

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.

Financial Services (Electronic Money) Regulations 2020

LN.2020/021

Commencement **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/488	rr. 2, (4), 3(1), 5(d), 6(5), 9(2)(b), (9), 10(2)(c), (5), 12(3), 13(2)(b), (10)-(11), 31(7)-(8), 32(3), 41(1)(a), 43-53, 57(2)(b), (10), 61-62, Sch. 2	1.1.2021
2022/188	r. 36(1)(c)	1.1.2021
2022/153	rr. 2(5)-(6), 9(2)(b), (9)(a), 10(3), (5), 14(1)(c)(i), 18(2), 36(1)(a)-(b), (2), 56(2), Schs.2-3	23.6.2022
2022/321	r. 36A	24.11.2022
2023/074	r. 18(2)	30.3.2023
2025/003	r. 31(7)	9.1.2025
2026/053	r. 29A	26.3.2026
2026/225	rr. 30(1)-(2), (5), 32(3), 32A, 39(4), 39A, Schs.4-5	16.7.2026

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2019-26

Financial Services

2020/021 Financial Services (Electronic Money) Regulations 2020

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;

“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) credit institutions within the meaning of Article 4.1 of the Capital Requirements Regulation, including branches of those institutions which are situated within Gibraltar, regardless of whether the head offices of those branches are located outside Gibraltar;
- (d) the Gibraltar Post Office;
- (e) government departments when acting in their capacity as public authorities; and
- (f) the Gibraltar Savings Bank.

“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;

“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.

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(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) *Omitted.*

(5) *Omitted.*

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

Application: electronic money institutions.

3.(1) Parts 2, 4 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).

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) *Omitted*
- (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.

(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.

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;
- (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 country or territory that is outside Gibraltar.

(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;
- (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-

- (a) the laws, regulations or administrative provisions of a country or territory which is outside Gibraltar 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 law.
- (3) An electronic money institution granting credit in relation to the provision of payment services within paragraph 17(4) or (5) 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.
- (5) An electronic money institution which has a branch which is located in Gibraltar and whose head office is situated in a country or territory which is outside Gibraltar 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.

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–

- (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 Proceeds of Crime Act 2015; 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.

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 section 7(2) or 1ZA respectively of the Proceeds of Crime Act 2015 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.

(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 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 institutions must not carry on the regulated activity of accepting deposits.

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.

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.**

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.

Restriction on dividend payments.

29A.(1) An electronic money institution may only make a dividend payment if-

- (a) it has notified the GFSC of the intention to make the payment; and

(b) the GFSC has not objected to the payment being made.

(2) In this regulation a “dividend payment” means a dividend to shareholders or a distribution of capital of any other kind, including capital repayments for a loan to a parent or holding company.

(3) An electronic money institution must give the GFSC notice of a proposed dividend payment at the earliest opportunity and, in any event, not less than 30 days before the day on which the institution proposes to declare (or otherwise decide to make) the dividend payment.

(4) A notice under sub-regulation (3) must—

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by such information as the GFSC reasonably requires.

(5) Without limiting sub-regulation (4), the information which the GFSC may require an electronic money institution to provide includes, in particular, information to demonstrate that the proposed dividend payment is appropriate in relation to the institution’s—

(a) actual and projected business performance; and

(b) current and future capital position.

(6) The GFSC may give notice (an “objection notice”) that it objects to the dividend payment being made if, having regard to the information provided and, in particular, the matters in sub-regulation (5), it is not satisfied that the electronic money institution has demonstrated that the payment is appropriate.

(7) An objection notice must be given to the electronic money institution not less than 15 days before the day on which it proposes to declare (or otherwise decide to make) the dividend payment.

(8) An objection notice takes effect immediately and requires the electronic money institution concerned to refrain from making—

(a) the proposed dividend payment; or

(b) any other dividend payment without the GFSC’s consent.

(9) An electronic money institution may appeal under section 615 of the Act against an objection notice as if it were a decision notice to which that section applies.

*Safeguarding***Safeguarding requirements.**

30.(1) An electronic money institution must safeguard relevant funds—

- (a) in accordance with either regulation 31 or regulation 32;
- (b) by complying with the requirements of Part 1 of Schedule 4; and
- (c) by maintaining and being able to retrieve a safeguarding resolution pack in accordance with Part 2 of that Schedule.

(2) In sub-regulation (1), “relevant funds” means any funds which an electronic money institution has received in exchange for electronic money that has been issued.

(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.

(5) Regulation 84 of the Financial Services (Payment Services) Regulations 2020 applies in relation to funds received by electronic money institutions for the execution of payment transactions that are not related to the issuance of electronic money with the following modifications—

- (a) references to a “payment institution” are to be treated as references to an electronic money institution; and
- (b) references to a “payment transaction” are to be treated as references to a payment transaction that is not related to the issuance of electronic money.

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
- (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 credit institution with Part 7 permission to carry on the regulated activity of accepting deposits; or
- (b) an approved foreign credit institution (see sub-regulation (8)),

but does not include 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.

(8) In sub-regulation (7), “approved foreign credit institution” means –

- (a) the central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
- (b) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;
- (c) any credit institution that–
 - (i) is subject to regulation by the banking regulator of a state that is not an OECD state;
 - (ii) is required by the law of the country or territory in which it is established to provide audited accounts;

- (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);
- (iv) has a surplus of revenue over expenditure for the last two financial years; and
- (v) has an annual report which is not materially qualified.

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

“insolvency event” means any of the insolvency events specified in section 3 of the Insolvency Act 2011;

Safeguarding returns.

32A.(1) An electronic money institution that safeguards relevant funds in accordance with regulation 30 must submit a safeguarding return to the GFSC, in the form and manner it directs, within 15 business days of the end of each calendar month (other than the month during which it becomes an electronic money institution).

(2) If the date for submission of a safeguarding return falls on a day which is not a business day, the return must be submitted so as to be received by the GFSC no later than the first business day after that date.

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.

(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 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.

(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 Financial Services (Credit Institutions) (Accounts) Regulations 2021;
 - (b) Part 7 of the Companies Act 2014; and
 - (c) the UK-adopted international accounting standards within the meaning of section 237(1) of the Companies Act 2014.
- (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 Part 7 of the Companies Act 2014 and, where applicable, the Financial Services (Credit Institutions) (Accounts) Regulations 2021.
- (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.

Submission of accounts, etc. to GFSC.

36A. An electronic money institution must submit to the GFSC, within four months of the end of the period to which they relate, a copy of each of the following documents—

- (a) every account and balance sheet prepared in accordance with regulation 36;
- (b) any report of the institution's auditor on any such account or balance sheet; and
- (c) every published annual account and balance sheet and the auditor's report on them.

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
- (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;
 - (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–
 - (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;
 - (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.
- (4) In this regulation a person has close links with an electronic money institution ("A") if that person is–
- (a) a parent undertaking of A;
 - (b) a subsidiary undertaking of A;
 - (c) a parent undertaking of a subsidiary undertaking of A; or
 - (d) a subsidiary undertaking of a parent undertaking of A.

