

Financial Services (Investment and Fiduciary Services)

**FINANCIAL SERVICES (EEA) (PAYMENT SERVICES)
REGULATIONS 2010**

1989-47
Revoked
Subsidiary
2010/078

Subsidiary Legislation made under s. 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) of the Interpretation and General Clauses Act.

**FINANCIAL SERVICES (EEA) (PAYMENT SERVICES)
REGULATIONS 2010**

Revoked by LN. 2018/010 as from 13.1.2018

(LN. 2010/078)

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Directive 97/5/EC

Directive 2006/48/EC

Directive 97/7/EC

Directive 2007/64/EC

Directive 2002/65/EC

Directive 2014/92/EU

Directive 2005/60/EC

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SCHEDULE
PAYMENT SERVICES

In exercise of the powers conferred on me by section 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) of the Interpretation and General Clauses Act, and in order to transpose in part into the law of Gibraltar Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, and matters connected thereto, I have made the following Regulations–

Title.

1. These Regulations may be cited as the Financial Services (EEA) (Payment Services) Regulations 2010.

**PART I
PRELIMINARY AND INTERPRETATION**

Interpretation.

- 2.(1) In these Regulations, and unless the context otherwise requires–

“agent” means a natural or legal person which acts on behalf of a payment institution in providing payment services;

“authentication” means a procedure which allows the payment service provider to verify the use of a specific payment instrument, including its personalised security features;

“branch” means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all the places of business set up in a single EEA State by a payment institution with a head office in another EEA State shall be regarded as a single branch;

“business day” means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;

“competent authority” means the Financial Services Commission or such other person as the Minister may, from time to time, designate pursuant to regulation 20;

“consumer” means a natural person who, in payment service contracts covered by these Regulations, is acting for purposes other than his trade, business or profession;

“direct debit” means a payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent given to the payee, to the payee’s payment service provider or to the payer’s own payment service provider;

“Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC;

“durable medium” means any instrument which enables the payment service user to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

“EEA State” is interpreted in accordance with the provisions of the European Communities Act and a reference to an EEA State in these Regulations shall be deemed to include a reference to Gibraltar;

“electronic money” means value as represented by a claim on the issuer which is—

- (i) stored on an electronic device;
- (ii) issued on receipt of funds of an amount not less in value than the monetary value issued;
- (iii) accepted as means of payment by undertakings other than the issuer;

“framework contract” means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

“funds” means banknotes and coins, scriptural money and electronic money;

“group” means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries have a holding as well as undertakings linked to each other by a relationship such that requires them to prepare consolidated accounts pursuant to the provisions of the Companies (Consolidated Accounts) Act 1999;

“home EEA State” means either of the following—

- (a) the EEA State in which the registered office of the payment service provider is situated; or
- (b) where the payment service provider has, under its national law, no registered office, the EEA State in which its head office is situated;

“host EEA State” means the EEA State, other than the home EEA State, in which a payment service provider has an agent or a branch or provides payment services;

“means of distance communication” refers to any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;

“micro-enterprise” means an entity engaged in an economic activity, irrespective of its legal form, including, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity which, at the time of conclusion of the payment service contract, is an enterprise—

- (a) which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million; or
- (b) which employs fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed EUR 2 million;

“Minister” means the Minister responsible for financial services;

“money remittance” means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring

a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, or where such funds are received on behalf of and made available to the payee;

“payee” means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;

“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 institution” means a legal person that has been granted authorisation in accordance with regulation 10 to provide and execute payment services;

“payment instrument” means any personalised device or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order;

“payment order” means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

“payment service” means any business activity listed in the Schedule;

“payment service provider” means the bodies referred to in regulation 3(1) and legal and natural persons benefiting from the waiver under regulation 26;

“payment service user” means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;

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

“payment transaction” means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

“principal Act” means the Financial Services (Investment and Fiduciary Services) Act;

“reference exchange rate” means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

“reference interest rate” means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;

“unique identifier” means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously the other payment service user and/or his payment account for a payment transaction;

“value date” means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

(2) Any term used but not defined in these Regulations is to be construed in accordance with the provisions of the Directive.

Scope.

3.(1) These Regulations lay down rules distinguishing the following categories of payment service provider—

- (a) credit institutions within the meaning of the Financial Services (Banking) Act;
- (b) electronic money institutions within the meaning of the Financial Services (Banking) Act;
- (c) post office giro institutions entitled by law to provide payment services;
- (d) payment institutions within the meaning of these Regulations;

- (e) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
- (f) EEA States or their regional or local authorities when not acting in their capacity as public authorities.

(2) These Regulations lay down rules concerning transparency of conditions and information requirements for payment services, and the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services as a regular occupation or business activity.

Application.

4.(1) These Regulations apply to payment services provided in Gibraltar.

(2) These Regulations apply to payment services provided as between Gibraltar and EEA States. However, with the exception of regulation 73, Parts III and IV apply only where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in Gibraltar or in an EEA State.

(3) Parts III and IV apply to payment services made in Euro, Sterling, or any other currency of an EEA State outside the Euro area.

(4) The Minister may, by regulations, waive the application of all or part of the provisions of these Regulations to the post office and Gibraltar Savings Bank.

(5) These Regulations do not apply to any of the following—

- (a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
- (b) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
- (c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

- (d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
- (e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;
- (f) money exchange business, that is to say, cash-to-cash operations, where the funds are not held on a payment account;
- (g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee–
 - (i) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
 - (ii) paper cheques similar to those referred to in sub paragraph (i) and governed by the laws of EEA States which are not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
 - (iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
 - (iv) paper-based drafts similar to those referred to in sub paragraph (iii) and governed by the laws of EEA States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
 - (v) paper-based vouchers;
 - (vi) paper-based traveller's cheques; or
 - (vii) paper-based postal money orders as defined by the Universal Postal Union;
- (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central

counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to regulation 28;

- (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in paragraph (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;
- (j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (hereinafter referred to as "IT") and communication network provision, provision and maintenance of terminals and devices used for payment services;
- (k) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;
- (l) 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;
- (m) payment transactions carried out between payment service providers, their agents or branches for their own account;
- (n) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group; or

- (o) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services as listed in the Schedule.

PART II
PAYMENT SERVICE PROVIDERS
CHAPTER 1
PAYMENT INSTITUTIONS

General rules

Application for authorisation.

5.(1) An application for authorisation as a payment institution shall be submitted to the competent authority together with the following—

- (a) a programme of operations setting out, in particular, the type of payment services envisaged;
- (b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- (c) evidence that the payment institution holds initial capital provided for in regulation 6;
- (d) for the payment institutions referred to in regulation 9(1), a description of the measures taken for safeguarding payment service users' funds in accordance with regulation 9;
- (e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;
- (f) a description of the internal control mechanisms which the applicant has established in order to comply with obligations in relation to money laundering and terrorist financing under the Terrorism Act 2005, the Crime (Money Laundering and

Proceeds) Act 2007 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;

- (g) 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 or international payment system;
- (h) the identity of persons holding in the applicant, directly or indirectly, qualifying holdings within the meaning of the Financial Services (Banking) Act, the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution;
- (i) the identity of directors and persons responsible for the management of the payment institution and, where relevant, persons responsible for the management of the payment services activities of the payment institution, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services as determined by the home EEA State of the payment institution;
- (j) where applicable, the identity of statutory auditors and audit firms as defined in the Financial Services (Auditors) Act 2009;
- (k) the applicant's legal status and memorandum and articles of association;
- (l) the address of the applicant's head office.

(2) For the purposes of sub-regulation (1)(d), (e) and (g), the applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment services.

Initial capital.

6.(1) Payment institutions shall hold, at the time of authorisation, initial capital as follows—

- (a) where the payment institution provides only the payment service listed in point 6 of the Schedule, its capital shall at no time be less than EUR 20,000;
- (b) where the payment institution provides the payment service listed in point 7 of the Schedule, its capital shall at no time be less than EUR 50,000; and
- (c) where the payment institution provides any of the payment services listed in points 1 to 5 of the Schedule, its capital shall at no time be less than EUR 125,000.

