

Financial Services (Banking)

FINANCIAL SERVICES (ELECTRONIC MONEY) REGULATIONS 2011

1992-11
Repealed
Subsidiary
2011/167

Subsidiary Legislation made under s. 79 of the Financial Services (Banking) Act and of the powers conferred by section 23(g) of the Interpretation and General Clauses Act.

FINANCIAL SERVICES (ELECTRONIC MONEY) REGULATIONS 2011

Repealed by LN.2020/021 as from 15.1.2020

(LN. 2011/167)

Commencement **29.9.2011**

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EU Legislation/International Agreements involved:

Directive 2005/60/EC
Directive 2000/46/EC
Directive 2006/48/EC
Directive 2009/110/EC
Directive (EU) 2015/2366

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Financial Services (Banking)

FINANCIAL SERVICES (ELECTRONIC MONEY) REGULATIONS
2011

In exercise of the powers conferred on me by section 79 of the Financial Services (Banking) Act and of the powers conferred by section 23(g) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, I have made the following Regulations—

Title and commencement

1.(1) These Regulations may be cited as the Financial Services (Electronic Money) Regulations 2011 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations—

“agent” means a person who provides payment services on behalf of an electronic money institution;

“authorised electronic money institution” means—

- (a) a person included by the Authority in the register as an authorised electronic money institution pursuant to regulation 4(1)(a); or
- (b) a person deemed to have been granted authorisation by the Authority by virtue of regulation 74;

“the Authority” means the Financial Services Commission;

“average outstanding electronic money” means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;

“Banking Consolidation Directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions, as amended from time to time;

“consumer” means an individual who is acting for purposes other than a trade, business or profession;

“credit institution” has the meaning given in Article 4(1) of the Banking Consolidation Directive and includes a branch of the credit institution within the meaning of Article 4(3) of that directive which is situated within the EEA and which has its head office in a territory that is outside the EEA in accordance with Article 38 of that directive;

“distributor” means a person who distributes or redeems electronic money on behalf of an electronic money institution but who does not provide payment services on its behalf;

“EEA” means the European Economic Area;

“EEA agent” means an agent through which an authorised electronic money institution, in exercise of its passport rights, provides payment services in the EEA other than in Gibraltar;

“EEA authorised electronic money institution” means a person authorised within the EEA, other than in Gibraltar, to issue electronic money and provide payment services in accordance with the Electronic Money Directive;

“EEA branch” means a branch established by an authorised electronic money institution, in the exercise of its passport rights, to issue electronic money, provide payment services, distribute or redeem electronic money or carry out other activities in accordance with these Regulations within the EEA other than in Gibraltar;

“electronic money” means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which is—

- (a) issued on receipt of funds for the purpose of making payment transactions;
- (b) accepted by a person other than the electronic money issuer; and
- (c) not excluded by regulation 3;

“Electronic Money Directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on

the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as the same may be amended from time to time;

“electronic money institution” means an authorised electronic money institution or a small electronic money institution;

“electronic money issuer” means any of the following persons when they issue electronic money—

- (a) authorised electronic money institutions;
- (b) small electronic money institutions;
- (c) EEA authorised electronic money institutions;
- (d) credit institutions;
- (e) the European Central Bank and the national central banks of EEA States, when not acting in their capacity as a monetary authority or other public authority;
- (f) government departments;
- (g) the Gibraltar Savings Bank;

“home State competent authority” means the competent authority designated in accordance with Article 3 of the Electronic Money Directive as being responsible for the authorisation and prudential supervision of an EEA authorised electronic money institution which is exercising (or intends to exercise) its passport rights in Gibraltar;

“host State competent authority” means the competent authority designated in accordance with Article 3 of the Electronic Money Directive in an EEA State in which an authorised electronic money institution exercises (or intends to exercise) its passport rights;

“initial capital” has the meaning given by paragraph 1 of Schedule 2;

“Money Laundering Directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of

money laundering and terrorist financing, as amended from time to time;

“own funds” has the meaning given by paragraph 4 of Schedule 2;

“parent undertaking” has the same meaning as in section 2 of the Companies (Consolidated Accounts) Act 1999;

“passport right” means the entitlement of a person to establish a branch or provide services in an EEA State, including Gibraltar, other than that in which they are authorised to provide electronic money issuance services—

- (a) in accordance with the Treaty on the Functioning of the European Union as applied in the EEA; and
- (b) subject to the conditions of the Electronic Money Directive;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment instrument” means any—

- (a) personalised device; or
- (b) personalised set of procedures agreed between the payment service user and the payment service provider;

“payment services” has the same meaning as in the Financial Services (EEA) (Payment Services) Regulations 2010;

“payment services” has the same meaning as in the Financial Services (Payment Services) Regulations 2018;

“Payment Services Directive” means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as amended from time to time;

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for processing, clearing and settlement of payment transactions;

“payment transaction” has the meaning given in Article 4(5) of the Payment Services Directive;

“qualifying holding” has the meaning given in Article 4(11) of the Banking Consolidation Directive;

“the register” means the register maintained by the Authority under regulation 4;

“small electronic money institution” means a person included by the Authority in the register pursuant to regulation 4(1)(b);

“subsidiary undertaking” has the same meaning as in section 2 of the Companies (Consolidated Accounts) Act 1999.

(2) In these Regulations references to amounts in Euro include references to equivalent amounts in another currency.

(3) Unless otherwise defined, expressions used in these Regulations which are also used in the Electronic Money Directive have the same meaning as in that directive.

(4) Expressions used in a modification to a provision in primary or secondary legislation applied by these Regulations have the same meaning as in these Regulations.

Electronic money: exclusions.

3. For the purposes of these Regulations electronic money does not include—

- (a) monetary value stored on instruments that can be used to acquire goods or services only—
 - (i) in or on the electronic money issuer’s premises; or
 - (ii) under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services;
- (b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT

device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

Application of Payment Services Directive.

3A. Without limiting these Regulations–

- (a) regulations 5, 6, 12 to 16, 18(7) and (8), 19 to 31 and 109(1) to (3) of the Financial Services (Payment Services) Regulations 2018; and
- (b) any delegated acts adopted by the European Commission under Articles 15(4), 28(5) and 29(7) of the Payment Services Directive;

shall apply to electronic money institutions with any necessary modifications.

PART 2

REGISTRATION

The register

The register of certain electronic money issuers.

4.(1) The Authority must maintain a register of–

- (a) authorised electronic money institutions and their EEA branches;
- (b) small electronic money institutions;
- (c) agents of electronic money institutions required to be registered under regulation 34; and
- (d) the Gibraltar Savings Bank where it issues electronic money.

(2) The Authority may include on the register any of the persons mentioned in paragraphs (c), (e), (f) and (g) of the definition of electronic money issuer in regulation 2(1) where such persons issue electronic money.

(3) Where a person mentioned in paragraph (e), (f) or (g) of the definition of an electronic money issuer in regulation 2(1)–

- (a) is not included on the register; and
- (b) issues, or proposes to issue, electronic money,

the person must give notice to the Authority.

(4) A notice under sub-regulation (3) must be given in such manner as the Authority may direct.

(5) The Authority may–

- (a) keep the register in any form it thinks fit;
- (b) include on the register such information as the Authority considers appropriate, provided that the register identifies the electronic money issuance for which the institution is authorised or registered under this Part; and
- (c) exploit commercially the information contained in the register, or any part of that information.

(6) The Authority must–

- (a) publish the register online and make it available for public inspection;
- (b) update the register on a regular basis; and
- (c) provide a certified copy of the register, or any part of it, to any person who asks for it—
 - (i) on payment of the fee (if any) fixed by the Authority; and
 - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.

Authorisation

Application to become an authorised electronic money institution or variation of an existing authorisation.

5.(1) An application to become an authorised electronic money institution must contain or be accompanied by the information specified in Schedule 1.

(2) An application for the variation of an authorisation must—

- (a) contain a statement of the proposed variation;
- (b) contain a statement of the electronic money issuance and payment services business which the applicant proposes to carry on if the authorisation is varied; and
- (c) contain, or be accompanied by, such other information as the Authority may reasonably require.

(3) An application under sub-regulation (1) or (2) must be made in such manner as the Authority may direct.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Conditions for authorisation.

6.(1) The Authority may refuse to grant an application for authorisation only if any of the conditions set out in sub-regulations (2) to (8) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 5.

(3) The applicant must immediately before the time of authorisation hold the amount of initial capital required in accordance with Part 1 of Schedule 2.

(4) The applicant must be either—

- (a) a body corporate constituted under the law of Gibraltar having—
 - (i) its head office; and
 - (ii) if it has a registered office, that office,

in Gibraltar; or

- (b) a body corporate which has a branch that is located in Gibraltar and whose head office is situated in a territory that is outside the EEA.

(5) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

- (a) robust governance arrangements for its electronic money issuance and payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed; and
- (c) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,

which are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

(6) The applicant must satisfy the Authority that—

- (a) having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised electronic money institution, any persons having a qualifying holding in the institution are fit and proper persons;
- (b) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;
- (c) it has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly;
- (d) it has taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with regulation 20.

(7) If the applicant has close links with another person the applicant must satisfy the Authority—

- (a) that those links are not likely to prevent the Authority's effective supervision of the applicant; and
- (b) if it appears to the Authority that the other person is subject to the laws, regulations or administrative provisions of a territory which is not within the EEA ("the foreign provisions"), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the Authority's effective supervision of the applicant.

(8) In this regulation an applicant has close links with another person if that person and the applicant are linked in any of the following ways—

- (a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;
- (b) a control relationship; or
- (c) the fact that both are permanently linked to one and the same third person by a control relationship.

(9) The Authority may provide that a person authorised under these Regulations may engage only in some of the activities listed in regulation 32.

Imposition of requirements.

7.(1) The Authority may include in an authorisation such requirements as it considers appropriate.

(2) A requirement may, in particular, be imposed so as to require the person concerned to—

- (a) take a specified action;
- (b) refrain from taking a specified action.

(3) A requirement may be imposed by reference to the person's relationship with its group or other members of its group.

