




FINANCIAL REGULATOR  
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Prudential Requirements for Payment  
Institutions authorised under S.I. No.  
383 of 2009 - European Communities  
(Payment Services) Regulations 2009

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# 1 Introduction

Statutory Instrument 383 of 2009, (European Communities (Payment Services) Regulations (“the Payment Services Regulations”) transposes Directive 2007/64/EC on Payment Services in the Internal Market (“the Payment Services Directive”) into Irish Law. The aim of the Payment Services Directive is to establish a harmonised set of rules and regulations that will apply to payment services throughout the EEA and thereby to remove barriers to entry, to ensure access to markets and to encourage competition for all payment service providers.

This document sets out the prudential supervision requirements for payment institutions authorised by the Financial Regulator.

## 2 Capital

A payment institution authorised under the Payment Services Regulations is subject to both an initial capital requirement and an on-going capital requirement as set out below.

An authorised payment institution is required to submit a report to the Financial Regulator on an annual or more frequent basis, as advised by the Financial Regulator, outlining its ability to comply with this requirement (see Requirement 4.4)

### 2.1 Own Funds

2.1.1 On an on-going basis a payment institution must ensure that it has sufficient capital ("own funds") in its own right to meet the applicable capital requirement.

2.1.2 A payment institution is required to hold a minimum level of own funds equal to the higher of its initial capital or the capital requirement calculated in accordance with 2.5.

2.1.3 Where a payment institution forms part of a group it must ensure that the own funds held by the payment institution to meet the capital requirements imposed by virtue of its authorisation under the Payment Services Regulations are not used elsewhere in the group to meet regulatory capital requirements.

### 2.2 Initial Capital

2.2.1 At the time of authorisation a payment institution is required to hold a minimum level of initial capital dependent on the level of authorisation held by the payment institution:

- (a) Where the payment institution is authorised to provide only payment service 6 as set out in Schedule 1 to the

Payment Services Regulations it must hold minimum initial capital of €20,000.

- (b) Where the payment institution is authorised to provide payment service 7 as set out in Schedule 1 to the Payment Services Regulations it must hold minimum initial capital of €50,000.
- (c) Where the payment institution is authorised to provide any one or more of the remaining payment services (1 to 5) set out in Schedule 1 to the Payment Services Regulations it must hold minimum initial capital of €125,000.

## **2.3 Definition of Initial Capital**

2.3.1 The definition of Initial Capital to be held by a payment institution comprises of the following elements of Article 57 of Directive 2006/48/EC:

- (a) Paid up share capital including share premium but excluding cumulative preference shares;  
plus:
- (b) Reserves excluding revaluation reserves<sup>1</sup>;  
plus
- (c) Profits and losses brought forward including interim profits that have been independently verified by an auditing body.

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<sup>1</sup> And excluding fair value reserves in relation to gains or losses on cash flow hedges of financial instruments measured at amortised cost and gains and loss on liabilities valued at fair value arising from changes in the payment institution's credit standing.

## 2.4 Definition of Own Funds

2.4.1 The own funds to be held by a payment institution on an on-going basis is defined in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC.

2.4.2 In practice<sup>2</sup> Own Funds will consist of the sum of

- (a) Paid up share capital plus share premium but excluding cumulative preferential shares;
- (b) Reserves<sup>3</sup>;
- (c) Profits and losses brought forward including interim profits that have been independently verified by an auditing body;
- (d) Revaluation Reserves;
- (e) Value Adjustments;
- (f) Other items specified in the aforementioned articles of Directive 2006/48/EC;
- (g) Fixed term cumulative preferential shares and subordinated loan capital provided they are in the format laid down by the Financial Regulator<sup>4</sup>;

Less the following items:

- (h) Own shares held at book value;
- (i) Intangible assets;
- (j) Material losses of the current financial year;
- (k) Holdings in other credit and financial institutions amounting to more than 10% of their capital;

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<sup>2</sup> The following description of own funds is included by way of illustration. For a complete definition of own funds, institutions should refer to the relevant provisions in the Payment Services Regulations.

<sup>3</sup> Including a capital contribution in the format pre-defined by the Financial Regulator.

