undergone drastic changes. Many consumers are accustomed to purchasing all kinds of goods on the Internet which were purchased at physical retail stores in the past. It is against such background that payment methods have advanced from physical ATMs or bank transfers in early days to online credit card transactions and online ATM money transfers. If the consumers are located overseas, they can also engage in online transactions through accounts with stored-value functionalities such as PayPal.

Recent years have seen a large increase of third-party payment operators in Taiwan. According to the Financial Supervisory Commission (hereinafter, the "FSC"), currently there are over 1,500 third-party payment service providers in Taiwan, and the output value of the entire electronic commerce industry (including B2C and C2C) was estimated at NT\$880 billion in 2014.

On January 16, 2015, the Legislative Yuan enacted the Statute for the Administration of Electronic Payment Institutions, which is expected to go into effect three months after it is promulgated by the President. For third-party payment service providers, the greatest difference made by the legislation is that before the legislation, third-party payment operators which are not financial institutions could not handle stored-value business. After the legislation, a third-party payment operator may operate stored-value

算功能之晶片、卡片、證或其他形式之債據，作為多用途支付使用之工具」都屬於電子票證（第三條第一款），只有經許可設立的電子票證機構或金融機構才能從事此等業務。第三方支付服務業者提供的儲值功能，由於很可能落入上述電子票證定義，除非第三方支付服務業者也去設立電子票證發行機構，或透過其他交易架構安排與電子票證發行機構合作，自行直接經營提供儲值服務將有很高的違法風險。

概括而言，除上述開放辦理儲值業務外，剛立法通過的電子支付機構管理條例的法案重點還包括：

1. 以新台幣伍萬元為儲值及帳戶間款項移轉上限，未來由主管機關視情況調整。
2. 電子支付機構之業務另包括「儲值帳戶間資金移轉」及「實質交易之代理收付且保管款項逾一定金額」者，至若未逾一定金額者，回歸一般商業管理。
3. 電子支付機構原則上皆只能經營本法所定電子機構業務，例外才能經主管機關核准間營電子票證或其他業務。惟銀行、郵局及電子票證機構亦可經許可後兼營電子支付機構業務。
4. 境外機構需依法申請設立後，才可以在我國境內經營電子支付機構業務。
5. 大陸地區機構申請許可設立電子支付

business after the electronic payment institution established by such operator is approved.

A reason why third-party payment operators could not operate stored-value business before the legislation is that under the Statute for the Administration of Electronic Tickets promulgated on January 23, 2009, all "debt instruments which store monetary value in electronic, magnetic or optical forms, which contain chips, cards, certificates or other forms with data storage or calculation functions, and which are used as multi-purpose payment tools" are electronic tickets (Article 3, Subparagraph 1), and only electronic ticket institutions established with government approval or financial institutions can engage in such business. Since the stored-value function provided by a third-party payment operator is very likely to fall within such definition of electronic tickets, direct operation and provision of stored-value services entail very high risks of legal violations unless the third-party payment operator also sets up an electronic ticket issuing institution or works with an electronic ticket issuing institution through other transaction frameworks and arrangements.

In general, in addition to the deregulated stored-value business mentioned above, the Statute for the Administration of Electronic Payment Institutions, which was just adopted by the Legislative Yuan, is also highlighted as follows:

1. The upper limit on stored-value and transfer between accounts is set at NT\$50,000, which will be adjusted by the competent authority, depending on the circumstances.
2. The business of an electronic payment institution also includes "fund transfers between stored-value accounts" and "collection for substantive transactions with an amount held under escrow in

機構，及任何人有與大陸地區支付機構合作或協助其於我國境內從事電子支付機構業務之相關行為，應依臺灣地區與大陸地區人民關係條例第七十二條及第七十三條之規定，取得陸委會的許可。

6. 法案對於電子支付機構的業務管理也有相當要求，例如，所有儲值及代理收付款項，要全部交付信託或取得銀行十足履約保證。
7. 電子支付機構於收受 新臺幣及外幣儲值款項合計達一定金額 者，應繳存足額之準備金。
8. 代理收付款項限以專用存款帳戶儲存及保管，電子支付機構不得為其他方式之運用，或指示專用存款帳戶銀行為其他方式之運用。
9. 儲值款項亦僅得於一定比率內進行低風險的運用或購買金融商品，例如銀行存款、政府債券、國庫券、銀行可轉讓定存單等。

