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EUROPEAN COMMUNITIES (ELECTRONIC MONEY) REGULATIONS
2011

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EUROPEAN COMMUNITIES (ELECTRONIC MONEY) REGULATIONS
2011

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EUROPEAN COMMUNITIES (ELECTRONIC MONEY) REGULATIONS
2011

I, MICHAEL NOONAN T.D., Minister for Finance, in exercise of the powers conferred on me by section 3 (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009¹, hereby make the following Regulations:

PART I

PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the European Communities (Electronic Money) Regulations 2011.

Commencement

2. These Regulations come into operation on 30 April 2011.

Interpretation

3. (1) In these Regulations—

“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 6 calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;

“the Bank” means the Central Bank of Ireland;

“competent authority”, in relation to any other Member State, means the body or bodies charged by law in the Member State with the supervision of electronic money institutions;

“consumer” means a natural person who, in electronic money contracts covered by the Electronic Money Directive, is acting for purposes other than his or her trade, business or profession;

“court” means the High Court;

¹OJ No. L267, 10.10.2009, p.7

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th April, 2011.*

“distributor” means a person—

- (a) acting on behalf of an electronic money institution, and
- (b) engaged by the institution to distribute and redeem electronic money;

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

- (a) is issued on receipt of funds for the purpose of making payment transactions,
- (b) is accepted by a person other than the electronic money issuer, and
- (c) is not excluded by Regulation 5;

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

“electronic money holder” means an electronic money holder referred to in the Electronic Money Directive;

“Member State” means a Member State of the European Communities and includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992² (as adjusted by the Protocol signed at Brussels on 17 March 1993³), as amended from time to time;

“money-laundering” means—

- (a) the conversion or transfer of property, knowing that the property is derived from criminal activity or from an act of participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the activity to evade the legal consequences of his or her action,
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that the property is derived from criminal activity or from an act of participation in criminal activity,
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that the property was derived from criminal activity or from an act of participation in criminal activity, or

²OJ No. L1, 03.01.1994, p.3

³OJ No. L1, 03.01.1994, p.572

- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in paragraphs (a), (b) or (c),

even if the activities that generated the property were carried out outside the State;

“payment account” means an account held in the name of one or more payment service users that is used for the execution of payment transactions where the holder of the account is entitled to place, transfer or withdraw funds without any restrictions;

“payment service” means each business activity listed in Schedule 1 to the Payment Services Regulations;

“Payment Services Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007⁴ on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC;

“Payment Services Regulations” means the European Communities (Payment Services) Regulations 2009 (S.I. No. 383 of 2009);

“the Register” has the meaning assigned to it by Regulation 7(1);

“registered” means entered in the Register;

“terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they should be used, in full or in part, in order to carry out any of the offences mentioned or referred to in Articles 1 to 4 of the Council Framework Decision 2002/475/JHA of 13 June 2002⁵ on combating terrorism;

“UCITS” means units in an undertaking for collective investment in transferable securities.

(2) In these Regulations (other than the definition in paragraph (1)) a reference to a payment service is a payment service to which these Regulations apply.

(3) Unless the contrary intention appears, a word or expression used in these Regulations and also in the Electronic Money Directive has in these Regulations the same meaning as it has in that Directive.

Bank to be competent authority

4. (1) The Bank is the competent authority in the State for the purposes of the Electronic Money Directive.

⁴OJ No. L319, 05.12.2007, p.1

⁵OJ No. L164, 22.6.2002, p.3

(2) Paragraph (1) does not imply that the Bank is required to supervise any business activity of an electronic money issuer other than those related to electronic money and the activities which fall within Regulation 28(1)(a) to (c).

Electronic monetary value to which these Regulations do not apply

5. These Regulations do not apply to—

(a) monetary value stored on instruments that can be used to acquire goods or services only—

(i) in the premises used by the electronic money issuer, or

(ii) under a commercial agreement with the electronic money issuer within a limited network of service providers or for a limited range of goods or services,

or

(b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or information technology device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or information technology device, on the condition that the telecommunication, digital or information technology operator does not act only as an intermediary between the electronic money user and the supplier of goods and services.

PART 2

REQUIREMENTS FOR THE TAKING UP, PURSUIT AND
PRUDENTIAL SUPERVISION OF BUSINESS OF ELECTRONIC
MONEY INSTITUTIONS

Chapter 1

*Right to issue electronic money**Persons that may issue electronic money*

6. (1) A person shall not issue electronic money unless the person is—
- (a) a credit institution within the meaning of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006⁶ relating to the taking up and pursuit of the business of credit institutions (including a branch, within the meaning of point 3 of Article 4 of that Directive, located in a Member State of a credit institution having its head office in or, in accordance with Article 38 of that Directive, elsewhere than in a Member State),
 - (b) an electronic money institution as defined in Article 2 of the Electronic Money Directive,
 - (c) An Post in its capacity as an issuer of electronic money, or the postal authority of another Member State in its capacity as an issuer of electronic money,
 - (d) the Bank, the European Central Bank or the central bank of another Member State, that is not acting in its capacity as a monetary authority, or other public authority,
 - (e) a Member State, or a regional or local authority of a Member State, that is acting in its capacity as a public authority,
 - (f) a credit union (within the meaning of the Credit Union Act 1997 (No. 15 of 1997)),
 - (g) a person that has been registered after qualifying as a small electronic money institution under Regulation 33,
 - (h) a person for the time being permitted under Part 6 to issue electronic money, or
 - (i) an electronic money institution authorised as such in another Member State pursuant to a law giving effect to the Electronic Money Directive.