Safeguarding audit requirements.

39A. An electronic money institution to which paragraph 1 of Schedule 5 applies must comply with the safeguarding audit requirements in that Schedule.

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, 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;
- (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.

(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***Omitted***

43. to 53. *Omitted.*

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.

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 Part 7 of the Companies Act 2014, 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) *Omitted*
- (c) small e-money institutions;
- (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—
- (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.

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;
 - (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

61. *Omitted.*

62. *Omitted.*

*Revocation***Revocation of 2011 Regulations.**

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

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;

- (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.

(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

- (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 warning 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.

(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).

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;
- (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.

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 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 power paragraph 13(1) ("the GFSC's requirement power");
 - (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 there is an immediate risk of substantial damage to—

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

(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.

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;”.

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 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 Part 3 of the Proceeds of Crime Act 2015 and Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 as it forms part of the law of Gibraltar after IP completion day 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.

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 sub-paragraph (1), the applicant must make an estimate on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the 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—

- (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 paragraph 17(1) to (5) of Schedule 2 to the Act that are not related to the issuance of electronic money; and

- (b) in accordance with Method D in respect of any activities carried on by the 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.

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 subparagraph (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 paragraph 17(6) of Schedule 2 to the Act (money remittance); and
- (b) 1 for an electronic money institution which is a regulated firm providing any other payment service specified in paragraph 17(1) to (5) 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.

(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 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.

SCHEDULE 4

Regulation 30(1)

SAFEGUARDING RELEVANT FUNDS**Application.**

1. This Schedule applies to electronic money institutions that receive or hold relevant funds in accordance with regulation 30(1).

Interpretation.

2. In this Schedule—

“acknowledgement letter fixed text” means the text in the acknowledgement letter in the Annex that is not in square brackets;

“acknowledgement letter variable text” means the text in the acknowledgement letter in the Annex that is in square brackets;

“D+1 segregation requirement” means the total amount of relevant funds that should be held by an electronic money institution in accordance with regulation 30;

“D+1 segregation resource” means the sum of items A and C of an electronic money institution’s safeguarding resource in accordance with paragraph 12(1);

“electronic money distributor” means a distributor within the meaning of regulation 2(1) of the Electronic Money Regulations;

“external safeguarding reconciliation” means the reconciliation described in paragraph 18;

“funds” has the meaning given in paragraph 2(1) of Schedule 2 to the Act;

“individual safeguarding balance” means the total amount of all funds the electronic money institution should be safeguarding for a particular client;

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

“insurance or guarantee method” means the method of safeguarding relevant funds described in regulation 32;

“internal safeguarding reconciliation” means the reconciliation described in paragraph 11(1);

“mixed remittance” means a remittance that is part client money or relevant funds and part other money or funds;

“reconciliation day” means a business day that is not a Saturday or Sunday, or a bank or public holiday in Gibraltar or where a reconciliation requires anything to be done by reference to a market outside of Gibraltar, any day on which that market is not normally open for business;

“reasonable assurance engagement” has the meaning given in paragraph 12 of the ISAE (UK) 3000 International Standard on Assurance Engagements, as amended from time to time;

“authorised credit institution” has the meaning given in regulation 31(7);

“relevant assets” means assets held by an electronic money institution for the purposes of regulation 31(2)(b);

“relevant assets account” means an account held at an authorised custodian which holds relevant assets for the purposes of regulation 31(2)(b);

“relevant funds bank account” means an account held at an authorised credit institution which holds funds for the purposes of regulation 31(2)(a);

“safeguarding account acknowledgement letter” means a letter in form of the template in the Annex;

“safeguarding resource” means the total amount safeguarded by an electronic money institution (see para 12(1));

“safeguarding requirement” the total amount an electronic money institution is required to safeguard (see para 13);

“safeguarding obligations” means any of the safeguarding obligations imposed on electronic money institutions by regulation 30 and this Schedule; and

“segregation method” means the method of safeguarding relevant funds described in regulation 31;

“standard method of internal safeguarding reconciliation” means the method of internal safeguarding reconciliation described in paragraphs 12 to 15;

PART 1 SAFEGUARDING REQUIREMENTS

Organisational requirements.

3.(1) An electronic money institution, when holding relevant funds, must maintain adequate arrangements to safeguard the client's rights and prevent the use of relevant funds for its own account.

(2) An electronic money institution that is also authorised to carry on other regulated activities must establish adequate policies and procedures to identify and determine under which activity it is holding funds.

(3) An electronic money institution must allocate to a single director or senior manager of sufficient skill and authority responsibility for–

- (a) oversight of the institution's operational compliance with its safeguarding obligations; and
- (b) reporting to the institution's governing body in respect of that oversight.

Allocation of relevant funds.

4.(1) An electronic money institution must allocate any relevant funds it receives to an individual client–

- (a) promptly and in a manner that enables it to comply with its obligations under these Regulations; and
- (b) in any event, no later than the end of the business day following the day of receipt (or where, after the receipt of funds, it has identified that the funds, or some of them, are relevant funds under sub-paragraph (3), no later than the end of the business day following that identification).

(2) Until the allocation required under sub-paragraph (1) is made, the electronic money institution must record the received relevant funds in its books and records as unallocated relevant funds.

(3) If an electronic money institution receives funds (whether in a relevant funds bank account or another account) which it is unable to immediately identify as relevant funds or other funds, it must–

- (a) take all necessary steps to identify the funds as either relevant funds or other funds; and

- (b) record the funds in its books and records as unidentified relevant funds while it performs the necessary steps under paragraph (a).

The segregation method.

5.(1) An electronic money institution that receives mixed remittances must maintain a written policy to demonstrate its approach to complying with regulation 30(3).

(2) An electronic money institution that segregates relevant funds in a different currency from that in which they were received or in which the electronic money institution is liable to the relevant client must ensure that the amount held is adjusted each day on which it performs an internal safeguarding reconciliation to an amount at least equal to the original currency amount (or currency in which the electronic money institution has its liability to its clients, if different), calculated at the previous day's closing spot exchange rate.

Segregation: secure, liquid assets.

6.(1) Where an electronic money institution wishes to seek approval of assets that have not been approved by the GFSC as set out in regulation 31(2)(b), it must submit an application in writing to the GFSC that demonstrates–

- (a) how the consumer protection objective of safeguarding will be met by investing in the assets in question; and
- (b) how liquidity risks will be managed.