(4) Where—

- (a) an applicant intends to carry on business activities other than the issuance of electronic money and provision of payment services; and
- (b) the Authority considers that the carrying on of such other business activities will impair, or is likely to impair—
 - (i) the financial soundness of the applicant; or
 - (ii) the Authority's effective supervision of the applicant,

the Authority may require the applicant to establish a separate body corporate to carry on the issuance of electronic money and provision of payment services.

(5) A requirement expires at the end of such period as the Authority may specify in the authorisation.

(6) Sub-regulation (5) does not affect the Authority's powers under regulation 8 or 11.

Variation etc at request of an authorised electronic money institution.

8. The Authority may, on the application of an authorised electronic money institution, vary the person's authorisation by—

- (a) imposing a requirement such as may, under regulation 7, be included in an authorisation;
- (b) cancelling a requirement included in the authorisation or previously imposed under paragraph (a); or
- (c) varying such a requirement,

provided that the conditions set out in regulation 6(4) to (7), and the requirement in regulation 19(1) to maintain own funds, will continue to be met.

Determination of application for authorisation or variation of authorisation.

9.(1) The Authority must determine an application for authorisation or for variation of an authorisation within three months beginning with the date on which it received the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the Authority notice, at any time before the Authority determines it.

(4) If the Authority decides to grant an application for authorisation, or for variation of an authorisation, it must give the applicant notice of its decision stating—

- (a) that authorisation has been granted to carry out electronic money issuance; or
- (b) that the variation has been granted,

described in such manner as the Authority considers appropriate.

(5) The notice must state the date on which the authorisation or variation takes effect.

(6) If the Authority proposes to refuse an application or to impose a requirement it must give the applicant notice in writing of the fact.

(7) The Authority must, having considered any representations made in response to the notice given under sub-regulation (6)—

- (a) if it decides to refuse the application or to impose a requirement, give the applicant a statement in writing giving reasons therefor; or
- (b) if it grants the application without imposing a requirement, give the applicant notice of its decision, stating the date on which the authorisation or variation takes effect.

(8) If the Authority decides to refuse the application or to impose a requirement the applicant may refer the matter to a judge of the Supreme Court.

(9) If the Authority decides to authorise the applicant, or vary its authorisation, it must update the register as soon as practicable.

Cancellation of authorisation.

10.(1) The Authority may cancel a person's authorisation and remove the person from the register where—

- (a) the person does not issue electronic money within 12 months beginning with the date on which the authorisation took effect;
- (b) the person requests, or consents to, the cancellation of the authorisation;
- (c) the person ceases to engage in business activity for more than six months;
- (d) the person has obtained authorisation through false statements or any other irregular means;
- (e) the person no longer meets, or is unlikely to meet, any of the conditions set out in regulation 6(4) to (7) or the requirement in regulation 19(1) to maintain own funds;
- (f) the person has issued electronic money or provided payment services other than in accordance with the authorisation granted to it;
- (g) the person would constitute a threat to the stability of a payment system by continuing its electronic money or payment services business;
- (h) the cancellation is desirable in order to protect the interests of consumers; or
- (i) the person's issuance of electronic money or provision of payment services is otherwise unlawful.

(2) A request for cancellation of a person's authorisation under sub-regulation (1)(b) must be made in such manner as the Authority may direct.

(3) At any time after receiving a request under sub-regulation (1)(b) and before determining it, the Authority may require the person making the request to provide it with such further information as it reasonably considers necessary to enable it to determine the request.

(4) Where the Authority proposes to cancel a person's authorisation, other than at the person's request, it must give the person a warning in writing to that effect.

(5) The Authority must, having considered any representations made in response to the warning referred to in sub-regulation (4)–

- (a) if it decides to cancel the authorisation, give the person notice in writing of the fact; or
- (b) if it decides not to cancel the authorisation, give the person notice of its decision.

(6) If the Authority decides to cancel the authorisation, other than at the person's request, the person may refer the matter to a judge of the Supreme Court.

(7) Where the period for a reference to a judge of the Supreme Court has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Variation of authorisation on Authority's own initiative.

11.(1) The Authority may vary a person's authorisation in any of the ways mentioned in regulation 8 if it appears to the Authority that–

- (a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (7) or the requirement in regulation 19(1) to maintain own funds;
- (b) the person has issued electronic money or provided a payment service other than in accordance with the authorisation granted to it;
- (c) the person would constitute a threat to the stability of a payment system by continuing to issue electronic money or provide payment services;
- (d) the variation is desirable in order to protect the interests of consumers;
- (e) the variation is necessary in order to protect the reputation of Gibraltar; or

- (f) the person's issuance of electronic money or provision of payment services is otherwise unlawful.

(2) A variation under this regulation takes effect–

- (a) immediately, if the notice given under sub-regulation (6) states that this is the case; or
- (b) on such date as may be specified in the notice.

(3) A variation may be expressed to take effect immediately or on a specified date only if the Authority, having regard to the ground on which it is exercising the power under sub-regulation (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.

(4) The Authority must as soon as practicable after the variation takes effect update the register accordingly.

(5) A person who is aggrieved by the variation of their authorisation under this regulation may refer the matter to a judge of the Supreme Court.

(6) Where the Authority proposes to vary a person's authorisation under this regulation, it must give the person notice.

(7) The notice must–

- (a) give details of the variation;
- (b) state the Authority's reasons for the variation and its determination as to when the variation takes effect;
- (c) inform the person that they may make representations to the Authority within such period as may be specified in the notice (whether or not the person has referred the matter to a judge of the Supreme Court);
- (d) inform the person of the date on which the variation takes effect; and
- (e) inform the person of their right to refer the matter to a judge of the Supreme Court and the procedure for such a reference.

(8) The Authority may extend the period allowed under the notice for making representations.

(9) If, having considered any representations made by the person, the Authority decides—

- (a) to vary the authorisation in the way proposed; or
- (b) if the authorisation has been varied, not to rescind the variation,

it must give the person notice.

(10) If, having considered any representations made by the person, the Authority decides—

- (a) not to vary the authorisation in the way proposed;
- (b) to vary the authorisation in a different way; or
- (c) to rescind a variation which has taken effect,

it must give the person notice.

(11) A notice given under sub-regulation (9) must inform the person of their right to refer the matter to a judge of the Supreme Court and the procedure for such a reference.

(12) A notice under sub-regulation (10)(b) must comply with sub-regulation (7).

Registration as a small electronic money institution

Application for registration as a small electronic money institution or variation of an existing registration.

12.(1) An application for registration as a small electronic money institution must contain, or be accompanied by, such information as the Authority may reasonably require.

(2) An application for the variation of a registration must—

- (a) contain a statement of the proposed variation;
- (b) contain a statement of the electronic money issuance and payment services business which the applicant proposes to carry on if the registration is varied; and

- (c) contain, or be accompanied by, such other information as the Authority may reasonably require.

(3) An application under sub-regulation (1) or (2) must be made in such manner as the Authority may direct.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Conditions for registration.

13.(1) The Authority may refuse to register an applicant as a small electronic money institution only if any of the conditions set out in sub-regulations (2) to (10) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 12.

(3) The total business activities of the applicant immediately before the time of registration must not generate average outstanding electronic money that exceeds 5,000,000 Euro.

(4) The monthly average over the period of 12 months preceding the application of the total amount of relevant payment transactions must not exceed 3,000,000 Euro.

(5) The applicant must immediately before the time of registration hold such amount, if any, of initial capital as is required in accordance with Part 1 of Schedule 2.

(6) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

- (a) robust governance arrangements for its electronic money and payment services business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility; and

- (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed,

which are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

(7) The applicant must satisfy the Authority that–

- (a) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;
- (b) it has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly; and
- (c) it has taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with regulation 20.

(8) None of the individuals responsible for the management or operation of the business has been convicted of an offence relating to the laundering of the proceeds of crime, the financing of terrorism, an offence contrary to financial services legislation or any other financial crime.

(9) The applicant must be a body corporate whose head office is situated in Gibraltar.

(10) For the purposes of sub-regulation (4), where the applicant has yet to commence the provision of payment services which are not related to the issuance of electronic money, or has been providing such payment services for less than 12 months, the monthly average may be based on the projected total amount of relevant payment transactions over a 12 month period.

(11) In sub-regulation (4) “relevant payment transactions” in respect of a small electronic money institution means payment transactions which–

- (a) are not related to the issuance of electronic money; and
- (b) are executed by the institution, including any of its agents who are in Gibraltar.

(12) In sub-regulation (8) “financial crime” includes any offence involving fraud or dishonesty and, for this purpose, “offence” includes any act or omission which would be an offence if it had taken place in Gibraltar.

Average outstanding electronic money.

14.(1) Where—

- (a) an applicant provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 32(1)(b) to (d) and (2); and
- (b) the amount of outstanding electronic money is unknown in advance,

the applicant may make an assessment for the purposes of regulation 13(3) on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that the representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an applicant has not completed a sufficiently long period of business to compile historical data adequate to make the assessment under sub-regulation (1), the applicant must make the assessment on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

Supplementary provisions.

15. Regulations 7 to 11 apply to registration as a small electronic money institution as they apply to authorisation as an authorised electronic money institution with the following modifications—

- (a) references to authorisation are to be treated as references to registration;
- (b) for regulation 8 substitute—

“8.(1) The Authority may, on the application of a small electronic money institution, vary the person’s registration by—

- (a) imposing a requirement such as may, under regulation 7, be included in a registration;

- (b) cancelling a requirement included in the registration or previously imposed under paragraph (a); or
- (c) varying such a requirement,

provided that the conditions set out in sub-regulation (2) continue to be met.

- (2) The conditions that must continue to be met are–
 - (a) the conditions in regulation 13(6) to (10);
 - (b) where applicable, compliance with the requirement in regulation 19(2) to maintain own funds;
 - (c) the condition that the total business activities of the applicant generate average outstanding electronic money that does not exceed 5,000,000 Euro; and
 - (d) the condition that the monthly average over any period of 12 months of the total amount of relevant payment transactions does not exceed 3,000,000 Euro.
- (3) In sub-regulation (2)(d) “relevant payment transactions” has the same meaning as in regulation 13.”;

- (c) in regulation 10 for sub-regulation (1)(e) substitute–

“(e) the person no longer complies with, or is unlikely to continue to comply with, any of the conditions mentioned in regulation 8(2)(a), (b), (c) and (d);”;

- (d) in regulation 11 for sub-regulation (1)(a) substitute–

“(a) the person no longer complies with, or is unlikely to continue to comply with, any of the conditions mentioned in regulation 8(2)(a), (b), (c) and (d);”.