⁶OJ No. L177, 30.06.2006, p.1

(2) An electronic money institution referred to in paragraph (1)(i) shall not, in the State, issue electronic money or provide a payment service unless the Bank has been given notice in accordance with Regulation 26.

(3) An electronic money institution authorised under Chapter 2 to issue electronic money shall not, in the State or in another Member State, issue electronic money that is not covered by its authorisation.

(4) An electronic money institution authorised by the law of another Member State to issue electronic money shall not, in the State, issue electronic money or provide a payment service that is not covered by its authorisation.

(5) A person referred to in paragraph (1)(g) shall not issue electronic money or provide a payment service other than one it is registered to provide.

(6) A person referred to in paragraph (1)(h) shall not issue electronic money other than electronic money it is permitted under Part 6 to provide.

The Register

7. (1) The Bank shall maintain a public register (in these Regulations called “the Register”) of—

- (a) electronic money institutions and their agents and branches,
- (b) credit unions that have been approved to issue electronic money as an additional service under the Credit Union Act 1997, and
- (c) persons who have been registered after qualifying as a small electronic money institution under Regulation 33 and their agents and branches.

(2) The Register shall specify the payment services for which an electronic money institution is authorised or for which a person referred to in paragraph (1)(c) has been registered.

(3) Electronic money institutions, credit unions referred to in paragraph (1)(b) and the persons referred to in paragraph (1)(c) shall be separately registered.

(4) The Bank shall make the Register publicly available for consultation and accessible online, and shall keep the Register up to date.

Chapter 2

Authorisation and registration of electronic money institutions

Applications for authorisation

8. (1) An application for authorisation as an electronic money institution shall be in the form directed by the Bank and shall contain or be accompanied by—

- (a) a programme of operations, setting out in particular the type of business envisaged,

- (b) a business plan, including a forecast budget calculation for the first 3 financial years that demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly,
- (c) evidence that the applicant holds initial capital in accordance with Regulation 13,
- (d) in the case of an applicant to which Regulations 29 and 30 apply, a description of the measures taken, in accordance with those Regulations, for protecting electronic money holders' funds,
- (e) a description of the applicant's governance arrangements and internal control mechanisms (including its administrative, risk-management and accounting procedures) that demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate,
- (f) a description of the internal control mechanisms that the applicant has established to comply with its obligations in relation to money laundering and terrorist financing and its obligations under Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006⁷ on information on the payer accompanying transfers of funds,
- (g) a description of the applicant's structural organisation, including, if applicable, a description of the intended use of agents and branches, a description of any outsourcing arrangements and a description of its participation in a national or international payment system,
- (h) the name of each person holding in the applicant, directly or indirectly, a qualifying holding (within the meaning of Regulation 3 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007)), the size of each such holding, and evidence of each such person's suitability taking into account the need to ensure the sound and prudent management of an electronic money institution,
- (i) the name of each director or other person responsible for the management of the applicant and, where relevant, each person responsible for the management of the proposed electronic money activities of the applicant, and evidence that each such person is of good repute and possesses appropriate knowledge and experience as determined by the home Member State of the electronic money institution,
- (j) the name of the person who will carry out for the applicant the functions of audit required by the Companies Acts,
- (k) the applicant's legal status and memorandum and articles of association or other constitutional documents, and

⁷OJ No. L345, 8.12.2006, p.1

(l) the address of the applicant's head office.

(2) The applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of electronic money services.

(3) The Bank may request from an applicant, by notice in writing, any further information that it requires for the purposes of considering the application.

(4) If the Bank makes a request for further information under paragraph (3), the Bank is not obliged to consider the application until the applicant concerned provides the information so requested.

Decision to grant or refuse authorisation

9. (1) The Bank may—

(a) grant an authorisation to operate as an electronic money institution,

(b) refuse to grant such an authorisation, or

(c) grant such an authorisation subject to a specified condition or requirement.

(2) If the Bank proposes to refuse to grant authorisation as an electronic money institution, it shall give the applicant concerned notice in writing of its intention to refuse, setting out a statement of the reasons for the proposed refusal and specifying a period (not less than 21 calendar days) within which the applicant may make submissions in writing in relation to the proposed refusal.