(2) An electronic money institution must take reasonable steps to ensure that investment in relevant assets complies with the following requirements–

- (a) there must be a suitable spread of investments;
- (b) investments must be made in accordance with an appropriate liquidity strategy;
- (c) the investments must be in accordance with an appropriate credit risk policy;
- (d) any foreign exchange risks must be prudently managed;
- (e) the policies and procedures for complying with paragraphs (a) to (d) must be reviewed at least annually;
- (f) any redemption of an investment must be by payment into a relevant funds bank account of the electronic money institution; and

- (g) where a third party has been appointed by the electronic money institution to manage the relevant assets, the mandate should provide for the proceeds from the sale of any relevant assets to be promptly reinvested in other relevant assets or paid into the electronic money institution's relevant funds bank account.
- (3) An electronic money institution may only appoint a third party to manage relevant assets if the third party has Part 7 permission to carry out the regulated activity of portfolio management.
- (4) An electronic money institution that appoints a third party to manage relevant assets must—
 - (a) exercise all due skill, care and diligence in the selection, appointment, and periodic review of the third party and the arrangements for managing the relevant assets;
 - (b) ensure that the mandate given to the third party prevents the third party from making investment decisions that are inconsistent with these Regulations; and
 - (c) ensure that the arrangements require the third party to provide, or make available, information on the number of relevant assets held, at least every business day, which relate to the close of business on the previous business day.
- (5) Where an electronic money institution makes the selection, appointment and conducts the periodic review of the third party it must take into account the expertise and market reputation of the third party with a view to ensuring the protection of clients' rights.
- (6) An electronic money institution must, on the date the selection is made or the review completed, make a record of—
 - (a) the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under sub-paragraph (3) and (4); and
 - (b) each periodic review of its selection and appointment of a third party under sub-paragraph (3), its considerations and conclusions.
- (7) An electronic money institution that appoints a third party in accordance with sub-paragraph (3) remains responsible for ensuring that the relevant funds are only invested in accordance with regulation 31 and this Part.

Insurance or guarantee method.

7.(1) This paragraph applies when an electronic money institution elects to protect some or all relevant funds using the insurance or guarantee method.

(2) An electronic money institution may protect relevant funds through an insurance policy or a guarantee if the policy or the guarantee complies with the following conditions—

- (a) the proceeds of the insurance policy or guarantee must be payable upon an insolvency event of the electronic money institution;
- (b) there must be no condition or restriction on the prompt paying out of the insurance or guarantee, other than the certification of the insolvency event;
- (c) a certification requirement for the purposes of paragraph (b) must be no more onerous than is practically necessary;
- (d) the terms of the insurance policy or guarantee must provide for the proceeds of the policy or guarantee to be promptly paid into a relevant funds bank account of the electronic money institution; and
- (e) the terms of the insurance policy or guarantee must not permit or enable the provider to cancel the policy or guarantee prior to its expiry, unless—
 - (i) such cancellation is due to the non-payment of the premium; and
 - (ii) the provider has given the electronic money institution and the GFSC at least three months' notice of its decision to cancel the policy or guarantee.

(3) An electronic money institution must notify the GFSC at least two months before it intends to rely on the insurance or guarantee method for the first time, change the amount of cover provided by its insurance policies or guarantees, or change its insurer or guarantor.

(4) The notification must set out—

- (a) the person providing the insurance policy or guarantee;
- (b) how the insurance policy or guarantee complies with the conditions in subparagraph (2);
- (c) when the insurance policy or guarantee expires, and if it renews automatically;
- (d) whether the electronic money institution has alternative arrangements in place instead of renewal;

- (e) an assessment by the electronic money institution as to whether the use of the insurance or guarantee method or the change to the safeguarding arrangements will lead to any increase in operational risk;
 - (f) an explanation of how the assessment in paragraph (e) was carried out; and
 - (g) a statement as to how the electronic money institution will mitigate any increased operational risk.
- (5) An electronic money institution must—
 - (a) decide whether it intends to continue to use the insurance or guarantee method in good time and at least three months before the expiry of its existing insurance policy or guarantee; and
 - (b) notify the GFSC of its decision.
- (6) Where an electronic money institution has less than three months remaining on an insurance policy or guarantee taken out for the purposes of safeguarding by the insurance or guarantee method and does not have a replacement for, or renewal of, the insurance policy or guarantee in place, the institution must—
 - (a) make a plan as to how it will use the segregation method to safeguard the funds that would have been protected by the insurance policy or guarantee if that policy or guarantee had been renewed or replaced; and
 - (b) provide the GFSC with that plan.

Selection and appointment of third parties.

- 8.(1) An electronic money institution must exercise all due skill, care and diligence in—
- (a) the selection, appointment, and periodic review of third parties that provide—
 - (i) accounts where relevant funds are received, deposited or otherwise held;
 - (ii) accounts where relevant assets are deposited or otherwise held; or
 - (iii) insurance or a guarantee for the purpose of the insurance or guarantee method; and
 - (b) the arrangements for the holding or protection of relevant funds or relevant assets.

(2) The electronic money institution must consider the need for diversification as part of its due diligence under sub-paragraph (1).

(3) When an electronic money institution makes the selection, the appointment and conducts the periodic review of a third party, it must take into account–

- (a) the expertise and market reputation of the third party with a view to ensuring the protection of clients' rights; and
- (b) any legal or regulatory requirements or market practices relating to the holding of relevant funds or relevant assets or the provision of insurance or a guarantee that could adversely affect clients' rights.

(4) An electronic money institution must–

- (a) periodically review whether it is appropriate to diversify (or further diversify) the third parties with which it deposits, holds, invests, insures or guarantees some or all of the relevant funds it is required to safeguard; and
- (b) whenever it concludes that it is appropriate to do so, make adjustments accordingly to the third parties it uses and to the amounts of relevant funds or relevant assets deposited or held with them or covered by them.

(5) An electronic money institution must make a record of–

- (a) the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under sub-paragraph (1);
- (b) each periodic review of its selection and appointment of a third party under sub-paragraph (1), its considerations and conclusions; and
- (c) each periodic review that it conducts under sub-paragraph (4), its considerations and conclusions.

(6) A record under sub-paragraph (5) must be made on the date the selection is made or the review is completed (as the case may be).

Safeguarding accounts: acknowledgement letters.

9.(1) For each relevant funds bank account, an electronic money institution must–

- (a) complete and sign a safeguarding account acknowledgement letter clearly identifying the relevant funds bank account; and

- (b) send it to the authorised credit institution with which the relevant funds bank account is, or will be, opened, requesting the credit institution to acknowledge and agree to the terms of the letter by countersigning it and returning it to the electronic money institution.
- (2) For each relevant assets account, an electronic money institution must—
 - (a) complete and sign a safeguarding account acknowledgement letter clearly identifying the relevant assets account; and
 - (b) send it to the firm with which the relevant assets account is, or will be, opened, requesting the firm to acknowledge and agree to the terms of the letter by countersigning it.
- (3) In drafting acknowledgement letters under this paragraph, an electronic money institution must use the template in the Annex.
- (4) When completing an acknowledgement letter, an electronic money institution must—
 - (a) not amend any of the acknowledgement letter fixed text;
 - (b) subject to paragraph (c), ensure the acknowledgement letter variable text is removed, included or amended as appropriate; and
 - (c) not amend any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.
- (5) An acknowledgement letter will no longer comply with sub-paragraph (4) if, on countersigning and returning the acknowledgement letter to an electronic money institution, the relevant person has also made amendments to—
 - (a) any of the acknowledgement letter fixed text; or
 - (b) any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.
- (6) Amendments made to the acknowledgement letter variable text in the acknowledgement letter returned to an electronic money institution by the relevant person will not have the result that the letter has been inappropriately redrafted if those amendments—
 - (a) do not affect the meaning of the acknowledgement letter fixed text;

(b) have been specifically agreed with the electronic money institution; and

(c) do not cause the acknowledgement letter to be inaccurate.