<sup>4</sup> Only fully paid up funds may be taken into account; the loans involved must have an original maturity of at least five years; the extent to which they rank as own funds shall be gradually reduced over the last five years; the loan arrangement shall not include any clause providing that in special circumstances, other than the winding up of the payment institution, the debt shall become repayable before the agreed date and amounts may not be repaid without the prior approval of the Financial Regulator.

- (l) Participations which the payment institution holds in insurance undertakings, reinsurance undertakings and insurance holding companies.

Note: The items referred to in points (d) - (g) above are subject to the following limits:

- (i) The total of items (d) to (g) may not exceed a maximum of 100% of the items in points (a) plus (b) plus (c) minus (h) to (j);
- (ii) The total of item (g) may not exceed a maximum of 50% of the items in points (a) plus (b) plus (c) minus (h) to (j).

## **2.5 Determination of the level of own funds required**

- 2.5.1 The Payment Services Regulations provide three methods for the calculation of the own funds requirements of a payment institution on an ongoing basis as set out below. Method A is 10% of the previous year's fixed overheads; Method B is calculated by a formula based on the level of payment transactions in the previous year; and Method C is calculated by a formula based on the level of income of the firm. A scaling factor is applied in both B and C based on the services the institution is authorised to provide.
- 2.5.2 The method to be used will be specified to the payment institution in its letter of authorisation or subsequent correspondence with the Financial Regulator.
- 2.5.3 A payment institution's own funds must at all times be the higher of the initial capital requirement set out in section 2.2 and whichever of Methods A, B, or C the institution is required to use.

#### **2.5.4 Method A**

10% of the payment institution's fixed overheads for the preceding year or where the payment institution has not yet completed a full year's business at the date of the calculation, the amount is 10% of the corresponding fixed overheads as projected in its business plan.

The Financial Regulator may vary this requirement in the event of a material change in the payment institution's business since the previous year.

#### **2.5.5 Method B**

The amount is that calculated by the formula—

$$SE \times k$$

where—

- (a) **SE** is—
- (i) for **PV** up to €5 million, 4.0% of **PV**,
  - (ii) for **PV** between €5 million and €10 million, €200,000 plus 2.5% of (**PV** – €5 million),
  - (iii) for **PV** between €10 million and €100 million, €325,000 plus 1% of (**PV** – €10 million),
  - (iv) for **PV** between €100 million and €250 million, €1,225,000 plus 0.5% of (**PV** – €250 million), and
  - (v) for **PV** between €250 million, €1,975,000 plus 0.25% of (**PV** – €250 million),
- (where **PV** is one-twelfth of the total amount of payment transactions executed by the payment institution in the previous year), and
- (b) **k** has the meaning set out in Section 2.5.7 below.

**Note:** For the purposes of calculating SE a step in any of subparagraphs (i) to (iv) in Section 2.5.5(a) above includes its upper limit but not its lower limit.

### **2.5.6 Method C**

(1) Subject to paragraph (3) below the amount is that calculated by the formula—

$$MF \times k,$$

where—

(a) **RI** is the sum of the following:

- (i) interest income;
- (ii) interest expenses;
- (iii) commissions and fees received;
- (iv) other operating income, and

(b) **MF** is the sum of

- (i) 10% of the tranche of **RI** up to €2.5 million,
- (ii) if **RI** exceeds €2.5 million, 8% of the tranche of **RI** between €2.5 million and €5 million,
- (iii) if **RI** exceeds €5 million, 6% of the tranche of **RI** between €5 million and €25 million,
- (iv) if **RI** exceeds €25 million, 3% of the tranche of **RI** between €25 million and €50 million, and
- (v) if **RI** exceeds €50 million, 1.5% of the tranche of **RI** over €50 million, and


(c) **k** has the meaning set out below.

- (2) For method C—
  - (a) in calculating **RI**, each element referred to in paragraph (1)(a) shall be included with its proper positive or negative sign,
  - (b) income from extraordinary or irregular items may not be used in calculating **RI**,
  - (c) expenditure on the outsourcing of services rendered by third parties may be used to reduce **RI** if the expenditure is incurred from an undertaking subject to supervision under the Payment Services Directive and
  - (d) **RI** is to be calculated over the previous financial year on the basis of the twelve-monthly observation at the end of the previous financial year.
- (3) Own funds calculated according to Method C should not to be less than 80% of the average own funds calculated using Method C over the previous three financial years cl.
- (4) When audited figures are not available business estimates may be used.