(2) For the purpose of sub-regulation (1) “initial capital” means–

- (a) capital, within the meaning of the Companies Act, in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares; and
- (b) reserves, within the meaning of the Companies Act and profits and losses brought forward as a result of the application of the final profit or loss.

Own funds.

7.(1) The own funds of payment institutions may not fall below the amount required under regulation 6 or 8, whichever is the higher.

(2) The competent authority shall take the necessary measures to prevent the multiple use of elements eligible for own funds–

- (a) where the payment institution belongs to the same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking; or
- (b) where a payment institution has a hybrid character and carries out activities other than providing payment services listed in the Schedule.

(3) If the conditions laid down in sub-regulation (4) are met, the competent authority may choose not to apply regulation 8 to payment institutions which are included in the consolidated supervision of the parent credit institution pursuant to the Financial Services (Banking) Act.

(4) The conditions to which sub-regulation (3) refers are as follows–

- (a) the payment institution must be a subsidiary of a credit institution, where both the subsidiary and the credit institution are subject to authorisation and supervision by the Financial Service Commission, and the subsidiary is included in the supervision on a consolidated basis of the credit institution which is the parent undertaking, and the requirements of this sub-regulation are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries;
- (b) there must be no current or foreseen material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking of the payment institution;
- (c) either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;
- (d) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary; and
- (e) the parent undertaking holds more than 50 % of the voting rights attaching to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(5) For the purposes of this regulation, “own funds” is to be construed in accordance with the provisions of the Financial Services (Banking) Act.

Calculation of own funds.

8.(1) Notwithstanding the initial capital requirements set out in regulation 6, the competent authority shall require payment institutions to hold, at all times, own funds calculated in accordance with one of the following three methods as the competent authority may see fit—

- (a) Method A

The payment institution’s own funds shall amount to at least 10 % of its fixed overheads of the preceding year. The competent authorities may adjust that requirement in the event of a material change in a payment institution’s business since the preceding year. Where a

payment institution has not completed a full year's business at the date of the calculation, the requirement shall be that its own funds amount to at least 10 % of the corresponding fixed overheads as projected in its business plan, unless an adjustment to that plan is required by the competent authority.

(b) Method B

The payment institution's own funds shall amount to at least the sum of the following elements multiplied by the scaling factor "k" defined in sub-regulation (2), where payment volume (hereinafter "PV") represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year—

- (i) 4,0 % of the slice of PV up to EUR 5 million; plus
- (ii) 2,5 % of the slice of PV above EUR 5 million up to EUR 10 million; plus
- (iii) 1 % of the slice of PV above EUR 10 million up to EUR 100 million; plus
- (iv) 0,5 % of the slice of PV above EUR 100 million up to EUR 250 million; plus
- (v) 0,25 % of the slice of PV above EUR 250 million.

(c) Method C

The payment institution's own funds shall amount to at least the relevant indicator defined in point (a), multiplied by the multiplication factor defined in point (b) and by the scaling factor "k" defined in sub-regulation (2).

- (a) The relevant indicator is the sum of the following—
- (i) interest income;
 - (ii) interest expenses;
 - (iii) commissions and fees received; and
 - (iv) other operating income.

Each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items may not

be used in the calculation of the relevant indicator. Expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from an undertaking subject to supervision under these Regulations. The relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year. The relevant indicator shall be calculated over the previous financial year. Nevertheless own funds calculated according to Method C shall not fall below 80 % of the average of the previous three financial years for the relevant indicator. When audited figures are not available, business estimates may be used.

- (b) The multiplication factor shall be—
- (i) 10 % of the slice of the relevant indicator up to EUR 2,5 million;
 - (ii) 8 % of the slice of the relevant indicator from EUR 2,5 million up to EUR 5 million;
 - (iii) 6 % of the slice of the relevant indicator from EUR 5 million up to EUR 25 million;
 - (iv) 3 % of the slice of the relevant indicator from EUR 25 million up to 50 million;
 - (v) 1,5 % above EUR 50 million.

(2) The scaling factor “k” to be used in Methods B and C shall be as follows—

- (a) 0,5 where the payment institution provides only the payment service listed in point 6 of the Schedule;
- (b) 0,8 where the payment institution provides the payment service listed in point 7 of the Schedule;
- (c) 1 where the payment institution provides any of the payment services listed in paragraphs 1 to 5 of the Schedule.

(3) Based on an evaluation of the risk-management processes, risk loss data base and internal control mechanisms of the payment institution, the competent authority may—

- (a) require the payment institution to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the method chosen in accordance with sub-regulation (1); or
- (b) permit the payment institution to hold an amount of own funds which is up to 20 % lower than the amount which would result from the application of the method chosen in accordance with sub-regulation (1).

Safeguarding requirements.

9.(1) The competent authority shall require a payment institution which provides any of the payment services listed in the Schedule and, at the same time, is engaged in other business activities referred to in regulation 16(1)(c) to safeguard funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, as follows—

- (a) either—
 - (i) they shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and, where they are still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets as defined by the competent authority; and
 - (ii) they shall be insulated in accordance with Gibraltar laws in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of insolvency; or
- (b) they shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, which does not belong to the same group as the payment institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

(2) Where—

- (a) a payment institution is required to safeguard funds under sub-regulation (1) and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for non-payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements under sub-regulation (1); and
- (b) the portion referred to in paragraph (a) is variable or unknown in advance, the competent authority may allow payment institutions to apply this sub-regulation on the basis of a representative portion assumed to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the competent authority.

(3) The Minister may, by regulations, require that payment institutions which are not engaged in other business activities referred to in regulation 16(1)(c) shall also comply with the safeguarding requirements under sub-regulation (1).

(4) The Minister may, by regulations, also limit the safeguarding requirements under sub-regulation (1), to funds of those payment service users whose funds individually exceed a threshold of EUR 600.

Granting of authorisation.

10.(1) The competent authority shall require undertakings other than those referred to in regulation 3(1)(a) to (c), (e) and (f) and other than legal or natural persons benefiting from a waiver under regulation 26, who intend to provide payment services, to obtain authorisation as a payment institution before commencing the provision of payment services. An authorisation shall be granted by the competent authority only to a legal person established in Gibraltar.

(2) An authorisation shall be granted if the information and evidence accompanying the application complies with all the requirements under regulation 5 and if the competent authority's overall assessment, having scrutinised the application, is favourable. Before an authorisation is granted, the competent authority may, where relevant, consult relevant public authorities.

(3) A payment institution which under Gibraltar law or the national law of its home EEA State is required to have a registered office, shall have its head office in the same place as its registered office.

(4) The competent authority shall grant an authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, the payment institution has robust governance arrangements for its payment services business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures; those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution.

(5) Where a payment institution provides any of the payment services listed in the Schedule and, at the same time, is engaged in other business activities, the competent authority may require the establishment of a separate entity for the payment services business, where the non-payment services activities of the payment institution impair or are likely to impair either the financial soundness of the payment institution or the ability of the competent authority to monitor the payment institution's compliance with all obligations in these Regulations.

(6) The competent authority shall refuse to grant an authorisation if, taking into account the need to ensure the sound and prudent management of a payment institution, it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings.

(7) Where close links exist between the payment institution and other natural or legal persons, the competent authority shall grant an authorisation only if those links do not prevent the effective exercise of its supervisory functions.

(8) The competent authority shall grant an authorisation only if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the payment institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of its supervisory functions.

(9) In accordance with the provisions of the Directive, an authorisation under these Regulations shall be valid in all EEA States and shall allow the payment institution concerned to provide payment services throughout the

EEA, either under the freedom to provide services or the freedom of establishment, provided that such services are covered by the authorisation.

(10) In this regulation, “close links” means a situation in which two or more natural or legal persons 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 or all are permanently linked to one and the same third person by a control relationship.

Communication of the decision.

11. Within three months of receipt of an application or, should the application be incomplete, of all the information required for the decision, the competent authority shall inform the applicant whether the authorisation has been granted or refused. Reasons shall be given whenever an authorisation is refused.

Withdrawal of authorisation.

