

REPUBLIC OF TRINIDAD AND TOBAGO

THE PAYMENT SYSTEMS AND SERVICES ACT

REGULATION

MADE BY THE MINISTER UNDER SECTION XX OF THE PAYMENT SYSTEMS AND SERVICES ACT

**PAYMENT SYSTEMS AND SERVICES (SAFEGUARDING OF USER FUNDS) REGULATIONS
20XX**

ARRANGEMENT OF REGULATIONS

Regulations

1. Citation
2. Interpretation
3. Application
4. Operation of Trust Accounts
5. Safeguarding User Funds with More than One Financial Institution
6. Distribution of User Funds
7. Withdrawal from the Trust Account
8. Safeguarding by Guarantee or Insurance Policy
9. Redemption or Refund of User Funds
10. Commencement

Citation	1. These Regulations may be cited as the Payment Systems and Services (Safeguarding of User Funds) Regulations, 20XX.
Interpretation	<p>2. In these Regulations –</p> <p>“Act” means Payment Systems and Services Act;</p> <p>“e-float” has the meaning assigned to it in the Payment Systems and Services (E-Money) Regulations, 20XX.</p> <p>“trust account” means an account designated by virtue of section 43 of the Act as a trust account for the purpose of safeguarding user funds which is -</p> <ul style="list-style-type: none"> (a) maintained with a financial institution or in the case of a financial institution that provides e-money accounts, issues electronic money and provides electronic wallets, maintained with that financial institution; (b) segregated from any other funds that the payment service provider holds; and (c) held for the sole benefit of users.
Application	<p>3. (1) These Regulations shall apply to a payment service provider that holds user funds at any point in time.</p> <p>(2) Regulations 4(1) to (6), 6, 7(1)(a)(b)(i), 8 and 9 shall apply <i>mutatis mutandis</i> to a financial institution that provides e-money accounts, issues electronic money and provides electronic wallets.</p>
Operation of Trust Accounts	<p>4. (1) Where a payment service provider safeguards user funds by way of a trust account it shall place such user funds in a trust account no later than the next business day following the day when the user funds were received.</p> <p>(2) A payment service provider shall disclose in writing to every user the following —</p> <ul style="list-style-type: none"> (a) that the user funds will be held by the payment service provider on behalf of the user in a trust account maintained with the financial institution; (b) that the user funds of all users will be held together in the trust account; (c) that the user funds held in a trust account will be for the benefit of all users; and (d) the consequences for the user in respect of the user funds if the payment service provider or the financial institution becomes insolvent.

(3) A payment service provider shall treat and deal with all user funds received from a user as belonging to the user and shall not, at any time, use the user funds as security or collateral or for payment of fees or charges incurred in connection with the administration of the trust account.

(4) A payment service provider shall not commingle the user funds in the trust account with other funds.

(5) Notwithstanding subregulation (4), a payment service provider may—

- (a) advance funds to the trust account from its own funds to open the trust account; or
- (b) from time to time, advance funds to the trust account from its own funds to maintain the trust account.

(6) A payment service provider that is licensed to provide an e-money account, to issue electronic money or to provide electronic wallet services shall ensure that the funds deposited in the trust account are at all times equivalent to the total value of the e-float.

(7) A payment service provider that is licensed to provide services other than the provision of an e-money account, the issuance of electronic money and the provision of electronic wallet services and that has deposited user funds in a trust account shall ensure that such funds are at all times equivalent to such value of the user funds received, as specified by the Central Bank.

Safeguarding User Funds with More Than One Financial Institution

5. (1) The Central Bank may direct a payment service provider to place user funds with more than one financial institution to mitigate the concentration risk.

(2) The financial institutions referred to in subregulation (1) shall not be a connected party of each other.

(3) Where a payment service provider opens multiple trust accounts with more than one financial institution, the payment service provider shall clearly identify and record the users and the user funds related to each trust account.

Distribution of
User Funds

6. (1) In the event of restriction or revocation of a payment service provider's licence or licence of a financial institution under the Financial Institutions Act, the Central Bank may direct the payment service provider or the financial institution to distribute the user funds in the trust account in a manner specified by the Bank in the best interest of the users.

(2) Upon the grant of a winding up order in relation to a payment service provider or a financial institution that provide an e-money account, issues electronic money and provides electronic wallet services, the liquidator shall distribute the user funds in a trust account solely to the users on behalf of whom the payment service provider or financial institution as the case may be was required to safeguard the relevant funds.

Withdrawal from the
Trust Account

7. (1) A payment service provider may only withdraw funds held in a trust account if–

(a) the funds are for the purpose of reimbursing the payment service provider for the funds that the payment service provider has advanced to the trust account from its own funds to open and maintain the trust account; or

(b) the withdrawal of the funds, whether or not they are funds that belong to the payment service provider, are for the purpose of payment to the user, provided that:

(i) in the case of a payment service provider licensed to provide an e-money account, to issue electronic money or to provide electronic wallet services, the withdrawal does not reduce the total amount of the trust account below the total value of the e-float.

(ii) in the case of a payment service provider licensed to provide services other than the provision of an e-money account, the issuance of electronic money or the provision of electronic wallet services, the withdrawal does not reduce the total amount of the trust account below the total value of funds received as specified by the Central Bank.

(2) Payment for any costs, charges and expenses incurred in connection with the administration of the trust account can be made from that account only if the balance in the account after deduction of the costs, charges and expenses is sufficient to cover the total value of the e-float and the payment service provider shall ensure

that there are funds in the trust account, in excess of the value of user funds under protection, for the purpose of covering such costs, charges and expenses.

Safeguarding by
Guarantee or
Insurance Policy

8. (1) Where user funds are safeguarded by way of guarantee, given by a financial institution, or insurer or by way of an insurance policy, the payment service provider shall —

(a) before obtaining a guarantee or an insurance policy —

(i) assess, and satisfy itself of, the suitability of the financial institution or insurer with respect to the giving of the guarantee or insurance policy; and

(ii) give written notice to the financial institution or insurer and obtain an acknowledgment from the financial institution or insurer that the guarantee or insurance policy is being obtained by the payment service provider for the purpose of complying with the Act.

(b) ensure that —

(i) the guarantee or insurance policy states that in the event of the insolvency or winding-up of the payment service provider, the financial institution or the insurer assumes a primary liability to pay a sum equal to the amount of the user funds held by the payment service provider at the end of the business day immediately preceding the date the payment service provider becomes insolvent or is wound up; and

(ii) there is no other condition or restriction on the immediate paying out of funds by the financial institution or the insurer to a separate trust account held by the payment service provider in accordance with the Act, in the event of the insolvency of the payment service provider; and

(c) disclose in writing to the user that the users' funds are being safeguarded by a guarantee or by an insurance policy, as applicable.

Redemption or Refund
of User Funds

9. (1) A payment service provider shall redeem or refund as the case may be any user funds or balance of user funds of its users or in its users' accounts in the event that -

(a) it is so directed upon the restriction of revocation of its licence by the Central Bank;

(b) a user decides to redeem or seek refund of their funds or to close their account; or

(c) a transaction is erroneous, unauthorised or disputed.

(2) The redemption or refund shall be made without any additional costs and shall be done within fourteen business days from the date the claim is made by the user except for complex redemption or refund cases.

(3) For complex refund cases that cannot be completed within fourteen business days, the payment service provider shall communicate the reason for such delays to users in a timely manner and complete the cases within thirty business days.

(4) A payment service provider shall provide users with options for the method of refund of funds.

Commencement

10. These Regulations shall come into operation on [date 20XX].