

Subsidiary Legislation made under ss.6(1), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10.

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Commencement

15.1.2020

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In exercise of the powers conferred upon the Minister by sections 6(1), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10 to, the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and upon the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made these Regulations.

FINANCIAL SERVICES (ELECTRONIC MONEY) REGULATIONS 2020

**PART 1
PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Electronic Money) Regulations 2020.

(2) These Regulations come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Financial Services Act 2019;

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

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

“close links” has the meaning given in Article 4.1(38) of the Capital Requirements Regulation;

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

“EEA electronic money institution” has the meaning given in regulation 36(2);

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“electronic money institution” means a regulated firm whose initial application for Part 7 permission is for permission to carry on the regulated activity of issuing electronic money;

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

- (a) electronic money institutions which are regulated firms;
- (b) small e-money institutions which are exempt persons;
- (c) EEA electronic money institutions;
- (d) credit institutions within the meaning of Article 4.1 of the Capital Requirements Regulation, including branches of those institutions within the EEA which is situated within the EEA, regardless of whether the head offices of those branches are located within the EEA or (in accordance with Article 47 of the Capital Requirements Directive) outside the EEA;
- (e) the Gibraltar Post Office;
- (f) the European Central Bank and the national central banks of EEA States, other than when acting in their capacity as a monetary authority or other public authority;
- (g) government departments when acting in their capacity as public authorities;
- (h) the Gibraltar Savings Bank;

“host state regulator” has the meaning given in regulation 39(2);

“initial capital” has the meaning given in paragraph 1 of Schedule 3;

“own funds” means own funds as defined in Article 4.1(118) of the Capital Requirements Regulation, and “Common Equity Tier 1 capital”, “Tier 1 capital” and “Tier 2 capital” have the same meaning as in that Regulation;

“Part 7 permission” means permission under Part 7 of the Act;

“the Payment Services Regulations” means the Financial Services (Payment Services) Regulations 2020;

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“the Register” means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to the issuance of electronic money, regulation 57;

“small e-money institution” has the meaning given in regulation 5(a).

(2) Without limiting the application of section 21 of the Interpretation and General Clauses Act, any expression used in these Regulations which is used in Schedule 2 to the Act has the same meaning as it has for the purposes of that Schedule.

(3) Accordingly, in these Regulations, the expressions listed in the first column below are defined or otherwise explained by the provisions Schedule 2 to the Act which are listed in the second column—

<i>Expression</i>	<i>Provision of Schedule 2 to the Act</i>
electronic money	Paragraph 12
payment account	Paragraph 15
payment instrument	Paragraph 15
payment services	Paragraphs 15 to 17
payment system	Paragraph 18(h)
payment transaction	Paragraph 15

(4) In these Regulations, references to amounts in Euro include references to the equivalent amounts in another currency.

(5) Unless otherwise defined, expressions used in these Regulations that are also used in the E-Money Directive have the same meaning as in that Directive.

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

Application: electronic money institutions.

3.(1) Parts 2, 4, 6 and 7 apply to electronic money institutions only.

(2) The provisions of these Regulations listed in paragraph 14 of Schedule 1 apply to small e-money institutions.

Application: electronic money issuers.

4. Parts 1, 3, 5 and 8 apply to all electronic money issuers (including electronic money institutions and small e-money institutions).

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Exempt persons in respect of issuing electronic money.

5. The following are exempt from the general prohibition in respect of the regulated activity of issuing electronic money—

- (a) a small e-money institution which satisfies the requirements of Schedule 1;
- (b) an agent through which an electronic money institution provides payment services and which, in accordance with regulation 57 is entered in the Register;
- (c) the Gibraltar Post Office;
- (d) the European Central Bank and the national central banks of EEA States other than when acting in their capacity as a monetary authority or other public authority;
- (e) government departments when acting in their capacity as public authorities;
- (f) the Gibraltar Savings Bank.

**PART 2
ELECTRONIC MONEY INSTITUTIONS**

General

Introduction.

6.(1) This Part includes provisions which supplement the threshold conditions as they apply to electronic money institutions.

(2) Each application for Part 7 permission must comply with the requirements of, and any requirements imposed by virtue of, regulation 8.

(3) In giving or varying Part 7 permission to an applicant to issue electronic money, the GFSC must ensure that the applicant meets, and will continue to meet, the threshold conditions.

(4) An electronic money institution which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

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(5) For the purposes of the Act, an electronic money institution with Part 7 permission to issue electronic money is, by virtue of section 54 of the Act, an authorised person and that authorisation—

- (a) is valid for the entire EEA; and
- (b) subject to compliance with the requirements of Part 6 of these Regulations, allows the firm to carry on throughout the EEA the regulated activity of issuing of electronic money for which it has permission, either through the right of establishment, including through a branch, or through the freedom to provide services.

Permission

Application for permission by electronic money institutions.

7.(1) Each application under section 76 of the Act for Part 7 permission to issue electronic money must include the information specified in Schedule 2.

(2) An electronic money institution must promptly inform the GFSC of any change that affects the accuracy of any information or evidence provided in accordance with sub-regulation (1).

Duty to notify changes: applications relating to Part 7 permission.

8.(1) Sub-regulation (2) applies where—

- (a) an application for Part 7 permission to issue electronic money, or to vary that permission, has been made; and
- (b) before it is determined, either—
 - (i) a material change occurs, or is likely to occur, affecting any information in connection with the application which was provided (whether at the time the application was made, at the request of the GFSC or under sub-regulation (2)); or
 - (ii) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy.

(2) The applicant must provide the GFSC with, as the case may be—

- (a) details of the change;

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- (b) the complete information; or
- (c) a correction of the inaccuracy.

(3) The information required by sub-regulation (2) must be provided—

- (a) without undue delay; or
- (b) if the change has not yet occurred, as soon as the applicant is aware of it.

(4) The GFSC may require an applicant to provide the information required by sub-regulation (2) in such form, or to verify it in such way, as the GFSC may direct.

Application of threshold conditions.

9.(1) This regulation supplements the threshold conditions in Schedule 12 to the Act as they apply to an electronic money institution.

(2) An electronic money institution must be either—

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

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

(3) The initial, and ongoing, capital requirements to be met by an electronic money institution are as specified in Part 4.

(4) The GFSC may give Part 7 permission to an electronic money institution only if, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, the GFSC is satisfied that the institution has—

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

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- (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed; and
- (c) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,

and that those arrangements, procedures and mechanisms are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

(5) The GFSC must refuse Part 7 permission to an electronic money institution if, taking into account the need to ensure the sound and prudent conduct of the affairs of an electronic money institution, the GFSC is not satisfied that any controller of the electronic institution is a fit and proper person.

(6) The GFSC must refuse Part 7 permission to an electronic money institution if the GFSC is not satisfied that the directors and persons responsible for the management of its electronic money and payment services business are-

- (a) of good repute; and
- (b) possess the appropriate knowledge and experience to issue electronic money and provide payment services.

(7) The GFSC may give Part 7 permission to an electronic money institution only if it is satisfied that the institution-

- (a) has a business plan (including for the first three financial years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly; and
- (b) has taken adequate measures to safeguard electronic money holders' funds in accordance with regulation 30.

(8) Where close links exist between an electronic money institution and other persons, the GFSC may give permission only if, in the opinion of the GFSC, those links do not prevent the effective exercise of its regulatory functions.

(9) The GFSC must refuse permission if it would be prevented from exercising its regulatory functions effectively by-

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- (a) the laws, regulations or administrative provisions of a territory which outside the EEA governing one or more person with which an institution (“the foreign provisions”) has close links; or
- (b) the difficulties in enforcing those measures.

Scope of permission.

10.(1) Where the GFSC gives Part 7 permission to an electronic money institution that permission also extends to the regulated activity of providing payment services.

(2) An electronic institution, in addition to issuing electronic money or providing payment services, may also engage in the following activities—

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

(3) An electronic money institution granting credit in relation to the provision of payment services within point (4) or (5) of paragraph 17 of Schedule 2 to the Act—

- (a) is subject to the same conditions as apply to payment institutions by virtue of regulation 11(3) of the Payment Services Regulations; and
- (b) may grant such credit only if it is not granted from funds safeguarded in accordance with regulation 30.