Application to become an authorised electronic money institution where a financial limit is exceeded.

16. Where a small electronic money institution ceases to comply with a condition referred to in regulation 8(2)(c) or (d) (as applied by regulation 15), the institution concerned must, within 30 days of becoming aware of the change in circumstances, apply to become an authorised electronic money institution under regulation 5 if it intends to continue issuing electronic money in Gibraltar.

Common provisions

Duty to notify changes.

17.(1) If at any time after an applicant has provided the Authority with any information under regulation 5(1), (2) or (4) or 12(1), (2) or (4) and before the Authority has determined the application—

- (a) there is, or is likely to be, a material change affecting any matter contained in that information; or
- (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

the applicant must provide the Authority with details of the change, the complete information or a correction of the inaccuracy (as the case may be) without undue delay, or, in the case of a material change which has not yet taken place, the applicant must provide details of the likely change as soon as the applicant is aware of such change.

(2) The obligation in sub-regulation (1) also applies to material changes or significant inaccuracies affecting any matter contained in any supplementary information provided pursuant to that sub-regulation.

(3) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.

Electronic money institutions acting without permission.

18. If an electronic money institution issues electronic money or carries on a payment service in Gibraltar, or purports to do so, other than in accordance with an authorisation or registration granted to it by the Authority under these Regulations, or deemed to be so granted under regulation 74, it is to be taken to have contravened a requirement imposed on it under these Regulations.

PART 3

PRUDENTIAL SUPERVISION AND PASSPORTING

Capital requirements

Capital requirements.

19.(1) An authorised electronic money institution must maintain at all times own funds equal to or in excess of–

- (a) 350,000 Euro; or
- (b) the amount of the own funds requirement calculated in accordance with paragraph 13 of Schedule 2 subject to any adjustment directed by the Authority under paragraph 15 of that Schedule,

whichever is the greater.

(2) Where the business activities of a small electronic money institution generate average outstanding electronic money of 500,000 Euro or more, it must maintain at all times own funds equal to or in excess of the amount of the own funds requirement calculated in accordance with paragraph 14 of Schedule 2, subject to any adjustment directed by the Authority under paragraph 16 of that Schedule.

(3) Where a small electronic money institution has not completed a sufficiently long period of business to calculate the amount of average outstanding electronic money for the purposes of sub-regulation (2), it must make an estimate on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

Safeguarding

Safeguarding requirements.

20.(1) Electronic money institutions must safeguard funds that have been received in exchange for electronic money that has been issued (referred to in this regulation and regulations 21 and 22 as “relevant funds”).

(2) Relevant funds must be safeguarded in accordance with either regulation 21 or regulation 22.

(3) Where–

- (a) only a proportion of the funds that have been received are to be used for the execution of a payment transaction (with the remainder being used for non-payment services); and
- (b) the precise portion attributable to the execution of the payment transaction is variable or unknown in advance,

the relevant funds are such amount as may be reasonably estimated, on the basis of historical data and to the satisfaction of the Authority, to be representative of the portion attributable to the execution of the payment transaction.

(4) Funds received in the form of payment by payment instrument need not be safeguarded until they—

- (a) are credited to the electronic money institution's payment account; or
- (b) are otherwise made available to the electronic money institution,

provided that such funds must be safeguarded by the end of five business days after the date on which the electronic money has been issued.

Safeguarding option 1.

21.(1) An electronic money institution must keep relevant funds segregated from any other funds that it holds.

(2) Where the institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must—

- (a) place them in a separate account that it holds with an authorised credit institution; or
- (b) invest the relevant funds in secure, liquid, low-risk assets (“relevant assets”) and place those assets in a separate account with an authorised custodian.

(3) An account in which relevant funds or relevant assets are placed under sub-regulation (2) must—

- (a) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds or relevant assets in accordance with this regulation; and

(b) be used only for holding those funds or assets.

(4) No person other than the electronic money institution may have any interest in or right over the relevant funds or the relevant assets placed in an account in accordance with sub-regulation (2)(a) or (b) except as provided by this regulation.

(5) The institution must keep a record of—

- (a) any relevant funds segregated in accordance with sub-regulation (1);
- (b) any relevant funds placed in an account in accordance with sub-regulation (2)(a); and
- (c) any relevant assets placed in an account in accordance with sub-regulation (2)(b).

(6) For the purposes of this regulation—

- (a) assets are both “secure” and “low risk” if they are—
 - (i) asset items falling into one of the categories set out in Table 1 of point 14 of Annex 1 to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the Capital Adequacy of Investment Firms and Credit Institutions, as amended from time to time for which the specific risk capital charge is no higher than 1.6% but excluding other qualifying items as defined in point 15 of that Annex; or
 - (ii) units in an undertaking for collective investment in transferable securities which invests solely in the assets mentioned in sub-paragraph (i); and
- (b) assets are “liquid” if they are approved as such by the Authority.

(7) In this regulation—

“authorised credit institution” means a person authorised for the purposes of the Financial Services (Banking) Act 1992 to accept deposits or otherwise authorised as a credit institution in accordance with

Article 6 of the Banking Consolidation Directive other than a person in the same group as the electronic money institution;

“authorised custodian” means a person authorised to safeguard and administer investments or authorised as an investment firm under section 6 of the Financial Services (Markets in Financial Instruments) Act 2006 which holds those investments under regulatory standards at least equivalent to those set out under section 13 of that Act.

Safeguarding option 2.

22.(1) An electronic money institution must ensure that—

- (a) any relevant funds are covered by—
 - (i) an insurance policy with an authorised insurer;
 - (ii) a guarantee from an authorised insurer; or
 - (iii) a guarantee from an authorised credit institution; and
- (b) the proceeds of any such insurance policy or guarantee are payable upon an insolvency event into a separate account held by the electronic money institution which must—
 - (i) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds in accordance with this regulation; and
 - (ii) be used only for holding such proceeds.

(2) No person other than the electronic money institution may have any interest or right over the proceeds placed in an account in accordance with sub-regulation (1)(b) except as provided by this regulation.

(3) In this regulation—

“authorised credit institution” has the same meaning as in regulation 21;

“authorised insurer” means a person authorised to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive 73/239/EEC of 24 July 1973 on the business of direct

insurance other than life insurance, other than a person in the same group as the electronic money institution;

“insolvency event” means any of the following procedures in relation to an electronic money institution–

- (a) the making of a winding-up order;
- (b) the passing of a resolution for voluntary winding-up;
- (c) the entry of the institution into administration;
- (d) the appointment of a receiver or manager of the institution’s property;
- (e) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);
- (f) the making of a bankruptcy order;
- (g) the conclusion of any composition contract with creditors; or
- (h) the conclusion of any composition contract with creditors.

Power of the Authority to exclude assets.

23. In exceptional circumstances the Authority may determine that an asset that would otherwise be secure and low-risk for the purposes of sub-regulation (2) of regulation 21 by virtue of sub-regulation (6) of that regulation is not such an asset provided that–

- (a) the determination is based on an evaluation of the risks associated with the asset, including any risk arising from the security, maturity or value of the asset; and
- (b) there is adequate justification for the determination.

Insolvency events.

24.(1) Subject to sub-regulation (2), where there is an insolvency event–

- (a) the claims of electronic money holders are to be paid from the asset pool in priority to all other creditors; and

- (b) until all the claims of electronic money holders have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with regulation 21(2)(a) or (b) or 22(1)(b).

(2) The claims referred to in sub-regulation (1)(a) shall not be subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

(3) An electronic money institution must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

(4) In this regulation—

“asset pool” means—

- (a) any relevant funds segregated in accordance with regulation 21(1);
- (b) any relevant funds held in an account accordance with regulation 21(2)(a);
- (c) any relevant assets held in an account in accordance with regulation 21(2)(b);
- (d) any proceeds of an insurance policy or guarantee held in an account in accordance with regulation 22(1)(b);

“insolvency event” has the same meaning as in regulation 22;

“insolvency proceeding” means—

- (a) winding-up, administration, receivership or bankruptcy;
- (b) a voluntary arrangement, deed of arrangement or trust deed for the benefit of creditors; or
- (c) the administration of the insolvent estate of a deceased person;

“security right” means—

- (a) security for a debt owed by an electronic money institution and includes any charge, lien, mortgage or other security over the asset pool or any part of the asset pool; and
- (b) any charge arising in respect of the expenses of a voluntary arrangement.

Accounting and statutory audit.

25.(1) An electronic money institution which carries on activities other than the issuance of electronic money and the provision of payment services, must provide to the Authority separate accounting information in respect of its issuance of electronic money and provision of payment services.

(2) Such accounting information must be subject, where relevant, to an auditor's report prepared by the institution's statutory auditors or an audit firm (within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts).

(3) A statutory auditor or audit firm ("the auditor") must, in any of the circumstances referred to in sub-regulation (4), communicate to the Authority information on, or its opinion on, matters—

- (a) of which it has become aware in its capacity as an auditor of an electronic money institution or of a person with close links to an electronic money institution; and
- (b) which relate to the electronic money issued and payment services provided by that institution.

(4) The circumstances are that—

- (a) the auditor reasonably believes that—
 - (i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the electronic money institution by or under these Regulations; and
 - (ii) the contravention may be of material significance to the Authority in determining whether to exercise, in relation to that institution, any functions conferred on the Authority by these Regulations;

- (b) the auditor reasonably believes that the information on, or the auditor's opinion on, those matters may be of material significance to the Authority in determining whether the institution meets or will continue to meet—
 - (i) in the case of an authorised electronic money institution, the conditions set out in regulation 6(4) to (7) or the requirement in regulation 19(1) to maintain own funds; or
 - (ii) in the case of a small electronic money institution, the conditions set out in regulation 13(6) to (10) or the requirement in regulation 19(2) to maintain own funds;
- (c) the auditor reasonably believes that the institution is not, may not be or may cease to be, a going concern;
- (d) the auditor is precluded from stating in the auditor's report that the annual accounts have been properly prepared;
- (e) the auditor is precluded from stating in the auditor's report, where applicable, that the annual accounts give a true and fair view of the company's accounts.