12.(1) The competent authority may withdraw an authorisation issued to a payment institution only where the institution–

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months;
- (b) has obtained the authorisation through false statements or any other irregular means;
- (c) no longer fulfils the conditions for granting the authorisation;
- (d) would constitute a threat to the stability of the payment system by continuing its payment services business; or
- (e) falls within one of the other cases where Gibraltar laws provide for withdrawal of an authorisation.

(2) Reasons shall be given for any withdrawal of an authorisation and those concerned shall be informed accordingly.

(3) Notice of the withdrawal of an authorisation shall be published by the competent authority and in the Gazette.

Registration.

13.(1) There shall be a public register, in such form as the Minister may deem appropriate, where there shall be entered the details of authorised payment institutions, their agents and branches, as well as of natural and legal persons, their agents and branches, benefiting from a waiver under regulation 26, and of the institutions referred to in regulation 4 that are entitled to provide payment services.

(2) The register shall identify the payment services for which the payment institution is authorised or for which the natural or legal person has been registered.

(3) Authorised payment institutions shall be listed in the register separately from natural and legal persons that have been registered in accordance with regulation 26.

(4) The register shall be publicly available for consultation, accessible online, and updated on a regular basis.

Maintenance of authorisation.

14. Where any change affects the accuracy of information and evidence provided in accordance with regulation 5, the payment institution shall, without undue delay, inform the competent authority accordingly.

Accounting and statutory audit.

15.(1) The following legislation applies to payment institutions–

- (a) the Financial Services (Auditors) Act 2009;
- (b) the Companies (Accounts) Act 1999;
- (c) the Companies (Consolidated Accounts) Act 1999;
- (d) the Banking (Accounts Directive) Regulations 1997;
- (e) the Insurance Companies (Accounts Directive) Regulations 1997; and

- (f) Regulation (EC) 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

(2) Unless exempted under any legislation referred to in sub-regulation (1), the annual accounts and consolidated accounts of payment institutions shall be audited by statutory auditors or audit firms within the meaning of Financial Services (Auditors) Act 2009.

(3) For supervisory purposes, the competent authority shall require that payment institutions provide separate accounting information for payment services listed in the Schedule and activities referred to in regulation 16(1), which shall be subject to an auditor's report. That report shall be prepared, where applicable, by the statutory auditors or an audit firm.

(4) Provisions in the Financial Services (Banking) Act relating to reports to the competent authority under sections 46 to 47 of the Financial Services (Banking) Act, shall apply to the statutory auditors or audit firms of payment institutions in respect of payment services activities.

Activities.

16.(1) Apart from the provision of payment services listed in the Schedule, payment institutions shall be entitled to engage in the following activities—

- (a) the provision of operational and closely related ancillary services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;
- (b) the operation of payment systems, without prejudice to regulation 28;
- (c) business activities other than the provision of payment services, having regard to applicable European Union and Gibraltar law.

(2) When payment institutions engage in the provision of one or more of the payment services listed in the Schedule, they may hold only payment accounts used exclusively for payment transactions. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds or electronic money within the meaning of the Financial Services (Banking) Act.

(3) Payment institutions may grant credit related to payment services referred to in paragraphs 4, 5 or 7 of the Schedule only if the following conditions are met—

- (a) the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction;
- (b) notwithstanding Gibraltar rules on providing credit by credit cards, the credit granted in connection with a payment and executed in accordance with regulations 10(9) and 25 shall be repaid within a short period which shall in no case exceed twelve months;
- (c) such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction; and
- (d) the own funds of the payment institution shall at all times and to the satisfaction of the supervisory authorities be appropriate in view of the overall amount of credit granted.

(4) Payment institutions shall not conduct the business of taking deposits or other repayable funds within the meaning of the Financial Services (Banking) Act.

(5) These Regulations shall be without prejudice to any statutory provision relating to consumer credit or the conditions for granting credit to consumers that is in conformity with European Union law.

Other requirements

Use of agents, branches or entities to which activities are outsourced.

17.(1) When a payment institution intends to provide payment services through an agent, it shall communicate the following information to the competent authority—

- (a) the name and address of the agent;
- (b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligations in relation to money laundering and terrorist financing under the Terrorism Act 2005 and the Crime (Money Laundering and Proceeds) Act 2007; and

(c) the identity of directors and persons responsible for the management of the agent to be used in the provision of payment services and evidence that they are fit and proper persons.

(2) When the competent authority receives the information set out in sub-regulation (1) then it may list the agent in the register provided for in regulation 13.

(3) Before listing the agent in the register, the competent authority may, if it considers that the information provided is incorrect, take further action to verify the information.

(4) If, after taking action to verify the information, the competent authority is not satisfied that the information provided to it pursuant to sub-regulation (1) is correct, it shall refuse to list the agent in the register provided for in regulation 13.

(5) Where a payment institution wishes to provide payment services in an EEA State by engaging an agent, it shall follow the procedures set out in regulation 25. In that case, before the agent may be registered under this regulation, the competent authority shall inform the competent authorities of the host EEA State of its intention to register the agent and take their opinion into account.

(6) Where the competent authority has reasonable grounds to suspect, in particular, as a result of any information provided or opinion given by the competent authorities in the host EEA State, that, in connection with the intended engagement of the agent or establishment of the branch, money laundering or terrorist financing is taking place, has taken place or been attempted, or that the engagement of such agent or establishment of such branch could increase the risk of money laundering or terrorist financing, it may refuse to register the agent or branch, or may withdraw the registration, if already made, of the agent or branch.

(7) Where a payment institution intends to outsource operational functions of payment services, it shall inform the competent authority accordingly.

(8) Outsourcing of important operational functions may not be undertaken in such way as to impair materially the quality of the payment institution's internal control and the ability of the competent authority to monitor the payment institution's compliance with all obligations laid down in these Regulations.

(9) For the purposes of this sub-regulation (8), an operational function shall be regarded as important if a defect or failure in its performance would materially impair any of the following—

- (a) the continuing compliance of a payment institution with the requirements of its authorisation requested under this Part;
- (b) the continuing compliance of a payment institution with its other obligations under these Regulations;
- (c) the payment institution's financial performance; or
- (d) the soundness or the continuity of the payment institution's payment services.

(10) The competent authority shall ensure that when payment institutions outsource important operational functions, the payment institutions comply with the following conditions—

- (a) the outsourcing shall not result in the delegation by senior management of its responsibility;
- (b) the relationship and obligations of the payment institution towards its payment service users under these Regulations shall not be altered;
- (c) the conditions with which the payment institution is to comply in order to be authorised and remain so in accordance with this Part shall not be undermined; and
- (d) none of the other conditions subject to which the payment institution's authorisation was granted shall be removed or modified.

(11) Payment institutions shall ensure that agents or branches acting on their behalf inform payment service users of this fact.

Liability.

18.(1) The competent authority shall ensure that, where payment institutions rely on third parties for the performance of operational functions, those payment institutions take reasonable steps to ensure that the requirements of these Regulations are complied with.

(2) The competent authority shall require that payment institutions remain fully liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced.

Record-keeping.

19. Payment institutions shall keep all appropriate records for the purpose of this Part for at least five years.

The competent authority and supervision

Designation of a person to be competent authority.

20.(1) The Minister shall designate either a public authority, or a body expressly empowered by statute for the purpose, as the competent authority responsible for the authorisation and prudential supervision of payment institutions which is to carry out the duties provided for under this Part.

(2) The competent authority shall be independent from economic bodies and shall avoid conflicts of interest. Without prejudice to sub-regulation (1), payment institutions, credit institutions, electronic money institutions, or post office giro institutions shall not be designated as competent authority.

(3) The Minister shall ensure the European Commission is informed of the designation accordingly.

(4) The Minister may make regulations under the principal Act to ensure that the competent authority possesses all the powers necessary for the performance of its duties under these Regulations.

(5) Sub-regulation (1) shall not imply that the competent authority is required to supervise business activities of the payment institutions other than the provision of payment services listed in the Schedule and the activities listed in regulation 16(1)(a).

Supervision.