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

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(5) An electronic money institution which has a branch which is located in Gibraltar and whose head office is situated in a territory which is outside the EEA may only provide payment services if those services are related to the issuance of electronic money.

Imposition of requirements.

11. Where an electronic money institution intends to carry on business activities other than issuing electronic money, and the GFSC considers that the carrying on of such business impairs or is likely to impair—

- (a) the financial soundness of the electronic money institution; or
- (b) the GFSC's effective supervision of the electronic money institution,

the GFSC may, in exercise of the power conferred by section 70 of the Act, require the electronic money institution to establish a separate entity to carry on the issuance of electronic money and provision of payment services.

Other requirements

Use of distributors and agents in connection with electronic money.

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

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

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

Use of agent to provide payment services.

13.(1) Electronic money institutions may provide payment services referred to in regulation 10(1) through agents—

- (a) only if the agent is entered on the Register; and
- (b) subject to the conditions laid down in this regulation and regulation 15.

(2) An electronic money institution that intends to provide payment services in Gibraltar through an agent must provide the GFSC, in such manner as the GFSC may direct, with the following information—

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- (a) the name and address of the agent;
- (b) where relevant, a description of the internal control mechanisms that will be used by the agent to comply with provisions of the Money Laundering Directive; and
- (c) the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons;
- (d) the payment services for which the agent is registered; and
- (e) the unique identification code or number of the agent (if any).

(3) The GFSC, within two months of receiving the information in sub-regulation (2) from an electronic money institution, must inform the institution whether the agent has been entered in the Register.

(4) Where the GFSC considers that any information provided under sub- regulation (2) is incorrect, the GFSC may–

- (a) take further steps to verify the information; and
- (b) where it has done so and is not satisfied that the information provided is correct, refuse to enter the agent in the Register.

(5) If the GFSC proposes to refuse to enter an agent in the Register, it must give the electronic money institution a warning notice.

(6) If the GFSC decides to refuse to enter an agent in the Register, it must give the electronic money institution a decision notice.

(7) An agent must not begin providing payment services until it has been entered in the Register.

(8) An electronic money institution must ensure that any agent or branch acting on its behalf informs payment service users of that fact.

(9) An electronic money institution must inform the GFSC without undue delay of any change regarding its use of any agent or any entity to which its activities are outsourced.

(10) An electronic money institution may provide payment services through an agent in another EEA State in exercise of an EEA right only if the agent is entered in the Register.

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(11) An electronic money institution that intends to provide payment services in another EEA State by engaging an agent or establishing a branch must follow the procedure set out in regulation 47.

Removal of agents from the Register.

14.(1) The GFSC may remove an agent of an electronic money institution from the register where—

- (a) the institution requests, or consents to, the agent's removal from the register;
- (b) the institution has obtained registration through false statements or any other irregular means;
- (c) the GFSC has reasonable grounds to suspect that, in connection with the provision of services through the agent—
 - (i) money laundering or terrorist financing within the meaning of the Money Laundering Directive is taking place, has taken place, or has been attempted; or
 - (ii) the risk of such activities taking place would be increased;
- (d) the GFSC is not satisfied that the persons referred to in regulation 13(2)(c) are fit and proper persons;
- (e) the removal is desirable in order to protect the interests of consumers; or
- (f) the agent's provision of payment services is otherwise unlawful.

(2) Where the GFSC proposes to remove an agent from the register, other than at the request of the institution, it must give the electronic money institution a warning notice.

(3) Where the GFSC decides to remove the agent, it must give the electronic money institution a decision notice.

Outsourcing.

15.(1) An electronic money institution that intends to outsource any operational functions relating to the issuance, distribution or redemption of electronic money or the provision of payment services must inform the GFSC, in the form and manner that the GFSC may direct.

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(2) An electronic money institution must not outsource an important operational function, including its information technology systems, unless all of the conditions in sub-regulation (3) are met.

(3) The conditions are that outsourcing must not–

(a) be undertaken in a way which impairs–

(i) the quality of the electronic money institution’s internal control; or

(ii) the GFSC’s ability to monitor and retrace the electronic money institution’s compliance with the Act, these Regulations, the Payment Services Regulations and any other regulations made under the Act (“relevant provisions”);

(b) result in any delegation of responsibility by the electronic money institution’s senior management;

(c) alter the electronic money institution’s relationship with and obligations towards its electronic money holders or payment service users under these Regulations or the Payment Services Regulations;

(d) undermine any limitation, requirement or other condition with which the electronic money institution must comply in relation to it having Part 7 permission to issue electronic money; or

(e) require the removal or variation of any limitation, requirement or other condition to which the electronic money institution’s permission is subject.

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

(a) the electronic money institution’s continuing compliance with any limitation, requirement or other condition to which its permission is subject;

(b) its other obligations under these Regulations or the Payment Services Regulations;

(c) its financial performance; or

(d) the soundness or continuity of its electronic money issuance or provision of payment services.

(5) An electronic money institution must inform the GFSC without undue delay of any change to its outsourcing arrangements.

Responsibility of electronic money institution for third parties.

16.(1) An electronic money institution which relies on a third party for the performance of operational functions must take reasonable steps to ensure that the requirements of the Act, these Regulations and the Payment Services Regulations are complied with.

(2) Without prejudice to sub-regulation (1), an electronic money institution is responsible, to the same extent as it had expressly permitted it, for anything done or omitted by any of its employees, or by a distributor, agent, branch or other entity issuing, distributing or redeeming electronic money, or providing payment services, on its behalf or to which activities are outsourced.

**PART 3
CONDUCT OF BUSINESS**

Application of Part 3.

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

Issuance and redemption of electronic money

Issuance and redeemability.

18.(1) An electronic money issuer must-

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

the monetary value of the electronic money held.

(2) Electronic money issuers must not take deposits or other repayable funds from the public within the meaning of Article 9 of the Capital Requirements Directive.

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Conditions of redemption.

19. An electronic money issuer must ensure-

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

Fees for redemption.

20.(1) Redemption may be subject to a fee only where the fee is stated in the contract in accordance with regulation 19(a) and-

- (a) redemption is requested before the termination of the contract;
- (b) the contract provides for a termination date and the electronic money holder terminates the contract before that date; or
- (c) redemption is requested more than one year after the date of termination of the contract.

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

Amount of redemption.

21.(1) Where, before the termination of the contract, an electronic money holder makes a request for redemption, the electronic money holder may request redemption of the monetary value of the electronic money in whole or in part, and the electronic money issuer must redeem the amount so requested subject to any fee imposed in accordance with regulation 20.

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

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

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Requests for redemption.

22. An electronic money issuer is not required under regulation 18(1)(b) to redeem the monetary value of electronic money where the electronic money holder makes a request for redemption more than six years after the date of termination of the contract.

Redemption rights of persons other than consumers.

23. Regulations 20 and 21 do not apply in the case of a person, other than a consumer, who accepts electronic money and, in such a case, the redemption rights of that person are subject to the contract between that person and the electronic money issuer.

Prohibition of interest.

24. An electronic money issuer must not award-

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

Termination of contract.

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

Complaints.

26.(1) The GFSC must maintain arrangements designed to enable electronic money holders and other interested parties to submit complaints to it that a requirement imposed by or under this Part has been contravened by an electronic money issuer.

(2) Regulations 74 to 76 of the Payment Services Regulations apply in respect of these Regulations as they apply in respect of the Payment Services Regulations.

**PART 4
PRUDENTIAL REQUIREMENTS**

Capital requirements

Initial capital.

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27.(1) Immediately before the time of giving of Part 7 permission to issue electronic money, an electronic money institution must hold the amount of initial capital required by paragraph 2 of Schedule 3.

(2) Immediately before the time of a small e-money institution's registration, it must hold the amount (if any) of initial capital required by paragraph 3 of Schedule 3.

Own funds: electronic money institutions.