### **2.5.7 Scaling factor *k***

The scaling factor ***k*** to be used in Methods B and C is:

- (a) in the case of a payment institution that provides only the payment service listed in point 6 of Schedule 1 to the Payment Services Regulations, 0.5,
- (b) in the case of a payment institution that provides the payment service listed in point 7 of Schedule 1 to the Payment Services Regulations, 0.8, and
- (c) in the case of a payment institution that provides only the payment service listed in any one or more of



points 1 to 5 of Schedule 1 to the Payment Services Regulations, 1.

## **2.6 Requirement to hold own funds higher or lower than that calculated using the method advised**

2.6.1 The Financial Regulator may require a payment institution to hold own funds of up to 20% higher or allow the payment institution to hold own funds of up to 20% less than that calculated using the method advised following an evaluation of the risk management processes, risk loss data base and internal control mechanisms of the payment institution.

## **2.7 Granting of Credit**

2.7.1 Where a payment institution grants credit related to payment services 4, 5 or 7 as set out in Schedule 1 to the Payment Services Regulations its own funds shall at all times and to the satisfaction of the Financial Regulator be appropriate in view of the overall amount of credit granted. In this regard, the Financial Regulator would expect a payment institution to hold additional own funds over and above that specified in 2.1.2 equal to the level of credit granted.

# 3 Safeguarding Users' Funds

Every payment institution authorised in the State must satisfy the Financial Regulator that it has adequate arrangements in place to safeguard the funds of payment service users.

## 3.1 Users' Funds

- 3.1.1 Users' funds consist of funds which a payment institution, an agent, branch or third party service provider acting on behalf of a payment institution has received in the course of carrying out payment services and which the payment institution, branch, agent or third party service provider holds on behalf of a payment service user. This includes funds received from payment service users and funds received from other payment service providers which have not yet been paid out.
- 3.1.2 A payment institution is required to safeguard all users' funds and to prevent the use of users' funds for the payment institution's own account.
- 3.1.3 Where a payment institution receives funds from the public in respect of non-payment services it is only required to safeguard those funds received in respect of payment services.
- 3.1.4 Where a payment institution does not know the exact portion of the funds to be used for payment services and that to be used for non-payment services it may make a reasonable estimate of the portion of the funds to be used for payment services. Such an estimate should be based on historical data and a payment institution should be in a position to justify its estimate accordingly.

- 3.1.5 A payment institution will safeguard users' funds either by:
- (a) Ensuring such funds shall not at any time be comingled with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and ensuring such funds are insulated against the claims of other creditors of the payment institution in the event of an insolvency;
- or**
- (b) Ensuring such funds are covered by an insurance policy or 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 comparable guarantee and payable in the event that the payment institution is unable to meet its financial obligations.

## **3.2 General Requirements**

These General Requirements are applicable to all payment institutions irrespective of the method chosen to safeguard users' funds.

- 3.2.1 A payment institution must exercise due skill, care and diligence in the selection and periodic review of a credit institution or custodian or insurer used to safeguard users' funds and must take into account the expertise and market reputation of the entity and any legal or regulatory requirements or market practices that could adversely affect payment service users' rights.
- 3.2.2 Additionally a payment institution that holds users' funds must:
- (a) keep such records and accounts as are necessary to enable them at any time and without delay to distinguish funds held for one user from funds held for any other user and from the funds of the payment institution;

- (b) maintain their records and accounts in such a way that ensures their accuracy and in particular their correspondence to the funds held for users;
- 3.2.3 The receipt of funds from a user by way of cheque or other payable order becomes users' funds upon receipt of that cheque or other payable order by the payment institution.
- 3.2.4 Where a payment institution passes users' funds to another person in the course of carrying on its activities the payment institution must inform that person that the funds are users' funds.

### **3.3 Segregation of Users' Funds**

The following requirements apply where a payment institution has elected to safeguard users' funds through the segregation of these funds from its own funds.