(3) If the Bank proposes to grant authorisation as an electronic money institution subject to a specified condition or requirement, it shall give the applicant concerned notice in writing of its intention to do so, setting out a statement of the reasons for the proposed condition or requirement and specifying a period (not less than 21 calendar days) within which the applicant may make submissions in writing in relation to the proposed condition or requirement.

(4) In making its decision on an application referred to in paragraph (2) or (3), the Bank shall take into account any submissions made by the applicant.

Bank may require adjustments to applicant's business plan

10. The Bank may, as a condition of granting an authorisation to an applicant, require the applicant to make a specified adjustment to the business plan submitted with its application. If the Bank requires such an adjustment to a business plan, references in these Regulations to the business plan are taken to be references to the plan as adjusted.

Conditions for granting of authorisation

11. (1) The Bank shall grant an authorisation only to—

- (a) a legal person established in the State that has its head office and its registered office in the State, or
- (b) a legal person which has a branch that is located in the State and whose head office is situated in a territory that is outside the European Economic Area.

(2) The Bank shall grant an authorisation if the information and evidence accompanying the application complies with all the requirements of Regulation 8 and if the Bank's overall assessment, having scrutinised the application, is favourable. Before granting an authorisation, the Bank may consult other relevant public authorities.

(3) The Bank shall grant an authorisation only if, taking into account the need to ensure the sound and prudent management of an electronic money institution, the electronic money institution has robust governance arrangements, including—

- (a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
- (b) effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and
- (c) adequate internal control mechanisms, including sound administrative and accounting procedures.

Those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the electronic money institution.

(4) Where an electronic money institution issues electronic money and is also engaged in other business activities, the Bank may require the electronic money institution to establish a separate entity for the issuance of electronic money if the other business activities of the electronic money institution impair or are likely to impair either the financial soundness of the electronic money institution or the ability of the Bank to monitor the electronic money institution's compliance with its obligations under these Regulations.

(5) The Bank shall refuse to grant an authorisation if, taking into account the need to ensure the sound and prudent management of an electronic money institution, it is not satisfied as to the suitability of any shareholder or member that has a qualifying holding within the meaning of Regulation 37.

(6) Where close links exist between an electronic money institution and another person, the Bank shall grant an authorisation only if those links do not prevent the effective exercise of its supervisory functions.

(7) The Bank shall grant an authorisation only if the laws, regulations or administrative provisions of a third country that govern a person with whom the electronic money institution has close links, or difficulties involved in the

enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of its supervisory functions.

(8) For the purposes of paragraphs (6) and (7) “close links” exist between 2 or more persons if—

(a) they are linked by—

- (i) participation in ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or
- (ii) a control relationship (that is, the relationship between a parent undertaking and a subsidiary, or a similar relationship between a person and an undertaking),

or

(b) they are permanently linked to the same third person by a control relationship.

(9) The Bank shall notify the European Commission of all authorisations for branches of electronic money institutions having their head office outside the European Economic Area.

Communication of the decision

12. Within 3 months of the receipt of an application (or, if the application is incomplete, of all the information required for the decision), the Bank shall inform the applicant concerned whether the authorisation has been granted or refused. The Bank shall give reasons if it refuses to grant the authorisation.

Chapter 3

Conditions of authorisation

Initial capital

13. (1) The Bank shall not authorise an applicant as an electronic money institution unless the applicant holds initial capital of at least €350,000.

(2) For the purposes of calculating an applicant’s initial capital, only the elements of its own funds described in subparagraphs (a) and (b) of Regulation 3(1) of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) shall be taken into account.

Own funds

14. (1) The Bank shall not authorise an applicant as an electronic money institution unless the applicant holds own funds of at least—

(a) the higher of—

- (i) the amount required by virtue of Regulation 13 as its initial capital, and

(ii) the amount calculated—

(I) in respect of the issuance of electronic money, by Method D, and

(II) if it proposes to engage in payment services which are not related to the issuance of electronic money, by whichever of Methods A, B or C the Bank directs the institution, under Regulation 16(2), to use.

(b) if the Bank so permits under paragraph (5), the amount required by virtue of Regulation 13 as the applicant's initial capital.

(2) Method D is set out in Regulation 15.

(3) Methods A, B and C are set out in Regulations 14, 15 and 16 respectively of the Payment Services Regulations.

(4) On the basis of an evaluation of the risk-management processes, risk-loss database and internal control mechanisms of an electronic money institution, the Bank may require an applicant to hold an amount of own funds that is up to 20% higher than, or permit it to hold an amount of own funds that is up to 20% lower than, the amount that results from the application of the method directed by the Bank under Regulation 16(1) and, if applicable, Regulation 16(2).

(5) The Bank may permit an applicant, on a case by case basis, not to hold own funds in accordance with paragraph (1)(a) if the electronic money institution is included in the consolidated supervision of a parent credit institution and meets the following conditions:

(a) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent credit institution;

(b) either the parent credit institution satisfies the Bank regarding the prudent management of the electronic money institution and has declared, with the consent of the Bank, that it guarantees the commitments entered into by the electronic money institution, or the risks in the electronic money institution are of negligible interest;

(c) the risk-evaluation, measurement and control procedures of the parent credit institution cover the electronic money institution; and

(d) the parent credit institution holds more than 50% of the voting rights attaching to shares in the capital of the electronic money institution, or has the right to appoint or remove a majority of the members of the management body of the electronic money institution.

