

*Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,368, 17 ta' Marzu, 2020*

*Taqsima B*

**L.N. 71 of 2020**

**FINANCIAL INSTITUTIONS ACT  
(CAP. 376)**

**Financial Institutions Act (Safeguarding of Funds) (Amendment)  
Regulations, 2020**

IN EXERCISE of the powers conferred by article 12(1)(c), (d) and (h) of the Financial Institutions Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

**1.** (1) The title of these regulations is the Financial Institutions Act (Safeguarding of Funds) (Amendment) Regulations, 2020 and they shall be read and construed as one with the Financial Institutions Act (Safeguarding of Funds) Regulations, hereinafter referred to as "the principal regulations".

Citation and scope.

S.L. 376.04.

(2) The purpose of these regulations is to transpose Article 10 of 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, and to provide for ancillary matters related thereto.

**2.** Regulation 1 of the principal regulations shall be substituted by the following:

Amends regulation 1 of the principal regulations.

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

**3.** Regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) the marginal note thereof shall be substituted by the following:

"Interpretation.";

(b) sub-regulation (1) thereof shall be deleted;

(c) sub-regulation (2) thereof shall be amended as follows:

(i) immediately before the definition "business

day", there shall be added the following new definition:

" "the Act" means the Financial Institutions Act;";

(ii) in the definition "business day", the words "payment services provider or electronic money issuer of the payer or the payment services provider or electronic money issuer of the payee", shall be substituted by the words "payment service provider or electronic money issuer of the payer or the payment service provider or electronic money issuer of the payee";

(iii) immediately after the definition "business day", there shall be added the following new definitions:

" "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;";

(iv) immediately after the definition "funds", there shall be added the following new definition:

" "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;";

(v) the definition "Payment Services Directive" shall be substituted by the following:

" "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;";

(vi) immediately after the definition "Payment

Services Directive" as amended, there shall be added the following new definition:

" "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;"

(d) sub-regulation (3) thereof shall be deleted; and

(e) immediately after sub-regulation (3) thereof, as deleted, there shall be added the following new sub-regulation:

"(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."

4. Regulation 3 of the principal regulations shall be amended as follows:

Amends  
regulation 3 of  
the principal  
regulations.

(a) sub-regulation (1) thereof shall be substituted by the following:

"(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.";

(b) sub-regulation (2) thereof shall be amended as follows:

(i) the words "Notwithstanding anything stated in article 1894 of the Civil Code or in the agreement", shall be substituted by the words "Notwithstanding the provisions of article 1894 of the Civil Code or any other law, or the agreement"; and

(ii) the words "the payment services user or electronic money holder or the fact that the payment services user's funds", shall be substituted by the words "the payment service user or electronic money holder, or the fact that the payment service user's funds"; and

(c) sub-regulation (3) thereof shall be amended as follows:

(i) the words "Without prejudice to any relevant provisions of the Act," shall be substituted by the words "Notwithstanding the provisions of any other law,";

(ii) the words "payment services user", and wherever they appear in the principal regulations, shall be substituted by the words "payment service user"; and

(iii) the words "nor shall it create any form of loan", shall be substituted by the words "nor shall it create any form of loan or any other similar credit facility".

Amends  
regulation 4 of  
the principal  
regulations.

**5.** Regulation 4 of the principal regulations shall be amended as follows:

(a) in the marginal note thereof, the word "user" shall be substituted by the words "user or electronic money holder"; and

(b) in sub-regulation (1) thereof, the words "A payment service user", as amended, shall be substituted by the words "Notwithstanding the provisions of any other law, a payment service user".

Amends  
regulation 5 of  
the principal  
regulations.

**6.** Regulation 5 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be amended as follows:

(i) the words "The creditors", shall be substituted by the words "Notwithstanding the provisions of any other law, the creditors"; and

(ii) the words "for and on behalf" shall be substituted by the words "for and on behalf of"; and

(b) sub-regulation (3) thereof shall be amended as follows:

(i) the words "In the event that any funds held under the control of the financial institutions", shall be substituted by the words "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";

and

(ii) the words "on whose behalf", shall be substituted by the words "on whose behalf and in the interest of whom".

7. Regulation 7 of the principal regulations shall be amended as follows:

Amends  
regulation 7 of  
the principal  
regulations.

(a) sub-regulation (1) thereof shall be substituted by the following:

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

(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, provided that, 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 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; or

(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.";

(b) immediately after sub-regulation (1) thereof, as amended, there shall be added the following new sub-

regulations:

"(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):

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."; and

(c) in sub-regulation (2) thereof, the words "such other functions", shall be substituted by the words "any other functions".

**8.** Regulation 8 of the principal regulations shall be amended as follows:

Amends  
regulation 8 of  
the principal  
regulations.

(a) sub-regulation (1) thereof shall be amended as follows:

(i) the words "payment services users or electronic money holders shall be liable for any loss or prejudice suffered by the payment services users due to the financial institution's fraud, wilful default or negligence", shall be substituted by the words "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"; and

(ii) the words "entered into with the payment services users", shall be substituted by the words "entered into with the payment service users"; and

(b) in sub-regulation (2) thereof, the words "financial institution to whom functions, duties or funds may be delegated or entrusted", shall be substituted by the words "financial institutions to whom functions or duties may be delegated or to whom funds are entrusted".

Amends  
regulation 9 of  
the principal  
regulations.

**9.** Regulation 9 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be amended as follows:

(i) the words "delegates or entrusts functions or duties", shall be substituted by the words "delegates functions or duties or entrusts funds"; and

(ii) the words "by the payment services users or electronic money holders as a result of the acts, omissions or insolvency of the financial institution.", shall be substituted by the words "by the payment service users or electronic money holders as a result of the acts, omissions or insolvency of such person."; and

(b) sub-regulation (2) thereof shall be substituted by the following:

"(2) Where the financial institution delegates functions or duties or entrusts funds to a person which is not a group company, without prejudice to the liability of such person, the financial institution shall be liable for any loss or prejudice suffered by the payment service users or electronic money holders as a result of the acts, omissions or insolvency of such person.".

Amends  
regulation 10 of  
the principal  
regulations.

**10.** Regulation 10 of the principal regulations shall be deleted.