(5) In this regulation a person has close links with an authorised electronic money institution if that person and the authorised electronic money institution are linked in any of the following ways—

- (a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;
- (b) a control relationship; or
- (c) the fact that both are permanently linked to one and the same third person by a control relationship.

Outsourcing.

26.(1) An authorised electronic money institution must notify the Authority of its intention to enter into a contract with another person under which that person will carry out any operational function relating to the issuance, distribution or redemption of electronic money or the provision of payment services ("outsourcing").

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(2) Where the institution intends to outsource any important operational function, all of the following conditions must be met–

- (a) the outsourcing is not undertaken in such a way as to impair–
 - (i) the quality of the institution’s internal control; or
 - (ii) the ability of the Authority to monitor the authorised electronic money institution’s compliance with these Regulations or the Financial Services (Payment Services) Regulations 2018;
- (b) the outsourcing does not result in any delegation by the senior management of the institution of responsibility for complying with the requirements imposed by or under these Regulations or the Financial Services (Payment Services) Regulations 2018;
- (c) the relationship and obligations of the institution towards its electronic money holders under these Regulations or the Financial Services (Payment Services) Regulations 2018 is not substantially altered;
- (d) compliance with the conditions which the institution must observe in order to become an authorised electronic money institution and remain so is not adversely affected; and
- (e) none of the conditions of the institution’s authorisation requires removal or variation.

(3) For the purposes of sub-regulation (2), an operational function is important if a defect or failure in its performance would materially impair–

- (a) compliance by the institution with these Regulations or the Financial Services (Payment Services) Regulations 2018 and any requirement of its authorisation under these Regulations;
- (b) the financial performance of the institution; or
- (c) the soundness or continuity of the institution’s electronic money issuance or provision of payment services.

Record keeping.

27.(1) Electronic money institutions must maintain relevant records and keep them for at least five years from the date on which the record was created.

(2) For the purposes of sub-regulation (1), records are relevant where they relate to the institution's compliance with this Part and, in particular, would enable the Authority to supervise effectively such compliance.

Exercise of passport rights

Notice of intention.

28.(1) An authorised electronic money institution (other than an institution mentioned in regulation 6(4)(b)) may exercise passport rights.

(2) Where an authorised electronic money institution intends to exercise its passport rights for the first time in a particular EEA State it must give the Authority, in such manner as the Authority may direct, notice of its intention to do so ("notice of intention") which—

- (a) identifies the electronic money issuance, redemption, distribution or payment services which it seeks to carry on in exercise of those rights in that State;
- (b) gives the names of those responsible for the management of a proposed EEA branch, if any;
- (c) provides details of the organisational structure of a proposed EEA branch, if any; and
- (d) identifies the distributors, if any, whom the institution intends to engage to distribute or redeem electronic money in exercise of its passport rights in that State.

(3) The Authority must, within one month beginning with the date on which it receives a notice of intention, inform the host State competent authority of—

- (a) the name and address of the authorised electronic money institution; and
- (b) the information contained in the notice.

(4) Regulation 34 applies where an authorised electronic money institution wishes to exercise its passport rights through an agent.

Registration of EEA branch.

29.(1) If the Authority, taking into account any information received from the host competent authority, has reasonable grounds to suspect that, in connection with the establishment of an EEA branch by an authorised electronic money institution–

- (a) money laundering or terrorist financing within the meaning of the Money Laundering Directive is taking place, has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

the Authority may refuse to register the EEA branch, or cancel any such registration already made and remove the branch from the register.

(2) If the Authority proposes to refuse to register, or cancel the registration of, an EEA branch, it must give the relevant authorised electronic money institution a notice in writing of the fact.

(3) The Authority must, having considered any representations made in response to the notice referred to in sub-regulation (2)–

- (a) if it decides not to register the branch, or to cancel its registration, give the authorised electronic money institution a statement in writing giving the reasons therefor; or
- (b) if it decides to register the branch, or not to cancel its registration, give the authorised electronic money institution notice of its decision.

(4) If the Authority decides not to register the branch, or to cancel its registration, the authorised electronic money institution may refer the matter to a judge of the Supreme Court.

(5) If the Authority decides to register, or cancel the registration of, an EEA branch, it must update the register as soon as practicable.

(6) If the Authority decides to cancel the registration the Authority must, where the period for a reference to the judge of the Supreme Court has expired without a reference being made, update the register as soon as practicable.

Supervision of firms exercising passport rights.

30.(1) Without prejudice to regulation 71, the Authority must co-operate with the relevant host State competent authority or home State competent authority, as the case may be, in relation to the exercise of passport rights by any authorised electronic money institution or EEA authorised electronic money institution.

(2) The Authority must, in particular—

- (a) notify the host State competent authority, whenever it intends to carry out an on-site inspection in the host State competent authority's territory; and
- (b) provide the host State competent authority or home State competent authority, as the case may be—
 - (i) on request, with all relevant information; and
 - (ii) on its own initiative with all essential information,

relating to the exercise of the passport rights by an authorised electronic money institution or EEA authorised electronic money institution, including where there is an infringement or suspected infringement of these Regulations, or of the provisions of the Electronic Money Directive, by a distributor, agent, branch or any other entity carrying out activities on behalf of such an institution.

(3) Where the Authority and the home State competent authority agree, the Authority may carry out on-site inspections on behalf of the home State competent authority in respect of electronic money issuance or payment services provided by an EEA authorised electronic money institution exercising passport rights.

Duty to inform home State competent authority of suspicion of money laundering.

31. Where the Authority has reasonable grounds to suspect that, in connection with the proposed establishment of a branch or the proposed provision of services by an EEA authorised electronic money institution—

- (a) money laundering or terrorist financing has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

it must inform the relevant home State competent authority of its grounds for suspicion.

PART 4

ADDITIONAL ACTIVITIES AND USE OF DISTRIBUTORS AND AGENTS

Additional activities.

32.(1) Subject to sub-regulations (2), (3) and (4), electronic money institutions may, in addition to issuing electronic money, engage in the following activities—

- (a) the provision of payment services;
- (b) the provision of operational and closely related ancillary services, including—
 - (i) ensuring the execution of payment transactions;
 - (ii) foreign exchange services;
 - (iii) safe-keeping activities; and
 - (iv) the storage and processing of data;
- (c) the operation of payment systems; and
- (d) business activities other than the issuance of electronic money, subject to any relevant European Union or domestic law.

(2) Electronic money institutions may grant credit subject to the same conditions as apply to authorised payment institutions by virtue of regulation 17(4) of the Financial Services (Payment Services) Regulations 2018 provided that such credit is not granted from funds safeguarded in accordance with regulation 20.

(3) Any payment account held by an electronic money institution which is used for payment transactions which are not related to the issuance of electronic money must be used only in relation to such payment transactions.

(4) An authorised electronic money institution which has a branch which is located in Gibraltar and whose head office is situated in a territory which

is outside the EEA may only provide payment services if those services are related to the issuance of electronic money.

Use of distributors and agents.

33.(1) An electronic money institution may distribute or redeem electronic money through a distributor or agent.

(2) An electronic money institution may not issue electronic money through a distributor, agent or any other entity acting on its behalf.

(3) An authorised electronic money institution may engage a distributor or an agent to distribute or redeem electronic money in the exercise of its passport rights.

(4) Where an electronic money institution distributes electronic money in another EEA State by engaging such a natural or legal person, the following shall apply (with any necessary modification) to the electronic money institution—

- (a) regulations 26 to 31, other than regulation 29(6), of the Financial Services (Payment Services) Regulations 2018; and
- (b) any delegated acts adopted by the European Commission in accordance with Articles 28(5) and Article 29(7) of the Payment Services Directive.

(5) Electronic money institutions may provide payment services referred to in regulation 32(1)(a) through agents but subject to the conditions laid down in regulations 18 and 19 of the Financial Services (Payment Services) Regulations 2018.

Requirement for agents to be registered.

34.(1) An electronic money institution may provide payment services in Gibraltar through an agent only if the agent is included on the register.

(2) An authorised electronic money institution may provide payment services in the exercise of its passport rights through an agent only if the agent is included on the register.

(3) An application for an agent to be included on the register must—

- (a) contain, or be accompanied by, the following information—

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- (i) the name and address of the agent;
- (ii) where relevant, a description of the internal control mechanisms that will be used by the agent to comply with provisions of the Money Laundering Directive; and
- (iii) the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons; and
- (iv) such other information as the Authority may reasonably require; and

(b) be made in such manner as the Authority may direct.

(4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(5) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) The Authority may refuse to include the agent on the register only if—

- (a) it has not received the information referred to in sub-regulation (3)(a), or is not satisfied that such information is correct;
- (b) it is not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;
- (c) it has reasonable grounds to suspect that, in connection with the provision of services through the agent—
 - (i) money laundering or terrorist financing within the meaning of the Money Laundering Directive is taking place, has taken place, or has been attempted; or
 - (ii) the risk of such activities taking place would be increased.

(7) Where—

- (a) an authorised electronic money institution intends to provide payment services through an EEA agent; and

- (b) the Authority proposes to include the EEA agent on the register,

the Authority must inform the host State competent authority and take account of its opinion (if provided within such reasonable period as the Authority specifies) on any of the matters referred to in sub-regulation (6)(b) or (c).

(8) The Authority must decide whether to include the agent on the register within a reasonable period of it having received a completed application.

(9) If the Authority proposes to refuse to include the agent on the register, it must give the applicant a notice in writing of the fact.

(10) The Authority must, having considered any representations made in response to the notice referred to in sub-regulation (9)–

- (a) if it decides not to include the agent on the register, give the applicant a statement in writing giving the reasons therefor; or
- (b) if it decides to include the agent on the register, give the applicant notice of its decision, stating the date on which the registration takes effect.

(11) If the Authority decides not to include the agent on the register the applicant may refer the matter to a judge of the Supreme Court.

(12) If the Authority decides to include the agent on the register, it must update the register as soon as practicable.