28. The own funds of an electronic money institution which is a regulated firm must not fall below the higher of-

(a) 350,000 Euro; or

(b) the amount of the own funds requirement calculated in accordance with paragraph 9 of Schedule 3, subject to any adjustment directed by the GFSC under paragraph 11 of that Schedule.

Own funds: small e-money institutions.

29.(1) Where the business activities of a small e-money institution generate average outstanding electronic money of 500,000 Euro or more, it must maintain at all times own funds equal to or in excess of the amount of the own funds requirement calculated in accordance with paragraph 10 of Schedule 3, subject to any adjustment directed by the GFSC under paragraph 12 of that Schedule.

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

Safeguarding

Safeguarding requirements.

30.(1) Electronic money institutions must safeguard funds that have been received in exchange for electronic money that has been issued (referred to in this regulation and regulations 31 and 32 as "relevant funds").

(2) Relevant funds must be safeguarded in accordance with either regulation 31 or regulation 32.

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(3) Where-

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

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

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

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

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

Safeguarding option 1.

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

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

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

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

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

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

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

(5) The institution must keep a record of-

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

(6) For the purposes of this regulation-

- (a) assets are both “secure” and “low risk” if they are—
 - (i) asset items falling into one of the categories set out in Article 336.1 of the Capital Requirements Regulation for which the specific risk capital charge is no higher than 1.6% but excluding other qualifying items as defined in Article 336.4; or
 - (ii) units in an undertaking for collective investment in transferable securities which invests solely in the assets mentioned in sub-paragraph (i); and
- (b) assets are “liquid” if they are approved as such by the GFSC.

(7) In this regulation-

“authorised credit institution” means—

- (a) a regulated firm with Part 7 permission to accept deposits; or
- (b) a person otherwise authorised as a credit institution in accordance with Article 8 of the Capital Requirements Directive other than a person in the same group as the electronic money institution;

“authorised custodian” means a regulated firm whose Part 7 permission extends to the safeguarding and administration of financial instruments or a person authorised as an investment firm under Article 5 of the MiFID 2 Directive which

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holds those financial instruments under regulatory standards at least equivalent to those set out in Article 16 of that Directive.

Safeguarding option 2.

32.(1) An electronic money institution must ensure that-

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

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

(3) In this regulation-

“authorised credit institution” has the same meaning as in regulation 31;

“authorised insurer” means a person authorised for the purposes of the Act to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with the Solvency 2 Directive, other than a person in the same group as the electronic money institution;

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

- (a) the making of a winding-up order;

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

Power of GFSC to exclude assets.

33. In exceptional circumstances the GFSC may determine that an asset that would otherwise be secure and low-risk for the purposes of regulation 31(2) by virtue of regulation 31(6) is not such an asset provided that-

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

Insolvency events.

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

- (a) the claims of electronic money holders must be paid from the asset pool in priority to all other creditors; and
- (b) until all the claims of electronic money holders have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with regulation 31(2)(a) or (b) or 32(1)(b).

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

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

(4) In this regulation-

“asset pool” means-

- (a) any relevant funds segregated in accordance with regulation 31(1);
- (b) any relevant funds held in an account in accordance with regulation 31(2)(a);
- (c) any relevant assets held in an account in accordance with regulation 31(2)(b);
- (d) any proceeds of an insurance policy or guarantee held in an account in accordance with regulation 32(1)(b);

“insolvency event” has the same meaning as in regulation 32;

“insolvency proceeding” means-

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

“security right” means-

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

Record keeping.

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

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

Appointment and duties of auditors

Accounting and statutory audit.

36.(1) The following apply, with any necessary modifications, to electronic money institutions—

- (a) the Bank Accounts Directive;
- (b) the Accounting Directive; and
- (c) the IAS Regulation.

(2) An electronic money institution's annual accounts and consolidated accounts must be audited by a statutory auditor or audit firm (within the meaning of Part 24 of the Act), unless it is exempt under the Accounting Directive and, where applicable, the Bank Accounts Directive.

(3) An electronic money institution which carries on activities other than the issuance of electronic money and the provision of payment services, must provide to the GFSC separate accounting information in respect of its issuance of electronic money and provision of payment services, and that information must be subject to an auditor's report prepared by, where applicable, the electronic money institution's statutory auditors or an audit firm.

(4) Regulation 99 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 applies, with any necessary modifications, to the statutory auditor or audit firm of an electronic money institution in respect of its electronic money issuance and payment services activities.

Appointment of auditors.

37.(1) Each electronic money institution incorporated in Gibraltar must appoint an approved auditor, being a person who is not disqualified under sub-regulation (2) from holding such an appointment.

(2) No person is qualified to be appointed as an auditor of an electronic money institution, or to continue to hold such an appointment, if the person—

- (a) is not or ceases to be an approved auditor; or

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- (b) is or becomes—
 - (i) a person acting in a capacity listed in sub-regulation (3) in relation to the electronic money institution; or
 - (ii) an officer or agent of the electronic money institution; or
 - (c) has or acquires a financial or proprietary interest in the electronic money institution otherwise than as a depositor.
- (3) The listed capacities are—
- (a) director of the electronic money institution, including—
 - (i) in every case a person who occupies the position of or performs the functions of a director, whether or not the person is called a director; and
 - (ii) in the case of an institution that is a partnership, a partner;
 - (b) managing director or chief executive of the electronic money institution;
 - (c) managing director or chief executive of any other institution of which the electronic money institution is a subsidiary undertaking;
 - (d) partner in any partnership of which the electronic money institution is also a partner;
 - (e) manager of the electronic money institution, that is to say a person (other than a director or a chief executive) who under the immediate authority of a director or chief executive of the institution—
 - (i) exercises managerial functions; or
 - (ii) is responsible for maintaining accounts or other records of the institution;
 - (f) controller of the electronic money institution;
 - (g) any person in accordance with whose directions or instructions the directors of the electronic money institution, the directors of another institution of which the electronic money institution is a subsidiary or persons who are controllers of the electronic money institution (or any of them) are accustomed to act;

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- (h) parent undertaking of an electronic money institution (or an individual who would be such a parent undertaking if the individual were an undertaking).

(4) A person (“P”) is not disqualified under sub-regulation (2) from being appointed as an auditor or from continuing to hold such an appointment, by reason of the fact that P has or acquires a financial or proprietary interest in the electronic money institution, if–

- (a) the GFSC has before P’s appointment given the person consent in writing to hold or acquire that interest; or
- (b) the GFSC has before P acquires the interest given P consent in writing to acquire it; or
- (c) where P acquires the interest otherwise than of P’s own volition, the person informs the GFSC in writing of the acquisition within seven days of becoming aware of it and either–
 - (i) the GFSC gives P consent to continue to hold the interest; or
 - (ii) if the GFSC does not give P such consent, P disposes of it within fourteen days after being informed of the decision of the GFSC (or within such longer period as the GFSC may in writing in any case allow).

(5) In this regulation, “approved auditor” means an audit firm or statutory auditor (within the meaning of Part 24 of the Act).

Notification in respect of auditors.

38.(1) An electronic money institution must without delay notify the GFSC if the electronic money institution–

- (a) proposes to remove an auditor before expiry of his or her term of office; or
- (b) proposes to replace an auditor at the expiry of his or her term of office with a different auditor.

Communications by auditors to GFSC.

39.(1) This regulation applies where a statutory auditor or audit firm (“A”) is–

- (a) an auditor of an electronic money institution;
- (b) an auditor of both–

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- (i) an electronic money institution; and
 - (ii) a body (“CL”) which has close links with the electronic money institution.

- (2) For the purposes of sections 166 and 167 of the Act, the circumstances specified in sub-regulation (3) are those in which A must notify the GFSC of information—
 - (a) which relates to the electronic money issued or payment services provided by the electronic money institution; and
 - (b) of which A becomes aware in A’s capacity as auditor of the electronic money institution or CL.