(7) An electronic money institution must use reasonable endeavours to ensure that any individual that has countersigned an acknowledgement letter that has been returned to the electronic money institution was authorised to countersign the letter on behalf of the relevant person.

(8) An electronic money institution must retain each countersigned acknowledgement letter it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last account to which the acknowledgement letter relates is closed.

(9) An electronic money institution must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this paragraph (such as any evidence it has obtained to ensure that the individual that has countersigned an acknowledgement letter that has been returned to the electronic money institution was authorised to countersign the letter on behalf of the relevant person).

(10) An electronic money institution must periodically (at least annually, and whenever it becomes aware that something referred to in an acknowledgement letter has changed) review each of its countersigned acknowledgement letters to ensure that they remain accurate.

(11) If an electronic money institution finds that a countersigned acknowledgement letter contains an inaccuracy, the electronic money institution must promptly draw up a replacement acknowledgement letter and request that the new acknowledgement letter is countersigned and returned by the relevant person.

(12) If an electronic money institution's relevant funds bank account or relevant assets account is transferred to another person, the electronic money institution must promptly draw up a new acknowledgement letter and request that the new acknowledgement letter is countersigned and returned by the relevant person.

Records and accounts.

10.(1) An electronic money institution must establish, implement and maintain adequate policies and procedures sufficient to ensure it complies with its safeguarding obligations, including in relation to any services provided through an agent or electronic money distributor.

(2) An electronic money institution must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish between relevant funds and other funds.

(3) An electronic money institution must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the relevant funds held for clients.

(4) An electronic money institution must—

- (a) maintain records so that it is able to determine the total amount of relevant funds it should be holding for each of its clients promptly and at any time; and
- (b) ensure that its records are sufficient to show and explain its transactions and commitments for its relevant funds.

(5) Subject to any other provision to the contrary, an electronic money institution must ensure that any record made under this Part is retained for a period of five years starting from the later of—

- (a) the date it was created; or
- (b) if it has been modified since that date, the date it was most recently modified.

(6) For each internal safeguarding reconciliation and external safeguarding reconciliation the electronic money institution conducts, it must ensure that it records—

- (a) the time and date it carried out the relevant process;
- (b) the actions it took in carrying out the relevant process;
- (c) the outcome of its calculation of its safeguarding requirement and, where relevant, safeguarding resource; and
- (d) where relevant, the outcome of its comparison of its D+1 segregation requirement and D+1 segregation resource.

(7) Where an electronic money institution provides payment services that are unrelated to the issuance of electronic money, the provisions of paragraphs 10 to 20 of this Schedule should be read as if they apply separately to the institution's unrelated payment services asset pool and to its electronic money asset pool.

Internal safeguarding reconciliations.

11.(1) An internal safeguarding reconciliation requires an electronic money institution to carry out a reconciliation of its internal records and accounts—

- (a) to check whether—
 - (i) its safeguarding resource was equal to its safeguarding requirement, as at the reconciliation point in accordance with paragraph 11(6); and
 - (ii) the amount of relevant funds and relevant assets it is required to hold in relevant funds bank accounts and relevant assets accounts is held in such accounts in accordance with paragraph 15; and
 - (b) to promptly identify and resolve any discrepancies in accordance with paragraphs 19(1) to (3).
- (2) An electronic money institution that uses the insurance or guarantee method to protect relevant funds (whether alone or in combination with the segregation method) and does so using an insurance policy or guarantee that is unlimited in the amount of cover it provides—
- (a) does not need to carry out an internal safeguarding reconciliation; but
 - (b) must carry out a daily calculation of its safeguarding requirement and record—
 - (i) the date it carried out the calculation;
 - (ii) the actions it took in carrying out the calculation; and
 - (iii) the outcome of its calculation.
- (3) An electronic money institution is not required to carry out the reconciliation described in paragraph 11(1)(a)(ii) (the comparison in paragraph 15) if all of its relevant funds—
- (a) are held in a relevant funds bank account; or
 - (b) were, before the last internal safeguarding reconciliation, invested in relevant assets.
- (4) In carrying out an internal safeguarding reconciliation, an electronic money institution must use the values contained in its internal records and ledgers (for example, the payment accounts it operates, its cash book or other internal accounting records) rather than the values contained in the records it has obtained from authorised credit institutions and other third parties with which it has placed relevant funds or relevant assets (for example, bank statements).

(5) Subject to paragraphs 11(2) and (8), an electronic money institution must perform an internal safeguarding reconciliation as frequently as necessary and no less than once each reconciliation day.

(6) An electronic money institution must select reconciliation points for every day on which it performs internal safeguarding reconciliations—

- (a) which must be at the same time for every day on which the electronic money institution carries out internal safeguarding reconciliations; and
- (b) each internal safeguarding reconciliation must be based on the electronic money institution's records as at the corresponding reconciliation point.

(7) An electronic money institution must record, as part of the policies and procedures required by paragraph 10(1)—

- (a) the reconciliation points referred to in sub-paragraph (6); and
- (b) the frequency with which it performs internal safeguarding reconciliations

(8) Following an insolvency event, an electronic money institution must—

- (a) perform an internal safeguarding reconciliation that relates to the time of the insolvency event as soon as reasonably practicable after the insolvency event; and
- (b) perform further internal safeguarding reconciliations as regularly as required under sub-paragraph (9), based on the records of the electronic money institution as at the close of business on the business day before the day on which the reconciliation takes place.

(9) An electronic money institution must determine when and how often to perform an internal safeguarding reconciliation under sub-paragraph (8)(b) so as to ensure that—

- (a) the electronic money institution remains in compliance with paragraph 10(2) to (6); and
- (b) the correct amounts of relevant funds are returned to clients.

(10) In carrying out its internal safeguarding reconciliation an electronic money institution may follow—

- (a) the standard method of internal safeguarding reconciliation set out in paragraphs 12 to 15; or

- (b) a non-standard method of internal safeguarding reconciliation if it complies with the requirements in paragraph 16.

Standard method: safeguarding resource.

12.(1) The safeguarding resource is the sum of–

- (a) the aggregate balance of funds held in the electronic money institution’s relevant funds bank accounts (“item A”);
- (b) the aggregate balance of relevant funds that have been segregated but not placed in a relevant funds bank account or invested in relevant assets (“item B”);
- (c) the aggregate value of relevant assets held in the electronic money institution’s relevant assets accounts based on the electronic money institution’s records as at the close of business on the previous business day (“item C”); and
- (d) the aggregate value of relevant funds that the electronic money institution has protected using the insurance or guarantee method (“item D”).