(13) An application under sub-regulation (3) may be combined with an application under regulation 5 or 12, in which case the application must be determined in the manner set out in regulation 9 (if relevant, as applied by regulation 15).

(14) An electronic money institution must ensure that an agent acting on its behalf informs payment service users of the agency arrangement.

Removal of agents from the register.

35.(1) The Authority may remove an agent of an electronic money institution from the register where–

- (a) the institution requests, or consents to, the agent's removal from the register;
- (b) the institution has obtained registration through false statements or any other irregular means;
- (c) regulation 34(6)(b) or (c) applies;
- (d) the removal is desirable in order to protect the interests of consumers; or
- (e) the agent's provision of payment services is otherwise unlawful.

(2) Where the Authority proposes to remove an agent from the register, other than at the request of the institution, it must give the institution a notice in writing of the fact.

(3) The Authority must, having considered any representations made in response to the notice referred to in sub-regulation (2)–

- (a) if it decides to remove the agent, give the institution a statement in writing giving reasons therefor; or
- (b) if it decides not to remove the agent, give the institution notice of its decision.

(4) If the Authority decides to remove the agent, other than at the request of the institution, the institution may refer the matter to a judge of the Supreme Court.

(5) Where the period for a reference to the judge of the Supreme Court has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Reliance.

36.(1) Where an electronic money institution relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Regulations and the Financial Services (Payment Services) Regulations 2018 are complied with.

(2) Without prejudice to sub-regulation (1), an electronic money institution is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees or by a distributor,

agent, branch or any other entity issuing, distributing or redeeming electronic money, or providing payment services, on its behalf or to which activities are outsourced.

Duty to notify change in circumstance.

37.(1) Where it becomes apparent to an electronic money institution that there is, or is likely to be, a significant change in circumstances which is relevant to—

- (a) in the case of an authorised electronic money institution—
 - (i) its fulfilment of any of the conditions set out in regulation 6(4) to (7) or the requirement in regulation 19(1) to maintain own funds; or
 - (ii) the issuance, distribution or redemption of electronic money, or the payment services, which it seeks to carry on in exercise of its passport rights;
- (b) in the case of a small electronic money institution, its fulfilment of any of the conditions set out in regulation 8(2) (as applied by regulation 15); or
- (c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 34(6)(b) and (c),

it must provide the Authority with details of the change without undue delay, or, in the case of a substantial change in circumstance which has not yet taken place, details of the likely change a reasonable period before it takes place.

(2) An electronic money institution must inform the Authority of any material change in the measures that it has taken in accordance with regulation 21 or 22 to safeguard funds that have been received in exchange for electronic money.

(3) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.

PART 5

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

Application of Part 5.

38. This Part applies to the issuance and redemption of electronic money where the issuance or redemption is carried on from an establishment maintained by an electronic money issuer or its agent in Gibraltar.

Issuance and redeemability.

39.(1) An electronic money issuer must—

- (a) on receipt of funds, issue without delay electronic money at par value; and
- (b) at the request of the electronic money holder, redeem—
 - (i) at any time; and
 - (ii) at par value,

the monetary value of the electronic money held.

(2) Electronic money issuers shall not take deposits or other repayable funds from the public within the meaning of Article 5 of the Banking Consolidation Directive.

Conditions of redemption.

40. An electronic money issuer must ensure—

- (a) that the contract between the electronic money issuer and the electronic money holder clearly and prominently states the conditions of redemption, including any fees relating to redemption; and
- (b) that the electronic money holder is informed of those conditions before being bound by any contract.

Fees for redemption.

41.(1) Redemption may be subject to a fee only where the fee is stated in the contract in accordance with regulation 40(a), and—

- (a) redemption is requested before the termination of the contract;
- (b) the contract provides for a termination date and the electronic money holder terminates the contract before that date; or

- (c) redemption is requested more than one year after the date of termination of the contract.

(2) Any fees for redemption must be proportionate and commensurate with the costs actually incurred by the electronic money issuer.

Amount of redemption.

42.(1) Where, before the termination of the contract, an electronic money holder makes a request for redemption, the electronic money holder may request redemption of the monetary value of the electronic money in whole or in part, and the electronic money issuer must redeem the amount so requested subject to any fee imposed in accordance with regulation 41.

(2) Where an electronic money holder makes a request for redemption on, or up to one year after, the date of the termination of the contract, the electronic money issuer must redeem—

- (a) the total monetary value of the electronic money held; or
- (b) if the electronic money issuer carries out any business activities other than the issuance of electronic money and it is not known in advance what proportion of funds received by it is to be used for electronic money, all the funds requested by the electronic money holder.

Requests for redemption.

43. An electronic money issuer is not required under regulation 39(b) to redeem the monetary value of electronic money where the electronic money holder makes a request for redemption more than six years after the date of termination of the contract.

Redemption rights of persons other than consumers.

44. Regulations 41 and 42 shall not apply in the case of a person, other than a consumer, who accepts electronic money and, in such a case, the redemption rights of that person shall be subject to the contract between that person and the electronic money issuer.

Prohibition of interest.

45. An electronic money issuer must not award—

- (a) interest in respect of the holding of electronic money; or
- (b) any other benefit related to the length of time during which an electronic money holder holds electronic money.

Termination of a contract.

46. For the purposes of this Part a contract between an electronic money issuer and an electronic money holder terminates when the right to use electronic money for the purpose of making payment transactions ceases.

PART 6

THE AUTHORITY

The functions of the Authority

Functions of the Authority.

47.(1) The Authority is to have the functions conferred on it by these Regulations.

(2) In discharging its function of determining the general policy and principles by reference to which it performs particular functions under these Regulations, the Authority must have regard to its obligations under section 7(1)(b)(i) to (viii) and section 7(2) of the Financial Services Commission Act.

Supervision and enforcement

Monitoring and enforcement.

48.(1) The Authority must maintain arrangements designed to enable it to determine whether—

- (a) persons on whom requirements are imposed by or under Part 2, 3 or 4 of these Regulations are complying with them;
- (b) there has been any contravention of regulation 63(1), 64(1) or 66(1) or (2).

(2) The Authority may maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 5 of these Regulations are complying with them.

(3) The Minister may provide for arrangements referred to in sub-regulations (1) and (2) to include the performance of functions on behalf of the Authority by any body or person who, in the Minister's opinion, is competent to perform them.

(4) The Authority must also maintain arrangements for enforcing the provisions of these Regulations.

(5) Sub-regulation (3) does not affect the Authority's duty under sub-regulation (1).

Reporting requirements.

49.(1) An electronic money issuer must give the Authority such information in respect of its issuance of electronic money and provision of payment services and its compliance with requirements imposed by or under Parts 2 to 5 of these Regulations as the Authority may direct.

(2) Information required under this regulation must be given at such times and in such form, and verified in such manner, as the Authority may direct.

Public censure.

50. If the Authority considers that an electronic money issuer has contravened a requirement imposed on it by or under these Regulations the Authority may publish a statement to that effect.

Financial penalties.

51.(1) The Authority may impose a penalty of such amount as it considers appropriate on—

- (a) an electronic money issuer who has contravened a requirement imposed on it by or under these Regulations; or
- (b) a person who has contravened regulation 63(1), 64(1) or 66(1) or (2).

(2) A penalty under this regulation is a debt due from that person to the Authority, and is recoverable accordingly.

Suspending authorisation etc.

52.(1) If the Authority considers that an electronic money institution has contravened a requirement imposed on it by or under these Regulations, it may–

- (a) suspend, for such period as it considers appropriate, the institution's authorisation or, as the case may be, registration; or
- (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of electronic money issuance or payment services business by the institution as it considers appropriate.

(2) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(3) A suspension may relate only to the carrying on of an activity in specified circumstances.

(4) A restriction may, in particular, be imposed so as to require the institution concerned to take, or refrain from taking, specified action.

(5) The Authority may–

- (a) withdraw a suspension or restriction; or
- (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) Any one or more of the powers in–

- (a) sub-regulation (1)(a) and (b) of this regulation; and
- (b) regulations 50 and 51,

may be exercised in relation to the same contravention.

Proposal to take disciplinary measures.

53.(1) Where the Authority proposes to–

- (a) publish a statement under regulation 50;
- (b) impose a penalty under regulation 51; or

- (c) suspend an institution's authorisation or registration or impose a restriction under regulation 52,

it must give the person concerned a notice in writing of the fact.

(2) The notice referred to in sub-regulation (1) must set out the terms of the statement, the amount of the penalty or the period for which the suspension or restriction is to have effect, as the case may be.

(3) If, having considered any representations made in response to the notice referred to in sub-regulation (1), the Authority decides to take any of the steps mentioned in sub-regulation (1), it must without delay give the person concerned a statement in writing giving reasons therefor.

(4) The statement referred to in sub-regulation (3) must set out the terms of any statement, the amount of any penalty or the period for which any suspension or restriction is to have effect, as the case may be.

(5) If the Authority decides to take any of the steps mentioned in sub-regulation (1) the person concerned may refer the matter to a judge of the Supreme Court.

(6) After a statement under regulation 50 is published, the Authority must send a copy of it to the person concerned and any other person the Authority deems appropriate.

Injunctions.

54.(1) If, on the application of the Authority, the court is satisfied that—

- (a) there is a reasonable likelihood that any person will contravene a requirement imposed by or under these Regulations; or
- (b) any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining the contravention.

(2) If, on the application of the Authority, the court is satisfied—

- (a) that any person has contravened a requirement imposed by or under these Regulations; and

- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the court is satisfied that any person may have—

- (a) contravened a requirement imposed by or under these Regulations; or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied that they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the Supreme Court.

(5) In sub-regulation (2), references to remedying a contravention include references to mitigating its effect.

Power of Authority to require restitution.

55.(1) The Authority may exercise the power in sub-regulation (2) if it is satisfied that an electronic money issuer (referred to in this regulation and regulation 56 as “the person concerned”) has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the person concerned as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in sub-regulation (1) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—

- (a) in a case within paragraph (a) of sub-regulation (1), to the profits appearing to the Authority to have accrued;
- (b) in a case within paragraph (b) of sub-regulation (1), to the extent of the loss or other adverse effect;
- (c) in a case within both of those paragraphs, to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.