- (3) The specified circumstances are that—
 - (a) A reasonably believes that—
 - (i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the electronic money institution by or under the Act or these Regulations; and
 - (ii) the contravention may be of material significance to the GFSC in determining whether to exercise, in relation to that institution, any functions conferred on the GFSC by the Act or these Regulations;
 - (b) A reasonably believes that the information on, or A’s opinion on, those matters may be of material significance to the GFSC in determining whether the institution meets or will continue to satisfy—
 - (i) in the case of an authorised electronic money institution, the threshold conditions set out in regulation 9(2) and (4) to (9) or the requirement in regulation 28(1) to maintain own funds; or
 - (ii) in the case of a small electronic money institution, the conditions for registration set out in paragraph 4(6) to (10) of Schedule 1 or the requirement in regulation 29 to maintain own funds;
 - (c) A reasonably believes that the institution is not, may not be or may cease to be, a going concern;

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- (d) A is precluded from stating in the auditor's report that the annual accounts have been properly prepared;
- (e) A is precluded from stating in the auditor's report, where applicable, that the annual accounts give a true and fair view of the company's accounts.

Auditor to notify GFSC of adverse occurrence etc.

40.(1) An auditor of an electronic money institution must without delay notify the GFSC in writing if-

- (a) there has been an adverse occurrence or adverse change in the auditor's perception of the credit institution; and
- (b) the occurrence in paragraph (a) has given rise to a material loss or indicates that a reasonable probability exists that a material loss may arise.

**PART 5
REPORTING AND NOTIFICATION**

Duty of electronic money institution to notify change in circumstances.

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

- (a) in the case of an electronic money institution-
 - (i) its fulfilment of any of the conditions set out in regulation 9(2) or (4) to (9) or the requirement in regulation 28 to maintain own funds; or
 - (ii) the issuance, distribution or redemption of electronic money, or the payment services, which it seeks to carry on in exercise of its EEA rights;
- (b) in the case of a small e-money institution, its fulfilment of any of the conditions set out in paragraph 10(2) of Schedule 1; or
- (c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 14(1)(c) and (d),

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

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(2) An electronic money institution must inform the GFSC of any material change in the measures that it has taken in accordance with regulation 31 or 32 to safeguard funds that have been received in exchange for electronic money.

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

Reporting requirements for electronic money issuers.

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

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

PART 6

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Chapter 1 EEA firms

Application and interpretation of Chapter 1.

43.(1) This Chapter applies to EEA electronic money institutions.

(2) In this Chapter, “EEA electronic money institution” means an EEA firm within paragraph 1(1)(c) of Schedule 10 to the Act.

Qualifying for authorisation: EEA firm exercising EEA rights.

44.(1) This regulation applies to an EEA electronic money institution which intends to exercise in Gibraltar an EEA right deriving from the E-Money Directive.

(2) Once an EEA electronic money institution satisfies the qualifying conditions, it qualifies for authorisation.

(3) The qualifying conditions are—

- (a) the GFSC has received notice from the electronic money institution’s home state regulator (“a home state notice”) containing information in connection with the intended provision of services in Gibraltar;

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- (b) the GFSC has, within one month of receiving the home state regulator’s notice—
 - (i) assessed the information contained in it; and
 - (ii) provided the home state regulator with relevant information in connection with the electronic money issuance, redemption or distribution or payment services which it intends to carry on in Gibraltar;
- (c) the information to be provided under paragraph (b)(ii) includes, if applicable, any reasonable grounds for concern with regard to money laundering or terrorist financing within the meaning of the Money Laundering Directive in connection with the intended engagement of an agent or establishment of a branch in Gibraltar; and
- (d) the home state regulator has entered the agent or branch in the home state regulator’s register in accordance with the information provided to it by the EEA electronic money institution.

(4) On qualifying for authorisation as a result of sub-regulation (2), an EEA electronic money institution has in respect of each permitted activity which is a regulated activity permission to carry on the regulated activity in Gibraltar.

(5) The permission is to be treated as being on terms equivalent to those appearing from the information contained in the home state notice.

(6) In sub-regulation (4), “permitted activity” means an activity identified in the information contained in the home state regulator’s notice.

Changes to information provided under regulation 44.

45.(1) The regulation applies to an EEA electronic money institution which intends to change any of the information provided under regulation 44(3).

(2) The permission which the EEA electronic money institution has under regulation 44(4) covers the services provided in Gibraltar as a result of the changes referred to in sub-regulation (1) if—

- (a) the EEA electronic money institution has notified those changes to its home state regulator without undue delay; and
- (b) the home state regulator has communicated those changes to the GFSC.

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Gibraltar firms

Application and interpretation of Chapter 2.

46.(1) This Chapter applies to a Gibraltar firm which is an electronic money institution having an EEA right deriving from the E-Money Directive.

(2) In this Chapter–

“a Gibraltar electronic money institution” means a Gibraltar firm within sub-regulation (1);

“host state regulator”, in relation to an EEA State, means the competent authority of that EEA State for the purposes of the E-Money Directive.

Exercise of EEA rights by Gibraltar firm.

47.(1) If the following requirements are met, a Gibraltar electronic money institution may provide electronic money issuance, redemption or distribution or payment services and ancillary services in another EEA State to the extent that those services are covered by the institution’s Part 7 permission.

(2) A Gibraltar electronic money institution that proposes to exercise its EEA right in an EEA State must notify the GFSC and provide it, in the form and manner it may direct, with the following information–

- (a) the name, address and any unique identification number shown in the Register in relation to the Gibraltar electronic money institution;
- (b) the EEA States in which it intends to operate;
- (c) the electronic money issuance, redemption or distribution or payment services to be provided;
- (d) where the Gibraltar electronic money institution intends to use an agent to provide the services in any of those States, the information referred to in regulation 13(2);
- (e) where the Gibraltar electronic money institution intends to use a branch to provide the services in any of those EEA States–
 - (i) the information in paragraphs 2 and 5 of Schedule 2 in relation to the payment service business to be provided through each branch;

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- (ii) a description of the organisational structure of each branch; and
- (iii) the identity of those responsible for the management of each branch;
- (f) the distributors, if any, whom the institution intends to engage to distribute or redeem electronic money in exercise of its EEA rights in that State; and
- (g) notice of any intention of the Gibraltar electronic money institution to outsource in those EEA States operational functions relating to the electronic money issuance, distribution or redemption or the provision of payment services.

(3) Within one month receiving all of the information referred to in sub-regulation (2), the GFSC must send it to the host State regulator.

(4) Within three months of receiving all of the information referred to in sub-regulation (2), and taking account of any information it receives from the host state regulator, the GFSC must—

- (a) determine whether the Gibraltar electronic money institution is to be permitted to exercise its EEA rights in each relevant EEA State; and
- (b) notify the Gibraltar electronic money institution and the host state regulator of its decision and provide the reasons for that decision if the GFSC disagrees with the assessment of the host state regulator.

(5) Where the GFSC proposes not to permit the EEA electronic money institution to exercise its EEA right, to refuse to register the Gibraltar electronic institution's branch or agent or to withdraw a registration which it has already made, it must give the electronic money institution a warning notice.

(6) Where the GFSC decides to take any of those steps, it must give the electronic money institution a decision notice.

Changes to information provided under regulation 47.

48.(1) A Gibraltar electronic money institution must promptly inform the GFSC of any change to the information provided under regulation 47(2), including changes to its agents or branches or the entities to which its activities are outsourced in the EEA States in which it operates.

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(2) The procedures under regulation 47(3) to (6) by which the GFSC considers and reaches a determination in respect of information provided under regulation 47(2) also apply, with any necessary modification, to any information which is provided under sub-regulation (1).

Gibraltar electronic money institution business in an EEA State.

49.(1) A Gibraltar electronic money institution may commence its activities in the relevant EEA State only after the GFSC has—

- (a) has notified the electronic money institution of its decision to permit the electronic money institution to do so; and
- (b) entered the electronic money institution's agent or branch in the relevant EEA State in the Register.

(2) The Gibraltar electronic money institution must notify the GFSC of the date from which it starts to provide payment services in the relevant EEA state through its agent or branch and the GFSC must inform the host state regulator accordingly.

(3) This Chapter applies subject to any regulatory technical standards adopted by the European Commission under Article 28.5 of the Payment Services Directive (as that provision applies to electronic money institutions by virtue of Article 3.1 of the E-Money Directive).