- 3.3.1 Where the users' funds have not yet been delivered to another payment service provider by the end of the business day following the day the funds were received the payment institution must deposit these funds in a separate account in a credit institution opened for this purpose or invest in secure, liquid, low-risk assets.
- 3.3.2 The Financial Regulator considers a security representing a claim on a zone A central government or central bank to be a secure, liquid, low-risk asset.
- 3.3.3 A payment institution may apply to the Financial Regulator for approval to invest in other liquid, low-risk assets setting out full details of the proposed assets and why it considers them to be secure, liquid and low-risk. A payment institution may not invest in such assets until such time as the Financial Regulator has approved the investment.
- 3.3.4 The funds must be lodged in the currency of receipt unless the payment institution has no users' account denominated in that

currency and it would be unduly burdensome for it to open such an account in which case the payment institution may convert the funds and hold them in a users' account in a different currency.

3.3.5 Additionally a payment institution that safeguards users' funds through the segregation of such funds must:

- (a) conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties with whom assets are held as set out in 3.5 below;
- (b) promptly notify the Financial Regulator in writing of differences identified during the reconciliation that are material or recurrent in nature
- (c) take the necessary steps to ensure that users' funds deposited in a credit institution or bank authorised in a third country, in accordance with these requirements are held in an account or accounts identified separately from any account used to hold funds belonging to the payment institution;
- (d) ensure that the designation on a users' account held with a credit institution or a custodian sufficiently distinguishes the funds held in these accounts from funds belonging to the payment institution; and
- (e) promptly lodge all users' funds held by the payment institution to the users' account.

3.3.6 A payment institution shall pay its own funds into a users' account if required to do so by the Financial Regulator.

## **3.4 Insurance Policy**

3.4.1 Where a payment institution uses an insurance contract or comparable guarantee to safeguard users' funds it must ensure that:

- (a) All relevant funds are covered by the insurance policy or other comparable guarantee from an insurance company or a credit institution;
- (b) The relevant insurance company or credit institution does not belong to the same group as the payment institution itself;
- (c) The amount covered by the insurance policy or comparable guarantee is that which would have been segregated in the absence of the policy or guarantee; and
- (d) The proceeds of the insurance policy or guarantee are payable in the event that the payment institution is unable to meet its financial obligations.

3.4.2 The Payment Institution should ensure that where the proceeds of the insurance policy or guarantee are due and payable they are received into a separate users' account clearly identified for this purpose.

## **3.5 Reconciliations**

3.5.1 A payment institution must as often as necessary to ensure the accuracy of its records carry out an internal reconciliation of all records and accounts of entitlements of payment service users with the records and accounts of amounts safeguarded.

3.5.2 A payment institution must carry out a reconciliation of its internal records of amounts held for payment service users with third party statements of users' funds held. This reconciliation should be performed daily by the end of the following business day.

- 3.5.3 In order to complete the reconciliation a payment institution should reconcile the balance on each users' account as recorded by the payment institution with the balance on that account as set out in the statement or similar document issued by the relevant party.
- 3.5.4 Where such reconciliations are carried out electronically a payment institution should retain a hard copy of the reconciliation signed and dated in accordance with the four-eyes principle.
- 3.5.5 A payment institution should maintain a hard copy of all differences corrected unless they arise solely as a result of identified differences in timing.
- 3.5.6 Where differences other than timing differences are identified they should be corrected as soon as possible. The payment institution should notify the Financial Regulator in writing within one business day of the completion of the reconciliation of any differences which are material or recurrent in nature.

## **3.6 Failure to perform reconciliations**

- 3.6.1 A payment institution must notify the Financial Regulator immediately where it has been unable or has failed to perform the reconciliation within the timeframe permitted.

## **3.7 When funds cease to be users' funds**

- 3.7.1 Funds cease to be users' funds when the cheque or other payable order is presented and paid by the eligible credit institution.

# 4 General Supervisory Issues

## 4.1 Relationship with the Financial Regulator

4.1.1 In addition to the requirements set out in the Payment Services Regulations a payment institution is required to consult with the Financial Regulator prior to engaging in any significant new activities including, but not limited to, the provision of additional payment services.

4.1.2 A payment institution is required to be open and cooperative in its dealing with the Financial Regulator. This requirement includes but is not limited to the requirement to notify the Financial Regulator as soon as it becomes aware of

- (a) Any breaches by the payment institution of the Payment Services Regulations;
- (b) Breaches of other Irish legislation which may be of prudential concern to the Financial Regulator;
- (c) The commencement of any significant legal proceedings by or against the payment institution;
- (d) Any situations which impact or potentially impact on the payment institution to a significant extent;
- (e) The imposition on the payment institution of fines by another supervisory authority; or
- (f) A visit to the payment institution by another supervisory authority.

