

# Freezing of Accounts by Law Enforcement Authorities

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**KEY INFORMATION FOR BUSINESSES  
AND MANAGERS**

## Introduction

The freezing of an account can greatly complicate the account holder's commercial and professional activity. This measure involves blocking some or all of the funds deposited in an account for a specific period. When the freeze is in effect, the account holder cannot use the blocked funds. A freeze on an account can thus seriously hinder the owner's financial liquidity.

Prosecutors in Poland more and more often apply this measure, primarily because a freeze can be used in practically any criminal case, and the grounds for applying it are worded broadly and generally. It is sufficient for the prosecutor to have a justified suspicion that the funds in the account are connected to a criminal or criminal fiscal offence.

Under Polish law, a freeze on a bank account (or other account) can be ordered for a specific period, not exceeding the statutory maximum. But in practice, freezing orders on bank accounts are often "converted" into other measures—seizure of tangible evidence (as funds in an account are also regarded as such) or security against property. This results in a continued freeze on the funds in the account.

A freezing order may affect not only entities involved in unlawful activity, but also those who have been caught up unawares in criminal mechanisms. Persons operating a business should thus bear in mind the risk of a freeze on their accounts. This applies in particular to businesses in sectors most often exposed to irregularities for which freezes on bank accounts are ordered (such as wholesale and retail trade, particularly involving electronics, building materials, metal products, scrap metal, waste, and tobacco products).

In this brochure we present key information about freezing of businesses' accounts:

- Who can order a freeze on an account, and in what circumstances?
- How can the holder defend against a freeze of their account?
- Is it possible to prepare for a freezing order, and how can it be combatted?

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## Conditions for Freezing an Account

Polish law provides for many grounds to ordering a freeze on an account (in Polish called a “blockade”—*blokada*). The most frequently applied of these are those found in the Anti-Money Laundering and Counter Financing of Terrorism Act and in the Banking Law.

### What does a freeze on a business’s account involve?

A freeze on an account consists of blocking all or part of the funds in the specific account (most often a bank account, but also for example a securities account). Whether the freeze applies to all or part of the funds is decided by the authority ordering the freeze.

Once the freeze is imposed, the account holder cannot freely use or dispose of the frozen funds, by withdrawing them or transferring them to another account. This can obviously cause difficulties in paying current obligations for taxes, employees, or contractors, and consequently can lead on to further problems. In this respect, freezing an account can be regarded as launching a mechanism that will snowball into further complications for operation of the business.

### In what situations can a freeze be ordered, who can order it, and for how long?

The specific laws indicate which entities can impose a freeze on an account and the situations when this can occur. In some regulations, the set of entities against whom a freeze can be applied is narrowed, although in most instances it covers essentially anyone who holds an account.

**SITUATION 1:**

**There is a justified suspicion that a transaction may be related to money laundering or financing of terrorism**

<b>Who is covered</b>	<b>Any holder of an account</b> (e.g. payment account, bank account, securities account, collective account, or monetary account for servicing such accounts)	
<b>Who imposes it</b>	Obligated institution (e.g. bank or savings & loan association) at the request of the General Inspector of Financial Information (GIIF)	Prosecutor
<b>Maximum period of freeze</b>	96 hours	6 months + extension by a further 6 months
<b>Legal basis</b>	AML/CFT Act* Art. 86(5) AML/CFT Act Art. 87(1)–(2)	AML/CFT Act Art. 86(9)–(11a)

\*Anti-Money Laundering and Counter Financing of Terrorism Act of 1 March 2018

**SITUATION 2**

**There is a justified suspicion that the property that is the subject of a transaction or funds in an account:**

- Derive from a criminal offence other than money laundering or financing of terrorism or a criminal fiscal offence
- Are connected to a criminal offence other than money laundering or financing of terrorism or a criminal fiscal offence

<b>Who is covered</b>	<b>Any holder of an account</b> (e.g. payment account, bank account, securities account, collective account, or monetary account for servicing such accounts)	
<b>Who imposes it</b>	Prosecutor	
<b>Maximum period of freeze</b>	6 months + extension by a further 6 months	
<b>Legal basis</b>	AML/CFT Act Art. 89 (4)–(5) and (6a)	

