

## Legal Alert

### Are gift cards a payment service?

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**In recent years, gift cards, coupons and vouchers have become a popular form for giving presents as well as an element in incentive programs of companies operating in Poland (in the form of gift coupons). Behind every such instrument there is a payment, and in each instance it should be determined whether the payment service regulations come into play.**

The Polish Payment Services Act was amended in connection with the need to implement the second Payment Services Directive (PSD2) in May 2018. The changes affect many areas connected with everyday payments. Below we present an analysis of whether gift cards, vouchers and coupons issued by popular retail chains (among others) fall within the purview of the Payment Services Act.

#### **Classification of gift cards for purposes of payment services**

Under the Payment Services Act, there is an exemption from the act for services based on payment instruments which can be used only in a limited manner, meeting one of the following three conditions:

- (i) They enable the acquisition of goods only at the issuer's locations or within a limited network of entities under direct commercial agreement with a professional issuer of such instruments.
- (ii) They can be used only to acquire a very limited range of goods or services.
- (iii) They may be used only in one Member State, and the instruments are provided at the request of an undertaking or unit of the public finance sector, are regulated in light of defined social or tax aims by a national or local public administrative authority, and can be used to acquire specific goods or services from suppliers having a commercial agreement with the issuer.

When there is no doubt that the given instrument is subject to the exemption (for example when it authorizes purchases only in the issuer's shops, or permits acquisition of only a single type of goods), but the total value of payment transactions performed within the last 12 months exceeds EUR 1 million, the entrepreneur wishing to claim the exemption must provide the Polish Financial Supervision Authority (KNF) a notice, within 14 days from the end of the month in which that amount was exceeded, containing *inter alia* a description of the goods or services offered and an indication of the exemption in the act which is applicable in the case.

KNF has 30 days after receipt of the notice to enter the entrepreneur in the register of suppliers and issuers of electronic money or to refuse to make the entry in the register—in which case the undertaking will be required to adjust the system of issuing gift instruments to meet the exemption from the requirements of the Payment Services Act, or maintain the existing business model and file an application for a license to operate as a domestic payment institution or small payment institution. If it is found that the issued instruments do not qualify for a statutory exemption, the undertaking must modify its operations **on or before 20 December 2018**.



**For more information  
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It should be stressed that failure to file the required notice entails relatively severe consequences. The law provides for a fine of up to PLN 500,000 to be imposed on the persons managing the enterprise.

Every entrepreneur issuing gift cards, coupons or vouchers should thus now conduct an analysis of whether its activity falls within the exemption for a limited network, and also monitor on an ongoing basis the value of the instruments issued, so that the Financial Supervision Authority can be notified within the proper time in compliance with the requirements of the amended Payment Services Act.