21.(1) The controls exercised by the competent authority for checking continued compliance with this Part shall be proportionate, adequate and responsive to the risks to which payment institutions are exposed, and in order to check compliance with this Part, the competent authority shall be entitled to take the following steps, in particular—

- (a) to require the payment institution to provide any information needed to monitor compliance;
- (b) to carry out on-site inspections at the payment institution, at any agent or branch providing payment services under the responsibility of the payment institution, or at any entity to which activities are outsourced;
- (c) to issue recommendations, guidelines and, if applicable, binding administrative provisions; and
- (d) to suspend or withdraw authorisation in cases referred to in regulation 12.

(2) Without prejudice to the procedures for the withdrawal of authorisations and the provisions of criminal law, the competent authority may, in respect of the persons listed in sub-regulation (3), adopt or impose such penalties or measures aimed specifically at ending observed breaches or the causes of such breaches as are reasonable in the circumstances, taking all relevant considerations into account.

(3) Those persons are payment institutions, or those who effectively control the business of payment institutions, which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their payment service business.

(4) Notwithstanding the requirements of regulations 6, 7(1) and (2) and 8, the competent authority is entitled to take such steps described under sub-regulation (1) as are reasonable to ensure sufficient capital for payment services, in particular where the non-payment services activities of the payment institution impair or are likely to impair the financial soundness of the payment institution.

Professional secrecy.

22.(1) All persons working or who have worked for the competent authority, as well as experts acting on behalf of the competent authority, are bound by the obligation of professional secrecy, without prejudice to cases covered by criminal law.

(2) In the exchange of information carried out pursuant to regulation 24, professional secrecy shall be strictly applied to ensure the protection of individual and business rights.

(3) When applying this regulation, account shall be taken of the provisions of Schedule 3 of the Financial Services (Banking) Act.

Right to apply to the Supreme Court.

23.(1) Decisions taken by the competent authority in respect of a payment institution pursuant to these Regulations may be contested before the Supreme Court.

(2) Sub-regulation (1) shall apply also in respect of a failure to act.

Exchange of information.

24.(1) The competent authority shall cooperate with the competent authorities of the EEA States and, where appropriate, with the European Central Bank, the national central banks of the EEA States and other relevant competent authorities designated by EEA States as having responsibilities in respect of payment service providers.

(2) Information shall also be exchanged between the competent authority and the following—

- (a) the competent authorities of EEA States responsible for the authorisation and supervision of payment institutions;
- (b) the European Central Bank and the national central banks of EEA States, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;
- (c) other relevant authorities designated by laws applicable to payment service providers, such as laws applicable to the protection of individuals with regard to the processing of personal data as well as money laundering and terrorist financing.

Exercise of the right of establishment and freedom to provide services.

25.(1) Any authorised payment institution wishing to provide payment services for the first time in a EEA State other than Gibraltar, in exercise of the right of establishment or the freedom to provide services, shall so inform the competent authority.

(2) Within one month of receiving that information, the competent authority shall inform the competent authorities of the host EEA State of the

name and address of the payment institution, the names of those responsible for the management of the branch, its organisational structure and of the kind of payment services it intends to provide in the territory of the host EEA State.

(3) The competent authority shall cooperate with the competent authorities of the host EEA State in order to carry out the controls and take the necessary steps provided for in regulation 21 in respect of the agent, branch or entity to which a payment institution has outsourced activities.

(4) By way of cooperation in accordance with this regulation, the competent authority shall notify the competent authorities of the host EEA State whenever it intends to carry out an on-site inspection in the territory of the latter.

(5) The competent authority may delegate to the competent authorities of the host EEA State the task of carrying out on-site inspections of the institution concerned.

(6) The competent authority shall provide the competent authorities of the host EEA State with all essential or relevant information, in particular, in the case of infringements or suspected infringements by an agent, a branch or an entity to which activities are outsourced. In this regard, the competent authority shall communicate to the competent authorities of other States, upon request, all relevant information and, on its own initiative, all essential information.

(7) This regulation is without prejudice to the obligation of competent authorities to supervise or monitor compliance with other financial services legislation.

Waiver

Conditions.

26.(1) Notwithstanding regulation 13, the Minister may waive or allow the competent authority to waive the application of all or part of the procedure and conditions set out in regulations 5 to 25, with the exception of regulations 20, 22, 23 and 24, and allow natural or legal persons to be entered in the register provided for in regulation 13, where—

- (a) the average of the preceding 12 months' total amount of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed EUR 3 million per month. That requirement

shall be assessed on the projected total amount of payment transactions in its business plan, unless an adjustment to that plan is required by the competent authority; and

- (b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

(2) Any natural or legal person registered in accordance with sub-regulation (1) carrying on business in Gibraltar shall be required to have its head office or place of residence in Gibraltar.

(3) The persons referred to in sub-regulation (1) shall be treated as payment institutions, save that regulations 10(9) and 25 shall not apply to them.

(4) The Minister may make regulations under the principal Act to provide that any natural or legal person registered in accordance with sub-regulation (1) may engage only in certain activities listed in regulation 16.

(5) The persons referred to in sub-regulation (1) shall notify the competent authority of any change in their situation which is relevant to the conditions specified in that sub-regulation, and where the conditions set out in the preceding sub-regulations are no longer fulfilled, the persons concerned shall seek authorisation from the competent authority within 30 calendar days in accordance with the procedure laid down in regulation 10.

(6) This regulation shall not be applied in respect of provisions relating to money-laundering or the financing of terrorism.

Notification and information.

27.(1) Where the right to a waiver, or any subsequent changes thereto, is exercised pursuant to regulation 26, the Minister shall ensure the European Commission is notified forthwith.

(2) The Minister shall ensure the European Commission is informed of the number of natural and legal persons concerned and, on an annual basis, of the total amount of payment transactions executed as of 31 December of each calendar year, as referred to in regulation 26(1)(a).

CHAPTER II
COMMON PROVISIONS

Access to payment systems.

28.(1) The procedures and practices relating to the access of authorised or registered payment service providers that are legal persons to payment systems shall be objective, non-discriminatory and proportionate and do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

(2) Payment systems shall not impose on payment service providers, on payment service users or on other payment systems any of the following requirements–

- (a) any restrictive rule on effective participation in other payment systems;
- (b) any rule which discriminates between authorised payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants; or
- (c) any restriction on the basis of institutional status.

(3) Sub-regulations (1) and (2) shall not apply to–

- (a) payment systems designated under the Financial Markets and Insolvency (Settlement Finality) Regulations 2002;
- (b) payment systems composed exclusively of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities; or
- (c) payment systems where a sole payment service provider (whether as a single entity or as a group)–
 - (i) acts or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the system; and
 - (ii) licenses other payment service providers to participate in the system and the latter have no right to negotiate fees between or amongst themselves in relation to the

payment system although they may establish their own pricing in relation to payers and payees.

Prohibition for persons other than payment service providers to provide payment services.

29. It shall be an offence for natural or legal persons that are neither payment service providers nor explicitly excluded from the scope of these Regulations to provide the payment services listed in the Schedule.

PART III
TRANSPARENCY OF CONDITIONS AND INFORMATION
REQUIREMENTS FOR PAYMENT SERVICES
CHAPTER I
GENERAL RULES

Scope of Part.

30.(1) This Part shall apply to single payment transactions, framework contracts and payment transactions covered by them, and parties may agree that it shall not apply in whole or in part when the payment service user is not a consumer.

(2) The Minister may, by regulations under the principal Act, provide that the provisions in this Part shall be applied to micro enterprises in the same way as to consumers.

(3) These Regulations shall be without prejudice to any statutory provision relating to consumer credit or the conditions for granting credit to consumers that is in conformity with European Union law.

Other provisions in European Union legislation.

31.(1) The provisions of this Part are without prejudice to any statutory provision containing additional requirements on prior information.

(2) Where the provisions of the Financial Services (Distance Marketing) Act 2006 apply, the information requirements set out in Schedule 1 paragraph 1, with the exception of paragraphs 2(c) to (g), 3(a), (d) and (e), and 4(b) of that Act, shall be replaced by regulations 36, 37, 41 and 42 of these Regulations.