Calculation of own funds — Method D

15. For Method D, the amount is at least 2% of the average outstanding electronic money.

Calculation of amount of own funds

16. (1) Subject to Regulation 14(4) and (5), the Bank shall direct an applicant in writing to employ Method D to calculate the amount of own funds that the applicant must hold in respect of the issuance of electronic money.

(2) Subject to Regulation 14(5), the Bank shall direct an applicant in writing to employ Method A, Method B or Method C to calculate the amount of own funds that the applicant must hold in respect of payment services in which an electronic money institution may engage which are not related to the issuance of electronic money.

(3) Regardless of the method that an applicant is to use in calculating own funds, in doing so, the applicant may take into account only components referred to in Regulations 3 and 9 of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006, subject to Regulations 7 and 8 and the limits set out in Regulation 11, of those Regulations.

(4) Regardless of the method that an applicant is to use in calculating own funds, in doing so—

- (a) where the applicant belongs to the same group as another electronic money institution, credit institution, payment institution, investment firm, asset management company or insurance or reinsurance undertaking, the applicant shall not take into account elements that also form part of a calculation of own funds for another member of the group, or
- (b) where the applicant carries out activities other than the issuance of electronic money or the provision of payment services, it shall not, in calculating own funds, take into account elements that are properly attributable to any of those other activities.

Average outstanding electronic money

17. (1) Where—

- (a) a person carries out payment services that are not related to the issuance of electronic money or carries out any of the activities which fall within Regulation 28(1)(b) to (e), and
- (b) the amount of outstanding electronic money is unknown in advance, the person may make an assessment for the purposes of Regulation 14(1)(a) 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 Bank.

(2) Where a person has not completed a sufficiently long period of business to compile historical data adequate to make the assessment under paragraph (1), the person 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 Bank.

Maintenance of authorisation

18. Where any change affects the accuracy of information and evidence provided by an electronic money institution in its application for authorisation in accordance with Regulation 8, the electronic money institution shall without undue delay inform the Bank in writing accordingly.

Accounting and audit

19. (1) For supervisory purposes, an electronic money institution shall provide separate accounting information for activities other than the issuance of electronic money and payment services, and shall provide an auditor's report in relation to all such accounting information.

(2) The obligations of an auditor of the holder of a licence under section 47 of the Central Bank Act 1989 (No. 16 of 1989) shall be taken to apply to the auditor of an electronic money institution. For that application—

- (a) references in that section to the holder of a licence shall be taken to be references to a electronic money institution,
- (b) a reference in that section to depositors shall be taken to be a reference to electronic money holders, and
- (c) references in that section to the Central Bank Acts 1942 to 1989 shall be taken to be references to these Regulations.

Use of distributors, agents or any other entity acting on behalf of electronic money institution

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

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

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

(4) An electronic money institution may provide payment services in the State through an agent only if the agent is included on the Register.

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

Requirement for agents to be registered

21. (1) If an electronic money institution intends to provide payment services through an agent it shall, at least 30 calendar days before the agent commences to provide the service, notify the Bank in writing of the following:

- (a) the name and address of the agent;
- (b) a description of the internal control mechanisms that will be used by the agent to comply with the electronic money institution's obligations in relation to money laundering and terrorist financing;
- (c) the names of directors and persons responsible for the management of the agent; and
- (d) evidence that they are fit and proper persons.

(2) When the Bank receives the information required by paragraph (1) it may list the agent in the Register.

(3) Before listing the agent in the Register, the Bank may, if it considers that the information provided to it is incorrect, take action to verify the information.

(4) If, after taking action to verify the information, the Bank is not satisfied that the information provided to it pursuant to paragraph (1) is correct, it may refuse to list the agent in the Register.

(5) If an electronic money institution wishes to provide payment services in another Member State by engaging an agent, before the Bank registers the agent, the Bank shall inform the competent authorities of the host Member State of its intention to register the agent and shall take their opinion into account.

(6) An electronic money institution shall ensure that any agent acting on its behalf informs payment service users that it is acting on behalf of the electronic money institution.

Outsourcing of functions

22. (1) For the purposes of this Regulation, an operational function is important if a defect or failure in its performance would materially impair—

- (a) the continuing compliance of the electronic money institution concerned with the requirements of its authorisation or its other obligations under these Regulations,
- (b) its financial performance, or
- (c) the soundness or continuity of its payment services.

(2) If an electronic money institution intends to outsource an operational function of the issuance of electronic money or the provision of payment services, it shall notify the Bank in writing accordingly at least 30 calendar days before the outsourcing is to commence.

