

SUBSIDIARY LEGISLATION 376.04**FINANCIAL INSTITUTIONS ACT
(SAFEGUARDING OF FUNDS) REGULATIONS**

30th April, 2011

LEGAL NOTICE 191 of 2011, as amended by Legal Notices 71 of 2020 and 67 of 2025.

Part 1**Preliminary**

1. (1) The title of these regulations is the Financial Institutions Act (Safeguarding of Funds) Regulations.

*Citation.
Substituted by:
L.N. 71 of 2020.*

(2) The provisions of these regulations, insofar as they apply to financial institutions issuing electronic money in terms of the Third Schedule to the Act, shall be deemed to have come into force on the 30th April, 2011.

2. (1) Deleted by Legal Notice 71 of 2020.

*Interpretation.
Cap. 376.
Amended by:
L.N. 71 of 2020.*

(2) For the purposes of these regulations, unless the context otherwise requires:

"the Act" means the Financial Institutions Act;

"business day" means a day on which the relevant payment service provider or electronic money issuer of the payer or the payment service provider or electronic money issuer of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;

"electronic money institution" means a financial institution issuing electronic money in terms of the Third Schedule to the Act;

"financial institution" means a payment institution as defined in these regulations and, or an electronic money institution;

"funds" mean banknotes and coins, scriptural money and electronic money as defined in the Act;

"payment institution" means a financial institution providing payment services as referred to in paragraphs 2(a) to (f) of the Second Schedule to the Act;

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as may be amended from time to time and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"the Commission Delegated Regulation" means the Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions, as amended from time to time;

(3) Deleted by Legal Notice 71 of 2020.

(4) Words and expressions used in these regulations which are also used in the Act, but which are not defined herein, shall have the same meaning as in the Act.

Part 2

General

Funds held under control constitute a distinct patrimony.
Amended by:
L.N. 71 of 2020.

3. (1) A financial institution in receipt of funds from a payment service user, or through another payment service provider for the execution of payment transactions, or from an electronic money holder in exchange for electronic money that has been issued, shall hold such funds solely for and on behalf of and in the interest of that payment service user or electronic money holder.

Cap. 16.

(2) Notwithstanding the provisions of article 1894 of the Civil Code or any other law, or the agreement entered into between the financial institution and the payment service user or electronic money holder, or the fact that the payment service user's funds or electronic money holder's funds held by the financial institution are registered in the name and title of or are otherwise vested in the financial institution, such funds shall be deemed to constitute a distinct patrimony, separate from that belonging to the financial institution.

(3) Notwithstanding the provisions of any other law, and except as expressly provided in the agreement entered into between the financial institution and the payment service user or electronic money holder, the control of funds belonging to a payment services user or electronic money holder by a financial institution shall not give or be deemed or construed to give to the financial institution any rights over such funds; nor shall it create any form of loan or any other similar credit facility between the financial institution and the payment service user or electronic money holder notwithstanding the nature of the funds or the rights or obligations of the financial institution in relation thereto.

Payment services user or electronic money holder enjoys right of ownership of funds.
Amended by:
L.N. 71 of 2020.

4. (1) Notwithstanding the provisions of any other law, a payment service user or electronic money holder whose funds are held by the financial institution enjoys a right of ownership over such funds notwithstanding that they may be registered in the name and title of, or are otherwise vested in, the financial institution.

(2) Any records, accounts and other statements held or issued by the financial institution shall, saving any proof to the contrary, constitute evidence of their contents and of the right of ownership of the payment service user or electronic money holder.

Funds held under control not subject to the rights of creditors of the subject person.
Amended by:
L.N. 71 of 2020

5. (1) Notwithstanding the provisions of any other law, the creditors of a financial institution shall have no claim or right of action on or against the funds held by the financial institution for and on behalf of and in the interest of any payment services user or electronic money holder, and such funds shall not be affected in any manner by the provisions of laws and regulations in force regulating the insolvency or bankruptcy of the financial institution.

(2) In the event of any such insolvency or bankruptcy or related order or resolution, or in the event that the competent authority so requires, the financial institution or any administrator or receiver or other officer appointed to represent it by any court or otherwise shall, on demand of any payment service user or electronic money holder or of the competent authority, immediately transfer the control, possession and title to all funds held by or in the name of the financial institution on behalf of the payment service user or electronic money holder to another financial institution or to such other person as may be instructed by the payment service user or electronic money holder or by the competent authority.

(3) Notwithstanding the provisions of any other law, in the event that any funds held by the financial institution for and on behalf of and in the interest of any payment service user or electronic money holder are, at the request of any creditor of the financial institution, made subject to any precautionary or executive act or warrant granted by any Court in terms of the Code of Organization and Civil Procedure, the payment service user or electronic money holder on whose behalf and in the interest of whom such funds are being held, the financial institution on behalf of the payment service user or electronic money holder or the competent authority may, by application to the Court, request the release of the funds from such act or warrant and the Court shall, on production of evidence as it may deem fit, accede to the application without undue delay.