Charges for information.

32.(1) The payment service provider shall not charge the payment service user for providing information under this Part.

(2) A payment service provider and a payment service user may agree on charges for additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request.

(3) Where a payment service provider may impose charges for information in accordance with sub-regulation (2), the charges shall be appropriate and in line with the payment service provider's actual costs.

Burden of proof on information requirements.

33. The Minister may, by regulations under the principal Act, stipulate that the burden of proof shall lie with the payment service provider to prove that it has complied with the information requirements set out in this Part.

Derogation from information requirements for low-value payment instruments and electronic money.

34.(1) In cases of payment instruments which, according to the framework contract, concern only individual payment transactions that do not exceed EUR 30 or that either have a spending limit of EUR 150 or store funds that do not exceed EUR 150 at any time—

- (a) by way of derogation from regulations 41, 42 and 46, the payment service provider shall provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, liability, charges levied and other material information needed to take an informed decision as well as an indication of where any other information and conditions specified in regulation 42 are made available in an easily accessible manner;
- (b) it may be agreed that, by way of derogation from regulation 44, the payment service provider shall not be required to propose changes in the conditions of the framework contract in the same way as provided for in regulation 41(1);
- (c) it may be agreed that, by way of derogation from regulations 47 and 48, after the execution of a payment transaction—

- (i) the payment service provider shall provide or make available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction, any charges or, in the case of several payment transactions of the same kind made to the same payee, information on the total amount and charges for those payment transactions;
 - (ii) the payment service provider shall not be required to provide or make available information referred to in subparagraph (i) if the payment instrument is used anonymously or if the payment service provider is not otherwise technically in a position to provide it. However, the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.
- (2) The Minister may, by regulations under the principal Act–
- (a) reduce or double the amounts referred to in sub-regulation (1) for payment transactions within Gibraltar;
 - (b) increase those amounts up to EUR 500 for prepaid payment instruments.

34A. *Revoked.*

CHAPTER II

SINGLE PAYMENT TRANSACTIONS

Application of Chapter.

35.(1) This Chapter applies to single payment transactions not covered by a framework contract.

(2) When a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the payment service provider shall not be obliged to provide or make available information which is already given to the payment service user on the basis of a framework contract with another payment service provider or which will be given to him according to that framework contract.

Prior general information.

36.(1) Before a payment service user is bound by any single payment service contract or offer–

- (a) the payment service provider shall make available in an easily accessible manner to the payment service user the information and conditions specified in regulation 37; and
- (b) at the payment service user's request, the payment service provider shall provide the information and conditions on paper or on another durable medium,

and in both cases the information and conditions shall be provided in easily understandable words and in a clear and comprehensible form, in English or in any other language agreed between the parties.

(2) If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with sub-regulation (1), the payment service provider shall fulfil its obligations under that sub-regulation immediately after the execution of the payment transaction.

(3) The obligations under sub-regulation (1) may also be discharged by supplying a copy of the draft single payment service contract or the draft payment order including the information and conditions specified in regulation 37.

Information and conditions.

37.(1) The following information and conditions shall be provided or made available to the payment service user–

- (a) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
- (b) the maximum execution time for the payment service to be provided;
- (c) all charges payable by the payment service user to his payment service provider and, where applicable, the breakdown of the amounts of any charges;
- (d) where applicable, the actual or reference exchange rate to be applied to the payment transaction.

(2) Where applicable, any other relevant information and conditions specified in regulation 42 shall be made available to the payment service user in an easily accessible manner.

Information for the payer after receipt of the payment order.

38. Immediately after receipt of the payment order, the payer's payment service provider shall provide or make available to the payer, in the same way as provided for in regulation 36(1), the following information—

- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
- (b) the amount of the payment transaction in the currency used in the payment order;
- (c) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of the amounts of such charges;
- (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, when different from the rate provided in accordance with regulation 37(1)(d), and the amount of the payment transaction after that currency conversion; and
- (e) the date of receipt of the payment order.

Information for the payee after execution.

39. Immediately after the execution of the payment transaction, the payee's payment service provider shall provide or make available to the payee, in the same way as provided for in regulation 36(1), the following information—

- (a) the reference enabling the payee to identify the payment transaction and, where appropriate, the payer and any information transferred with the payment transaction;
- (b) the amount of the payment transaction in the currency in which the funds are at the payee's disposal;

- (c) the amount of any charges for the payment transaction payable by the payee and, where applicable, a breakdown of the amount of such charges;
- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion; and
- (e) the credit value date.

**CHAPTER III
FRAMEWORK CONTRACTS**

Application of Chapter.

40. This Chapter applies to payment transactions covered by a framework contract.

Prior general information.

41.(1) A payment service provider shall provide a payment service user with the information and conditions specified in regulation 42 as follows—

- (a) on paper or on another durable medium;
- (b) in good time before the payment service user is bound by any framework contract or offer;
- (c) in easily understandable words;
- (d) in a clear and comprehensible form; and
- (e) in English or in any other language agreed between the parties.

(2) Where the framework contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with sub-regulation (1), the payment service provider shall fulfil its obligations under that sub-regulation immediately after the conclusion of the framework contract.

(3) The obligations under sub-regulation (1) may also be discharged by supplying a copy of the draft framework contract including the information and conditions specified in regulation 42.

Information and conditions.

42. The following information and conditions shall be provided to the payment service user—

- (a) on the payment service provider—
 - (i) the name of the payment service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in the EEA State where the payment service is offered, and any other address, including electronic mail address, relevant for communication with the payment service provider; and
 - (ii) the particulars of the relevant supervisory authorities and of the register provided for in regulation 13 or of any other relevant public register of authorisation of the payment service provider and the registration number, or equivalent means of identification in that register;
- (b) on use of the payment service—
 - (i) a description of the main characteristics of the payment service to be provided;
 - (ii) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
 - (iii) the form of and procedure for giving consent to execute a payment transaction and withdrawal of such consent in accordance with regulations 54 and 66;
 - (iv) a reference to the point in time of receipt of a payment order as defined in regulation 64 and the cut-off time, if any, established by the payment service provider;
 - (v) the maximum execution time for the payment services to be provided; and
 - (vi) whether there is a possibility to agree on spending limits for the use of the payment instrument in accordance with regulation 55(1);

- (c) on charges, interest and exchange rates–
 - (i) all charges payable by the payment service user to the payment service provider and, where applicable, the breakdown of the amounts of any charges;
 - (ii) where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate; and
 - (iii) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements related to the changes in accordance with regulation 44(2);

- (d) on communication–
 - (i) where applicable, the means of communication, including the technical requirements for the payment service user’s equipment, agreed between the parties for the transmission of information or notifications under these Regulations;
 - (ii) the manner in and frequency with which information under these Regulations is to be provided or made available;
 - (iii) the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken; and
 - (iv) the payment service user’s right to receive the contractual terms of the framework contract and information and conditions in accordance with regulation 43;

- (e) on safeguards and corrective measures–
 - (i) where applicable, a description of steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of regulation 56(1)(b);

- (ii) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with regulation 55;
 - (iii) the liability of the payer in accordance with regulation 61, including information on the relevant amount;
 - (iv) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly executed payment transaction in accordance with regulation 58 as well as the payment service provider's liability for unauthorised payment transactions in accordance with regulation 60;
 - (v) the liability of the payment service provider for the execution of payment transactions in accordance with regulation 75; and
 - (vi) the conditions for refund in accordance with regulations 62 and 63;
- (f) on changes in and termination of framework contract—
- (i) if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with regulation 44, unless he notifies the payment service provider that he does not accept them before the date of their proposed date of entry into force;
 - (ii) the duration of the contract; and
 - (iii) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with regulations 44(1) and 45;
- (g) on redress—
- (i) any contractual clause on the law applicable to the framework contract and/or the competent courts; and
 - (ii) the out-of-court complaint and redress procedures available to the payment service user in accordance with regulations 80 to 83.

Accessibility of information and conditions of the framework contract.

43. At any time during the contractual relationship a payment service user shall have a right to receive, on request, the contractual terms of the framework contract as well as the information and conditions specified in regulation 42 on paper or on another durable medium.