(3) In sub-regulation (2) “appropriate person” means a person appearing to the Authority to be someone–

- (a) to whom the profits mentioned in paragraph (a) of sub-regulation (1) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of sub-regulation (1).

Proposal to require restitution.

56.(1) If the Authority proposes to exercise the power in regulation 55 (2), it must give the person concerned a notice in writing of the fact.

(2) The notice referred to in sub-regulation (1) must state the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in regulation 55 (2).

(3) If, having considered any representations made in response to the warning, the Authority decides to exercise the power in regulation 55(2), it must without delay give the person concerned a statement in writing giving reasons therefor.

(4) The decision must–

- (a) state the amount that the person concerned is to pay or distribute;
- (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
- (c) state the arrangements in accordance with which the payment or distribution is to be made.

(5) If the Authority decides to exercise the power in regulation 55(2), the person concerned may refer the matter to a judge of the Supreme Court.

Restitution orders.

57.(1) The court may, on the application of the Authority, make an order under sub-regulation (2) if it is satisfied that an electronic money issuer has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the electronic money issuer as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the electronic money issuer to pay to the Authority such sum as appears to the court to be just having regard—

- (a) in a case within paragraph (a) of sub-regulation (1), to the profits appearing to the court to have accrued;
- (b) in a case within paragraph (b) of sub-regulation (1), to the extent of the loss or other adverse effect;
- (c) in a case within both those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the Authority in pursuance of an order under sub-regulation (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In sub-regulation (3), “qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in paragraph (a) of sub-regulation (1) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of sub-regulation (1).

(5) On an application under sub-regulation (1) the court may require the electronic money issuer to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in paragraph (a) of that sub-regulation ;
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (b) of that sub-regulation; and
- (c) determining how any amounts are to be paid or distributed under sub-regulation (3).

(6) The court may require any accounts or other information supplied under sub-regulation (5) to be verified in such manner as it may direct.

(7) The jurisdiction conferred by this regulation is exercisable by the Supreme Court.

Saving.

58. Nothing in regulation 57 affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this regulation applies.

Complaints.

59.(1) The Authority must maintain arrangements designed to enable electronic money holders and other interested parties to submit complaints to it that a requirement imposed by or under Part 5 of these Regulations has been breached by an electronic money issuer.

(2) Regulations 95 to 97 of the Financial Services (Payment Services) Regulations 2018 apply in respect of these Regulations as they apply in respect of the first-mentioned Regulations.

Miscellaneous

Authority may give guidance.

60. The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of these Regulations;
- (b) any matters relating to the functions of the Authority under these Regulations;

- (c) any other matters about which it appears to the Authority to be desirable to give information or advice in connection with these Regulations.

Authority may publish guidance.

61. The Authority may—

- (a) publish its guidance; and
- (b) offer copies of its published guidance for sale at a reasonable price.

Authority may charge for guidance.

62. Where the Authority gives guidance pursuant to regulations 60 or 61 in response to a request made by any person, it may seek the approval of the Government to charge for that guidance.

PART 7

GENERAL

Offences

Prohibition on issuing electronic money by persons other than electronic money issuers.

63.(1) A person may not issue electronic money in Gibraltar, or purport to do so, unless the person is—

- (a) an authorised electronic money institution;
- (b) a small electronic money institution;
- (c) an EEA authorised electronic money institution exercising its passport rights;
- (d) a credit institution authorised in Gibraltar or exercising passporting rights;
- (e) the Gibraltar Post Office;

- (f) the European Central Bank or a national central bank of an EEA State;
- (g) a Government department;
- (h) the Gibraltar Savings Bank.

(2) A person who contravenes sub-regulation (1) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both.

False claims to be an electronic money issuer.

64.(1) A person who does not fall within any of paragraphs (a) to (h) of regulation 63(1) may not—

- (a) describe themselves (in whatever terms) as a person falling within any of those paragraphs; or
- (b) behave, or otherwise hold themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are such a person.

(2) A person who contravenes sub-regulation (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defences.

65. In proceedings for an offence under regulation 63 or 64 it is a defence for the accused to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Misleading the Authority.

66.(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give the Authority information which is false or misleading in any material particular.

(2) A person may not–

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular; or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Authority in connection with its functions under these Regulations.

(3) A person who contravenes sub-regulation (1) or (2) is guilty of an offence and is liable–

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

Restriction on penalties.

67. A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 51 in respect of the same contravention of a requirement imposed by or under these Regulations.

Liability of officers of bodies corporate etc/

68.(1) If an offence under these Regulations committed by a body corporate is shown–

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, sub-regulation (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect of such officer,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in that capacity; and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

Prosecution.

69. Proceedings for an offence under these Regulations may be instituted only by or with the consent of the Attorney General.

Proceedings against unincorporated bodies.

70.(1) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(4) Summary proceedings for an offence under these Regulations may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where they are for the time being.

(5) Sub-regulation (4) does not affect any jurisdiction exercisable apart from this regulation.

Duties of the Authority to co-operate

Duty to co-operate and exchange information.

71.(1) The Authority must take such steps as it considers appropriate to co-operate with—

- (a) the competent authorities, designated under Article 3 of the Electronic Money Directive, or referred to in Article 13 of that directive, of EEA States ;
- (b) the European Central Bank and the national central banks of EEA States; and
- (c) any other relevant competent authorities designated under European Union law or the law of any EEA State which is applicable to electronic money issuers,

for the purposes of the exercise by those bodies of their functions under the electronic money directive and other relevant European Union or national legislation.

(2) Subject to any applicable legislative restriction on the disclosure of information, the Authority may provide information to—

- (a) the bodies mentioned in sub-regulation (1)(a) and (c);
- (b) the European Central Bank and the national central banks of EEA States when acting in their capacity as monetary and oversight authorities;
- (c) where relevant, other public authorities responsible for the oversight of payment and settlement systems,

for the purposes of the exercise by those bodies of their functions under the Electronic Money Directive and other relevant European Union or national legislation.

Actions for breach of requirements

Right to bring actions.

72.(1) A contravention—

- (a) which is to be taken to have occurred by virtue of regulation 18;
- (b) of a requirement imposed by regulation 20, 21, 22 or 24; or
- (c) of a requirement imposed by or under Part 5,

is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person acting in a fiduciary or representative capacity may bring an action under sub-regulation (1) on behalf of a private person if any remedy—

- (a) will be exclusively for the benefit of the private person; and
- (b) cannot be obtained by way of an action brought otherwise than at the suit of the fiduciary or representative.

(3) In this regulation “private person” means—

- (a) any individual, except where the individual suffers the loss in question in the course of issuing electronic money or providing payment services; and
- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind,

but does not include a government or an international organisation.

Prohibition on contracting-out.

73. A term contained in an agreement between an electronic money issuer and an electronic money holder or a payment service user is void if, and to the extent that, it is inconsistent with a provision for the protection of an electronic money holder or a payment service user contained in these Regulations or the Financial Services (Payment Services) Regulations 2018.

Transitional provisions

Persons with existing permission.

74.(1) Any person who—

- (a) is authorised under the Financial Services (Banking) Act in respect of the activity of issuing electronic money;
- (b) before the coming into operation of these Regulations has carried on that activity in accordance with that authorisation; and
- (c) is not a person mentioned in any of paragraphs (c) to (g) of the definition in regulation 2(1) of electronic money issuer,

shall be deemed to have been granted authorisation by the Authority under regulation 9.

(2) A person who is deemed to have been granted authorisation by virtue of sub-regulation (1) must on the coming of operation of these Regulations—

- (a) notify the Authority whether it wishes to become an authorised electronic money institution or to be registered as a small electronic money institution; and

- (b) provide the Authority with such information as it may reasonably require (“the required information”).

(3) Where a person notifies the Authority on the coming of operation of these Regulations that it wishes to become an authorised electronic money institution or that it wishes to be registered as a small electronic money institution, the Authority must decide whether to include the person on the register as an authorised electronic money institution or as a small electronic institution, and—

- (a) if the Authority decides to include the person on the register, the person’s authorisation shall cease to be deemed to have been granted by virtue of sub-regulation (1) at the time of such inclusion;
- (b) if the Authority decides not to include the person on the register, the person’s authorisation shall cease to be so deemed when the period for a reference to a judge of the Supreme Court elapsed without a reference being made or, if the matter is referred, at such time as the judge may direct.

(4) Where a person who is deemed to have been granted authorisation by virtue of sub-regulation (1)—

- (a) notifies the Authority on the coming of operation of these Regulations that it does not wish to be an electronic money institution; or
- (b) fails to make by that date a notification in accordance with sub-regulation (2)(a),

such authorisation shall cease to be so deemed on 30 October 2011 or, if the person’s authorisation under the Financial Services (Banking) Act is cancelled before that date, on the cancellation of the permission.

(5) If the Authority decides to include the person on the register as an authorised electronic money institution or a small electronic money institution it must—

- (a) give the person notice of its decision; and
- (b) update the register as soon as practicable.

(6) The Authority may decide that a person is not to be included on the register only if—

- (a) it has not received the required information on the coming of operation of these Regulations;
- (b) any of the conditions in regulation 6(3) to (7) or, as the case may be, regulation 13(3) to (10) (“the required conditions”) is not met in respect of that person; or
- (c) it appears to the Authority that the person is unlikely to issue electronic money within 12 months beginning with the date of coming into operation of these Regulations.

(7) If the Authority proposes to decide not to include a person on the register it must give the person a notice in writing of the fact.

(8) The Authority must, having considered any representations in response to the notice referred to in sub-regulation (7)–

- (a) if it decides not to include the person on the register, give the person written notice of the fact; or
- (b) if it decides to include the person on the register, give the person notice of its decision.

(9) If the Authority gives the person a notice under sub-regulation (8)(a), the person may refer the matter to a judge of the Supreme Court.

(10) Where a person is deemed to have been granted authorisation by virtue of sub-regulation (1)–

- (a) the duty to which the Authority is subject under regulation 4(1) to maintain a register shall not apply in respect of it; and
- (b) Parts 3 and 4 shall not apply to it.