(2) In determining item C, an electronic money institution must ensure that any valuation of the relevant assets is performed impartially and with all due skill, care and diligence.

Standard method: safeguarding requirement.

13. The safeguarding requirement, the total amount an electronic money institution is required to safeguard, is the sum of–

- (a) individual safeguarding balances calculated in accordance with paragraph 14(1), ignoring any negative balances; and
- (b) any amounts received but unallocated to an individual client under paragraph 4(1) and (2).

Standard method: individual safeguarding balance.

14.(1) An electronic money institution must calculate a client’s individual safeguarding balance in a way which captures the total amount of all funds the electronic money institution should be safeguarding for that client.

(2) When calculating an individual safeguarding balance for each client, an electronic money institution must–

(a) include—

- (i) all relevant funds received by the electronic money institution for the client; and
- (ii) any amounts credited to the client's account by the electronic money institution (for example, interest due and payable to a client on a payment account); and

(b) deduct—

- (i) any payments executed for the client (provided the funds have been paid to the payee or the payee's payment service provider);
- (ii) any electronic money that has been redeemed; and
- (iii) any sums due and payable by the client to the electronic money institution (for example, any fees and charges which are due and, under the framework contract, may be deducted from the funds held by the electronic money institution).

(3) For the purpose of sub-paragraph (2)(b)(iii), an electronic money institution must not take into account any payment or sums due and payable by the client to the extent those payments or sums create a negative balance on an account operated by the electronic money institution for the client.

Standard method: D+1 comparison.

15. In accordance with paragraph 11(1)(a)(ii), and subject to paragraph 11(3), an electronic money institution must—

(a) compare its—

- (i) D+1 segregation requirement; and
- (ii) D+1 segregation resource; and

(b) promptly identify and resolve any discrepancies in accordance with paragraphs 19(2) and (3).

Non-standard method.

16.(1) A “non-standard method of internal safeguarding reconciliation” means a method of internal safeguarding reconciliation which does not meet the requirements of the standard method of internal safeguarding reconciliation.

(2) An electronic money institution, before using a non-standard method of internal safeguarding reconciliation, must–

- (a) establish and document in writing its reasons for concluding that the method of internal safeguarding reconciliation it proposes to use will check whether–
 - (i) the amount of relevant funds recorded in the electronic money institution’s records as being safeguarded meets the electronic money institution’s safeguarding obligation to its clients; and
 - (ii) the amount of relevant funds recorded in the electronic money institution’s records as being held in a relevant funds bank account or invested in relevant assets and held in a relevant assets account meets the electronic money institution’s safeguarding obligations to its clients; and
 - (b) obtain a written report prepared by an independent auditor of the electronic money institution in line with a reasonable assurance engagement and stating the matters set out in sub-paragraph (3).
- (3) The report in sub-paragraph (2)(b) must state whether, in the auditor’s opinion–
- (a) the method of internal safeguarding reconciliation which the electronic money institution will use is suitably designed to enable it to check whether–
 - (i) the amount of relevant funds recorded in the electronic money institution’s records as being safeguarded meets the electronic money institution’s safeguarding obligations to its clients; and
 - (ii) the amount of relevant funds recorded in the electronic money institution’s records as being held in a relevant funds bank account or invested in relevant assets and held in a relevant assets account meets the electronic money institution’s safeguarding obligations to its clients; and
 - (b) the electronic money institution’s systems and controls are suitably designed to enable it to carry out the method of internal safeguarding reconciliation the electronic money institution will use.

(4) An electronic money institution using a non-standard method of internal payment reconciliation must not materially change its method of undertaking internal safeguarding reconciliations unless–

- (a) the electronic money institution has established and documented in writing its reasons for concluding that the changed methodology will meet the requirements in sub-paragraph (2)(a); and
- (b) an auditor of the electronic money institution has prepared a report that complies with the requirements in (2)(b) and (3) in respect of the electronic money institution's proposed changes.

(5) An electronic money institution must take reasonable steps to ensure that the auditor it appoints to prepare the report in sub-paragraph (2)(b)–

- (a) is approved under Part 24 of the Act to carry out statutory audits; and
- (b) has the required skill, experience and resources to perform the functions specified in this Part.

External safeguarding reconciliations.

17.(1) An electronic money institution must conduct reconciliations between its internal records and accounts and those of–

- (a) the authorised credit institution with which the electronic money institution holds a relevant funds bank account;
- (b) the persons with which the electronic money institution holds any other account in which relevant funds are held; and
- (c) the authorised custodians with which the electronic money institution holds a relevant assets account, and any third party that manages relevant assets on behalf of the electronic money institution.

(2) An electronic money institution must perform an external safeguarding reconciliation–

- (a) as frequently as necessary and no less than once each reconciliation day; and
- (b) as soon as reasonably practicable after the date to which the external safeguarding reconciliation relates.

(3) Sub-paragraph (2) does not apply to an electronic money institution following an insolvency event.

(4) Following an insolvency event, an electronic money institution must perform an external safeguarding reconciliation that relates to the time of the insolvency event as soon as reasonably practicable after the insolvency event, based on the next available statements or other forms of confirmation after the insolvency event from–

- (a) the authorised credit institutions with which the electronic money institution holds a relevant funds bank account;
- (b) the persons with which the electronic money institution holds any other account in which relevant funds are held; and
- (c) the authorised custodians with which the electronic money institution holds a relevant assets account, and any third party that manages relevant assets on behalf of the electronic money institution.

(5) When determining the frequency with which it will undertake further external safeguarding reconciliations after an insolvency event, an electronic money institution must have regard to–

- (a) the frequency, number and value of transactions which the electronic money institution undertakes in respect of relevant funds;
- (b) the risks to which the relevant funds are exposed, such as the nature, volume and complexity of the electronic money institution's activities and where and with whom the relevant funds are held or invested; and
- (c) the need to be able to verify that–
 - (i) relevant funds within an asset pool have not been incorrectly distributed, transferred or dissipated; and
 - (ii) the proceeds of any payments and transactions that settle after the insolvency event and which involve relevant funds have been received correctly.

External safeguarding reconciliations: method.

18. An external safeguarding reconciliation requires an electronic money institution to–

- (a) compare–

- (i) the balance, currency by currency, as recorded by the electronic money institution, with the balance on that account as set out in the most recent statement or other form of confirmation issued by the person with which those accounts are held, for–
 - (aa) each relevant funds bank account; and
 - (bb) any other account in which relevant funds are held; and
 - (ii) the quantity of relevant assets, investment by investment, as recorded by the electronic money institution for each account held with an authorised custodian, with the quantity set out in the most recent statement or other form of confirmation issued by the authorised custodian; and
- (b) promptly identify and resolve any discrepancies between those balances in accordance with paragraphs 19(5) and (6).

Reconciliation discrepancies.