特別值得提出的是，電子支付機構管理條例對於電子支付的定義寬廣，第三方支付業者因此也可以跨足到行動支付的業務領域。依電子支付機構管理條例第三條規定，電子支付機構提供第三方支付服務是「利用電子設備以連線方式傳遞收付訊息」，行政院提出的草案理由特別說明，「本條例規定電子支付機構之業務項目，

excess of a specific threshold." Services involving an amount below such threshold are subject to general commercial management.

3. Basically, electronic payment institutions can only operate the electronic institution business set by this law and can operate electronic tickets or other business concurrently only with the approval of the competent authority under exceptional circumstances. However, banks, post offices and electronic ticket institutions can also operate electronic payment institution business concurrently with government approval.
4. A foreign institution can operate electronic payment institution business in Taiwan only after being established pursuant to law.
5. Electronic payment institutions for which establishment application is filed by mainland China institutions and any person seeking to work with a payment institution of mainland China or to facilitate such entity's engagement of the electronic payment institution business in Taiwan shall obtain the approval of the Mainland Affairs Council in accordance with Articles 72 and 73 of the Statute for Relations between the People in the Taiwan and Mainland China Areas.
6. The legislation also contains certain requirements for the business administration of electronic payment institutions. For example, all stored-value and payment collection amounts shall be held in trust or entail full performance guarantee from a bank.
7. When a certain amount of New Taiwan Dollar and foreign currency stored-value is received by an electronic payment institution, a sufficient amount of reserve shall be made.

包含實體通路交易(線下交易)之支付服務(即O2O, Online To Offline)型態, 故所定『利用電子設備以連線方式傳遞收付訊息』, 其電子設備不限於傳統桌上型電腦, 亦包含行動載具(例如平板電腦、行動電話等可攜式設備)或其他得以連線方式傳遞訊息之設備亦屬之。」因此, 第三方支付業者也可以提供讓其會員透過行動設備進行付、收款的服務。

目前我國行動支付服務的市場才剛萌芽, 與提供行動支付有關的「信託服務管理平台」(Trusted Service Manager; TSM) 包括群信行動數位科技公司、台灣行動支付股份有限公司、聯合國際行動支付股份有限公司及中華電信自建的TSM系統, 目前都已經上線。參與的服務提供者主要是發卡銀行(信用卡服務)、悠遊卡公司(悠遊卡)、提供會員卡的公司等。

既然電子支付機構管理條例不限制第三方支付業者將其服務從線上擴及到實體商店, 可以想見若有適當的條件, 未來第三方支付業者也可以與TSM平台合作, 或透過其他資訊安全系統, 將經營範圍擴大到實體店家, 進而與銀行及電子票證機構產生合作又競爭的關係。以國外的發展而言, 經營第三方支付的業者如Paypal或Amazon都已在努力於跨大行動支付的業務。

不過, 由於目前法令面的限制, 上述第三方支付及行動支付服務的提供並非毫無阻礙。就行動支付而言, 金管會2012年11月

8. For payment collection, such amounts shall be stored and maintained via dedicated deposit accounts, which electronic payment institutions shall not use in other ways or designate for use in other ways by a bank at which a dedicated deposit account is opened.
9. The amount of the stored-value payment can be utilized in low-risk manners or to purchase financial products within a certain percentage, such as bank deposit, government bonds, treasury bills, negotiable bank certificates of deposit, etc.

It is particularly worth mentioning that electronic payment is broadly defined under the Statute for the Administration of Electronic Payment Institutions. Therefore, third-party payment operators can expand their operation to the electronic payment field. Under Article 3 of the Statute for the Administration of Electronic Payment Institutions, the third-party payment services provided by an electronic payment institution "use electronic equipment to transmit payment information through network connections." According to the special explanation in the reasons for the draft prepared by the Executive Yuan, "the business items of the electronic payment institutions under the Statute include payment service types for transactions in physical channels (offline transactions) (i.e., O2O, Online to Offline); and therefore, the electronic equipment in the 'use of electronic equipment to transmit payment information through online connections' is not limited to traditional desktop computers and also includes mobile carriers (portable equipment such as tablets and cellphones) and other equipment which may transmit information through online connections." Therefore, third-party payment operators can also provide services that allow their members to make and collect payment through mobile equipment.