Chapter 3 **EEA firms and Gibraltar firms**

Regulatory arrangements.

50.(1) For the purposes of performing their respective functions under these Regulations and the E-Money Directive and the GFSC must co-operate with—

- (a) the home state regulator in relation to EEA electronic money institution which has exercised its EEA rights; or
- (b) the host state regulator in relation to a Gibraltar electronic money institution.

(2) In particular, the GFSC must—

- (a) notify the host state regulator whenever it intends to carry out an on-site inspection in the territory of that regulator; and
- (b) provide the home state regulator or the host state regulator, as the case may be—

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- (i) on request, with any relevant information (including in relation to any infringement or suspected infringement of these Regulations, or of the provisions of the E-Money Directive, by a distributor, agent, branch or any other entity carrying out activities on behalf of an electronic money institution or where such infringements occurred in the exercise of the freedom to provide services); and
- (ii) on its own initiative, with all essential information (including compliance by the relevant electronic money institution with the conditions in regulation 9(2)).

(3) Where the GFSC and the home state regulator agree, the GFSC may carry out on-site inspections on behalf of the home state regulator in respect of electronic money issuance or payment services provided by an EEA electronic money institution exercising its EEA rights.

(4) This regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 29.5 to 29.7 of the Payment Services Directive (as those provisions apply to electronic money institutions by virtue of Article 3.1 of the E-Money Directive).

Non-compliance: branches or agents of EEA electronic money institutions.

51.(1) Without limiting the responsibility of the home state regulator, where the GFSC ascertains that an EEA electronic money institution with an agent or branch in Gibraltar is not complying with any provision of the these Regulations, the E-Money Directive, the Payment Services Regulations or the Payment Services Directive it must inform the home state regulator without delay.

(2) In an emergency, where immediate action is necessary to address a serious threat to the collective interests of electronic money holders or payment service users in Gibraltar, the GFSC may also take precautionary measures pending action by the home state regulator.

(3) Any precautionary measures under sub-regulation (2)–

- (a) must be appropriate and proportionate to their purpose of protecting against a serious threat to the collective interests of electronic money holders or payment service users in Gibraltar;
- (b) must not result in a preference for the EEA electronic money institution's electronic money holders or payment service users in Gibraltar over its electronic money holders or payment service users in other EEA States; and

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- (c) must be temporary and end when the serious threats identified are addressed, including with the assistance or co-operation of the home State regulator of the EBA as referred to in regulation 62.

(4) Where the GFSC decides to take precautionary measures, it must inform the home state regulator, the competent authority of any other EEA State concerned, the European Commission and the EBA of those measures and the justification for them—

- (a) in advance of taking the measures, where doing so is compatible with the emergency; and
- (b) in any case without undue delay.

Non-compliance: branches or agents of Gibraltar electronic money institutions.

52.(1) Sub-regulation (2) applies where—

- (a) the GFSC receives information from the host state regulator of a Gibraltar electronic money institution with an agent or branch in an EEA State; and
- (b) the information states that the electronic money institution is not complying with any provision of—
 - (i) Part 2 of these Regulations;
 - (ii) the E-Money Directive; or
 - (iii) Title III or IV of the Payment Services Directive.

(2) The GFSC must—

- (a) evaluate the information received;
- (b) promptly take any measures which are appropriate to ensure that the electronic money institution remedies the situation; and
- (c) promptly inform the host state regulator (and any other relevant competent authority) of the measures taken.

Reasons and communication.

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53.(1) Any measure lawfully taken by the GFSC under this Part involving penalties or restrictions on the exercise of EEA rights must be properly justified and communicated to the electronic money institution concerned.

(2) Nothing in this Part affects the GFSC's or any other competent authority's obligations under the Money Laundering Directive and Regulation (EU) 2015/847 (in particular under Article 48.1 of that Directive and Article 22.1 of that Regulation) to supervise or monitor compliance with the requirements laid down in those instruments.

**PART 7
REGULATORY POWERS**

**Chapter 1
Intervention**

Additional powers.

54.(1) Sub-regulation (2) and (3) supplement, in relation to electronic money institutions which are regulated firms, the powers of the GFSC under the Act.

(2) The power of the GFSC under Part 10 of the Act to carry out on-site inspections includes on-site inspections at—

- (a) any agent, branch or distributor of an electronic money institution; or
- (b) any entity to which activities of the electronic money institution are outsourced.

(3) The GFSC may issue directions, recommendations and guidelines for the purposes of verifying compliance with Part 2 of these Regulations.

**Chapter 2
Sanctions**

Sanctioning powers.

55. For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to contravention of a regulatory requirement (within the meaning of that Part) are to be read together with the provisions of this Chapter.

Maximum amounts of administrative penalty.

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56.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement in connection with the issuance of electronic money must be of an amount that does not exceed the higher of the following—

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
- (b) in the case of a legal person—
 - (i) £250,000; or
 - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, £125,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

PART 7
MISCELLANEOUS

The Register: electronic money issuance.

57.(1) This regulation makes provision as to the content of the Register in connection with the issuance of electronic money.

(2) The Register must contain such information as the GFSC considers appropriate and must include at least the following—

- (a) electronic money institutions;
- (b) any branches of Gibraltar electronic money institutions which in an EEA State issue electronic money, provide payment services, distribute or redeem electronic money or carry on other activities in accordance with these Regulations;
- (c) small e-money institutions;

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(d) agents of electronic money institutions required to be registered under regulation 13; and

(e) the Gibraltar Savings Bank where it issues electronic money.

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

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

(a) is not included on the Register; and

(b) issues, or proposes to issue, electronic money in Gibraltar,

the person must give notice to the GFSC.

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

(6) The Register must identify the regulated activities–

(a) to which an electronic money institution Part 7 permission relates;

(b) for which a small e-money institution is registered in accordance with Schedule 1.

(7) The Register must include details of–

(a) the cancellation or an electronic money institution's Part 7 permission;

(b) any withdrawal of a small e-money institution's registration.

(8) The GFSC may–

(a) include on the Register such other information as it considers appropriate; and

(b) exploit commercially the information contained in the register, or any part of that information.

(9) The GFSC must–

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

(10) The requirements of this regulation are subject to any regulatory technical standards adopted by the European Commission under Article 15.4 of the Payment Services Directive (as that provision applies to electronic money institutions by virtue of Article 3.1 of the E-Money Directive).

Data Protection.

58. The processing of personal data for the purposes of these Regulations must be carried out in accordance with the data protection legislation.

Right to bring actions.

59.(1) This regulation applies—

- (a) in any case where an electronic money institution which is a regulated firm—
 - (i) issues electronic money or carries on a payment service otherwise than in accordance with its Part 7 permission; and
 - (ii) by virtue of section 11 of the Act, is taken to have contravened a requirement;
- (b) to a contravention of a requirement imposed by or under Part 3; or
- (c) to a contravention of a requirement imposed by—
 - (i) regulation 30;
 - (ii) regulation 31;
 - (iii) regulation 32;

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(iv) regulation 34.

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

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

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

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

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

but does not include a government or an international organisation.

Prohibition on contracting out.

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

Cooperation and professional secrecy

Cooperation and exchange of information.

61.(1) The GFSC must co-operate with—

- (a) the competent authorities in other EEA States; and
- (b) where appropriate—

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- (i) the European Central Bank, the national central banks of EEA States and the EBA; and
- (ii) other relevant competent authorities designated under European Union law or the law of an EEA State which is applicable to electronic money issuers or payment service providers.

(2) The GFSC may exchange information with–

- (a) the competent authorities of other EEA States responsible for the authorisation and supervision of electronic money 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 authorities designated under the Payment Services Directive, the Money Laundering Directive or any other European Union law which applies to payment service providers, such as laws relating to money laundering and terrorist financing; and
- (d) the EBA, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in Article 1.5(a) of the EBA Regulation.

(3) The professional secrecy obligation in section 46 of the Act applies to any information obtained or supplied under this regulation and is to be applied strictly, in order to protect individual and business rights.

(4) In applying this regulation, Articles 53 to 61 of the Capital Requirements Directive are to be taken into account, with any necessary modifications.

