Finding solutions
Payment Systems and Digital Commerce
Eversheds Sutherland’s Payment Systems and Digital Commerce Group has extensive experience advising clients in all aspects of the payments sector, including payment and settlement systems, payment products and services, merchant acquiring and card issuance, co-branding, card acceptance, and payment scheme participation arrangements, digital and mobile commerce, emerging and alternative payment methods, cryptocurrency and other fintech solutions.

With payments lawyers spanning across the globe in the United States, United Kingdom, Europe, Middle East and Asia, we are able to provide our clients in the payments and digital commerce sector a global solution with local know-how. By leveraging our deep understanding of the payments and fintech sectors, we provide practical, business savvy advice to deliver thoughtful and creative solutions that meet the business goals of our payments clients.

We meet our payments clients’ evolving business needs by drawing on our experience of advising a diverse client base comprising banks, acquirers and other payments services providers, private equity investors and fintech start-ups.

We work collaboratively with the payments industry to help our clients consider policy, trends and industry positions. We drive discussions on potential issues and the industry approach taken through regular client events involving regulators, leading fintech businesses, cybersecurity advisers and global consultants.
What we do for clients

Strategic relationships and joint ventures

Our transactional attorneys have negotiated all types of deals in the payments and digital commerce space, including:

- merchant acquiring and other joint ventures
- network participation agreements and other strategic agreements with card networks and other payment system providers
- payment processing agreements
- co-brand and affinity deals
- technology and software licensing, outsourcing and services agreements
- mobile commerce and other emerging or alternative payment method deals
- marketing, referral and revenue sharing agreements
- payment facilitator and ISV arrangements
- correspondent and agency banking arrangements
- merchant agreements

Key themes impacting our clients in this space include cybersecurity, biometrics, digitization, artificial intelligence and operational resilience, and these play an important part in the partnerships which we are helping to build.

M&A

In a rapidly changing field like payments and digital commerce, mergers, acquisitions and other business combinations play a significant part in many companies’ business strategies, as they consider whether to build, buy or partner. Our payments professionals have extensive experience advising our clients on acquisitions and divestitures in the payments and fintech sectors. We have represented some of the largest payment processors, financial institutions and technology solution providers in M&A deals. Our global footprint, with more than 500 M&A attorneys in 34 countries, makes us particularly adept at advising our clients on their global M&A strategies and on cross-border transactions.
Regulatory/licensing

The payments and digital commerce landscape is constantly evolving along with the accompanying regulatory and compliance pressures that impact our clients. Our attorneys are well-versed in the complex fabric of laws, regulations and payment scheme rules affecting the payments and financial services industries, as well as industry practices that affect client operations.

Our attorneys can help you navigate regulatory and other compliance matters, including:

- Europe’s Payment Services Directive 2 (PSD2), including payment institution registration and passporting under PSD2
- US federal and state regulation and licensing requirements, including Bank Secrecy Act, FinCEN, CFPB, debit regulation under the Durbin amendment, prepaid access rule, federal and state money transmitter licensing, and other fintech licensing options
- Europe’s E-Money Directive, Cross Border Payments Regulation and Funds Transfer Regulation
- application of the UK’s Financial Conduct Authority’s (FCA) Banking Conduct regime and national payments rules on topics such as Confirmation of Payee
- payment scheme rules and other industry rules, standards and guidance
- data security and privacy issues, including GDPR, CCPA and data compromise events
- blockchain and cryptocurrency regulation and licensing
- the impact of Brexit

We also have a lot of experience in working with regulators and industry bodies to influence the direction of travel in the payments industry, including lobbying regulators on behalf of global payments clients on key industry issues.

Payments products

We advise financial institutions, technology providers and other clients in the payments sector on all stages of the process to develop and commercialize new payments products and initiatives. This includes practical advice on regulatory and compliance considerations when developing new products and services, patent, trademark, and other intellectual property guidance, drafting customer-facing terms and conditions, negotiating agreements with technology providers and distribution channels and overlaying strategic planning.

Our work in this area also includes:

- leading full-scale regulatory change/product update programs such as in relation to Europe’s PSD2 or the Cross-Border Payments Regulation
- carrying out regulatory assurance reviews of operational processes either as part of annual compliance programs or as a result of specific regulator feedback

We help our clients keep up with the changing pace of the market by advising them on the evolution of their products and key regulatory developments.
Intellectual Property

Intellectual property often represents a critical area of importance for payments, digital commerce and other fintech businesses. Our IP attorneys know the patent landscape in the payments arena, enabling us to spot potential issues before detailed patent searches are run.