(3) The Bank may direct an electronic money institution not to outsource an important operational function if the Bank is of the opinion that the outsourcing would—

- (a) result in the delegation by senior management of its responsibility,
- (b) alter the relationship and obligations of the electronic money institution towards its electronic money holders or payment service users under these Regulations,
- (c) undermine the conditions with which the electronic money institution is to comply in order to be authorised and remain so,
- (d) remove or modify any other condition of the electronic money institution's authorisation,
- (e) materially impair the quality of the electronic money institution's internal control, or
- (f) materially impair the ability of the Bank to monitor the electronic money institution's compliance with its obligations under these Regulations.

Establishment of branch or engagement of agent in the State by electronic money institution authorised in another Member State

23. If an electronic money institution authorised in another Member State wishes to establish a branch in the State or wishes to engage an agent to provide payment services in the State, and the Bank has reasonable grounds to suspect that, in connection with the intended establishment of the branch or the engagement of the agent, as the case may be—

- (a) money laundering or terrorist financing is taking place, has taken place or has been attempted, or
- (b) the establishment of the branch or the engagement of the agent, as the case may be, could increase the risk of money laundering or terrorist financing,

it shall so inform the competent authorities of the electronic money institution's home Member State.

Liability

24. (1) If an electronic money institution relies on a third party for the performance of an operational function, the electronic money institution shall take reasonable steps to ensure that the third party complies with the requirements of these Regulations so far as those requirements are capable of application to the third party.

- (2) An electronic money institution remains fully liable for any acts of—
 - (a) its employees, or

- (b) any distributor, agent, branch or entity to which activities are outsourced.

Record-keeping

25. An electronic money institution shall keep all appropriate records for the purpose of this Part for at least 5 years.

Obligation to give notice of intention to commence providing certain services in another Member State

26. (1) An electronic money institution intending to—

- (a) commence providing electronic money issuance, redemption or distribution services in another Member State, or
- (b) commence payment services in another Member State,

shall so notify the Bank in writing at least one month before the date that it proposes to commence providing those services in the other Member State.

(2) Within one month of receiving the notification referred to in paragraph (1), the Bank shall inform the competent authorities of the host Member State of—

- (a) the name and address of the electronic money institution,
- (b) the names of the individuals to be responsible for the management of the branch,
- (c) its organisational structure, and
- (d) the kind of services referred to in paragraph (1) that it intends to provide in the host Member State.

(3) If an electronic money institution authorised in the State wishes to establish a branch in another Member State or wishes to engage an agent to provide payment services in another Member State, and the competent authorities of that Member State inform the Bank that those competent authorities have reasonable grounds to suspect that, in connection with the intended establishment of the branch or the engagement of the agent, as the case may be—

- (a) money laundering or terrorist financing is taking place, has taken place or has been attempted, or
- (b) the establishment of the branch or the engagement of the agent, as the case may be, could increase the risk of money laundering or terrorist financing,

the Bank may refuse to register the agent or branch.

(4) The Bank shall cooperate with the competent authorities of the host Member State.

(5) The Bank shall notify the competent authorities of the host Member State whenever it intends to carry out an on-site inspection in the territory of the latter. However, if it so wishes, the Bank may delegate to the competent authorities of the host Member State the task of carrying out on-site inspections of the institution concerned.

(6) The Bank shall provide the competent authorities of the host Member State with all essential and relevant information, in particular information about infringements or suspected infringements by any distributor, agent, branch or entity to which activities are outsourced. The Bank shall communicate all relevant information upon request, and all essential information on its own initiative.

(7) Paragraphs (1) to (6) do not affect any obligation of the Bank to supervise or monitor an electronic money institution's compliance with the requirements of any law in relation to money-laundering or terrorist financing.

Chapter 4

Withdrawal of authorisation

Withdrawal of authorisation

27. (1) The Bank may withdraw an authorisation issued to an electronic money institution—

(a) if the institution—

- (i) does not engage in the business of the issuance of electronic money, or the provision of payment services, in accordance with the authorisation within 12 months, expressly renounces the authorisation or ceases to engage in that business for more than 6 months,
- (ii) obtained the authorisation through false statements or any other irregular means, or
- (iii) would constitute a threat to the stability of the payment system by continuing its electronic money or payment services business,

or

(b) on being satisfied on reasonable grounds that—

- (i) the holder of the authorisation has contravened or is contravening, or has failed or is failing to comply, with a provision of this Part, a condition of the authorisation or a requirement imposed by or under this Part,
- (ii) if the holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of the Partnership Act 1890 (53 & 54 Vic., c.39),