19.(1) When a discrepancy arises between an electronic money institution's safeguarding resource and its safeguarding requirement, the electronic money institution must determine the reason for the discrepancy and, subject to sub-paragraph (4), ensure that–

- (a) any shortfall is paid into a relevant funds bank account or invested in relevant assets as soon as possible and, in any case, by the end of the day on which the reconciliation is performed; or
 - (b) any excess is withdrawn from an account holding relevant funds or relevant assets.
- (2) If an electronic money institution's D+1 segregation resource is lower than its D+1 segregation requirement, the electronic money institution must–
- (a) determine the reason for the discrepancy; and
 - (b) subject to sub-paragraph (4), ensure that sufficient relevant funds are paid into a relevant funds bank account or invested in relevant assets to address the difference as soon as possible and, in any case, by the end of the day on which the reconciliation is performed.
- (3) If it is not possible to use relevant funds to comply with sub-paragraph (2), the electronic money institution must use its own funds to do so, even if this leads to a discrepancy between its safeguarding requirement and safeguarding resource.

(4) Following an insolvency event, an electronic money institution is not required to make a payment, investment or withdrawal under sub-paragraphs (1) or (2) if the legal procedure for the insolvency event restricts it from doing so.

(5) If any discrepancy is identified by an external safeguarding reconciliation, the electronic money institution must—

- (a) investigate the reason for the discrepancy; and
- (b) take all reasonable steps to resolve it without undue delay,

unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the electronic money institution.

(6) If an external safeguarding reconciliation has identified a discrepancy which an electronic money institution is unable to resolve immediately and a record or set of records examined during that reconciliation indicates that there is a need to have a greater amount of relevant funds or relevant assets than is the case, until the matter is finally resolved the electronic money institution must—

- (a) assume that the record or set of records is accurate; and
- (b) pay its own funds into a relevant funds bank account or invest them in relevant assets.

(7) Following an insolvency event, an electronic money institution is not required to comply with sub-paragraph (6)(b) if the legal procedure for the insolvency event restricts it from doing so.

Notification requirements.

20. An electronic money institution must inform the GFSC in writing without delay if—

- (a) its internal records and accounts of relevant funds are materially out of date, inaccurate or invalid so that the electronic money institution is no longer able to comply with the requirements in paragraphs 10(2), (3) or (4);
- (b) it will be unable to, or materially fails to, conduct an internal safeguarding reconciliation in compliance with paragraphs 11(1) and (5)

- (c) it will be unable to, or materially fails to, pay any shortfall into a relevant funds bank account or invest it in relevant assets, or withdraw any excess from an account holding relevant funds or relevant assets so that the electronic money institution is unable to comply with paragraph 19(1) to (3) after having carried out an internal safeguarding reconciliation;
- (d) it will be unable to, or materially fails to, conduct an external safeguarding reconciliation in compliance with paragraph 17(1) or (2);
- (e) it will be unable to, or materially fails to, identify and resolve any discrepancies under paragraph 19(5) and (6) after having carried out an external safeguarding reconciliation; or
- (f) it becomes aware that, at any time in the preceding 12 months, the amount of relevant funds safeguarded was materially different from the total aggregate amount of relevant funds the electronic money institution was required to safeguard under these Regulations.

PART 2 SAFEGUARDING RESOLUTION PACK

Introduction.

21.(1) An electronic money institution which receives or holds relevant funds in accordance with Part 1 of this Schedule must maintain and be able to retrieve a safeguarding resolution pack in accordance with this Schedule.

(2) In this Part, “safeguarding resolution pack” means the documents and records specified in paragraph 2.

Safeguarding resolution pack: content.

22.(1) An electronic money institution must include within its safeguarding resolution pack—

- (a) a master document containing information sufficient to retrieve each document in the institution’s safeguarding resolution pack;
- (b) a document which identifies the institutions the electronic money institution has appointed (including through an agent or electronic money distributor)—
 - (i) for the receipt or holding of relevant funds; and
 - (ii) for the holding of relevant assets;

- (c) for each institution identified in paragraph (b), a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the electronic money institution that relates to the holding of relevant funds or relevant assets including any acknowledgement letters sent or received in accordance with paragraph 9;
- (d) a document which identifies the institutions the electronic money institution has appointed to provide insurance or a guarantee in accordance with regulation 32;
- (e) for each institution identified in paragraph (d), a copy of each executed policy or guarantee with that institution, including any side letters or other agreements used to clarify or modify the terms of the executed policy or guarantee;
- (f) a document which identifies each agent or electronic money distributor of the electronic money institution;
- (g) a document which—
 - (i) identifies each member of the electronic money institution's group involved in operational functions related to its safeguarding obligations and, for each group member identified; and
 - (ii) for each group member, the type of entity (for example, branch, subsidiary or nominee company) the group member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;
- (h) a document which—
 - (i) identifies each third party which the electronic money institution uses for the performance of operational functions related to its safeguarding obligations;
 - (ii) describes how to gain access to relevant information held by that third party; and
 - (iii) describes how to affect a transfer of any relevant funds or relevant assets held by the electronic money institution, but controlled by that third party;
- (i) a copy of the electronic money institution's procedures for the management, recording and transfer of the relevant funds and relevant assets that it holds; and
- (j) a document which identifies—

- (i) each senior manager and director and any other individual and the nature of their responsibility within the electronic money institution who is critical or important to the performance of operational functions related to its safeguarding obligations; and
- (ii) the individual to whom responsibility for operational oversight has been allocated under paragraph 3(3).

(2) For the purpose of sub-paragraph (1)(b), electronic money institutions must ensure that the document records–

- (a) the full name of the appointed institution in question;
- (b) its postal address, email address and telephone number; and
- (c) the numbers of all accounts opened by that electronic money institution with that institution.

(3) An electronic money institution must include, as applicable, within its safeguarding resolution pack–

- (a) the records required under the following provisions of Part 1–
 - (i) paragraph 6(6) (appointment of a third party to manage relevant assets)
 - (ii) paragraph 8(5) and (6) (selection and appointment of third parties); and
 - (iii) paragraphs 10(2), (4), (5) and (6) (records and accounts);
- (b) the policies and procedures referred to in paragraph 10(1); and
- (c) the standard terms and conditions incorporated into its contracts with clients.

Adequate arrangements and retrievability.

23.(1) An electronic money institution must, in relation to each document in its resolution pack–

- (a) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it, or any material part of its property, is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer’s appointment; and

- (b) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of request of the GFSC.
- (2) For the purpose of sub-paragraph (1), the following documents and records must be retrievable immediately–
- (a) the documents identifying the institutions referred to in paragraph 22(1)(b) and (d);
 - (b) any acknowledgement letters referred to in paragraph 22(1)(c);
 - (c) a copy of each policy or guarantee referred to in paragraph 22(1)(e);
 - (d) the document identifying individuals referred to paragraph 22(1)(j); and
 - (e) the most recent internal safeguarding reconciliation and external safeguarding reconciliation records referred to paragraph 22(3)(a)(iii).
- (3) Where an electronic money institution is reliant on the continued operation of certain systems for the provision of component documents in its safeguarding resolution pack, it must have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.

