

Pursuant to Article 35, paragraph 1, subparagraph 1.1 and Article 65, paragraph 1 of Law no. 03/L-209 on Central Bank of the Republic of Kosovo (Official Gazette of the Republic of Kosovo, No. 77/16 August 2010), Article 8, paragraph, 1 subparagraph 1.1 as well as paragraph 2, subparagraph 2.3 of Law no. 04/L-155 on Payment System (Official Gazette of the Republic of Kosovo, No. 12/03 May 2013) as well as Article 92, paragraph 3, Article 101, paragraph 1 and Article 114 of Law no. 04/L-093 on Banks, Microfinance Institutions and Nonbank Financial Institutions (Official Gazette of the Republic of Kosovo, No. 11/11 May 2012), the Board of the Central Bank of the Republic of Kosovo, in its meeting held on 29 November 2019, approved the following :

REGULATION ON REGULATORY CAPITAL AND SAFEGUARDING THE FUNDS OF NON-BANK FINANCIAL INSTITUTIONS' CUSTOMERS

CHAPTER I GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Regulation sets out the regulatory capital requirements applicable to Non-bank Financial Institutions (NBFIs) registered for payment activities services and/or issuance of electronic money.
2. This Regulation also sets out the requirements for the safeguarding of client funds that apply to Nonbank Financial Institutions registered to conduct payment service activities and/or issuance of electronic money.

Article 2

Definitions

1. All terms in this Regulation shall have the same meaning as those defined in the Law on Banks, Microfinance Institutions and Nonbank Financial Institutions, Law on Payment System and/or as defined below, for the purpose of this Regulation:
 - 1.1. **Average Outstanding Electronic Money** – is the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the six months, calculated on the first calendar day of the following six-month period and applied for that calendar month;
 - 1.2. **Non-bank Financial Institution (NBFI)** – a legal entity registered in accordance with the applicable law on business organizations and registered by the CBK to carry out the activities permitted for NBFIs set out under the provisions of the Law on Banks, Microfinance Institutions and Nonbank Financial Institution and this regulation.

1.3. **Regulatory Capital** – means the sum of Tier 1 Capital and Tier 2 Capital consisting of the elements set forth in the Regulation on Bank Capital Adequacy where at least 75% of Tier 1 capital consists of Tier 1 capital and second tier capital shall be equal to or less than one third (1/3) of Tier 1 capital.

1.4. **Client** – means the payment service user, as defined in the NBFi Regulations.

1.5. **CBK** – Central Bank of the Republic of Kosovo

Article 3

Minimum capital

The minimum amount of capital required for registration and maintained for NBFIs registered for conducting of payment service activity and/or issuance of electronic money shall be in accordance with the provisions of Article 4 of the Regulation on Registration of Non-Banking Financial Institutions, according to relevant activity.

CHAPTER II

REGISTERED NBFIs FOR CONDUCTING OF PAYMENT SERVICE ACTIVITY

Article 4

Regulatory capital of registered NBFIs for conducting of payment service activity

1. The regulatory capital of NBFIs registered for conducting of payment service activity shall not fall below the value set out in Article 3 of this Regulation or the calculations set out in Article 5 of this Regulation, whichever is higher.
2. Where the regulatory capital of NBFIs registered for conducting of payment service activity falls below the thresholds set forth in paragraph 1 of this Article, the CBK may, in certain cases, allow the relevant NBFi a limited period of time, within which the set limits must be met.
3. Where a relevant NBFi registered for conducting of payment service activity belongs to the same group of an NBFi, a bank or other financial entity, multiple uses of the elements eligible for regulatory capital shall not be permitted.
4. Paragraph 3 of this Article shall apply in relation to NBFIs registered for conducting of payment service activity performing activities other than provision of payment services.
5. Where an NBFi registered for conducting of payment service activity carries out activities other than the provision of payment service which are as well subject to regulatory capital requirements, the relevant NBFi registered for conducting of payment service activity shall meet such requirements in addition to the requirements set forth in this Article.

Article 5

Calculation of the regulatory capital of NBFIs registered for conducting of payment service activity

1. Notwithstanding the capital requirements set forth in Article 3 of this Regulation, NBFIs registered for conducting of payment service activity shall at all times maintain their funds calculated in accordance with one of the following three methods, according to CBK designations:

1.1. Method A

The regulatory capital of NBFIs registered for conducting of payment service activity should be at least 10% of their previous year fixed costs. In cases when NBFIs registered for conducting payment service activity at the date of calculation of this capital adequacy ratio have not exceeded 1 (one) year in the exercise of its activity, the ratio shall be calculated on the basis of the fixed costs provided for in business plan for the first year of operation, presented in the application process for obtaining registration as NBFI.