Changes in conditions of the framework contract.

44.(1) Any changes in the framework contract as well as the information and conditions specified in regulation 42, shall be proposed by the payment service provider in the same way as provided for in regulation 41(1) and no later than two months before their proposed date of application.

(2) Where applicable in accordance with regulation 42(f)(i), the payment service provider shall inform the payment service user that he is to be deemed to have accepted any changes proposed if he does not notify the payment service provider that he does not accept them before the proposed date of their entry into force and where this sub-regulation applies, the payment service provider shall also specify that the payment service user has the right to terminate the framework contract immediately and without charge before the date of the proposed application of the changes.

(3) Changes in the interest or exchange rates may be applied immediately and without notice, provided that such a right is agreed upon in the framework contract and that the changes are based on the reference interest or exchange rates agreed on in accordance with regulation 42(c)(ii) and (iii).

(4) Payment service users shall be informed of any change in the interest rate at the earliest opportunity in the same way as provided for in regulation 41(1), unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available.

(5) Changes in interest or exchange rates which are more favourable to the payment service users, may be applied without notice.

(6) Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users.

Termination.

45.(1) The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice. Such a period may not exceed one month.

(2) Termination of a framework contract concluded for a fixed period exceeding 12 months or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months, but in all other cases charges for the termination shall be appropriate and in line with costs.

(3) If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice in the same way as provided for in regulation 41(1).

(4) Charges for payment services levied on a regular basis shall be payable by the payment service user only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally.

(5) The provisions of this regulation are without prejudice to any statutory provision or rule of law governing the rights of parties to declare the framework contract unenforceable or void.

(6) The Minister may, by regulations under the principal Act, provide more favourable provisions for payment service users.

Information before execution of individual payment transactions.

46. Where an individual payment transaction is made under a framework contract initiated by the payer, the payment service provider shall, at the payer's request for this specific payment transaction, provide explicit information on the maximum execution time and the charges payable by the payer and, where applicable, a breakdown of the amounts of any charges.

Information for the payer on individual payment transactions.

47.(1) After—

- (a) the amount of an individual payment transaction is debited from the payer's account; or
- (b) where the payer does not use a payment account, the receipt of the payment order,

the payer's payment service provider shall provide the payer without undue delay in the same way as laid down in regulation 41(1) with the following information—

- (i) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee;
- (ii) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;
- (iii) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payer;
- (iv) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion; and
- (v) the debit value date or the date of receipt of the payment order.

(2) A framework contract may include a condition that the information referred to in sub-regulation (1) is to be provided or made available periodically at least once a month and in an agreed manner which allows the payer to store and reproduce information unchanged.

(3) However, the Minister may, by regulations under the principal Act, require payment service providers to provide information on paper once a month free of charge.

Information for the payee on individual payment transactions.

48.(1) After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee without undue delay in the same way as laid down in regulation 41(1) with the following information—

- (a) the reference enabling the payee to identify the payment transaction and, where appropriate, the payer, and any information transferred with the payment transaction;
- (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payee;

- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion; and
- (e) the credit value date.

(2) A framework contract may include a condition that the information referred to in sub-regulation (1) is to be provided or made available periodically at least once a month and in an agreed manner which allows the payee to store and reproduce information unchanged.

(3) However, the Minister may, by regulations under the principal Act, require payment service providers to provide information on paper once a month free of charge.

CHAPTER IV

COMMON PROVISIONS

Currency and currency conversion.

49.(1) Payments shall be made in the currency agreed between the parties.

(2) Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction: and the payer shall agree to the currency conversion service on that basis.

Information on additional charges or reductions.

50.(1) Where, for the use of a given payment instrument, the payee requests a charge or offers a reduction, the payee shall inform the payer thereof prior to the initiation of the payment transaction.

(2) Where, for the use of a given payment instrument, a payment service provider or a third party requests a charge, he shall inform the payment service user thereof prior to the initiation of the payment transaction.

PART IV

RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION

AND USE OF PAYMENT SERVICES

CHAPTER I

COMMON PROVISIONS

Scope of Part.

51.(1) Where the payment service user is not a consumer, the parties may agree that regulations 52(1), 54(2)(b), 59, 61, 62, 63, 66 and 75 shall not apply in whole or in part, and the parties may also agree on a time period different from that laid down in regulation 58.

(2) The Minister may, by regulations under the principal Act, provide that—

- (a) regulation 83 does not apply where the payment service user is not a consumer;
- (b) provisions in this Part are applied to micro enterprises in the same way as to consumers.

(3) These Regulations shall be without prejudice to any statutory provision relating to consumer credit or the conditions for granting credit to consumers that is in conformity with European Union law.

Charges applicable.

52.(1) The payment service provider may not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Part, unless otherwise specified in regulations 65(1), 66(5) and 74(2), and such charges shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.

(2) Where a payment transaction does not involve any currency conversion, the payee shall pay the charges levied by his payment service provider, and the payer shall pay the charges levied by his payment service provider.

(3) The payment service provider shall not prevent the payee from requesting from the payer a charge or from offering him a reduction for the use of a given payment instrument. However, the Minister may, by regulations under the principal Act, forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments.

Derogation for low value payment instruments and electronic money.

53.(1) In the case of payment instruments which, according to the framework contract, solely concern individual payment transactions not exceeding EUR 30 or which either have a spending limit of EUR 150 or store funds which do not exceed EUR 150, at any time payment service providers may agree with their payment service users that—

- (a) regulations 56(1)(b), 57(1)(c) and (d) and 61(4) and (5) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
- (b) regulations 59, 60, 61(1) and (2) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;
- (c) by way of derogation from regulation 65(1), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
- (d) by way of derogation from regulation 66, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee;
- (e) by way of derogation from regulations 69 and 70, other execution periods apply.

(2) For payment transactions within Gibraltar, the Minister may, by regulations under the principal Act, reduce or double the amounts referred to in sub-regulation (1), and may increase them for prepaid payment instruments up to EUR 500.

(3) Regulations 60 and 61 shall apply also to electronic money within the meaning of the Financial Services (Banking) Act, except where the payer's payment service provider does not have the ability to freeze the payment account or block the payment instrument, and the Minister may, by regulations under the principal Act, limit that derogation to payment accounts or payment instruments of a certain value.

CHAPTER II
AUTHORISATION OF PAYMENT TRANSACTIONS

Consent and withdrawal of consent.

54.(1) A payment transaction—

- (a) shall be considered to be authorised only where the payer has given consent to execute the payment transaction;
- (b) may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.

(2) The following provisions shall apply—

- (a) consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider; and
- (b) in the absence of such consent, a payment transaction shall be considered to be unauthorised.

(3) Consent—

- (a) may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under regulation 66;
- (b) to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.

(4) The procedure for giving consent shall be agreed between the payer and the payment service provider.

Limits of the use of the payment instrument.

55.(1) Where a specific payment instrument is used for the purposes of giving consent, the payer and his payment service provider may agree on spending limits for payment transactions executed through that payment instrument.

(2) Where agreed in the framework contract, the payment service provider may reserve the right to block the payment instrument for objectively justified reasons related to the security of the payment instrument, the suspicion of unauthorised or fraudulent use of the payment instrument or, in

the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his liability to pay.

(3) In such cases the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter, unless giving such information would compromise objectively justified security reasons or is an offence.

(4) The payment service provider shall unblock the payment instrument or replace it with a new payment instrument once the reasons for blocking no longer exist.

Obligations of the payment service user in relation to payment instruments.

56.(1) The payment service user entitled to use a payment instrument shall have the following obligations–

- (a) to use the payment instrument in accordance with the terms governing the issue and use of the payment instrument; and
- (b) to notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.

(2) For the purposes of sub-regulation (1)(a), the payment service user shall, in particular, as soon as he receives a payment instrument, take all reasonable steps to keep its personalised security features safe.

Obligations of the payment service provider in relation to payment instruments.