**SITUATION 3**

**There is a justified suspicion that the funds in the account in whole or part:**

- Derive from a criminal fiscal offence or a criminal offence other than financing of terrorism (Criminal Code Art. 165a) or money laundering (Criminal Code Art. 299)
- Are connected to a criminal fiscal offence or a criminal offence other than financing of terrorism (Criminal Code Art. 165a) or money laundering (Criminal Code Art. 299)

Who is covered	Any holder of a bank account		Any holder of an account at a savings & loan association (SKOK)	
	Bank	Prosecutor	SKOK	Prosecutor
Who imposes it	Bank	Prosecutor	SKOK	Prosecutor
Maximum period of freeze	72 hours	6 months + extension by a further 6 months	72 hours	6 months + extension by a further 6 months
Legal basis	Banking Law Art. 106a (3)–(4)	Banking Law Art. 106a (6) and (7a)	SKOK Act* Art. 16 (3) and (5)	SKOK Act Art. 16 (7) and (8a)

\*Savings and Loan Associations Act of 5 November 2009

**SITUATION 4**

**There is a justified suspicion of:**

- Commission of the criminal offence of financing of terrorism (Criminal Code Art. 165a) or money laundering (Criminal Code Art. 299)
- Use of the operations of a bank or savings & loan association for the purpose of concealing criminal activity or for purposes connected with a criminal offence or criminal fiscal offence

Who is covered	Any holder of an account (e.g. payment account, bank account, securities account, collective account, or monetary account for servicing such accounts)	Any holder of an account at a savings & loan association (SKOK)
	Who imposes it	Prosecutor
Maximum period of freeze	6 months + extension by a further 6 months	
Legal basis	Banking Law Art. 106a (3a) and (7a)	SKOK Act Art. 16 (4) and (8a)

**SITUATION 5****There is a justified suspicion of commission of a criminal offence of:**

- Unauthorised use of inside information concerning financial instruments
- Unauthorised issuance of a recommendation or encouragement to buy or sell financial instruments to which inside information relates
- Manipulation of financial instruments or entry into a conspiracy with another person aimed at manipulation (criminal offences under Art. 181–183 of the Act on Trading in Financial Instruments), and a transaction that was made or is to be made may be connected to commission of such offence.

<b>Who is covered</b>	<b>Any holder of a securities account</b> maintained by the supervised entity, or collective account, or other account in which financial instruments other than securities are recorded, or monetary account
<b>Who imposes it</b>	Supervised entity (e.g. company operating a regulated market, investment fund, or investment fund company) at the request of the chair or deputy chair of the Polish Financial Supervision Authority (KNF)
<b>Maximum period of freeze</b>	96 hours
<b>Legal basis</b>	Capital Market Supervision Act Art. 39(1) in connection with Art. 39(3)

**SITUATION 6****There is a justified suspicion of commission of:**

- A criminal offence under Art. 181–183 of the Act on Trading in Financial Instruments
- A criminal offence that could exert significant consequences on trading on a regulated market

<b>Who is covered</b>	<b>Natural person, legal person, or entity with legal capacity</b> but without legal personality who is the holder of a securities account maintained by a supervised entity, or collective account, or other account in which financial instruments other than securities are recorded, or monetary account
<b>Who imposes it</b>	Prosecutor
<b>Maximum period of freeze</b>	6 months + extension for a further 6 months by the National Prosecutor
<b>Legal basis</b>	Capital Market Supervision Act Art. 40(1)

**SITUATION 7**

**There is a suspicion** that a qualified entity (a legal person, an entity with legal capacity but without legal personality, a natural person operating a business, or a natural person not operating a business conducting gainful activity for his or her own account) may use the activity of a bank or savings & loan association for purposes connected with tax fraud or attempted tax fraud, and a freeze on the account of the qualified entity is necessary to combat such fraud

