



# **Safeguarding of Clients' Assets Policy**

**Bankinter Luxembourg S.A.**

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## **1. Introduction**

In the course of conducting of business with clients, Bankinter Luxembourg S.A. (hereinafter referred as "Bankinter" or "the Bank") may receive, hold and control Client Money and Assets on behalf of the clients. The Bank is committed to ensuring that such money or assets are adequately protected and segregated in accordance with the client and the regulatory and legal framework in place.

The present Policy entails the safekeeping of financial instruments which aims to describe the main measures taken by the Bank to ensure the protection of the property rights of the assets received from the clients, to avoid their unjustified use as well as know, at any time and without delay, the position of the funds, values and operations in progress of each client.

The obligations related to the safeguarding of clients 'assets are contained in the following legislation:

- Law of 5 April 1993 on the financial sector, as amended;
- Law 30 May 2018 on markets in financial instruments, as amended;
- Grand Ducal Regulation of 30 May 2018, on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, as amended.

## **2. Scope**

The measures to protect and safeguard the property rights of clients described in this Policy are limited to the financial instruments and funds entrusted by clients to the Bank in light of the activities and services related to the provision of custody services and management of financial instruments.

This Policy is applicable to retail and professional investors, as well as eligible counterparties.

## **3. Definition of Client Money and Assets**

Client Money and Assets includes any money and/or assets received, held and/or due to a client arising from banking safe custody, investment and relevant insurance activities (if applicable) but specifically excluding deposit-taking activities that are ruled by specific regulation. In case of insolvency, the client money and assets are the amount that a specific Financial Institution is liable to return to the client.

#### **4. Key principles applicable to the Safeguarding of Client's Assets**

As per the legal and regulatory framework in force, Financial Institutions must ensure that they have in place the necessary arrangements in order to properly safeguard the clients' assets.

##### **4.1 Distinction between the client's assets and the Financial Institution own assets**

All Financial Institutions must physically hold, or arrange for holding of, the client's assets separate from the investment firm's own assets and maintain accounting segregation between the Financial Institution's own assets and clients' assets. The entity shall ensure that this distinction can be made without delay and at any time.

##### **4.2 Designation and Registration**

All Financial Institutions must ensure that clients' assets are clearly identified in its internal records and in the records of third parties. Moreover, Financial Institutions shall maintain these registers accurate at any time, so that all the information is available for audit purposes.

##### **4.3 Reconciliation**

All Financial Institutions must keep accurate books and records to enable them, at any time and without delay, to provide an accurate record of the clients' assets held by the Financial Institution for each client, as well as the total held in the clients' assets account. Financial Institutions must conduct a regular reconciliation between its internal records and those records of any third party with whom the clients' assets are held. In order to make such distinction between clients' assets accounts and their own accounts, the Financial Institution shall make sure to designate both accounts on their books differently (so that it can be easily distinct) or use any other measures in order to reach the same level of protection.

##### **4.4 Protection of Clients' assets deposited on third parties custody entities**

Financial Institutions will guarantee that clients' assets deposited at a third member state country, are subject to specific custody legislation and supervision (both the entity and the country where the clients' assets are held).

In any case, this obligation could be waived if the nature of the financial instrument or the related investment services, requires that these are deposited on a specific country which does not meet the custody and supervision legislation requirements, or if the client is a professional client and specifically ask the entity to deposit such instruments on a third party custody entity on a specific country.

#### **4.5 Protection of cash from clients deposited on third parties' custody entities**

All Financial Institutions shall adopt the necessary steps in order to guarantee that the cash received from clients is deposited on an account opened at a custody entity such as a central bank, a credit entity, an authorized bank on another country or a monetary fund.

When the cash received from clients is not deposited at a central bank, Financial Institutions shall act with the required competence, attention and diligence with respect to the selection of the credit entity, bank or monetary fund where the clients' cash will be deposited.

#### **4.6 Client disclosure and consent**

Financial Institutions must provide information to their clients in a way that inform them on how and where their assets are held and the result of the risks thereof.

#### **4.7 Financial Institutions: organizational measures**

Financial Institutions must introduce organizational measures in order to minimize their risk of loss or decrease on clients' assets value or the rights related to those assets, as a consequence of a wrongful use, fraud, inadequate administration or negligence.

#### **4.8 Special measures in case of insolvency**

Financial Institutions shall guarantee that the *jus in rem* rights over securities, pledge rights and/or set-off rights over the financial instruments or investment funds of clients, which allow a third party to dispose of such rights in order to recover debts not connected with the clients or the services rendered to them, are not permitted, unless this is permitted at the third member state where the funds or financial instruments are deposited. In these cases, the Financial Institutions must disclose this information to their clients so that they are duly informed about the associated risks.

#### **4.9 Deposit of the Clients' assets on a group entity**

When a Financial Institution has deposited its clients' asset at a credit entity, bank or monetary fund which belongs to the same group, such deposit shall not exceed 20% of the total funds of the Financial Institution. Such obligation can be waived if the Financial Institution demonstrates that, given the nature and complexity of its activity, and the security and protection of the assets offered by other custodian entities, this obligation is not proportionated.

#### **4.10 Use of Clients' financial instruments**

Financial Institutions will not establish agreements regarding securities financing transactions with respect to clients' financial instruments, or that they may use in any other way such financial instruments, unless the following two conditions are met: (i) that the client expressly consent prior to this use, by means of a signed writing confirmation; (ii) such use has to be restricted to the one expressly accepted by the client.