- 4.1.3 The payment institution is required to obtain prior approval of the Financial Regulator in respect of a proposed change of name.

## **4.2 Outsourcing**

- 4.2.1 A payment institution shall notify the Financial Regulator as soon as possible where a change occurs or is due to occur in an outsourcing arrangement governing an important operational function relating to the provision of payment services.
- 4.2.2 A payment institution shall notify the Financial Regulator in advance where it proposes to outsource any additional operational function relating to the provision of payment services.
- 4.2.3 Where a payment institution intends to outsource an important operational function it shall ensure that:
- (a) The outsourcing shall not result in the delegation of responsibility by senior management;
  - (b) The relationship and obligation of the payment institution towards its payment service users is not altered;
  - (c) It continues to comply with the conditions of authorisation imposed on it; and
  - (d) None of the other conditions imposed on the payment institution requires removal or alteration.
- 4.2.4 The Financial Regulator may request further information regarding the nature of the outsourcing contract or impose specific conditions governing the arrangement.
- 4.2.5 The payment institution must ensure its agents and branches inform payment service users of the outsourcing arrangement in place.

## **4.3 Annual Accounts**

4.3.1 The payment institution is required to submit to the Financial Regulator, in a timely manner, and in any case not later than six months after the end of the relevant reporting period annual audited financial statements in respect of the payment institution.

## **4.4 Reporting Requirements**

4.4.1 Each payment institution is required to submit to the Financial Regulator at the frequency specified to the payment institution by the Financial Regulator and within 20 business days of the end of the relevant reporting period a report setting out:

- (a) a statement of profit and loss and a balance sheet for the period in the format advised by the Financial Regulator;
- (b) details of the payment institution's regulatory capital requirement and the level of own funds held;
- (c) the safeguarding arrangements the payment institution has in place;
- (d) the level of users' funds held at the period end as well as the highest and lowest levels held during the period;
- (e) the number of agents appointed;
- (f) the number of agency contracts terminated; and
- (g) the total number of existing agency contracts.

Additionally on an annual basis each payment institution must provide:

- (h) full details regarding its ownership structure including full particulars of any qualifying shareholders.

A form for this purpose is provided by the Financial Regulator.

4.4.2 Where the payment institution is also engaged in the provision of non-payment services the Financial Regulator may request

separate accounting information relating to the provision of payment and non-payment services.

- 4.4.3 Where the level of own funds held by a payment institution falls below 120% of the level of own funds required the payment institution should notify the Financial Regulator accordingly.

## **4.5 Head Office**

- 4.5.1 The payment institution must maintain its head office and have a substantial presence within the State. The Financial Regulator must have the opportunity to communicate with and meet the management within the State.

## **4.6 Fitness & Probity**

- 4.6.1 The Financial Regulator applies a “fit and proper” test to any proposed director, beneficial owner and specified member of senior management to ensure he/she is of integrity and is competent.
- 4.6.2 All appointments to the board of directors and senior management positions are subject to the prior approval of the Financial Regulator. In this regard an “Individual Questionnaire” must be completed and submitted to the Financial Regulator for processing in respect of the proposed appointment of any director or senior manager. A copy of the Individual Questionnaire is available on the Financial Regulator’s website, <http://www.financialregulator.ie/industry-sectors/payment-institutions/Pages/authorisation.aspx>.
- 4.6.3 All resignations and departures from senior management and the Boards of Directors of a payment institution must be notified to the Financial Regulator and the reason for the resignation/departure provided.