- (iii) the winding-up of the holder of the authorisation has commenced,
- (iv) the holder of the authorisation is so structured, or the business of the holder is so organised, that the holder is no longer capable of being regulated to the satisfaction of the Bank,
- (v) the circumstances under which the authorisation was granted have changed to the extent that an application for authorisation would be refused had it been made in the changed circumstances,
- (vi) the holder of the authorisation suspends payments due to creditors, or is unable to meet any other obligations to creditors of the holder,
- (vii) if the holder of the authorisation is a branch or subsidiary of a body corporate that has its head office in another Member State, the authority of that other Member State that performs functions similar to those of the Bank under this Part has terminated the authority of that body to carry on a regulated business in that other Member State,
- (viii) the holder of the authorisation, or an officer of the holder, is convicted of—
 - (I) an offence against this Part or against any other designated enactment or designated statutory instrument, or
 - (II) an offence involving fraud, dishonesty, breach of trust, money laundering or financing terrorism,
 or
- (ix) the holder of the authorisation has failed to comply with a condition, requirement or direction imposed under these Regulations and the Bank is of the opinion that the stability and soundness of the holder is or has been materially affected by the failure.

(2) In paragraph (1)(b)(viii)(I) “designated enactment” and “designated statutory instrument” have the same respective meanings as in the Central Bank Act 1942 (No. 22 of 1942).

(3) Before withdrawing an authorisation, the Bank shall—

- (a) give notice in writing of the proposed withdrawal to the institution concerned, setting out a summary of the relevant evidence and the reasons for the proposal and specifying a reasonable period (not less than 21 calendar days) within which the institution may make representations in writing concerning the proposal, and
- (b) consider any representations made by the institution within the specified period.

(4) The Bank shall notify the electronic money institution concerned in writing of the withdrawal of an authorisation, setting out the reasons for the withdrawal.

(5) The Bank shall give public notice of the withdrawal of an authorisation.

(6) If the Bank withdraws an authorisation, it shall remove from the Register the entries in relation to the electronic money institution concerned and any agent or branch of it.

(7) Withdrawal of an authorisation under this Regulation takes effect on and from the date of the notice of withdrawal or, if a later date is specified in the notice, on and from that date, irrespective of whether an appeal against the withdrawal is made under Part VIIA of the Central Bank Act 1942.

Chapter 5

Additional activities

Additional activities in which electronic money institutions may engage

28. (1) Apart from the issuance of electronic money, an electronic money institution may engage in the following activities:

- (a) the provision of payment services;
- (b) the granting of credit related to a payment service subject to paragraph (3);
- (c) the provision of operational and closely related ancillary services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data, in respect of the issuance of electronic money or to the provision of payment services referred to in subparagraph (a);
- (d) the operation of payment systems referred to in point 6 of Article 4 of the Payment Services Directive and without prejudice to Article 28 of that Directive;
- (e) business activities other than issuance of electronic money and the provision of payment services.

(2) The receipt of funds by an electronic money institution from an electronic money holder shall—

- (a) be exchanged for electronic money without delay, and
- (b) not constitute the taking of a deposit or other repayable funds.

(3) An electronic money institution may grant credit related to a payment service referred to in point 4, 5 or 7 of Schedule 1 to the Payment Services Regulations only if the following conditions are met:

- (a) the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction;
 - (b) notwithstanding any law in relation to providing credit by means of credit cards, the credit shall be repaid within a short period that is not to be longer than 12 months;
 - (c) credit shall not be granted from funds received or held for the purpose of executing a payment transaction; and
 - (d) the own funds of the electronic money institution shall at all times and to the satisfaction of the Bank be appropriate in view of the overall amount of credit granted.
- (4) An electronic money institution shall not engage in the business of taking deposits or other repayable funds.
- (5) When an electronic money institution engages in the provision of one or more payment services that are not linked to the issuance of electronic money, it may hold only payment accounts used exclusively for payment transactions.
- (6) The receipt of funds by an electronic money institution with a view to the provision of a payment service does not constitute—
- (a) the taking of a deposit or other repayable funds, or
 - (b) electronic money.
- (7) An electronic money institution which has a branch which is located in the State and whose head office is situated in a territory which is outside the European Economic Area may only provide payment services if those services are related to the issuance of electronic money.

Chapter 6

Safeguarding requirements

Safeguarding for electronic money institutions engaged in the issuance of electronic money

29. (1) In this Regulation—

“electronic money institution” includes a credit union;

“secure and low-risk”, in relation to assets, means that the assets are—

- (a) asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006⁸ on the capital adequacy of investment firms and credit institutions (recast) for which the specific risk

⁸OJ No. L177, 30.06.2006, p.201

capital charge is no higher than 1.6%, but excluding other qualifying items as defined in point 15 of that Annex, or

(b) UCITS which invests solely in assets as specified in paragraph (a);

“users’ funds” means funds that have been received in exchange for electronic money that has been issued, and includes funds that have been credited to an electronic money institution’s payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in the Payment Services Directive, where applicable, in exchange for electronic money that has been issued.