Settlement of disagreements between competent authorities.

62.(1) If the GFSC considers that, in a particular matter, cross-border cooperation with the home state regulator of an EEA firm does not comply with the relevant conditions set out in regulations 61(1) or (2) or Part 6, the GFSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of the EBA Regulation.

(2) If the EBA is assisting the GFSC or the home state regulator an EEA State in respect of a disagreement between them of the kind referred to in sub-regulation (1), the GFSC must defer any decision in relation to the subject matter of the disagreement until it has been resolved under Article 19 of the EBA Regulation.

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Revocation

Revocation of 2011 Regulations.

63. The Financial Services (Electronic Money) Regulations 2011 are revoked.

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SCHEDULE 1

Regulation 5(a)

SMALL E-MONEY INSTITUTIONS

Registration

1. A small e-money institution must be entered on the Register.
- 2.(1) A small e-money institution which applies for registration must submit the information specified in Schedule 2 to the GFSC.
 - (2) An application for registration must—
 - (a) be made in such manner as the GFSC may direct; and
 - (b) contain or be accompanied by such other information as the GFSC may reasonably require.
 - (3) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
3. A small e-money institution must promptly inform the GFSC of any change that affects the accuracy of any information or evidence provided in accordance with paragraph 2.
- 4.(1) Sub-paragraph (2) applies where—
 - (a) an application for registration has been made by a small e-money institution; and
 - (b) before it is determined, either—
 - (i) a material change occurs, or is likely to occur, affecting any information in connection with the application which was provided (whether at the time the application was made, at the request of the GFSC or under sub-paragraph (2)); or
 - (ii) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy.
- (2) The applicant must provide the GFSC with, as the case may be—
 - (a) details of the change;

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- (b) the complete information; or
 - (c) a correction of the inaccuracy.
- (3) The information required by sub-paragraph (2) must be provided—
- (a) without undue delay; or
 - (b) if the change has not yet occurred, as soon as the applicant is aware of it.
- (4) The GFSC may require an applicant to provide the information required by sub-paragraph (2) in such form, or to verify it in such way, as the GFSC may direct.
5. The GFSC may refuse to register a small e-money institution only if one or more of the conditions in paragraph 6 are not met.
- 6.(1) The conditions for registration as a small e-money institution are as follows.
- (2) The application for registration must comply with the requirements of paragraph 2.
 - (3) The total business activities of the applicant immediately before the time of registration must not generate average outstanding electronic money that exceeds 5,000,000 Euro.
 - (4) The monthly average over the period of 12 months preceding the application of the total amount of relevant payment transactions must not exceed 3,000,000 Euro.
 - (5) The initial capital requirements to be met by an applicant are as specified in regulation 27(2).
 - (6) The applicant must satisfy the GFSC that, taking into account the need to ensure the sound and prudent conduct of the affairs of the small e-money institution, it has—
 - (a) robust governance arrangements for its electronic money and payment services business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility; and
 - (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed,
- that are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

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- (7) The applicant must satisfy the GFSC that-
- (a) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;
 - (b) it has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly; and
 - (c) it has taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with regulation 30.

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

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

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

(11) In sub-paragraph (4) "relevant payment transactions" in respect of a small e-money institution means payment transactions which-

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

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

7.(1) Where-

- (a) an applicant provides payment services that are not related to the issuance of electronic money or carries on any of the activities referred to in regulation 10(2) or (3); and

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(b) the amount of outstanding electronic money is unknown in advance,

the applicant may make an assessment for the purposes of paragraph 4(3) on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that the representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the GFSC.

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

8.(1) The GFSC must determine an application for registration within three months beginning with the date on which it received the completed application.

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

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

(4) If the GFSC decides to grant an application for registration it must give the applicant notice of its decision stating that the small e-money institution has been registered to carry on electronic money issuance.

(5) The notice must state the date on which the application takes effect.

(6) If the GFSC proposes to refuse an application it must give the applicant a waning notice.

(7) If the GFSC decides to refuse an application, it must give the applicant a decision notice.

Scope of exemption

9.(1) Where a small e-money institution is entered on the Register, the GFSC may limit the activities referred to in sub-paragraph (2)(b) or (c) which a small e-money institution may carry on.

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(2) A small e-money institution's exemption from the general prohibition under regulation 5 applies in relation to—

- (a) the regulated activity of issuing electronic money;
- (b) the regulated activity of providing payment services; and
- (c) any of the activities referred to in regulation 10(2) and (3).

(3) Sub-paragraph (2) is subject to—

- (a) any limitation imposed on the small e-money institution under sub-paragraph (1); and
- (b) any conditions or requirements imposed on the small e-money institution under the following provisions of this Schedule.

Supervision by the GFSC

10.(1) The functions of the GFSC include supervising a registered small e-money institution's compliance with the requirements of this Schedule and the Payment Services Regulations.

(2) For the purposes of sub-paragraph (1), the GFSC may impose a requirement on, vary or withdraw the small e-money institution's registration in accordance with paragraphs 13 to 20.

Information gathering and investigatory powers

11. For the purposes of paragraph 8, the GFSC may exercise in relation to small e-money institutions any power conferred on the GFSC under Part 10 of the Act (and for this purpose references to relevant persons or authorised persons are to be read as including small e-money institutions).

Sanctioning actions

12. In relation to any contravention of a requirement of these Regulations or the Payment Services Regulations by small e-money institutions or those who effectively control their business, the GFSC may take any sanctioning action in relation to small e-money institutions which may be taken under Part 11 of the Act in relation to a regulated firms (and, for this purpose, any reference to a suspension of permission is to be read as a reference to a suspension of registration).

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Imposition of requirements

13.(1) The GFSC may include in a registration of a small e-money institution such requirements as it considers appropriate.

(2) A requirement may, in particular, be imposed so as to require the small e-money institution to—

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

(3) A requirement may be imposed by reference to the small e-money institution's relationship with its group or other members of its group.

(4) Where—

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

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

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

(6) Sub-paragraph (5) does not affect the GFSC's powers under paragraph 14 or 16.

Variation of requirements at request of small e-money institution

14.(1) The GFSC may, on the application of a small e-money institution, vary its registration by—

- (a) imposing a requirement that may be included in a registration under paragraph 13;

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

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

(2) The conditions that must continue to be met are—

- (a) the conditions in paragraph 6(6) to (10);
- (b) where applicable, compliance with the requirement to maintain own funds in regulation 29;
- (c) the condition that the total business activities of the applicant generate average outstanding electronic money that does not exceed 5,000,000 Euro; and
- (d) the condition that the monthly average over any period of 12 months of the total amount of relevant payment transactions does not exceed 3,000,000 Euro.

(3) In sub-paragraph (2)(d) “relevant payment transactions” has the same meaning as in paragraph 6.

(4) An application for variation of registration must—

- (a) be made in such manner as the GFSC may direct; and
- (b) contain or be accompanied by such information as the GFSC may reasonably require.

(5) At any time after the application is received and before it is determined, the GFSC may require the registered institution to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) The GFSC must determine an application for variation of registration within three months beginning with the date on which it received the completed application.

(7) If the GFSC decides to grant an application for variation of a registration, it must give the applicant notice of its decision stating that the variation has been granted, described in such manner as the GFSC considers appropriate.

(8) The notice must state the date on which the variation takes effect.

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Withdrawal of registration

15.(1) The GFSC may withdraw a small e-money institution's registration and remove the institution from the Register where—

- (a) the institution has failed, during a period of at least 12 months, to issue electronic money;
- (b) the institution requests, or consents to, the cancellation of the registration;
- (c) the institution has failed, during a period of at least six months, to carry on business activity;
- (d) the institution has obtained registration by making a false statement or by any other irregular means;
- (e) the institution no longer meets, or is unlikely to continue to meet, any of the conditions in paragraph 14(2)(a) to (d);
- (f) the institution has issued electronic money or provided payment services other than in accordance with the requirements of this Schedule;
- (g) the institution would constitute a threat to the stability of, or trust in, the payment system by continuing its electronic money or payment services business;
- (h) the withdrawal is desirable in order to protect the interests of consumers;
- (i) the institution's issuance of electronic money or provision of payment services is otherwise unlawful; or
- (j) the GFSC considers that withdrawal—
 - (i) is necessary in order to avoid or reduce significant risk to any of the designated regulatory objectives of the GFSC; and
 - (ii) would be reasonable and proportionate having regard to all the circumstances.