Cap. 12.

6. (1) The delivery of the funds of a payment services user or electronic money holder to a financial institution and from a financial institution to a payment service user or electronic money holder or another financial institution for the purpose of safeguarding the funds in terms of these regulations shall not be deemed to constitute a chargeable transfer for the purposes of the Duty on Documents and Transfers Act and for the purposes of article 5(1) of the Income Tax Act, where the delivery of such funds does not constitute a change in the beneficial owner of the funds.

Applicability of the
Duty on
Documents and
Transfers Act and
Income Tax Act.

Cap. 364.

Cap. 123.

(2) For the purpose of this regulation, "beneficial owner" means a person who is the real owner of, or who is otherwise beneficially entitled to, the funds held under control by the financial institution, as provided in regulation 4.

Part 3

Safeguarding of Funds

7. (1) A payment institution shall, for the purpose of article 10B of the Act, safeguard all funds in either of the following ways:

Duties of the
financial
institution.*Amended by:*
L.N. 71 of 2020;
L.N. 67 of 2025.

- (a) funds shall not be commingled at any time with the funds of any natural or legal person, other than payment service users on whose behalf the funds are held. Where the funds of payment service users are held in a common account, the funds belonging to each payment service user shall be identifiable at all times. Where funds are still held by the payment institution and not yet delivered to the payee or transferred to another payment service

provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution or in a central bank at the discretion of such central bank, or invested in secure liquid low-risk assets, as defined in sub-regulation (1A). Funds shall be insulated in accordance with these regulations in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of insolvency; or⁵⁶

- (b) funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, which does not belong to the same group as the payment institution itself for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

(1A) For the purpose of this regulation:

- (a) secure, low-risk assets are:
 - (i) asset items falling into one of the categories set out in Table 1 of Article 336(1) of the CRR for which the specific risk capital charge is no higher than 1.6% but excluding other qualifying items as defined in Article 336(4) of the CRR; or
 - (ii) units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets referred to in sub-paragraph (i):
Provided that in exceptional circumstances and with adequate justification, the competent authority may, based on an evaluation of security, maturity, value or other risk elements of the assets referred in sub-paragraphs (i) and (ii), determine which of those assets do not constitute secure, low-risk assets for the purpose of sub-regulation (1).
- (b) secure, low-risk assets shall be deemed to be liquid if they fall within the criteria set out in a Financial Institutions Rule.

(1B) Where a payment institution is required to safeguard funds pursuant to article 10B of the Act and a portion of those funds is to be used for future transactions, with the remaining amount to be used for non-payment services, that portion to be used for future transactions shall also be subject to the requirements of the said article. Where that portion is variable or not known in advance, the payment institution shall safeguard a representative portion assumed to be used for payment services, provided that such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the competent authority.

(1C) An electronic money institution shall safeguard funds which have been received in exchange for electronic money that has been issued in accordance with sub-regulations (1), (1A) and (1B), and the said provisions shall be applied and interpreted *mutatis mutandis*:

Provided that funds received in the form of payment by payment instrument need not be safeguarded until they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in the Payment Services Directive, where applicable. In any event, such funds shall be safeguarded by not later than five business days after the issuance of electronic money.

(1D) Sub-regulations (1) to (1B) shall also apply to electronic money institutions undertaking the activities listed in paragraph 2(a) to (f) of the Second Schedule to the Act that are not linked to the activity of issuing electronic money.

(2) A financial institution shall carry out any other functions and duties as may be prescribed in a Financial Institutions Rule.

8. (1) A financial institution in receipt of funds belonging to payment service users or electronic money holders shall be liable for any loss or prejudice suffered by the payment service users or electronic money holders due to the financial institution's fraud, wilful default, misconduct or negligence including the unjustifiable failure to perform in whole or in part the financial institution's obligations arising under these regulations, the terms and conditions of the agreement entered into with the payment service users or electronic money holders, the conditions of any financial institutions licence or such other requirements as may be laid down by the competent authority.

Liability of the
subject person.
Amended by:
L.N. 71 of 2020.

(2) For the purposes of this regulation, "financial institution" includes such other financial institutions to whom functions or duties may be delegated or to whom funds are entrusted in terms of these regulations and any applicable Financial Institutions Rules issued under the Act.

9. Deleted by Legal Notice 67 of 2025.

Financial
institution may
delegate functions
and duties or
entrust funds to
another person.
Amended by:
L.N. 71 of 2020.

10. Deleted by Legal Notice 71 of 2020.

Funds received as
payment to be
credited to the
payment account
of a financial
institution.