Accuracy of resolution pack.

24.(1) An electronic money institution must ensure that it reviews the content of its safeguarding resolution pack on an ongoing basis to ensure that it remains accurate.

(2) Where a change of circumstances has the effect of making the content of a document specified in paragraph 22(1) inaccurate in any material respect, an electronic money institution must ensure that the inaccuracy is corrected promptly and, in any event, no more than five business days after the change of circumstances arose.

Reporting and notifications.

25.(1) An electronic money institution must ensure that its governing body receives a report in respect of compliance with this Part at least annually.

(2) An electronic money institution must notify the GFSC in writing immediately if it has not complied with, or is unable to comply with paragraph 21(1).

Groups.

26.(1) An electronic money institution is to be treated as satisfying a requirement in this Part to include a document in its safeguarding resolution pack if–

- (a) a member of the electronic money institution’s group–
 - (i) is subject to the same requirement; and
 - (ii) includes that document in its own safeguarding resolution pack; and
- (b) the electronic money institution is still able to comply with paragraph 23(1).

(2) Where documents are held by members of an electronic money institution’s group in accordance with sub-paragraph (1), the electronic money institution must have adequate arrangements in place with its group members which allow for delivery of the documents within the timeframe referred to in paragraph 23(1).

**PART 3
TRANSITIONAL ARRANGEMENTS**

Transitional Provisions.

27.(1) An electronic money institution which, when this Schedule comes into operation, has a third party appointment in place to which paragraphs 6(4)(a) and 8(1) apply, must carry out a review of that appointment within three months of this Schedule coming into operation.

- (2) Paragraph 7(2)–
 - (a) does not apply to an insurance policy or guarantee obtained in accordance with regulation 32 before this Schedule comes into operation; but
 - (b) does apply to any renewal or extension of such a policy or guarantee after this Schedule comes into operation.
- (3) Paragraphs 6(6)(a) and 8(5)(a) do not apply to third party appointments made before this Schedule comes into operation.

**Annex
Safeguarding account acknowledgement letter template**

[Letterhead of electronic money institution, including institution’s full name and address]

[Date]

[Name and address of authorised credit institution or authorised custodian]

Safeguarding Account Acknowledgement Letter

We refer to the following [account[s]] which [name of electronic money institution], regulated by the Gibraltar Financial Services Commission), (“us”, “we” or “our”) [has opened or will open] [and/or] [has deposited or will deposit] with [name of authorised credit institution or authorised custodian] (“you” or “your”):

[insert the account title[s], the account unique identifier[s] (for example, sort code and account number, deposit number or reference code) and (if applicable) any abbreviated name of the account[s] as reflected in the firm’s systems] ([collectively,] the “Safeguarding Account[s]”).

For [each of] the Safeguarding Account[s] identified above you acknowledge that we have notified you that:

- (1) we are under an obligation to keep [money] [or] [assets] we hold to meet the claims of our clients separate from other [money] [or] [assets];
- (2) we have opened, or will open, the Safeguarding Account for the purpose of depositing [money] [or] [assets] with you to meet the claims of our clients; and
- (3) we hold all [money] [or] [assets] standing to the credit of the Safeguarding Account to meet the claims of our clients.

For [each of] the Safeguarding Account[s] above you agree that:

(4) you do not have any interest in, or recourse or right against [money] [or] [assets] in the Safeguarding Account in respect of any sum owed to you, or owed to any third party, on any other account (including an account we use for our own [money] [or] [assets]). This means, for example, that you do not have any right to combine the Safeguarding Account[s] with any other account and any right of set-off or counterclaim against [money/assets] in the Safeguarding Account, except following an insolvency event as defined in regulation 32 of the Financial Services (Electronic Money) Regulations 2020, and:

- (a) to the extent that the right of set-off or counterclaim relates to your fees and expenses in relation to the operation of the Safeguarding Account; or
- (b) if all the claims of our clients have been paid;

(5) you will title, or have titled, the Safeguarding Account as stated above and that this title is different to the title of any other account containing [money] [or] [assets] belonging to us or to any third party; and

(6) you are required to release on demand all [money] [or] [assets] standing to the credit of the Safeguarding Account upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy (or similar procedure), in any relevant jurisdiction, except:

(a) to the extent that you are exercising a right of set-off or security right; or

(b) until the fixed term expires, any amounts held under a fixed term deposit arrangement which cannot be terminated before the expiry of the fixed term,

provided that you have a contractual right to retain such [money] [or] [assets] under (a) or (b) and that this right is notwithstanding paragraphs (1) to (3) above and without breach of your agreement to paragraph (4) above.

We acknowledge that:

(7) you are not responsible for ensuring compliance by us with our own obligations in respect of the Safeguarding Account[s].

You and we agree that:

(8) the terms of this letter will remain binding upon the parties, their successors and assigns, and, for clarity, regardless of any change in any of the parties' names;

(9) this letter supersedes and replaces any previous agreement between the parties in connection with the Safeguarding Account[s], to the extent that such previous agreement is inconsistent with this letter;

(10) if there is any conflict between this letter and any other agreement between the parties over the Safeguarding Account[s], this letter will prevail;

(11) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the Financial Services (Electronic Money) Regulations 2020;

(12) this letter is governed by the laws of [insert appropriate jurisdiction] [electronic money institutions may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction]; and

(13) the courts of [insert same jurisdiction as previous] have non-exclusive jurisdiction to settle any dispute or claim from or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible.

For and on behalf of [name of electronic money institution]

x _____

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [name of authorised credit institution/custodian]

x _____

Authorised Signatory

Print Name:

Title:

Contact Information: [insert signatory's phone number and email address]

Date:

SCHEDULE 5

Regulation 39A

SAFEGUARDING AUDIT REQUIREMENTS**Application.**

1. This Schedule applies to electronic money institutions that have been required to safeguard more than £100,000 of relevant funds at any time for a period of at least 53 weeks.

Interpretation.

2.(1) In this Schedule—

“period covered” is to be construed in accordance with paragraph 8(2);

“reasonable assurance engagement” has the meaning given in paragraph 2 of Schedule 4;

“safeguarding obligations” means any of the safeguarding obligations imposed on electronic money institutions by regulation 30 and Schedule 4.

(2) In this Schedule references to “auditor” mean the auditor appointed by an electronic money institution for the purposes of this Schedule who may, but need not be, the auditor appointed by the institution for other purposes.

Appointment of auditors.

3.(1) An electronic money institution must—

- (a) appoint an auditor;
- (b) ensure that a replacement auditor is appointed to fill any vacancy in the office of auditor, either from the time it arises or as soon as reasonably practicable after that; and
- (c) promptly notify the GFSC—
 - (i) of the appointment of an auditor, the auditor’s name and business address and the date from which the appointment has effect; or
 - (ii) that a vacancy in the office of auditor has arisen or will arise, and of the reasons for the vacancy.