<b>Who is covered</b>	<b>Qualified entity holding an account maintained by a bank or savings &amp; loan association</b>
<b>Who imposes it</b>	Bank or savings & loan association at the request of the head of the National Revenue Administration (KAS)
<b>Maximum period of freeze</b>	72 hours + extension up to 3 months in the case of obligations exceeding the equivalent of EUR 10,000
<b>Legal basis</b>	Tax Ordinance Art. 119zv §1 in connection with Art. 119zv §3(1) and 119zv §4(2), and Tax Ordinance Art. 119zw §1

The assessment of whether the circumstances for imposing a freeze have arisen is made by the entity applying the freeze or at whose request it is applied. In some instances, failure to impose a freeze despite an obligation to do so may result in imposition of a fine on the entity that failed to impose the freeze (with respect to freezing orders based on the Tax Ordinance, Art. 119zzh §2 in connection with Art. 119zzh §1), or even criminal liability on a person acting for or on behalf of an entity obligated to impose a freeze (with respect to freezing orders imposed under the Capital Market Supervision Act, Art. 45).

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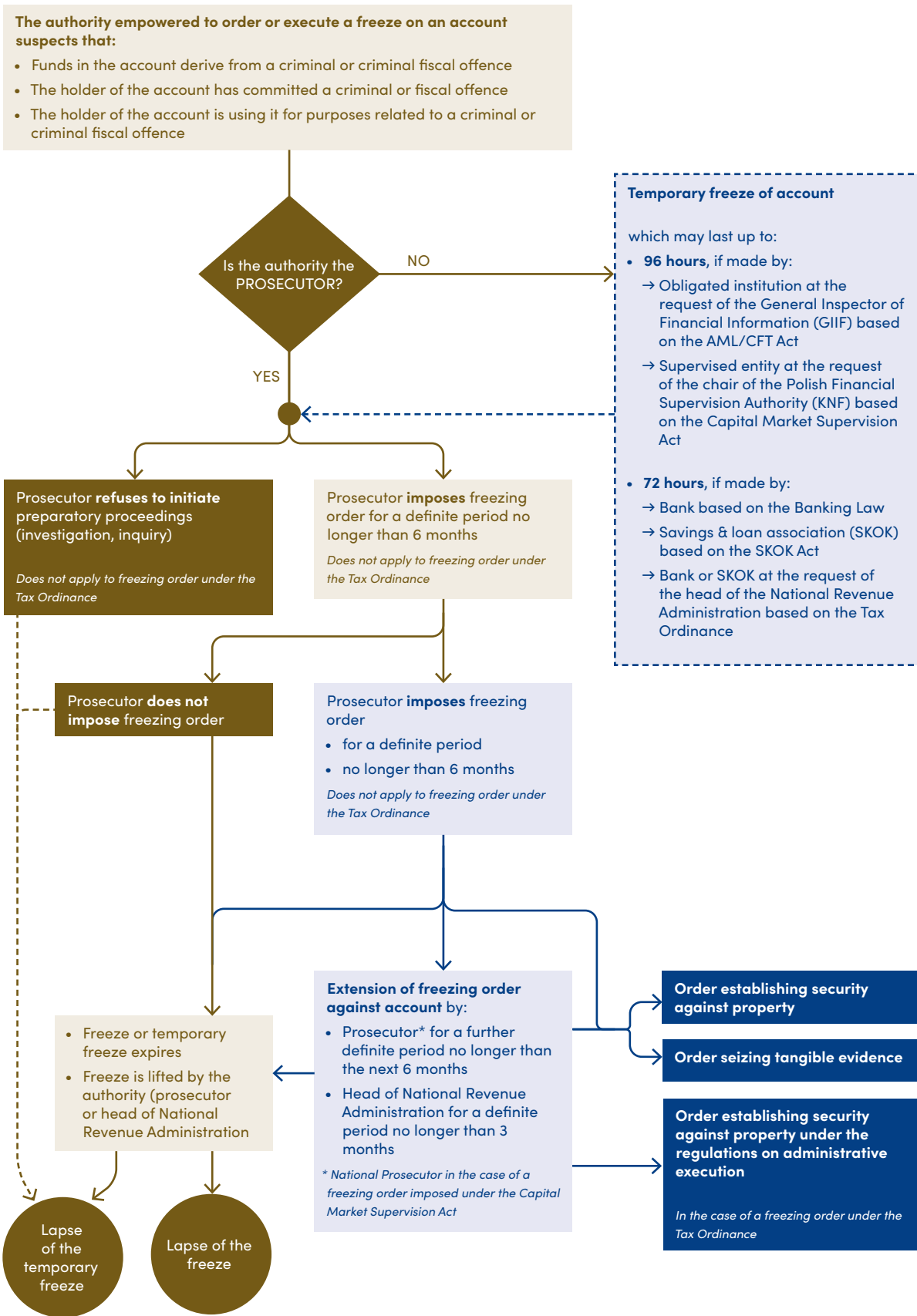
## Freezing order procedure