Our IP attorneys can help you with:
- patent prosecution and patent portfolio management
- patent searches and other IP due diligence
- infringement issues unique to payments and digital commerce
- trademark and branding strategies and portfolio management
- domain name acquisitions

Other Areas

As a global full-service law firm, we offer our clients a full suite of services to meet their legal needs in addition to the areas outlined above, including tax, litigation, antitrust and competition and labor and employment. We also have strategic partnerships in place with some of the payments sector’s leading industry bodies, including Open Banking Excellence and the Emerging Payments Association.
Deals and experience

Joint ventures and strategic relationships

- represented a major global payment processor in the formation, renewal and international expansion of its various joint ventures with some of the world’s largest financial institutions, which service hundreds of thousands of merchants and are some of the largest US merchant payment card processing companies
- represented one of the world’s largest US-based financial institutions in creating a multi-year license and services arrangement with one of the leading payment card networks. At the time, considered one of the most innovative and significant transactions in the payments industry, the platform license was designed to give the financial services client greater control and visibility over its business
- represented one of the largest global retailers based in the US in negotiating a master acceptance agreement for credit and debit cards with a leading payment network. The agreement represented billions of dollars per year in value to the client
- represented one of the largest payment processing and fintech solution companies in the dissolution of a multi-billion dollar US merchant processing joint venture and implementation of a go-forward payment processing outsourcing agreement
- advised one of the largest US payment processors in the negotiation of a master merchant processing agreement with a holding company of multiple global fashion brands
- represented a leading US payment processor in negotiating its agreement with American Express for the rollout of Amex’s OptBlue merchant acquiring program
- advised a US aviation fuel and FBO client on the development of an aviation fuel card program
- advised one of the largest UK banks on its partnerships with an emerging fintech in order to bring an innovative open banking payment initiation service to market

M&A

- represented a UK clearing bank on its provision of banking services to the UK Government, including the provision of accounts and cash pooling facilities to more than 700 government bodies (£75 billion and €300 million)
- represented ten CREST Settlement Banks collectively on negotiations with Euroclear on the amendments required to system- and customer-facing documentation arising from the changes to the funding of USD liquidity, including reviewing and negotiating trust arrangements with the Bank of England and indemnities provided by the Banks to the US Federal Reserve Banks as part of the National Settlement Service
- advised a Swiss bank on its position as a payment facilitator, which involved advice regarding card issuance and payment processing matters and the payment facilitator agreement with a PSP operating in the Netherlands
- advised a Dutch innovative payment services provider on a partnership agreement with a software developer
- advised a US-based global financial institution on the expansion of its merchant processing capabilities in Europe and Latin America
- advised a global financial institution based in Singapore in relation to its SWIFT payment messaging arrangements
- advised a virtual bank in Hong Kong in relation to the adoption of Google Pay and tokenization

- represented one of the largest US-based global financial institutions in its acquisition of a technology platform for mobile payments. This acquisition was a core piece of the client’s technology strategy for its mobile wallet offering
- represented a leading payments company in its acquisition of a Silicon Valley point-of-sale payment acceptance technology business. This technology has become recognized as highly innovative and market-leading
- represented a US payments company in its acquisition of a loyalty and rewards technology solutions business
- represented a leading US payments company in its acquisition of a gift card mobile wallet and e-commerce technology business
- represented a global payments and fintech solution company in the sale of a US payment processing and software solution company focused on servicing member-based organizations and associations
- represented a leading US-based financial technology company on its acquisition of an innovative bill payment technology business
- represented private equity firm Pollen Street Capital on their acquisition of FX businesses including Foreign Currency Direct PLC, Earthportfx (from Visa) and Infinity International
- represented a US corporation on its acquisition of a global payments services business
- represented the founders of Prepaid Financial Services, a multi-award winning European provider of white label payments and banking-as-a-service technology and one of Europe’s largest issuers of e-money, on its sale to Australian listed EML Payments
- represented a FTSE100 company on the sale of its payments technology software business to a listed acquirer
- advised a PRC fintech company on its acquisition of a Hong Kong based international payment group focused on servicing e-commerce merchants

**Payments products**
- represented one of the world’s largest financial institutions in the initial development of its European commercial card program across 27 jurisdictions. The project involved initial development of the program in the UK by putting in place necessary commercial contracts to operate the product, advising on operational and process issues and subsequent advisory work to passport the bank’s UK license into 26 other jurisdictions and provide regulatory advice on relevant mandatory law to provide the program in those countries
- represented one of the UK’s biggest banks on a payment services project driven by the UK’s Payment Service Regulation to rewrite the customer-facing documentation for more than 100 corporate banking products, including payments products and digital banking products
- advised numerous banks and third-party payment services providers on the launch of account information services and payment initiation services
- advised a global financial institution based in Hong Kong in relation to the adoption of blockchain technology to send and receive payment instructions to facilitate group treasury management capabilities
- advised an emerging fintech company on the development and launch of an e-money product and various other payment services products