1.2. Method B

The regulatory capital of NBFIs registered for conducting of payment service activity shall be at least the sum of the following elements multiplied by the scaling factor “k” specified in paragraph 2 of this Article, where the payment volume - PV represents one-twelfth (1/12) of the total amount of payment transactions performed by NBFI registered for conducting of payment service activity in the previous year:

- 1.2.1. for payments of up to EUR 5 million, 4.0% of the one-twelfth part of the total amount of payment transactions in the preceding year (payment volume - PV); plus
- 1.2.2. for the amount of payments from EUR 5 million to EUR 10 million, 2.5% of one-twelfth part of the total amount of payment transactions in the preceding year (payment volume - PV); plus
- 1.2.3. for payments from EUR 10 million up to EUR 100 million, 1.00 % of one-twelfth part of the total amount of payment transactions in the preceding year (payment volume - PV); plus
- 1.2.4. for payments from EUR 100 million up to EUR 250 million, 0.5 % of one-twelfth part of the total amount of payment transactions in the preceding year (payment volume - PV); plus
- 1.2.5. for payments over EUR 250 million, 0.25% of one-twelfth part of the total amount of payment transactions in the preceding year (payment volume - PV).

1.3 Method C

The regulatory capital of NBFIs registered for the exercise of the payment service activity shall be at least at the value of the relevant indicator set out in subparagraph 1.3.1 of this paragraph multiplied by the multiplication factor set out in subparagraph 1.3.2 of this paragraph and with the scaling factor “k” specified in paragraph 2 of this Article.

- 1.3.1 the relevant indicator is the sum of the following elements:
 - 1.3.1.1 interest revenue;
 - 1.3.1.2 interest expenses;
 - 1.3.1.3 revenues from commissions and fees received; and
 - 1.3.1.4 other operational income.

1.3.1.5 Any element specified in sub-sub- subparagraphs of the sub-sub-paragraph 1.3.1 of this Article shall be included in the total amount of relevant indicator with positive or negative impact. Extraordinary revenues shall not be used in the calculation of the relevant indicator. Expenditure on subcontracting services performed by third parties may reduce the relevant indication if the expense is incurred by an entity subject to the supervisory provisions of this regulation. The relevant indicator shall be calculated based on data for the last 12 months of the last financial year. The relevant indicator shall be calculated for the previous financial year. The regulatory capital calculated under Method C shall not fall below 80% of the average of the previous three financial years for the relevant indicator. Where audited financial data is not available, data according to NBFIs may be used.

1.3.2 The multiplication factor consists of:

1.3.2.1 10%, for the amount of relevant indicator of the previous year up to EUR 2.5 million;

1.3.2.2 8%, for the amount of the relevant indicator of the previous year from EUR 2.5 million to EUR 5 million;

1.3.2.3 6%, for the amount of the relevant indicator of the previous year from EUR 5 million to EUR 25 million;

1.3.2.4 3%, for the amount of the relevant indicator of the previous year from EUR 25 million to EUR 50 million;

1.3.2.5 1.5%, for the amount of the relevant indicator of the previous year over EUR 50 million.

2. The scaling factor “k” used in Method B and C shall be as follows:

2.1. 0.5, for NBFIs registered to carry out the payment service activity, which only perform payment services abroad (transfers abroad);

2.2. 1, for other NBFIs registered for performing payment service activity.

3. Method A set forth in paragraph 1 under paragraph 1.1 of this Article shall apply to the calculation of regulatory capital in the first year after the NBFIs' registration for payment service activity.

4. Method B set out in paragraph 1 sub-paragraph 1.2 of this Article shall apply to NBFIs registered to carry out the payment service activity. This method begins to be applied after the NBFIs registered for carrying out the payment service activity have completed a full financial year of operation.

5. Method C set forth in paragraph 1 subparagraph 1.3 of this Article shall apply to NBFIs which, in addition to registering for payment service activity or issuance of electronic money, are also involved in the lending activity.