## 4.7 Acquiring Transactions

- 4.7.1 Where possible prior notification should be made to the Financial Regulator in respect of any proposed material change in the ownership of a payment institution.
- 4.7.2 The Financial Regulator considers a material change in ownership to occur where the transaction would result in the proportion of voting rights or capital held by a person or more than one person acting in concert reaching or exceeding 10%, 20%, 33% or 50% or would result in a payment institution becoming a subsidiary of the acquirer.
- 4.7.3 Additionally notification should be made to the Financial Regulator where a direct or indirect disposal occurs by a person or more than one person acting in concert which would result in the proportion of voting rights or capital held by the person or persons falling below 20%, 33% or 50% or such that a payment institution would cease to be a subsidiary or the disposer.
- 4.7.4 Any notification for approval in this regard should be made on the Acquiring Transaction Notification form available on the Financial Regulator's website:  
<http://www.financialregulator.ie/industry-sectors/investment-firms/mifid-firms/Pages/forms.aspx>.
- 4.7.5 Where prior notification of a proposed transaction is not possible a payment institution should inform the Financial Regulator as soon as practical of the proposed transaction.
- 4.7.6 Once in each year or at such other times as may be directed by the Financial Regulator a payment institution must provide the Financial Regulator with full particulars of the names of all shareholders of 10% or more of its share capital, both direct and indirect. A report for this purpose will be provided to the payment institution (see Section 4.4).

## **4.8 Records**

4.8.1 A payment institution must keep appropriate records for at least five years.

4.8.2 Such records include but are not limited to:

- (a) Identification of users;
- (b) Communications with users including user statements;
- (c) Transaction records;
- (d) Reconciliations of users' funds;
- (e) Agents' files – due diligence undertaken and relationship management;
- (f) Board Minutes;
- (g) Financial Audit Reports;
- (h) Internal Audit Reports;
- (i) Compliance Reports; and
- (j) Complaints records & handling.

# 5 Passporting

## 5.1 Introduction

5.1.1 In accordance with Article 10(9) of the Payment Services Directive a payment institution may provide the payment services for which it has been authorised throughout the European Community either through the establishment of a branch or the engagement of an agent in another EU Member State or the freedom to provide services on a cross border basis.

5.1.2 The Financial Regulator, together with the competent authorities of other Member States has agreed a common terminology and harmonisation of passport notification documents which are published on the website of the European Commission:

[http://ec.europa.eu/internal\\_market/payments/docs/framework/transposition/passporting\\_guidelines\\_en.pdf](http://ec.europa.eu/internal_market/payments/docs/framework/transposition/passporting_guidelines_en.pdf)

5.1.3 A payment institution authorised by the Financial Regulator that wishes to avail of the passporting provisions of the Payment Services Directive should review the information contained in this document and forward the necessary notifications to the Financial Regulator.

## 5.2 Freedom to Provide Services on a Cross-Border basis

5.2.1 Upon receipt of the notification from an authorised payment institution the Financial Regulator will communicate the information to the relevant host competent authority as soon as is practicable but no later than one month from receipt.

5.2.2 The Financial Regulator will then confirm to the payment institution that this communication has taken place and the payment institution may then provide the services concerned in the host Member State.


5.2.3 The Financial Regulator will add details of the payment services to be carried out in the host Member State onto the public register.

## **5.3 Branch Establishment and Engagement of Agents in a Host Member State**

5.3.1 A payment institution wishing to provide services in another Member State through a branch or through the engagement of an agent in a host Member State to act on its behalf must provide the Financial Regulator with the necessary information as set out in the standard notifications referred to in Section 5.1.2 above.

5.3.2 Once the Financial Regulator is satisfied with regard to the information provided it will forward the information to the competent authority of the host Member State in a timely manner. The Financial Regulator will advise the payment institution that this notification has taken place. The host Member State then has up to one month to provide feedback to the Financial Regulator regarding any concerns it may have with regards to money laundering or terrorist financing.

5.3.3 The Financial Regulator will then take this information into account before deciding whether to enter the branch and/or agent onto the public register. Confirmation of the Financial Regulator's decision in this regard will be provided to the competent authority of the host Member State and to the payment institution.



5.3.4 The payment institution may start to organise its general business (rent premises, recruit staff etc) but may not provide any payment services until the Financial Regulator has registered the branch and/or agent.

# 6 Agents

## 6.1 Notification of Appointment of Agents

6.1.1 A payment institution wishing to appoint an agent either within the State or under the passporting provisions in another Member State is required to register the appointment of each agent with the Financial Regulator at least 1 month in advance.

6.1.2 This registration should be in the format set out in the Agent Application Form that is available on the Financial Regulator's website.

6.1.3 Where the Financial Regulator considers some element of this information either incomplete or incorrect the Financial Regulator may take further action to verify the information provided.