57.(1) The payment service provider issuing a payment instrument shall have the following obligations–

- (a) to make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in regulation 56;

- (b) to refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
- (c) to ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to regulation 56(1)(b) or request unblocking pursuant to regulation 55(4); on request, the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that he made such notification; and
- (d) to prevent all use of the payment instrument once notification pursuant to regulation 56(1)(b) has been made.

(2) The payment service provider shall bear the risk of sending a payment instrument to the payer or of sending any personalised security features of it.

Notification of unauthorised or incorrectly executed payment transactions.

58. The payment service user shall obtain rectification from the payment service provider only—

- (a) where he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, including that under regulation 75; and
- (b) no later than 13 months after the debit date,

unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Part III.

Evidence on authentication and execution of payment transactions.

59.(1) Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for his payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.

(2) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the

payment service provider shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of his obligations under regulation 56.

Payment service provider's liability for unauthorised payment transactions.

60.(1) Without prejudice to regulation 58, in the case of an unauthorised payment transaction, the payer's payment service provider shall—

- (a) refund to the payer immediately the amount of the unauthorised payment transaction; and
- (b) where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

(2) Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his payment service provider.

Payer's liability for unauthorised payment transactions.

61.(1) By way of derogation from regulation 60, the payer shall bear the losses relating to any unauthorised payment transactions, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features safe, from the misappropriation of a payment instrument.

(2) The payer shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil one or more of his obligations under regulation 56 with intent or gross negligence; and in such cases, the maximum amount referred to in sub-regulation (1) shall not apply.

(3) In cases where the payer has not acted fraudulently or with intent failed to fulfil his obligations under regulation 56, the Minister may, by regulations under the principal Act, reduce the liability referred to in sub-regulations (1) and (2), taking into account, in particular, the nature of the personalised security features of the payment instrument and the circumstances under which it was lost, stolen or misappropriated.

(4) The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification

in accordance with regulation 56(1)(b), except where he has acted fraudulently.

(5) Where the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under regulation 57(1)(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where he has acted fraudulently.

Refunds for payment transactions initiated by or through a payee.

62.(1) A payer shall be entitled to a refund, consisting of the full amount of the executed payment transaction, from his payment service provider of an authorised payment transaction initiated by or through a payee which has already been executed, where the following conditions are met—

- (a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and
- (b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case;

and—

- (i) at the payment service provider's request, the payer shall provide factual elements relating to such conditions;
- (ii) for direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in sub-paragraphs (a) and (b) above are not met.

(2) For the purposes of sub-regulation (1)(b), the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider in accordance with regulations 37(1)(d) and 42(3)(b) was applied.

(3) It may be agreed in the framework contract between the payer and the payment service provider that the payer has no right to a refund—

- (a) where he has given his consent to execute the payment transaction directly to his payment service provider; and

- (b) where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or by the payee.

Requests for refunds for payment transactions initiated by or through a payee.

63.(1) The payer may request the refund referred to in regulation 62 of an authorised payment transaction initiated by or through a payee for a period of eight weeks from the date on which the funds were debited.

(2) Within ten business days of receiving such a request for a refund, the payment service provider shall either–

- (a) refund the full amount of the payment transaction; or
- (b) provide justification for refusing the refund, indicating the bodies to which the payer may refer the matter in accordance with regulations 80 to 83 if he does not accept the justification provided.

(3) The payment service provider's right under sub-regulation (2) to refuse the refund shall not apply in the case set out in regulation 62(1)(ii).

CHAPTER III
EXECUTION OF PAYMENT TRANSACTIONS

Payment orders and amounts transferred

Receipt of payment orders.

64.(1) The point in time of receipt of a payment order shall be–

- (a) the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received by the payer's payment service provider; and
- (b) where the point in time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day,

and the payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day.

(2) Where the payment service user initiating a payment order and his payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal, the point in time of receipt for the purposes of regulation 69 shall be deemed to be the agreed day; and where the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

Refusal of payment orders.

65.(1) The following provisions shall apply—

- (a) where the payment service provider refuses to execute a payment order, the refusal and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user, unless it is an offence to notify such information;
- (b) the payment service provider shall provide or make available the notification in an agreed manner at the earliest opportunity, and in any case, within the periods specified in regulation 69; and
- (c) the framework contract may include a condition that the payment service provider may charge for such a notification if the refusal is objectively justified.

(2) Where all the conditions set out in the payer's framework contract are met, the payer's payment service provider shall not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by a payer or by or through a payee, unless it is an offence.

(3) For the purposes of regulations 69 and 75 a payment order of which execution has been refused shall be deemed not to have been received.

Irrevocability of a payment order.

66.(1) The payment service user may not revoke a payment order once it has been received by the payer's payment service provider, unless otherwise specified in this regulation.

(2) Where the payment transaction is initiated by or through the payee, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee.

(3) In the case of a direct debit, and without prejudice to refund rights, the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds.

(4) In the case referred to in regulation 64(2) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day.

(5) After the time limits specified in sub-regulations (1) to (4)–

- (a) the payment order may be revoked only if agreed between the payment service user and his payment service provider; and
- (b) for the purposes of sub-regulations (2) and (3), the payee's agreement shall also be required.

(6) If agreed in the framework contract, the payment service provider may charge for revocation.

Amounts transferred and amounts received.

67.(1) Subject to sub-regulation (2), the payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers shall transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.

(2) The payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee, and in such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

(3) Where any charges other than those referred to in sub-regulation (2) are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. In cases where the payment transaction is initiated by or through the payee, his payment service provider shall ensure that the full amount of the payment transaction is received by the payee.

Execution time and value date

Scope of this regulation and regulations 69 to 73.

68.(1) This regulation and regulations 69 to 73 apply to—

- (a) payment transactions in Euro;
- (b) payment transactions in Sterling or Gibraltar Pounds within Gibraltar or between Gibraltar and the United Kingdom in Sterling; and
- (c) payment transactions involving only one currency conversion between the Euro and Sterling, provided that the required currency conversion is carried out in Gibraltar and, in the case of cross-border payment transactions, the cross-border transfer takes place in Euro.

(2) The following provisions shall apply—

- (a) this regulation and regulations 69 to 73 shall apply to other payment transactions, unless otherwise agreed between the payment service user and his payment service provider, with the exception of regulation 73, which is not at the disposal of the parties;
- (b) when the payment service user and his payment service provider agree on a longer period than any of those laid down in regulation 69, for intra-European Union payment transactions such period shall not exceed 4 business days following the point in time of receipt in accordance with regulation 64.

Payment transactions to a payment account.

69.(1) The payer's payment service provider shall ensure that, after the point in time of receipt in accordance with regulation 64, the amount of the payment transaction shall be credited to the payee's payment service provider's account at the latest by the end of the next business day. However, until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three business days. These periods may be extended by a further business day for paper-initiated payment transactions.

(2) The payment service provider of the payee shall value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with regulation 73.

(3) The payee's payment service provider shall transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and his payment service provider, enabling settlement, as far as direct debit is concerned, on the agreed due date.

Absence of payee's payment account with the payment service provider.

70. Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the period specified in regulation 69.

Cash placed on a payment account.

71. Where—

- (a) a consumer places cash on a payment account with a payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is made available and value dated immediately after the point of time of the receipt of the funds;
- (b) the payment service user is not a consumer, the amount shall be made available and value dated at the latest on the next business day after the receipt of the funds.

Payment transactions within Gibraltar.

72. For payment transactions within Gibraltar, the Minister may, by regulations under the principal Act, provide for shorter maximum execution times than those provided for in regulations 68 to 71 and 73.

Value date and availability of funds.

73.(1) The following provisions shall apply—

- (a) the credit value date for the payee's payment account shall be no later than the business day on which the amount of the

payment transaction is credited to the payee's payment service provider's account; and

- (b) the payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

(2) The debit value date for the payer's payment account shall be no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

Liability

Incorrect unique identifiers.

74.(1) Where a payment order is executed in accordance with the unique identifier, it shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

(2) The following provisions shall apply—

- (a) where the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under regulation 75 for non-execution or defective execution of the payment transaction;
- (b) the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction; and
- (c) where agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

(3) Where the payment service user provides information additional to that specified in regulations 37(1)(a) or 42(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

Non-execution or defective execution.