(11) An authorisation under the Financial Services (Banking) Act in respect of the activity of issuing electronic money, which has not been cancelled, shall cease–

- (a) in the case of a person falling within sub-regulation (3)(a), on the coming into operation of these Regulations or, if later, at the time of the person’s inclusion on the register as an electronic money institution;

- (b) in the case of a person falling within sub-regulation (3)(b), at the time at which the person's authorisation ceases to be deemed to have been granted;
- (c) in the case of a person falling within sub-regulation (4), on 30 October 2011.

EEA firms.

75.(1) Any person who—

- (a) immediately before the coming into operation of these Regulations is an electronic money institution;
- (b) is an EEA firm qualifying for authorisation under the Financial Services (Banking) Act in respect of the activity of issuing electronic money; and
- (c) before the coming into operation of these Regulations has carried on that activity,

may continue until 30 October 2011 to carry on that activity and engage in any related activity.

(2) Parts 5 and 6 shall apply to a person falling within sub-regulation (1) as if the person were an EEA authorised electronic money institution.

(3) In this regulation “electronic money institution” has the meaning given in Article 1(3)(a) of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (“the First Electronic Money Directive”).

(4) In this regulation and in regulation 76 “related activity” means an activity mentioned in Article 1(5) of the First Electronic Money Directive.

Transitional arrangements: Payment Services Directive

75A.(1) An electronic money institution that has, before 13th January 2018, taken up activities in accordance with these Regulations and the Financial Services (EEA) (Payment Services) Regulations 2010 may continue to do so without the need to seek authorisation under the relevant provisions or to comply with the other requirements laid down or referred to in them until 13th July 2018.

(2) An electronic money institution to which sub-regulation (1) applies must submit all relevant information to the Authority, to allow it to assess, by 13th July 2018, whether that electronic money institution complies with the requirements of the relevant provisions and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.

(3) Where the Authority verifies that an electronic money institution complies with the requirements of the relevant provisions, it must be granted authorisation and entered in the register.

(4) An electronic money institution to which sub-regulation (1) applies which does not comply with the requirements of the relevant provisions by 13th July 2018 is prohibited from issuing electronic money.

(5) In this regulation the “relevant provisions” means regulations 2, 4 to 17, 19 to 21, 23, 26 to 35, 37, 39, 47 to 49, 60, 71, 74, 77 and Schedules 1 and 2.

Existing fixed term contracts.

76.(1) Part 5 shall not apply in respect of the redemption of electronic money that has been issued before the coming of operation of these Regulations where the contract—

- (a) provides for a termination date up to two years after the date on which the contract was entered into; and
- (b) does not provide that the means of storing electronic money can be recharged.

(2) In sub-regulation (1) “termination date” has the same meaning as in Part 5.

Amendments to the Financial Services (Banking) Act.

77.(1) The Financial Services (Banking) Act is amended as follows—

- (a) Part IIA is deleted,
- (b) section 2 is amended by substituting for the definition of “electronic money business” the following definition—

“electronic money business” shall be interpreted in accordance with the provisions of the Financial Services (Electronic Money) Regulations 2011”;

- (c) section 2 is amended by substituting for the definition of “electronic money”, the following definition–

“electronic money” shall be interpreted in accordance with the provisions of the Financial Services (Electronic Money) Regulations 2011”;

- (d) section 2 is amended by substituting for the definition of “electronic money institution”, the following definition–

“electronic money institution” shall be interpreted in accordance with the provisions of the Financial Services (Electronic Money) Regulations 2011”;

- (e) section 2 is amended by substituting for the definition of “electronic money directive”, the following definition–

“Electronic Money Directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as the same may be amended from time to time;

- (f) section 23(1) is amended by deleting the words “or electronic money business”, the words “or in the case of electronic money institutions, Euro 1 million”, the words “in both cases” and paragraph (f);

- (g) section 23(2) is amended by deleting paragraph (c);

- (h) section 23(3) is amended by deleting the words “or electronic money business”, and the words “dealing with electronic money as the case may be”;

- (i) section 35A is deleted;

- (j) section 59 is amended by deleting the words “or any electronic money institution exempted from Part IIA by reason of section 11B.”.

- (2) The Financial Services (Banking) Act is further amended as follows –
- (a) in section 2, by substituting for the definition of “credit institution”, the following definition–

“credit institution” means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;”
 - (b) in section 2 in the definition of “financial institution”, by inserting after the words “paragraphs 2 to 12”, “and 15”
 - (c) in Schedule 1, by inserting after paragraph 14, the following paragraph -

“15. Issuing electronic money”.

Amendments to the Crime (Money Laundering and Proceeds) Act 2007.

78.(1) The Crime (Money Laundering and Proceeds) Act 2007 is amended in accordance with the provisions of this regulation.

(2) Section 6(1) is amended in the definition of “financial institution” by substituting for paragraph (a), the following paragraph–

- “(a) an undertaking, other than a credit institution, which carries out one or more of the operations included in points 2 to 12 and points 14 and 15 of Annex I to Directive 2006/48, including the activities of currency exchange offices;”

(3) For section 10G(7)(d) there is substituted the following paragraph–

- “(d) electronic money, as defined in regulation 2 of Financial Services (Electronic Money) Regulations 2011, where –
 - (i) if it is not possible to recharge, the maximum amount stored electronically in the device is no more than EUR 250; or
 - (ii) where, if it is possible to recharge, a limit of EUR 2500 is imposed on the total amount transacted in a calendar year,

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except when an amount of EUR 1000 or more is redeemed in that same calendar year upon the electronic money holder's request in accordance with regulations 39 to 44 of the said Regulations. As regards payment transactions within Gibraltar, the Minister may, by regulations, increase the amount of EUR 250 referred to in this paragraph to a ceiling of EUR 500.”.

SCHEDULE 1

Regulation 5(1)

Information to be included in or with an application for authorisation

1. A programme of operations, setting out, in particular, the type of electronic money issuance and payment services which are envisaged.
2. A business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly.
3. Evidence that the applicant holds initial capital for the purposes of regulation 6(3).
4. A description of the measures taken for safeguarding the electronic money holders' and payment service users' funds in accordance with regulation 20.
5. A description of the applicant's governance arrangements and internal control mechanisms including administrative risk management and accounting procedures, which demonstrates that such arrangements, mechanisms and procedures are proportionate, appropriate, sound and adequate.
6. A description of the internal control mechanisms which the applicant has established in order to comply with the Money Laundering Directive and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.
7. A description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements, and of its participation in a national and international payment system.
8. In relation to each person holding, directly or indirectly, a qualifying holding in the applicant—
 - (a) the size and nature of their qualifying holding; and
 - (b) evidence of their suitability taking into account the need to ensure the sound and prudent management of an electronic money institution.

9.(1) The identity of directors and persons who are or will be responsible for the management of the applicant and, where relevant, persons who are or will be responsible for the management of the electronic money issuance and payment services activities of the applicant.

(2) Evidence that the persons described in paragraph (1) are of good repute and that they possess appropriate knowledge and experience to issue electronic money and perform payment services.

10. The identity of the auditors of the applicant, if any.

11.(1) The legal status of the applicant and, where the applicant is a limited company, its articles.

(2) In this paragraph “articles” has the meaning given in section 2(1) of the Companies Act (articles of association).

12. The address of the head office of the applicant.

13. For the purposes of paragraphs 4, 5 and 7, a description of–

- (a) the audit arrangements of the applicant; and
- (b) the organisational arrangements that the applicant has set up,

with a view to the applicant taking all reasonable steps to protect the interests of its electronic money holders and payment service users and to ensuring continuity and reliability in the performance of the issuance of electronic money and payment services activities.

SCHEDULE 2

Regulations 6, 13 and 19

CAPITAL REQUIREMENTS

PART 1

INITIAL CAPITAL

1. For the purposes of these Regulations “initial capital” comprises the items specified in paragraph 4(a), (b) and (c) of this Schedule.

2. An applicant for authorisation as an electronic money institution must hold an amount of initial capital of at least 350,000 Euro.

3.(1) Where the business activities of an applicant for registration as a small electronic money institution generate average outstanding electronic money of 500,000 Euro or more it must hold an amount of initial capital at least equal to 2% of the average outstanding electronic money of the institution.

(2) Where the applicant has not completed a sufficiently long period of business to calculate the amount of average outstanding electronic money for the purposes of paragraph (1), the applicant must make an estimate on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

PART 2

OWN FUNDS

Qualifying items.

4. For the purposes of these Regulations “own funds” means the following items, subject to the deductions specified in paragraph 7 and to the limits specified in paragraph 9–

- (a) paid up capital, including share premium accounts but excluding amounts arising in respect of cumulative preference shares;
- (b) reserves other than–
 - (i) revaluation reserves;

- (ii) fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost; and
 - (iii) that part of profit and loss reserves that arises from any gains on liabilities valued at fair value that are due to changes in the electronic money institution's credit standing;
- (c) profit or loss brought forward as a result of the application of the final profit or loss provided that—
- (i) interim profits may only be included if they are—
 - (aa) verified by persons responsible for the auditing of the institution's accounts;
 - (bb) shown to the satisfaction of the Authority that the amount has been evaluated in accordance with the principles set out in Directive 86/635/EEC of the Council of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, as amended from time to time; and
 - (cc) net of any foreseeable charge or dividend;
 - (ii) in the case of an electronic money institution which is the originator of a securitisation, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement to positions in the securitisation are excluded;
- (d) revaluation reserves;
- (e) general or collective provisions if—
- (i) they are freely available to the electronic money institution to cover normal electronic money issuance and payment services risks where revenue or capital losses have not yet been identified;

- (ii) their existence is disclosed in internal accounting records; and
 - (iii) their amount is determined by the management of the electronic money institution, verified by a statutory auditor or audit firm (as defined by regulation 25(2)) and notified to the Authority;
- (f) securities of indeterminate duration and other instruments that fulfil the following conditions–
- (i) they may not be reimbursed on the bearer’s initiative or without the prior agreement of the Authority;
 - (ii) the debt agreement provides for the electronic money institution to have the option of deferring the payment of interest on the debt;
 - (iii) the lender’s claim on the electronic money institution is wholly subordinated to those of all non-subordinated creditors;
 - (iv) the documents governing the issue of the securities provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the electronic money institution in a position to continue trading,

provided that only fully paid-up amounts are to be taken into account;

- (g) cumulative preferential shares, other than fixed-term cumulative preference shares referred to in paragraph (j);
- (h) the commitments of the members of an electronic money institution set up as a cooperative, comprising–
 - (i) that institution’s uncalled capital; and
 - (ii) the legal commitments of the members of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;

- (i) the joint and several commitments of the borrower in the case of an electronic money institution organised as a fund, comprising–
 - (i) that institution’s uncalled capital; and
 - (ii) the legal commitments of the borrowers of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;
- (j) fixed-term cumulative preferential shares and subordinated loan capital if–
 - (i) binding agreements exist under which, in the event of the winding-up of the electronic money institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled; and
 - (ii) in the case of subordinated loan capital–
 - (aa) only fully paid-up funds are taken into account;
 - (bb) the loans involved have an original maturity of at least five years, after which they may be repaid;
 - (cc) the extent to which they may rank as own funds is gradually reduced during at least the last five years before the repayment date; and
 - (dd) the loan agreement does not include any clause providing that in specified circumstances, other than the winding-up of the electronic money institution, the debt will become repayable before the agreed repayment date.