6.1.4 Once the Financial Regulator is satisfied with the appointment of an agent it will so inform the payment institution and the details of the agent will be added to the Register of authorised payment institutions. The payment institution may then begin using the agent for the provision of payment services.

## 6.2 Responsibility of the Payment Institution

6.2.1 A payment institution remains fully liable for the acts of any agent which it has appointed to provide services on its behalf.

## **6.3 De-Registration of Agents**

- 6.3.1 Notification must be given to the Financial Regulator in respect of the termination of an agency arrangement, the effective date of termination and the reason for its termination.
- 6.3.2 Where possible this notification should be made in advance of the termination of the agency arrangement.

# 7 Anti-Money Laundering

## 7.1 Introduction

- 7.1.1 Pending the implementation of Directive 2005/60 EC of the European Parliament and of the Council of 26th October, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorists financing ('the Third Money Laundering Directive') a payment institution should have due regard to the Guidance Note for Financial Institutions (excluding Credit Institutions) supervised by the Financial Regulator issued with the approval of the Money Laundering Steering Committee in June 2003 and the Guidance on the Offence of Financing of Terrorism and the Financial Sanctions Regime for bodies designated under Section 32 of the Criminal Justice Act, 1994 ("the Guidance Notes").
- 7.1.2 The Financial Regulator will use the Guidance Notes as criteria against which it will assess the adequacy of a payment institution's internal controls, policies and procedures to counter money laundering and terrorist financing.

## 8 Definitions

Unless the contrary intention appears a word or expression used in this document and also in the Payment Services Regulations has the same meaning as in the Payment Services Regulations.

References to “**books**”, “**records**” or other “**documents**” or to any of them, shall be construed as including any document or information kept in a non-legible form (whether stored electronically or otherwise) which must be capable of being reproduced in a legible form and all the electronic or other automatic means, if any, by which such document or information is so capable of being reproduced and to which the payment institution has access.

“**business day**” means any day, except Saturday, Sunday, bank holidays and public holidays (not being bank holidays).

“**user**” means any **person** for whom the **payment institution** has provided or intends to provide **payment services** and thus it includes officers and employees of the **firm**.

“**users’ funds**” consists of **money** which, in the course of carrying on a payment service a **payment institution** receives, holds, or pays out for or on behalf of **users**.

“**credit institution**” means the holder of an authorisation issued by the **Financial Regulator** or a competent authority of another Member State for the purposes of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.

“**Financial Regulator**” means the Irish Financial Services Regulatory Authority.

**“four-eyes”** means that two different people independently approve the completion of the relevant task.

**“held”** a **payment institution** is deemed to hold **users’ funds** where-

- (a) the money has been lodged on behalf of a user of the payment institution to an account with a credit institution or relevant party in name of the payment institution or any nominee of the payment institution, and
- (b) the **payment institution** has the capacity to effect transactions on that account.

**“Insolvency Event”** shall mean any of the following events, namely:

- (i) the **payment institution** becoming insolvent or ceasing to be able to discharge its debts as they fall due; or
- (ii) the **payment institution** stopping making payments generally or declaring a moratorium with respect to all or any part of its debts or entering or proposing to enter into a scheme of arrangement or composition with its creditors or any class thereof; or
- (iii) the passing of any resolution for the winding up or the presentation of a petition or the making of any order for the appointment of a liquidator, a provisional liquidator, a receiver, an examiner, an administrative receiver, an administrator, a trustee or similar officer to the **payment institution** or over all or any material part of the assets of the **payment institution** or the levying or execution of a distress, execution or other process against all or any material part of such assets or the taking of any action for the winding-up, dissolution or striking off of the **payment institution** but shall exclude any winding-up, dissolution, reorganisation or other action in each case carried out on a solvent basis of the **payment institution**.

**“Member State”** means a Member State of the European Community.

**“money”** includes cash, cheques or other payable orders together with **users’ accounts** maintained with a central bank, an eligible credit



institution or a **qualifying money market fund** and includes current and deposit accounts maintained with **eligible credit institutions**.

**“Zone A Credit Institution”** means a credit institution that has its registered office in any EEA state, any country that is a full member of the OECD or in a country that has conducted special lending arrangements with the International Monetary Fund associated with the Fund’s general agreements to borrow.



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