The procedures for freezing accounts differ depending on the legal basis for the freezing order. Generalising somewhat, the phases common to these procedures are as follows:

- Formation by the authorised entity of a suspicion that circumstances justifying a freezing order have arisen
- Temporary freezing of the account
- Freezing of the account
- Extension of the freeze on the account
- Conversion of the freeze on the account into seizure of tangible evidence or security against property — or lapse of the freezing order\*.

\* It should be pointed out that converting a freezing order into seizure of tangible evidence, and treating seized funds as tangible evidence, is quite a controversial solution. The parliament introduced this possibility because law enforcement authorities often are not in a position to make the factual findings enabling them to file criminal charges while the freezing order is still in place, and thus to establish security against the frozen funds. But it is hard to discern the evidentiary value of the funds in the account as such. Additionally, entities that may be covered by a freezing order should be afforded appropriate procedural guarantees enabling them to defend against these difficulties. However, no such guarantees are provided under current law.





## Measures for Protecting Against Freezing of Accounts

Protection against freezing of accounts covers two categories of measures:

- Procedural, aimed primarily at countering a freezing order already applied
- Pre-procedural (preventive), aimed at counteracting potential application of a freeze on accounts.

### When the freeze is already in effect: procedural measures for protection

An entity whose accounts have been frozen basically has two types of protective measures at its disposal seeking to lift the freeze:

- Appeal against the freezing order or extension of the freezing order
- Application to set aside the freezing order.

These measures are independent of each other, and can be used in this manner by the holder of a frozen account. Both measures lead to judicial review of the freezing order.

Under both of these measures, the account holder can:

- Demonstrate the true or lawful nature of the specific transaction in connection with which the freeze was applied, or demonstrate that the frozen funds were received in connection with legitimate commercial activity—delivery of services or goods by the account holder
- Challenge the grounds for imposing the freeze, i.e. demonstrate the lack of a suspicious origin or connection between the funds and any prohibited act
- Demonstrate any procedural defects arising during the process of applying the freeze.

It should be borne in mind, however, that these are remedial measures, and should not take the place of preventive measures that should be taken to limit the risk of a freeze.

### Before any freeze is ordered: “antifreeze” prophylaxis

To protect the enterprise against a freeze on its accounts, measures should first and foremost be taken to minimise the risk of occurrence of situations justifying a freeze. The point is to ensure that the funds in the account have no connection with any criminal or criminal fiscal offence, and even more so, do not derive from such activities.

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This is particularly important in the case of a criminal offence of money laundering, for which the statutory conditions are so broad that sometimes businesses can fall afoul of them without fully realising that the funds they accept or process might have some connection with criminal offences. This applies in particular to unknowing involvement in VAT carousels.

Combating such phenomena is the particular aim of developing internal solutions of customer due diligence, examining counterparties and transactions to identify suspicious ones with links to criminal and criminal fiscal offences, and to apply these practices in the everyday operation of the enterprise—especially when entering into commercial dealings with new counterparties. At part of this “antifreeze” prophylaxis, it is worthwhile to collect and store documentation concerning the specific counterparty and transaction and demonstrating the economic rationale for the transaction. Such documentation can prove useful to show that the business conducts lawful, bona fide transactions, rather than sham transactions.

The organisation should also have a transparent system in place where any personnel involved in handling commercial relationships or specific transactions can report any observed irregularities or suspicions.

Preventive measures of this type can head off problems related to imposition of a freeze on the company’s accounts, or at least limit them. This, in consequence, can minimise the associated costs for the enterprise.

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