(2) Subject to paragraph (3), an electronic money institution that is engaged in the issuance of electronic money shall safeguard users’ funds in either of the following ways:

(a) users’ funds—

(i) shall not be mixed at any time with the funds of any person other than the electronic money holder’s on whose behalf the funds are held, and

(ii) if still held by the electronic money institution and not yet delivered to the payee or transferred to another electronic money institution by the end of the business day after the day of receipt, shall be deposited in a separate account in a credit institution or invested in assets accepted by the Bank as secure and low-risk;

or

(b) users’ funds shall be insured by an insurance company, or guaranteed by a credit institution, that does not belong to the same group as the electronic money institution, payable in the event that the electronic money institution is unable to meet its financial obligations, for an amount equal to that which would have been segregated if the method set out in subparagraph (a) had been used.

(3) Where an electronic money institution referred to in subparagraph (2) receives users’ funds in the form of a payment instrument—

(a) such funds do not need to be safeguarded until they are credited to the electronic money institution’s payment account or are otherwise made available to the institution, and

(b) such funds shall be safeguarded by no later than 5 business days after the issuance of the electronic money concerned.

(4) No liquidator, receiver, administrator, examiner or creditor of an electronic money institution, nor the Official Assignee in Bankruptcy, has any recourse or right against users’ funds held in accordance with paragraph (2)(a)(ii) received from electronic money holders or through a payment service

provider until all proper claims of electronic money holders or of their heirs, successors or assigns against users' funds relating to such electronic money have been satisfied in full.

(5) In exceptional circumstances, the Bank may determine that the assets specified in paragraph (2)(a)(ii) do not constitute secure and low-risk assets for the purposes of safeguarding if—

- (a) the determination is based on an evaluation of security, maturity, value or other risk element of the assets, and
- (b) there is adequate justification for the determination.

(6) Where an electronic money institution that is required to safeguard users' funds receives funds from an electronic money holder and part of those funds is to be used for future electronic money transactions and the remainder for activities other than the issuance of electronic money, the electronic money institution shall protect the part of the funds to be used for future electronic money transactions in accordance with paragraph (2). Where that part is variable or not known in advance, the electronic money institution may safeguard a representative part likely to be used for electronic money transactions if such a representative part can be reasonably estimated on the basis of historical data to the satisfaction of the Bank.

(7) The Bank may determine the method of safeguarding to be used in instances where the Bank has concerns that an electronic money institution has not taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with this Regulation. The Bank shall communicate those concerns to the electronic money institution prior to determining the method.

Safeguarding for electronic money institutions engaged in payment services not related to the issuance of electronic money

30. (1) In this Regulation—

“secure and low-risk”, in relation to assets, means that the assets are—

- (a) asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 for which the specific risk capital charge is no higher than 1.6%, but excluding other qualifying items as defined in point 15 of that Annex, or
- (b) UCITS which invests solely in assets as specified in paragraph (a);

“users' funds” means funds that have been received by an electronic money or payment institution from payment service users or through another payment service provider for the execution of payment transactions.

(2) An electronic money institution that is engaged in payment services that are not related to the issuance of electronic money shall safeguard users' funds in either of the following ways:

(a) users' funds—

- (i) shall not be mixed at any time with the funds of any person other than the payment service users on whose behalf the funds are held, and
- (ii) if still held by the electronic money institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day after the day of receipt, shall be deposited in a separate account in a credit institution or invested in assets accepted by the Bank as secure and low-risk;

or

(b) users' funds shall be insured by an insurance company, or guaranteed by a credit institution, that does not belong to the same group as the electronic money institution, payable in the event that the electronic money institution is unable to meet its financial obligations, for an amount equal to that which would have been segregated if the method set out in subparagraph (a) had been used.

(3) No liquidator, receiver, administrator, examiner or creditor of an electronic money institution, nor the Official Assignee in Bankruptcy, has any recourse or right against users' funds held in accordance with paragraph (2)(a)(ii) received from payment service users or through another payment service provider until all proper claims of payment service users or of their heirs, successors or assigns against users' funds relating to such payment services have been satisfied in full.

(4) Where an electronic money institution that is required to safeguard users' funds receives funds from a payment service user and part of those funds is to be used for future payment transactions and the remainder for non-payment services, the electronic money institution shall protect the part of the funds to be used for future payment transactions that are not related to the issuance of electronic money in accordance with paragraph (2). Where that part is variable or not known in advance, the electronic money institution may safeguard a representative part likely to be used for payment services that are not related to the issuance of electronic money if such a representative part can be reasonably estimated on the basis of historical data to the satisfaction of the Bank.

(5) The Bank may require an electronic money institution that is not engaged in business activities which fall within Regulation 27(1)(c) of the Payment Services Regulations to comply with the requirements of paragraph (2).

(6) The Bank may limit the application to an electronic money institution of a requirement under this Regulation to users' funds of payment service users each of whom has deposited more than €600 with the institution.

(7) The Bank may determine the method of safeguarding to be used in instances where the Bank has concerns that an electronic money institution has not taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with this Regulation. The Bank shall communicate those concerns to the electronic money institution prior to determining the method.