Article 6

Request for safeguarding the funds for NBFIs registered to carry out payment service activity

1. NBFIs registered to carry out payment service activity shall safeguard all funds received from payment service customers or through another payment service provider for executing payment transactions in the following manner:
 - 1.1. The funds shall not be merged (mixed) at any time with the funds of any other natural or legal person other than the customer on whose behalf the funds are held.
 - 1.2. If the funds received are still held by the NBFI registered to carry out the payment service activity and have not been delivered to the beneficiary or transferred to a bank or other NBFI licensed/registered to carry out the payment service activity until the end of the business day following the day when the funds are received, they shall be deposited in a separate account of a bank.
 - 1.3. The funds received shall be safeguarded from the claims of other creditors of the registered NBFI to carry out the payment service activity, especially in the event of insolvency;

CHAPTER III

NBFIs REGISTERED FOR CARRYING OUT OF THE ACTIVITY OF ISSUING ELECTRONIC MONEY

Article 7

Regulatory capital of NBFIs registered for carrying out of the activity of issuing electronic money

1. The regulatory capital of NBFIs registered for carrying out of the activity of issuing electronic money shall not fall below the amount of capital specified in Article 3 or the amount of capital calculated in accordance with Article 8 of this Regulation, whichever is higher.
2. In the event that the regulatory capital of NBFIs registered for carrying out of the activity of issuing electronic money falls below the limits set forth in paragraph 1 of this Article, the CBK may, in certain cases, allow the NBFI concerned a limited period of time in which to set limits.
3. If the relevant NBFIs registered for carrying out of the activity of issuing electronic money belong to the same group of NBFIs, banks or other financial entities, the multiple uses of elements eligible for regulatory capital shall not be permitted.
4. Paragraph 3 of this Article shall apply in relation to NBFIs registered for carrying out of the activity of issuing electronic money that carries out activities other than the issuance of electronic money and/or the provision of payment services.
5. Where an NBFI registered for carrying out of the activity of issuing electronic money that carries out activities other than the issuance of electronic money and/or the provision of payment services which are also subject to regulatory capital requirements, the relevant NBFIs registered for carrying out of the activity of issuing electronic money shall meet such requirements, in addition to the requirements set forth in this Article.

Article 8

Calculation of regulatory capital of NBFIs registered for carrying out of the activity of issuing electronic money

1. The regulatory capital of NBFIs registered for carrying out of the activity of issuing electronic money shall at any time be equal to or higher than the amount resulting from the fulfilment of the requirements set out in the following paragraphs.
2. The regulatory capital of NBFIs registered for carrying out of the activity of issuing electronic money shall be at least 2% of the average outstanding electronic money.
3. For registered NBFIs which, in addition to issuing electronic money, also carry out the payment service activity, the calculation of regulatory capital for payment service activity shall be carried out in accordance with one of the three methods set out in Article 5 of this Regulation, whereas the calculation of regulatory capital of the activity of issuing electronic money shall be carried out in accordance with the provisions of paragraph 2 of this Article.

Article 9

Request for safeguarding the funds for NBFIs registered for carrying out of the activity of issuing electronic money

1. NBFIs registered for carrying out of the activity of issuing electronic money shall safeguard funds received in exchange for issued electronic money pursuant to the provisions set forth in Article 6 of this Regulation.
2. For registered NBFIs which, in addition to issuing electronic money, carry out the activity of payment service, in addition to the provisions of this Article, the provisions of Article 6 of this Regulation shall apply.
3. Funds received in the form of payment through the payment instrument shall not be safeguarded until they are credited to the account of NBFIs registered for carrying out of the activity of issuing electronic money or if they have been made available to the NBFIs registered for carrying out of the activity of issuing electronic money in accordance with legal or regulatory requirements for the timing of execution of payment transactions. In any event, such funds shall be safeguarded by no later than five business days after the date of issuance of electronic money.
4. NBFIs registered for carrying out of the activity of issuing electronic money shall inform the CBK in advance of any significant changes regarding the safeguarding of funds.

CHAPTER IV FINAL PROVISIONS

Article 10

Violations, remedial measures and civil penalties

Any violation of the provisions of this Regulation shall be subject to remedial measures and administrative penalties as set forth in the Law on Central Bank of the Republic of Kosovo, the Law on Banks, Microfinance Institutions and Nonbank Financial Institutions and the Law on Payment Systems.

Article 11

Entry into force

This Regulation shall enter into force on 1 January 2020.

Flamur Mrasori

Chairman of the Board of the Central Bank of the Republic of Kosovo