5. The items specified in paragraph 4(a) to (d) must be–

- (a) available to the electronic money institution for unrestricted and immediate use to cover risks or losses as soon as these occur; and

- (b) net of any foreseeable tax charge at the moment of their calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

6. Own funds are not to include guarantees provided by the Government to an electronic money institution which is a public sector entity for the purposes of the banking consolidation directive.

Deductions from own funds

7. The deductions from own funds are—

- (a) own shares at book value held by the electronic money institution;
- (b) intangible assets;
- (c) material losses of the current financial year;
- (d) holdings of shares in credit institutions and financial institutions exceeding 10% of their capital;
- (e) if sub-paragraph (d) applies, the items specified in paragraph 4(f), (g) and (j) held in the relevant credit institution or financial institution;
- (f) holdings of shares or of the items specified in paragraph 4(f), (g) and (j) held in other credit institutions or financial institutions where—
 - (i) the holding has not been deducted in accordance with sub-paragraph (d) or (e) of this paragraph; and
 - (ii) the total amount of such holdings exceeds 10% of the electronic money institution's own funds calculated before deduction of the items specified in this sub-paragraph and sub-paragraphs (d), (e), (g) and (h);
- (g) participations which the electronic money institution holds in an insurance undertaking, reinsurance undertaking or insurance holding company; and

- (h) the following instruments held in an insurance undertaking, reinsurance undertaking or insurance holding company in which the electronic money institution holds a participation—
 - (i) instruments referred to in article 16(3) of Directive 73/239/EEC of the Council on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended from time to time;
 - (ii) instruments referred to in article 27(3) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, as amended from time to time.

8. Where shares in another credit institution, financial institution, insurance undertaking, reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the Authority may direct that any or all of the items specified in paragraph 7(d) to (h) are not to be deducted from own funds.

Limits on qualifying items

9.(1) The limits referred to in paragraph 4 are—

- (a) that A must not exceed B; and
- (b) that C must not exceed 50% of B.

(2) After applying such limits—

- (a) 50% of the total of the items specified in paragraph 7(d) to (h) must be deducted from A and the remaining 50% must be deducted from B; and
- (b) the amount, if any, by which the amount to be deducted from A exceeds A must be deducted from B.

(3) In this paragraph—

- (a) “A” means the total of the items specified in paragraph 4(d) to (j);

- (b) “B” means the total of the items specified in paragraph 4(a) to (c) less the total of the items specified in paragraph 7(a) to (c); and
- (c) “C” means the total of the items specified in paragraph 4(h) to (j).

10. The Authority may, in temporary and exceptional circumstances, direct that an electronic money institution may exceed one or more of the limits described in paragraph 9(1).

11. An electronic money institution must not include in its own funds calculation—

- (a) any item used in an equivalent calculation of own funds by an electronic money institution, authorised payment institution, credit institution, investment firm, asset management company or insurance undertaking in the same group; or
- (b) in the case of an electronic money institution which carries on activities other than electronic money issuance or the provision of payment services, any item included in an own funds calculation required by or under any other enactment.

12. An authorised electronic money institution that carries on activities other than the issuance of electronic money and the provision of payment services related to the issuance of electronic money must not use—

- (a) in its calculation of own funds in accordance with Method A, B or C, any qualifying item included in its calculation of own funds in accordance with Method D;
- (b) in its calculation of own funds in accordance with Method D, any qualifying item included in its calculation of own funds in accordance with Method A, B or C.

Own funds requirement

13. An authorised electronic money institution must calculate its own funds requirement—

- (a) in accordance with such of Method A, Method B or Method C as the Authority may direct in respect of any activities carried on by the authorised electronic money institution consisting of

payment services that are not related to the issuance of electronic money; and

- (b) in accordance with Method D in respect of any activities carried on by the authorised electronic money institution that consist of the issuance of electronic money and payment services that are related to the issuance of electronic money.

14. Where a small electronic money institution is required by regulation 19(2) to maintain own funds, it must calculate its own funds requirement as an amount equal to 2% of the average outstanding electronic money of the institution.

Adjustment by the Authority

15. The Authority may direct in respect of an authorised electronic money institution that—

- (a) an amount of own funds resulting from a calculation made in accordance with paragraph 13(a) is to be up to 20% higher or up to 20% lower;
- (b) an amount of own funds resulting from a calculation made in accordance with paragraph 13(b) is to be up to 20% higher or up to 20% lower; or
- (c) the sum of the amounts of own funds resulting from calculations made in accordance with paragraph 13(a) and (b) is to be up to 20% higher or up to 20% lower.

16. The Authority may direct in respect of a small electronic money institution that an amount of own funds resulting from a calculation made in accordance with paragraph 14 is to be up to 20% higher or up to 20% lower.

17. A direction made under paragraph 15 or 16 must be on the basis of an evaluation of the relevant electronic money institution including, if available, and where the Authority considers it appropriate, any risk-management processes, risk loss database or internal control mechanisms of the electronic money institution.

18. The Authority may make a reasonable charge for making an evaluation required under paragraph 17.

Provision for start-up electronic money institutions

19. If an electronic money institution has not completed a full financial year's business, references to a figure for the preceding financial year are to be read as the equivalent figure projected in the business plan provided in the electronic money institution's application for authorisation or registration, subject to any adjustment to that plan required by the Authority.

Method A

20.(1) "Method A" means the calculation method set out in this paragraph.

(2) The own funds requirement is 10% of the authorised electronic money institution's fixed overheads for the preceding financial year.

(3) If a material change has occurred in an authorised electronic money institution's business since the preceding financial year, the Authority may direct that the own funds requirement is to be a higher or lower amount than that calculated in accordance with sub-paragraph (2).

Method B

21.(1) "Method B" means the calculation method set out in this paragraph.

(2) The own funds requirement is the sum of the following elements multiplied by the scaling factor—

- (a) 4% of the first 5,000,000 Euro of payment volume;
- (b) 2.5% of the next 5,000,000 Euro of payment volume;
- (c) 1% of the next 90,000,000 Euro of payment volume;
- (d) 0.5% of the next 150,000,000 Euro of payment volume; and
- (e) 0.25% of any remaining payment volume.

(3) "Payment volume" means the total amount of payment transactions that are not related to the issuance of electronic money executed by the authorised electronic money institution in the preceding financial year divided by the number of months in that year.

(4) The "scaling factor" is—

- (a) 0.5 for an authorised electronic money institution providing a payment service specified in paragraph (1)(f) of Schedule 1 to the Financial Services (Payment Services) Regulations 2018;

- (b) 0.8 for an authorised electronic money institution providing the payment service specified in paragraph (1)(g) of Schedule 1 to those Regulations; and
- (c) 1 for an authorised electronic money institution providing any other payment service.

Method C

22.(1) “Method C” means the calculation method set out in this paragraph.

(2) The own funds requirement is the relevant indicator multiplied by–

- (a) the multiplication factor; and
- (b) the scaling factor;

subject to the proviso in paragraph (7).

(3) The “relevant indicator” is the sum of the following elements–

- (a) interest income;
- (b) interest expenses;
- (c) gross commissions and fees received; and
- (d) gross other operating income.

(4) For the purpose of calculating the relevant indicator–

- (a) each element must be included in the sum with its positive or negative sign;
- (b) income from extraordinary or irregular items may not be used;
- (c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
- (d) the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;

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- (e) the relevant indicator must be calculated over the previous financial year; and
 - (f) audited figures must be used unless they are not available in which case business estimates may be used.
- (5) The “multiplication factor” is the sum of–
- (a) 10% of the first 2,500,000 Euro of the relevant indicator;
 - (b) 8% of the next 2,500,000 Euro of the relevant indicator;
 - (c) 6% of the next 20,000,000 Euro of the relevant indicator;
 - (d) 3% of the next 25,000,000 Euro of the relevant indicator; and
 - (e) 1.5% of any remaining amount of the relevant indicator.
- (6) “Scaling factor” has the meaning given in paragraph 21(4).
- (7) The proviso is that the own funds requirement must not be less than 80% of the average of the previous three financial years for the relevant indicator.

Method D

- 23.(1) “Method D” means the calculation method set out in this paragraph.
- (2) The own funds requirement in respect of the activity of issuing electronic money and providing payment services that are related to the issuance of electronic money is an amount equal to 2% of the average outstanding electronic money of the authorised electronic money institution.
- 24.(1) Where–
- (a) an electronic money institution provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 32(1)(b) to (d) and (2); and
 - (b) the amount of outstanding electronic money is unknown in advance,

the institution may calculate its own funds requirement on the basis of a representative portion assumed to be used for the issuance of electronic

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money and payment services related to the issuance of electronic money, provided that such representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an electronic money institution has not completed a sufficiently long period of business to compile historical data adequate to make the calculation under paragraph (1), it must make an estimate on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

Application of accounting standards

25. Except where this Schedule provides for a different method of recognition, measurement or valuation, whenever a provision in this Schedule refers to an asset, liability, equity or income statement item, an electronic money institution must, for the purpose of that provision, recognise the asset, liability, equity or income statement item and measure its value in accordance with the requirements of section 3(1) of the Companies (Accounts) Act.