16日同意備查的「信用卡業務機構辦理手機信用卡業務安全控管作業基準」是一個基於TSM技術概念的準則，因此，凡是基於與TSM平台技術有差異的行動支付服務（例如Apple Pay使用的Visa Token及Google的HCE），是否可以通過金管會的審查，即有疑問。

其次，電子支付機構管理條例甫通過，相關子法仍在修訂中（金管會預計在法案公布後三個月內完成子法訂定），關於電子支付機構如何跨足實體行動支付，是否在公布的子法有清楚規定，目前不得而知。如果業者有上述服務計畫，必需主動聯繫金管會，或積極參與相關子法訂定的公聽會，就相關子法的訂定提供具體建議，以使其內容可配合科技的發展與業界的需要。

總之，在電子支付機構管理條例通過後，第三方支付產業已可以辦理儲值業務，相關業務推展計畫應不會再有綁手綁腳的感覺。此外，行動支付是目前的大勢所趨，與行動支付的相關子法，如「信用卡業務機構辦理手機信用卡業務安全控管作業基準」，及基於電子支付機構管理條例的相關子法，應有配合科技演進再儘速修改的必要，以免又成為另一個阻礙創新發展的因素。

Currently, the mobile payment service market in Taiwan has just burgeoned. Trusted service managers (TSM) relating to mobile payment include Alliance Digital Tech Co., Taiwan Mobile Payment Co., Ltd., Smart Catch International Payment Co., Ltd., and the TSM system built by Chunghwa Telecom have all become operational. The participating service providers are primarily credit card issuing banks (credit card services), Easy Card Corporation (Easy Card), and companies that provide membership cards.

Since the Statute for the Administration of Electronic Payment Institutions does not limit a third-party payment operator's expansion of its services from the Internet to physical stores, it is imaginable that under proper conditions, third-party operators may work with TSMs in the future or expand the scope of their operation to physical stores through other information security systems to create cooperation and competition relations with banks and electronic ticketing institutions. In view of overseas developments, third-party payment operators such as PayPal and Amazon have spared no efforts in expanding their mobile payment business.

However, due to restrictions under laws and regulations, the provision of third-party payment and mobile payment services mentioned above are not without barriers. For mobile payment, the Operating Guidelines for Security Control for Handset Credit Card Business by Credit Card Business Institutions, whose recordation is approved by the FSC on November 16, 2012, are guidelines based on the TSM technical concept. Therefore, whether a mobile payment service based on a technology different from TSMs (such as Visa Token used by Apple Pay and HCE by HCE) can pass the review of the Financial Supervisory Commission is questionable.

In addition, the Statute for the

Administration of Electronic Payment Institutions has just been adopted with relevant ancillary laws still being prepared (the FSC expects to complete the formulation of ancillary laws within three months after the bill is promulgated). Whether the expansion of electronic payment institutions to physical mobile payment will be specifically stipulated in the ancillary laws as promulgated is still not known. If an operator has such service plan, it should actively contact the FSC or proactively participate in the public hearings regarding the formulation of relevant ancillary laws to provide concrete recommendations regarding the formulation of relevant ancillary laws so that their provisions can accommodate technological development and industry needs.

In conclusion, the third-party payment industry has been able to operate stored-value business after the Statute for the Administration of Electronic Payment Institutions was adopted and will not feel handicapped in implementing relevant business promotional plans. In addition, mobile payment is a general trend now. It is necessary to further modify relevant ancillary laws for mobile payment such as the Operating Guidelines for Security Control for Handset Credit Card Business by Credit Card Business Institutions and relevant ancillary laws based on the Statute for the Administration of Electronic Payment Institutions to accommodate technological advancement to prevent such laws from becoming another factor that undermines innovative development again.