**Debit, Prepaid and Gift Card**
- Advised a global US-based financial institution on the impact of the Durbin Amendment (Regulation II) on its debit card and digital wallet programs
- Represented one of the largest US service providers in the gift card space on several commercial agreements relating to debit card network participation, gift card processing deals for merchants, and a white label outsourcing deal for gift card processing
- Advised one of the largest global payment card networks on the development of its UK gift card program and the negotiation of a contract with Blackhawk Network to distribute the gift cards via various large UK retailers
- Advised a major US retailer on the restructuring of its multi-brand gift card program
- Represented First Data Corporation on its acquisition of the Instant Cash ATM Network from Wells Fargo and related network participation agreement
- Advised a multi-brand US restaurant company on various aspects of its gift card program
- Advised several US clients on unclaimed property issues and audits with respect to their gift card programs
- Advised one of the largest UK banks on the development of its corporate prepaid card program, including product design, producing the contractual documentation and advising on regulatory and operational issues
- Advised a US-based global airline on regulatory issues relating to its gift card program in France, Germany and the UK including whether it required a payment services license to operate the program
- Advised a large French bank on its prepaid card program, including in relation to the transfer to a new services provider to operate the program
- Advised a national multi-channel consumer financial services provider regarding compliance of its prepaid card program with the disclosure and funds availability requirements of Electronic Funds Transfer Act and Regulation E and in determining applicability of state money transmitter and check cashing laws to its prepaid card program

**Intellectual Property**
- provided patent counseling and worldwide patent prosecution services on numerous software, business method and hardware technologies for a leading US-based global payment processing and technology provider to financial institutions. Our guidance covered patent portfolio strategies, technology/intellectual property licensing and third-party patent issues
managed the worldwide patent and trademark portfolio for the world’s largest US-based payments company

conducted trademark clearance searching and rendered trademark clearance opinions for new brand names selected for a worldwide financial service product launch for a US company

defended US financial service companies against allegations of third-party patent infringement, including analyzing and determining patent invalidity and non-infringement positions

Regulatory/licensing

represented a major US financial services company in obtaining money transmission licenses in 48 states and ongoing compliance advice related to money transmission

advised clients on digital currency projects, initial coin offerings and compliance issues related to digital currency, including advising the Polish Ministry of Digital Affairs on the inclusion of cryptocurrencies in the Polish legal system

represented a series of banks, issuers and other payment services providers on their implementation projects relating to the European Payment Services Directive and the changes coming out of PSD2, including building tools to ensure regulatory compliance and thought leadership sessions on the threats and opportunities coming out of the new PSD2 regime

represented a leading international payment processor in relation to obtaining a license to offer payment services in the UK. The project involved providing strategic advice on the best model to use to operate the business in the UK, assisting with the drafting of the detailed application documentation to become an authorized payment institution and providing in-depth tax, payment services, AML and data privacy advice in connection with the set-up of the UK business

represented several of the largest UK financial institutions on compliance, lobbying and technical build requirements relating to Open Banking requirements placed upon them by the Competition and Markets Authority

advised on key European payments legislation changes relating to improving the value and transparency of cross border payments (under the CBPR) and lessening the risk of fraud associated with credit transfers (under the new Confirmation of Payee and Contingent Reimbursement Model regimes)

represented a competition law review of the UK’s wholesale cash market on behalf of the key industry participants

supervised the structural reform activities of two major UK banks in respect of CHAPS, CREST, TARGET2, SEPA, CLS and LCH transfer and participation

represented a UK headquartered global bank on the extension of its correspondent banking network into Portugal, Austria, Bulgaria, Hungary, Romania, Sweden, Norway and Denmark

represented a global bank on the review of its arrangements for the clearing of hard and soft currencies with banks in South Korea, Taiwan, Brazil, Chile, Argentina, Lebanon and Kazakhstan

advised a US credit card company on Cross Border Payments Regulation 2 and its centrally settled products in the Netherlands

advised a European electronic money institution with payment services on setting up a subsidiary and the license application at the Dutch Central Bank, including all communication with the Dutch Central Bank and drafting all required documentation (policies and procedures)

advised a Dutch innovative payment services provider (using smart contracts) on various compliance issues regarding PSD2

advised a European payment services provider on its customer due diligence process, AMLS and transaction monitoring procedure

represented several payment processors on structuring advice and implementation strategies for Brexit planning

advised a regional payment gateway provider in Hong Kong in relation to its data privacy collection strategy

advised a global financial institution based in Singapore in relation to its SFTR payment regulatory reporting arrangements

advised a Dubai-based transportation network company operating in the Middle East, Africa and South East Asia in respect of proposed Money Services Regulations issued by the Dubai Financial Services Authority and the Saudi Arabian Monetary Authority

advised Fintech clients on their expansion of e-wallet and money services businesses in Hong Kong and Singapore

advised on implementing a digital payment regulation strategy in Tunisia. The team analyzed the existing electronic payments legal framework, benchmarked this against other African legislation, and made recommendations on implementation. The project included electronic transactions, e-commerce, electronic advertising, protection of personal data, cybersecurity and cybercrime, and IT security

implemented the first payments establishment between the three main telecoms operators in Tunisia
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