

EXCERPTS FROM THE PAYMENT SERVICES ACT

Rules on liability

62.-(1) The payer's provider is liable to the payer for any loss incurred due to the unauthorised use by any third party of a payment instrument unless otherwise provided in (2)-(6) hereof. The payer is only liable under (2)-(6) hereof if the transaction was accurately recorded and entered in the accounts. In case of unauthorised use of a payment instrument, the payer's provider shall immediately reimburse the payer with the amount.

However, the payer is liable without limitation with respect to any loss incurred due to the payer acting fraudulently or with intent failing to fulfil his obligations under section 59.

(2) Except where more extensive liability follows from (3) or (6) hereof, the payer is liable for an amount up to DKK 1,100 for any loss incurred due to the unauthorised use by a third party of the payment instrument where the payment instrument's personalised security feature was used.

(3) Except where more extensive liability follows from (6) hereof, the payer is liable for

an amount up to DKK 8,000 for any loss incurred due to the unauthorised use by a third party of the payment instrument provided that the payer's provider proves that the payment instrument's personalised security feature was used, and

(i) that the payer failed to notify the payer's provider without undue delay on becoming aware of the loss of the payment instrument, or of the personalised security feature having come to the knowledge of the unauthorised person;

(ii) that the payer passed the personalised security feature on to the person making the unauthorised use without this falling within the scope of (6) hereof; or

(iii) that the payer facilitated the unauthorised use by gross recklessness.

(4) The payer is liable for an amount up to DKK 8,000 for any loss incurred due to the unauthorised use by a third party of the payment instrument where the payment instrument was read physically or electronically and the unauthorised person in

connection therewith used a false signature, and the payer's provider proves (i) that the payer or a person to whom the payer entrusted the payment instrument failed to notify the payer's provider without undue delay on becoming aware of the loss of the payment instrument; or

(ii) that the payer or a person to whom the payer entrusted the payment instrument facilitated the unauthorised use by gross recklessness.

(5) Where the payer is liable under (3) and (4) hereof, the payer's total liability cannot exceed DKK 8,000.

(6) The payer is liable without limitation with respect to any loss incurred due to the unauthorised use by a third party of the payment instrument where the payment instrument's personalised security feature was used and the payer's provider proves that the payer disclosed the personalised security feature to the person making the unauthorised use, and that the circumstances were such that the payer knew or ought to have known that there was a risk of abuse.

(7) Notwithstanding the provisions of (2)-(6) hereof, the payer's provider is liable for any unauthorised use after the provider was notified that the payment instrument had been lost, that the personalised security feature had come to the knowledge of an unauthorised person, or that the payer required the payment instrument to be blocked for any other reason.

(8) Notwithstanding the provisions of (2)-(6) hereof, the payer's provider is liable for any unauthorised use if the provider did not provide appropriate means, cf. section 60(1)(ii).

(9) Moreover, notwithstanding the provisions of (2)-(6) hereof, the payer's provider is liable if the payee knew or ought to know that the use of the payment instrument was unauthorised.

(10) It may be agreed that (1)-(6) hereof shall not apply to micro-payment instruments used anonymously, or where the nature of the micro-payment instrument makes the payer's provider unable to prove that the payment transaction was authorised. It may furthermore be agreed that (7) and (8) hereof shall not apply to micro-payment instruments

where the nature of the payment instrument makes it impossible to block its use.

(11) The provisions of (1)-(6) hereof apply to e-money except where the payer's provider of e-money is unable to block the payment account or the payment instrument.

63. Contestations concerning unauthorised or incorrectly executed payment transactions must be received by the provider as soon as possible and not later than 13 months after the debit date of the relevant payment transaction. Contestations from the payee must be received within 13 months of the credit date. Where the provider has not provided information or made information available under Part 5, the deadline is calculated from the date on which the provider provided information or made information available.

64.-(1) The provider has the burden of proof with respect to a payment transaction being accurately recorded and entered in the accounts and not affected by a technical breakdown or some other deficiency. In

connection with the use of a payment instrument, the provider furthermore has to prove that the payment instrument's personalised security feature was used in connection with the payment transaction. The recorded use of a payment instrument is not in itself proof that the payer authorised the transaction, that the payer acted fraudulently or failed to fulfil his obligations, cf. section 59. (2) It may be agreed that (1) hereof shall not apply to micro-payment instruments used anonymously, or where the nature of the payment instrument makes the provider unable to prove that the payment transaction was authorised.