(2) If an electronic money institution fails to appoint an auditor within 28 days of being required to do so, and is not obliged to appoint an auditor under any other enactment, the GFSC may appoint an auditor for the electronic money institution.

(3) Where GFSC makes an appointment under sub-paragraph (2)–

- (a) the electronic money institution is bound by and must comply with the terms on which the GFSC appointed the auditor;
- (b) the institution must remunerate the auditor on the basis agreed between them or, in the absence of agreement, on a reasonable basis; and
- (c) the auditor is to hold office until the auditor resigns or the institution appoints another auditor.

Auditors' qualifications.

4.(1) Before appointing an auditor, an electronic money institution must take reasonable steps to ensure that the auditor–

- (a) is approved under Part 24 of the Act to carry out statutory audits; and
- (b) has the required skill, experience and resources to perform the functions specified in this Schedule.

(2) An electronic money institution must not appoint as auditor a person who is disqualified from acting as an auditor either for that institution or for a relevant class of institution.

(3) An electronic money institution must take reasonable steps to ensure that any auditor that it is planning to appoint or has appointed, provides the GFSC with any information that the GFSC may reasonably require regarding the auditor's qualifications, skills, experience and independence.

Independence of auditors.

5.(1) The auditor of an electronic money institution must be independent of that institution.

(2) An electronic money institution must–

- (a) take reasonable steps to ensure that the auditor which it appoints is independent of the institution; and

- (b) if becomes aware at any time that its auditor is not independent—
 - (i) take reasonable steps to ensure that it has an auditor independent of the institution; and
 - (ii) notify the GFSC if independence is not achieved within a reasonable time.
- (3) The auditor of an electronic money institution must—
 - (a) take reasonable steps to satisfy itself that it is—
 - (i) independent of the electronic money institution; and
 - (ii) free from any conflict of interest in respect of that institution from which bias may reasonably be inferred; or
 - (b) take appropriate action where this is not the case.

Cooperation with auditors.

6. An electronic money institution must cooperate with its auditor in the discharge of the auditor's duties under this Schedule.

Obligations of auditors.

- 7.(1) An auditor of an electronic money institution must—
- (a) cooperate with the GFSC; and
 - (b) give any skilled person appointed by the institution or the GFSC all assistance that person reasonably requires in accordance with section 509(4) of the Act.
- (2) An auditor must notify the GFSC without delay if the auditor—
- (a) is removed from office by an electronic money institution;
 - (b) resigns before the auditor's term of office expires; or
 - (c) is not re-appointed by an electronic money institution.
- (3) An auditor who ceases to be, or is formally notified that they will cease to be, the auditor of an electronic money institution, must notify the GFSC without delay—

- (a) of any matter connected with the cessation which the auditor thinks ought to be drawn to the GFSC's attention; or
- (b) that there is no such matter.

Auditor's safeguarding report.

8.(1) The auditor of an electronic money institution must prepare a safeguarding report addressed to the GFSC which—

- (a) states the matters set out in sub-paragraph (3);
- (b) specifies the matters to which sub-paragraphs (4) and (5) refer; and
- (c) is prepared in accordance with the terms of a reasonable assurance engagement.

(2) An auditor's safeguarding report must cover the period ending not more than 53 weeks after the later of—

- (a) the date the electronic money institution becomes subject to this Schedule; or
- (b) the end of the period covered by the previous report.

(3) The auditor's safeguarding report must state whether, in the auditor's opinion—

- (a) the electronic money institution has maintained systems adequate to enable it to comply with its safeguarding obligations throughout the period covered; and
- (b) the electronic money institution was in compliance with its safeguarding obligations at the end of the period covered by the report.

(4) If the auditor's safeguarding report states that one or more of the requirements in sub-paragraph (3) have not been met, the auditor must specify in the report each of those requirements and the respects in which they have not been met.

(5) Whether or not an auditor concludes that one or more of the requirements in sub-paragraph (3) have been met, the auditor must ensure that the safeguarding report—

- (a) identifies each individual provision in respect of which a breach has been identified; or
- (b) where the auditor has not identified any breaches includes a statement to that effect.

(6) If an auditor is unable to form an opinion as to whether one or more of the requirements in sub-paragraph (3) have been met, the auditor must specify in the safeguarding report those requirements and the reasons why the auditor has been unable to form an opinion.

(7) An auditor's safeguarding report must—

- (a) be submitted to the GFSC in the form and manner it directs; and
- (b) be signed on behalf of the statutory auditor by the individual with primary responsibility for the report and in that individual's name.

Review of draft report.

9.(1) An auditor must provide the electronic money institution with a draft of its safeguarding report so it has an adequate period of time to consider the auditor's findings and provide the auditor with comments of the kind referred to in sub-paragraph (2).

(2) An electronic money institution must consider the draft safeguarding report provided in accordance with sub-paragraph (1) and provide an explanation of—

- (a) the circumstances that gave rise to each of the breaches identified in the draft report; and
- (b) any remedial actions that it has undertaken or plans to undertake to correct those breaches.

(3) The explanation provided in accordance with sub-paragraph (2) must be submitted to the auditor in a timely manner and in any event before the auditor is required to deliver the report to the GFSC in accordance with paragraph 10.

(4) An auditor must ensure that the information provided to it by an electronic money institution in accordance with sub-paragraph (2) is included in the safeguarding report.

(5) If by the date at which the report is due for submission in accordance with paragraph 10 an auditor has not received the information referred to in with sub-paragraph (2), the auditor must submit the report without that information, together with an explanation for its absence.

Submission of final report.

10.(1) The auditor of an electronic money institution must deliver its safeguarding report to the GFSC within four months of the end of the period covered.

(2) If an auditor expects that it will be unable to comply with sub-paragraph (1), the auditor must, by no later than the end of the four-month period in question—

- (a) notify the GFSC that the auditor expects that it will be unable to deliver a safeguarding report by the end of that period; and
- (b) ensure that the notification includes or is accompanied by a full account of the reasons for the expected failure.

(3) If an auditor fails to comply with sub-paragraph (1), it must promptly—

- (a) notify the GFSC of that failure; and
- (b) ensure that the notification includes or is accompanied by a full account of the reasons for that failure.

(4) An auditor must deliver a copy of the final safeguarding report to the electronic money institution at the same time as it delivers that report to the GFSC.

(5) An electronic money institution must ensure that the final safeguarding report delivered to it in accordance with sub-paragraph (4) is reported to the institution's governing body.

Transitional Provisions.

11. For the period of 53 weeks beginning with the day on which this Schedule comes into operation—

- (a) paragraph 1 has effect as if for the reference to “for a period of at least 53 weeks” there were substituted “since this Schedule came into operation”; and
- (b) where the period covered to which paragraph 10(1) applies ends within that 53 week period, the auditor must deliver the safeguarding report within 6 months of the end of that period.