(2) A request for the withdrawal of a small e-money institution's registration under sub-paragraph (1)(b) must be made in such manner as the GFSC may direct.

(3) At any time after receiving a request under sub-paragraph (1)(b) and before determining it, the GFSC may require the institution making the request to provide it with

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such further information as it reasonably considers necessary to enable it to determine the request.

Variation on initiative of GFSC

16. The GFSC may vary a small e-money institution's registration in any of the ways mentioned in paragraph 14(1) if it appears to the GFSC that—

- (a) the institution no longer meets, or is unlikely to continue to meet, any of the conditions in paragraph 14(2)(a) to (d);
- (b) the institution has issued electronic money or provided payment services other than in accordance with the requirements of this Schedule;
- (c) the institution would constitute a threat to the stability of, or trust in, the payment system by continuing its electronic money or payment services business;
- (d) the variation is desirable in order to protect the interests of consumers;
- (e) the variation is necessary in order to protect the reputation of Gibraltar;
- (f) the small e-money institution's issuance of electronic money or provision of payment services is otherwise unlawful; or
- (g) the GFSC considers that the variation—
 - (i) is necessary in order to avoid or reduce significant risk to any of the designated regulatory objectives of the GFSC; and
 - (ii) would be reasonable and proportionate having regard to all the circumstances.

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

Notice procedure

17.(1) Except in any case to which paragraph 18 applies, the GFSC must give the small e-money institution a warning notice if it proposes—

- (a) to exercise the GFSC's power under paragraph 13(1) ("the GFSC's requirement power");

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- (b) to exercise the GFSC's power under power paragraph 15(1) ("the GFSC's withdrawal power"); or
- (c) to exercise the GFSC's power under power paragraph 16(1) ("the GFSC's variation power").

(2) The GFSC must give the small e-money institution a decision notice if the GFSC decides—

- (a) to exercise GFSC's requirement power;
- (b) to exercise the GFSC's withdrawal power; or
- (c) to exercise the GFSC's variation power.

Directions in urgent cases

18.(1) If all of conditions A to D are met in relation to a small e-money institution ("S") the GFSC may by direction—

- (a) impose a requirement on S or vary a requirement already imposed on S under paragraph 13; or
- (b) suspend S's registration.

(2) Condition A is that the GFSC is considering whether to exercise—

- (a) the GFSC's power under paragraph 13(1) to impose a requirement on S or to vary any such requirement; or
- (b) the GFSC's power under paragraph 15(1) or 16(1) to withdraw or vary S's registration.

(3) Condition B is that the GFSC, having regard to the ground on which it is considering exercising the power in question, reasonably considers that that there is an immediate risk of substantial damage to—

- (a) the interests of consumers;
- (b) the public interest; or
- (c) the reputation of Gibraltar.

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(4) Condition C is that the GFSC reasonably considers that the giving of a direction under this section is—

- (a) to a material extent, likely to avoid the occurrence of the damage referred to in sub-paragraph (3) or to reduce the extent of such damage; and
- (b) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the regulated firm that may result from that direction.

(5) Condition D is that the GFSC gives S a notice which states that the imposition or variation of a requirement, or the withdrawal or variation of the registration, takes effect on the date of the notice or on such later date as may be specified in the notice.

(6) A direction under sub-paragraph (1) takes effect on the date specified in the notice under sub-paragraph (5).

(7) A notice under sub-paragraph (5) must—

- (a) give details of the requirement or its variation, or the suspension of registration, which is the subject of the direction under sub-paragraph (1);
- (b) identify which of the grounds specified in sub-paragraph (3) the GFSC is relying on and how that ground is engaged;
- (c) state the GFSC's reasons for imposing or varying the requirement or suspending the registration;
- (d) specify why the GFSC considers that the requirements of each of paragraphs (a) and (b) of sub-paragraph (4) is met;
- (e) inform S that S may make representations to the GFSC within such period as may be specified in the notice;
- (f) inform S of when the imposition or variation of the requirement, or the suspension of registration, takes effect;
- (g) inform S of the right to make an application under paragraph 19(1); and
- (h) indicate the procedure to be followed in making any such application.

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

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Revocation or variation of directions

19.(1) The Supreme Court may, on an application made to it by the small e-money institution of which not less than two working days' notice has been given to the GFSC—

- (a) direct the GFSC to revoke any direction given under paragraph 18(1); or
- (b) quash or vary anything done by the GFSC under paragraph 16.

(2) A small e-money institution may apply to the GFSC for the revocation or variation of a direction and, if the GFSC refuses to grant the application, it must give the firm a notice stating the reasons for the refusal.

(3) The GFSC—

- (a) may revoke or vary a direction under paragraph 18(1); and
- (b) must revoke the direction if either condition B or C specified in paragraph 18 ceases to be met.

(4) A direction under paragraph 18(1) ceases to have effect—

- (a) if it is revoked under this section; or
- (b) unless sub-paragraph (5) applies, on the expiry of the period of two months beginning with the date of the notice under paragraph 18(5).

(5) Where, before the end of the period referred to in sub-paragraph (4)(b), a warning notice under paragraph 17(1) is given to the small e-money institution in connection with the requirement or the withdrawal or variation of registration that is the subject of the direction under paragraph 18(1), the direction does not cease to have effect until—

- (a) the expiry of the period within which an appeal may be made against any decision notice under paragraph 17(2) which has been given to the small e-money institution in connection with the requirement in question or the small e-money institution's registration; or
- (b) when any appeal is finally determined or withdrawn.

Application for Part 7 permission where financial limit is exceeded

20. Where a small e-money institution ceases to comply with a condition referred to in paragraph 14(2)(c) or (d) it must, within 30 days of becoming aware of the change in circumstances, apply for Part 7 permission to issue electronic money if it intends to continue issuing electronic money in Gibraltar.

Rights and obligations of small e-money institutions

21.(1) A small e-money institution is subject to the following provisions of these Regulations—

- (a) regulation 12(1) and (2);
- (b) regulation 13(1) to (9);
- (c) regulation 14;
- (d) regulation 16;
- (e) Part 3;
- (f) Part 4, other than regulations 27(1), and 28;
- (g) Part 5;
- (h) Part 7;
- (i) regulations 57 to 60.

(2) In the application to small e-money institutions of any provision of the Regulations listed in sub-paragraph (1), apart from those that apply to electronic money issuers—

- (a) any reference to an electronic money institution is to be understood as a reference to a small e-money institution; and
- (b) any reference to an electronic money institution's Part 7 permission is to be understood as the extent of a small e-money institution's exemption, as set out in paragraph 7.

(3) In the application of regulation 59 to small e-money institutions, sub- paragraph (1) is to have effect as if, for paragraph (a), there were substituted—

- “(a) in any case where a small e-money institution issues electronic money or carries on payment services otherwise than in accordance with this Schedule;”.

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SCHEDULE 2

Regulation 7 and
paragraph 2(1) of Schedule 1

ELECTRONIC MONEY INSTITUTION: APPLICATION FOR PERMISSION

1. A programme of operations, setting out, in particular, the type of electronic money issuance and payment services which are envisaged.
2. A business plan including a forecast budget calculation for the first three financial years which demonstrates that the electronic money institution is able to employ appropriate and proportionate systems, resources and procedures to operate soundly.
3. Evidence that the **electronic money** institution holds initial capital for the purposes of regulation 9(3) (or, the application of this Schedule to small e-money institutions, paragraph 6(5) of Schedule 1).
4. A description of the measures taken for safeguarding the electronic money holders' and payment service users' funds in accordance with regulation 30.
5. A description of the electronic money institution's governance arrangements and internal control mechanisms including administrative risk management and accounting procedures, which demonstrates that such arrangements, mechanisms and procedures are proportionate, appropriate, sound and adequate.
6. A description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations under regulation 87 of the Payment Services Regulations.
7. A description of the process in place to file, monitor, track and restrict access to sensitive payment data.
8. A description of business continuity arrangements, including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans.
9. A description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud.
10. A security policy document, including a detailed risk assessment in relation to the payment services to be provided and a description of security control and mitigation

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measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data.