75.(1) Where—

- (a) a payment order is initiated by the payer, his payment service provider shall, without prejudice to regulations 58, 74(2) and

(3) and 78, be liable to the payer for correct execution of the payment transaction, unless he can prove to the payer and, where relevant, to the payee's payment service provider, that the payee's payment service provider received the amount of the payment transaction in accordance with regulation 69(1), in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction;

- (b) the payer's payment service provider is liable under paragraph (a), he shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place;
- (c) the payee's payment service provider is liable under paragraph (a), he shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account,

and in the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, his payment service provider shall, regardless of liability under this sub-regulation, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

(2) The following provisions apply–

- (a) where a payment order is initiated by or through the payee, his payment service provider shall, without prejudice to regulations 58, 74(2) and (3) and 78, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with regulation 69(3), and where the payee's payment service provider is liable under this paragraph, he shall immediately re-transmit the payment order in question to the payment service provider of the payer;
- (b) the payment service provider of the payee shall, without prejudice to regulations 58, 74(2) and (3) and 78, in addition be liable to the payee for handling the payment transaction in accordance with its obligations under regulation 73, and where the payee's payment service provider is liable under this paragraph, he shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that

amount is credited to the payee's payment service provider's account;

- (c) in the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under paragraphs (a) and (b), the payer's payment service provider shall be liable to the payer, and where the payer's payment service provider is so liable he shall, as appropriate and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place; and
- (d) in the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, his payment service provider shall, regardless of liability under this sub-regulation, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(3) Payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of non-execution or defective execution of the payment transaction.

Additional financial compensation.

76. Any financial compensation additional to that provided for under regulations 74 to 75 and 77 to 78, may be determined in accordance with the law applicable to the contract concluded between the payment service user and his payment service provider.

Right of recourse.

77.(1) Where the liability of a payment service provider under regulation 75 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under regulation 75.

(2) Further financial compensation may be determined in accordance with agreements between payment service providers and/or intermediaries and the law applicable to the agreement concluded between them.

No liability.

78. Liability under this Chapter and Chapter II shall not apply in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other statutory obligations.

CHAPTER IV
DATA PROTECTION

Data protection.

79.(1) The Commissioner shall permit the processing of personal data by payment systems and payment service providers when this is necessary to safeguard the prevention, investigation and detection of payment fraud.

(2) The processing of personal data under sub-regulation (1) shall be carried out in accordance with the Data Protection Act 2004.

(3) In sub-regulation (1), “Commissioner” shall be interpreted in accordance with section 2 of the Data Protection Act 2004.

CHAPTER V
OUT-OF-COURT COMPLAINT AND REDRESS PROCEDURES
FOR THE SETTLEMENT OF DISPUTES

Complaint procedures

Complaints.

80.(1) Payment service users and other interested parties, including consumer associations, may submit complaints to the competent authority with regard to payment service providers’ alleged infringements of the provisions of these Regulations.

(2) Where appropriate and without prejudice to the right to bring proceedings before the Supreme Court, the reply from the competent authority shall inform the complainant of the existence of the out-of-court complaint and redress procedures set up in accordance with regulation 83.

Penalties.

81.(1) A payment service user or provider that is responsible for any act or omission contrary to the provisions of these Regulations or the Financial Services (EEA) (Payment Services) (Supplemental) Regulations 2015 commits an offence.

(2) A payment service user or provider found guilty of an offence contrary to sub-regulation (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Competent authorities for complaints.

82.(1) Where there has been an infringement or suspected infringement of the provisions of Parts III and IV by a payment service provider where Gibraltar is the host EEA State, the competent authority responsible for hearing complaints and imposing penalties shall be that of the home EEA State, except for agents and branches operating in Gibraltar under the right of establishment in respect of whom the competent authority shall be that described in regulation 2.

(2) Where there has been an infringement or suspected infringement of the provisions of Parts III and IV by a payment service provider where Gibraltar is the home EEA State, the competent authority responsible for hearing complaints and imposing penalties shall be that described in regulation 2, except for agents and branches operating elsewhere in the EEA under the right of establishment in respect of whom the competent authorities shall be those of the host EEA State.

(3) This regulation is modified by regulation 7(2) of the Financial Services (EEA) (Payment Services)(Supplemental) Regulations 2015.

Out-of-court redress procedures

Out-of-court redress.

83.(1) The provisions of the Arbitration Act shall apply for the settlement of disputes between payment service users and their payment service providers concerning rights and obligations arising under these Regulations as if there were an Arbitration Agreement between them providing for the reference of disputes between them to an official referee for all the purposes of section 7 of the Arbitration Act.

(2) In the case of cross-border disputes, the competent authority shall facilitate and encourage the cooperation of the bodies or persons actively involved in resolving disputes referred to in sub-regulation (1).

(3) This regulation is modified by regulation 7(3) of the Financial Services (EEA) (Payment Services) (Supplemental) Regulations 2015.

PART V
FINAL PROVISIONS

Derogations from Act.

84. Any attempt by a payment service providers to derogate, to the detriment of payment service users, from the provisions of these Regulations shall be unenforceable save where explicitly provided for in these Regulations, but payment service providers may decide to grant more favourable terms to payment service users.

Transitional provision.

85.(1) Legal persons who, before 25 December 2007, have lawfully commenced the activities of payment institutions, within the meaning of these Regulations, may continue to do so until 30 April 2011 without authorisation under regulation 10; but any such persons who have not been granted authorisation within this period shall, pursuant to regulation 29, be prohibited from providing payment services as from that date.

(2) Notwithstanding sub-regulation (1) and subject to sub-regulation (3), an exemption to the authorisation requirement under regulation 10 shall be granted by the competent authority to—

- (a) financial institutions that have commenced money transmission services under the Financial Services (Banking) Act;
- (b) since 25 December 2007, such services have been effectively included in the consolidated supervision of the parent undertaking, or of each of the parent undertakings of that financial institution in accordance with the provisions of the Financial Services (Banking) Act; and
- (c) the consolidated supervision referred to in paragraph (b), focused in particular on the minimum own funds requirements set out in the Financial Services (Banking) Act for the control of large exposures and for the purposes of the limitation of holdings provided for in that Act.

(3) The competent authority shall have notified the competent authorities of the home EEA State of these activities by 25 December 2007. This notification shall have included the information demonstrating that they

have complied with regulation 5(a), (d), (g) to (i), (k) and (l) of these Regulations. Where the competent authorities of the home EEA State are satisfied that those requirements are complied with, the financial institutions concerned shall be registered in accordance with regulation 13 of these Regulations, and the Minister may, by regulations under the principal Act, allow the competent authority to exempt those financial institutions from the requirements under regulation 5.

(4) The Minister may, by regulations under the principal Act, provide that legal persons referred to in sub-regulation (1) shall be automatically granted authorisation and entered into the register provided for in regulation 13 if the competent authority already has evidence that the requirements laid down in regulations 5 and 10 are complied with, and the competent authority shall inform the entities concerned before the authorisation is granted.

(5) The competent authority may allow persons who have lawfully commenced the activities of payment institutions within the meaning of these Regulations before 25 December 2007 and who are eligible for waiver under regulation 26 to continue those activities within Gibraltar for a transitional period not longer than 3 years without being waived in accordance with regulation 26 and entered into the register provided for in regulation 13. It shall be an offence for any such persons who are not waived within the said period of 3 years to provide payment services.

Schedule.

86. The Schedule shall have effect.

SCHEDULE

Regulation 86

PAYMENT SERVICES

1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
3. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider—
 - (a) execution of direct debits, including one-off direct debits;
 - (b) execution of payment transactions through a payment card or a similar device;
 - (c) execution of credit transfers, including standing orders.
4. Execution of payment transactions where the funds are covered by a credit line for a payment service user—
 - (a) execution of direct debits, including one-off direct debits;
 - (b) execution of payment transactions through a payment card or a similar device;
 - (c) execution of credit transfers, including standing orders.
5. Issuing and/or acquiring of payment instruments.
6. Money remittance.
7. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.