This obligation is extended to the use of clients' financial instruments, when these are kept on global accounts at a third custody entity. In this respect, it will be also needed the express agreement of all the clients whose financial instruments are deposited on these global accounts and the Financial Institution shall implement systems and controls in order to guarantee the use of these financial instruments.

#### **4.11 Prohibition of entering into TTCAs<sup>1</sup> with retail clients**

Financial Institutions shall not enter into TTCAs with retail clients in order to ensure or cover actual or future obligation, real or contingent, for clients. TTCAs are arrangements under which a client transfers his rights in a financial instrument to the firm (often as part of providing collateral or security to the firm in respect of the client's obligations to the firm). Financial Institution must ensure that the professional clients and eligible counterparties, with whom they can enter into TTCA agreements, are duly informed about the property of the instrument (i.e. the instrument belongs to the firm) and about the decrease to have any protections under the safeguarding provisions of MiFID in relation to such instrument.

#### **4.12 Appointment of a responsible for the compliance with the safeguarding obligations**

Financial Institutions shall appoint a single specific person with adequate skills and knowledge as the responsible for the compliance of safeguarding measures and principles over clients' financial instruments and cash.

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<sup>1</sup> Title Transfer Collateral Arrangements

## 5. Safeguarding of Clients' Assets at Bankinter

### 5.1. Distinction between the clients' assets and the Bank's own assets

The Bank has established in its Core Banking System (Olympic) a structure of portfolio accounts that allows to differentiate the financial instruments of the clients, and within these, identifies the assets owned by each one of them, by opening separate accounts at Olympic.

On the other hand, the Bank has clearly identified and segregated in the computer system (Olympic), the accounts that have been opened by the Bank in third parties - sub custodians - to give support to its clients in the different markets in which operates.

### 5.2 Sub custodians

As per the regulatory framework in place, the Bank may deposit financial instruments held by its clients in global accounts opened with their custody entities, subject to due diligence, competence and attention in the selection, designation and periodic review of these entities and to the agreements that regulate the ownership of the financial instruments' custody.

The Bank has currently the following sub custodians:

Name of the Sub custodians	Financial Instrument
Bankinter S.A.	Fixed Income, Equities and Structured Products.
Citibank Europe PLC	Investment Funds and Equities
Allfunds Bank International S.A.	Investment Funds

The Bank will take into account the following criteria when selecting sub custodians:

- a. The experience and the prestige of the sub custodians that are being selected;
- b. The rating of the sub custodian;
- c. The quality of the entity as well as the quality of the information for the monitoring of the activity and the frequency and access to the positions that are maintained in each moment;
- d. The internal procedures of the sub custodian regarding the safeguarding of clients' assets and if they are aligned with the Bank's procedures;
- e. The existence of a clear separation between the clients' accounts, the Bank's accounts and the sub custodian's accounts;
- f. The efficient process and workflows that are in place for ensuring cash payments;

- g. Efficient, fast and secured MiFID channel which are in place for the exchange of instructions, reports.

The Bank will perform on an annual basis the following activities with respect to its sub-custodians:

- a. Monitor the sub-custodians' performance and its compliance with the Bank standards;
- b. Ensure that the sub-custodian exercises a high standard of care, prudence and diligence in the performance of its tasks, and in particular that it ensures the effective segregation of the assets and cash deposited;
- c. Review the custody risks associated with the decision to entrust clients' assets and cash to such sub-custodian;
- d. Monitor, on an annual basis, the services provided in order to identify and/or review all the issues or problems that may have arisen, as well as monitor the follow-up actions implemented in order to solve such issues or problems.

Furthermore, Bankinter has a continuous communication with their custody entities in order to verify and resolve possible deficiencies or issues.

On those cases, which require the use of *omnibus* accounts, the Bank will verify, prior to the opening process of the global account, if the following requirements are met:

- a. That there is an absolute segregation between the positions of the Bank's accounts and the ones that belong to clients. In this case the "global account" should be named as "third party account";
- b. That there are procedures in place to ensure the individualization of every client's position;
- c. That at the beginning of the commercial relationship, clients have been informed of the possibility of Bankinter use global accounts, the inherent risks as well as the identification of the financial entity that is acting as depositary of the global account.

## **6. Reconciliations at Bankinter**

Bankinter guarantees that its internal registries are accurate, and that the financial instruments registered in such registers match with the ones deposited at their custody Entities. Moreover, the Bank carries out a reconciliation of all the movements, on a daily basis, and a reconciliation

of the positions on a monthly basis. These reconciliations are based on the files that each custody entity send to the Bank during the night.

### **7. Responsible for the compliance with the safeguarding obligations**

The Director of the Operations Department will be the responsible for the compliance of safeguarding measures and principles over clients' financial instruments and cash.

### **8. Agreement and Consent**

The Bank will provide to its clients, prior to the provision of the investments all the relevant aspects related to the protection and safeguarding of financial instruments. The clients who contract a custodian service will be informed in the corresponding contract of the key aspects related to the administration of the financial instruments through sub-custodians as well as the Bank guarantee on them.

Likewise, and in the event that the Bank intends to receive or deliver incentives related to the provision of custody services or management of financial instruments, the Bank will properly disclose this information to the customer.

In addition, Bankinter will include the present Policy in its public website.

### **9. Revision**

Compliance Department will review the effectiveness of this Policy and, where deemed necessary, correct any deficiencies that may be found.

Moreover, Compliance Department shall review the present Policy once a year or whenever a material change occurs that affects the Bank's ability to guarantee the safeguarding of clients' assets. Any material changes will be promptly disclosure to clients.

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