11. A description of the internal control mechanisms which the electronic money institution has established in order to comply with the Money Laundering Directive and Regulation 2015/847/EU of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds.

12. A description of the electronic money institution's structural organisation, including, where applicable, a description of the intended use of agents and branches and the off-site and on-site checks that the institution undertakes to perform on them at least annually, a description of outsourcing arrangements, and of its participation in a national and international payment system.

13. The identity of any controller of the electronic money institution, the size and nature of their holding in the institution and evidence of their suitability taking into account the need to ensure the sound and prudent management of an electronic money institution.

14. The identities of—

- (a) directors and persons who are or will be responsible for the management of the electronic money institution; and
- (b) where relevant, persons who are or will be responsible for the management of the electronic money issuance and payment services activities of the institution,

and evidence that they are of good repute and that they possess appropriate knowledge and experience to issue electronic money and perform payment services.

15. Where applicable, the identity of the auditors of the electronic money institution.

16. The legal status of the electronic money institution and, where the institution is a limited company, its articles of association.

17. The address of the head office of the electronic money institution.

18. For the purposes of paragraphs 4, 5 and 12, a description of—

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

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

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SCHEDULE 3

Regulations 27, 28 and 29

CAPITAL REQUIREMENTS

**PART 1
INITIAL CAPITAL**

1. For the purposes of these Regulations “initial capital” comprises one or more of the items specified in Article 26.1(a) to (e) of the Capital Requirements Regulation.

Electronic money institution

2. An applicant for Part 7 permission to carry on the regulated activity of issuing electronic money must hold an amount of initial capital of at least 350,000 Euro.

Small e-money institution

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

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

**PART 2
OWN FUNDS**

Qualifying items.

4. For the purposes of these Regulations, “own funds” means “own funds” as defined in Article 4.1(118) of the Capital Requirements Regulation, and are to be calculated in accordance with paragraphs 5 to 8.

Limits on qualifying items

5. For the purposes of calculating own funds—

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- (a) the amount of Tier 2 capital must be equal to or less than one third of the amount of Tier 1 capital; and
 - (b) at least 75% of the amount of Tier 1 capital must be in the form of Common Equity Tier 1 capital.
6. The GFSC may, in temporary and exceptional circumstances, direct that an electronic money institution or small e-money institution may exceed one or more of the limits described in paragraph 5.
7. An electronic money institution or small e-money institution must not include in its own funds calculation-
- (a) any item used in an equivalent calculation of own funds by an electronic money institution, small e-money institution, payment institution, credit institution, investment firm, asset management company or insurance undertaking in the same group; or
 - (b) in the case of an electronic money institution or small e-money institution which carries on activities other than electronic money issuance or the provision of payment services, any item included in an own funds calculation required by or under any other enactment.
8. An electronic money institution which is a regulated firm that carries on activities other than the issuance of electronic money and the provision of payment services related to the issuance of electronic money must not use-
- (a) in its calculation of own funds in accordance with Method A, B or C, any qualifying item included in its calculation of own funds in accordance with Method D;
 - (b) in its calculation of own funds in accordance with Method D, any qualifying item included in its calculation of own funds in accordance with Method A, B or C.

Own funds requirement

9. An electronic money institution which is a regulated firm must calculate its own funds requirement-
- (a) in accordance with such of Method A, Method B or Method C as the GFSC may direct in respect of any activities carried on by the electronic money institution consisting of payment services specified in points 1 to 5 of paragraph 17 of Schedule 2 to the Act that are not related to the issuance of electronic money; and

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

10. Where a small e-money institution is required by regulation 29 to maintain own funds, it must calculate its own funds requirement as an amount equal to 2% of the average outstanding electronic money of the institution.

Adjustment by GFSC

11. The GFSC may direct in respect of an electronic money institution which is a regulated firm that-

- (a) an amount of own funds resulting from a calculation made in accordance with paragraph 9(a) is to be up to 20% higher or up to 20% lower;
- (b) an amount of own funds resulting from a calculation made in accordance with paragraph 9(b) is to be up to 20% higher or up to 20% lower; or
- (c) the sum of the amounts of own funds resulting from calculations made in accordance with paragraph 9(a) and (b) is to be up to 20% higher or up to 20% lower.

12. The GFSC may direct in respect of a small e-money institution that an amount of own funds resulting from a calculation made in accordance with paragraph 10 is to be up to 20% higher or up to 20% lower.

13. A direction made under paragraph 11 or 12 must be on the basis of an evaluation of the relevant institution including, if available, and where the GFSC considers it appropriate, any risk-management processes, risk loss database or internal control mechanisms of the institution.

14. The GFSC may make a reasonable charge for making an evaluation required under paragraph 13.

Provision for start-up electronic money institutions

15. If an electronic money institution or a small e-money institution has not completed a full financial year's business, references to a figure for the preceding financial year are to be read as the equivalent figure projected in the business plan provided in the relevant institution's application for Part 7 permission or registration, subject to any adjustment to that plan required by the GFSC.

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Method A

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

(2) The own funds requirement is 10% of the fixed overheads for the preceding financial year of an electronic money institution which is a regulated firm.

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

Method B

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

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

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

(3) “Payment volume” means the total amount of payment transactions that are not related to the issuance of electronic money executed in the preceding financial year by the electronic money institution which is a regulated firm, divided by the number of months in that year.

(4) The “scaling factor” is—

- (a) 0.5 for an electronic money institution which is a regulated firm providing a payment service specified in point 6 of paragraph 17 of Schedule 2 to the Act (money remittance); and

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- (b) 1 for an electronic money institution which is a regulated firm providing any other payment service specified in points 1 to 5 of paragraph 17 of Schedule 2 to the Act.

Method C

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

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

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

subject to the proviso in sub-paragraph (7).

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

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

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

- (a) each element must be included in the sum with its positive or negative sign;
- (b) income from extraordinary or irregular items may not be used;
- (c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
- (d) the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
- (e) the relevant indicator must be calculated over the previous financial year; and
- (f) audited figures must be used unless they are not available in which case business estimates may be used.

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- (5) The “multiplication factor” is the sum of–
- (a) 10% of the first 2,500,000 Euro of the relevant indicator;
 - (b) 8% of the next 2,500,000 Euro of the relevant indicator;
 - (c) 6% of the next 20,000,000 Euro of the relevant indicator;
 - (d) 3% of the next 25,000,000 Euro of the relevant indicator; and
 - (e) 1.5% of any remaining amount of the relevant indicator.
- (6) “Scaling factor” has the meaning given in paragraph 17(4).
- (7) The proviso is that the own funds requirement must not be less than 80% of the average of the previous three financial years for the relevant indicator.

Method D

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

(2) The own funds requirement in respect of the activity of issuing electronic money and providing payment services that are related to the issuance of electronic money is an amount equal to 2% of the average outstanding electronic money of the electronic money institution which is a regulated firm.

20.(1) Where–

- (a) an electronic money institution or small e-money institution provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 10(2) or (3); and
- (b) the amount of outstanding electronic money is unknown in advance,

the institution may calculate its own funds requirement on the basis of a representative portion assumed to be used for the issuance of electronic money and payment services related to the issuance of electronic money, provided that such representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the GFSC.

(2) Where an electronic money institution or small e-money institution has not completed a sufficiently long period of business to compile historical data adequate to make the calculation under sub-paragraph (1), it must make an estimate on the basis of projected

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outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the GFSC.

Application of accounting standards

21. Except where this Schedule provides for a different method of recognition, measurement or valuation, whenever a provision in this Schedule refers to an asset, liability, equity or income statement item, an electronic money institution or small e-money institution must, for the purpose of that provision, recognise the asset, liability, equity or income statement item and measure its value in accordance with the requirements of section 238(1) of the Companies Act 2014.