Material change in measures of safeguarding

31. Where any material change will affect the accuracy of information and evidence provided by an electronic money institution in measures taken for safeguarding of funds in exchange for electronic money issued, the institution shall inform the Bank in advance and in writing accordingly.

Chapter 7

Registration of small electronic money institutions

Application for registration as small electronic money institution

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

(2) An application under paragraph (1) must be made in such manner as the Bank may direct.

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

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

Small electronic money institutions — waiver of application of certain provisions of Chapters 2, 3, 4 and 6

33. (1) A person qualifies as a small electronic money institution for the purposes of these Regulations if—

- (a) the total business activities of the person immediately before the time of registration do not generate average outstanding electronic money that exceeds €1 million, and
- (b) the average amount of payment transactions executed by the person and any agent for which the person bears full responsibility during the previous 12 months, or the average amount of payment transactions likely to be executed by the person within the next 12 months, assessed on the projected total amount of payment transactions in its business plan, is not more than €3 million per month.

(2) The Bank may waive the application to a person of all or part of the procedure and conditions set out in Chapters 2, 3, 4 and 6, and may register the person as a small electronic money institution, if—

- (a) the person satisfies the Bank that the person qualifies as a small electronic money institution,
 - (b) none of the individuals responsible for the management or operation of the person's business has been convicted of any offence relating to money laundering or terrorist financing or any other financial crime, and
 - (c) it has its head office in the State.
- (3) A person registered as a small electronic money institution under paragraph (2) shall be taken to be an electronic money institution for the purposes of these Regulations except that—
- (a) its registration as a small electronic money institution is valid only in the State, and
 - (b) it is not entitled to issue electronic money in any other Member State.
- (4) A person registered as a small electronic money institution may engage in payment services not related to the issuance of electronic money which fall within Regulation 28(1), only if the conditions set out in Regulation 35 of the Payment Services Regulations are met to the satisfaction of the Bank.
- (5) The Bank may direct that a person registered as a small electronic money institution shall not engage in one or more of the activities which fall within Regulation 28(1).
- (6) A person registered as a small electronic money institution in accordance with paragraph (2) shall—
- (a) forthwith notify the Bank of any change that may affect whether it continues to qualify as a small electronic money institution in accordance with this Regulation, and
 - (b) at least annually, and on a date specified by the Bank, report to the Bank on the average outstanding electronic money.

Average outstanding electronic money

34. (1) Where—

- (a) a person carries out activities that are not related to the issuance of electronic money or carries out any of the activities which fall within Regulation 28(1)(b) to (e), and
- (b) the amount of outstanding electronic money is unknown in advance, the person may make an assessment for the purposes of Regulation 33(1)(a) 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 Bank.

(2) Where a person has not completed a sufficiently long period of business to compile historical data adequate to make the assessment under paragraph (1), the person 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 Bank.

Requirement to apply for authorisation in certain circumstances

35. (1) If a person registered as a small electronic money institution in accordance with Regulation 33 no longer qualifies as a small electronic money institution, or (in the case of a person subject to a direction under Regulation 33(5)) proposes to engage in a business activity other than the one specified in the relevant direction, the person shall apply for authorisation under Chapter 2 within 30 calendar days.

(2) If a person referred to in paragraph (1) applies for authorisation in accordance with that paragraph, within the period of 30 calendar days referred to in that paragraph, it may continue issuing electronic money or providing a payment service until the Bank notifies it of its decision on the application. If such a person fails to apply for authorisation in accordance with that paragraph, it shall cease to issue electronic money or providing a payment service at the end of that period of 30 calendar days.

Withdrawal of waiver

36. (1) The Bank may withdraw a waiver granted to a person (in this Regulation called the “undertaking”) under Regulation 33(2)—

(a) if the undertaking—

- (i) does not begin to engage in the business of electronic money issuance or the provision of payment services in accordance with the waiver within 12 months, expressly renounces the waiver or ceases to engage in that business for more than 6 months,
- (ii) obtained the waiver through false statements or any other irregular means,
- (iii) no longer qualifies as a small electronic money institution, or
- (iv) would constitute a threat to the stability of the payment system by continuing to issue electronic money or provide payment services,

or

(b) on being satisfied on reasonable grounds that—

- (i) the undertaking has contravened or is contravening, or has failed or is failing to comply with, a provision of this Part, a condition of the authorisation or a requirement imposed by or under this Part,

- (ii) in the case of a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of the Partnership Act 1890,
- (iii) the winding-up of the undertaking has commenced,
- (iv) the undertaking is so structured, or its business is so organised, that the person is no longer capable of being regulated to the satisfaction of the Bank,
- (v) the circumstances under which the waiver was granted have changed to the extent that an application for authorisation would be refused had the application been made in the changed circumstances,
- (vi) the undertaking suspends payments due to creditors, or is unable to meet any other obligations to its creditors,
- (vii) if the undertaking is a branch or subsidiary of a body corporate that has its head office in another country that is an European Economic Area country, the authority of that other country that performs functions similar to those of the Bank under this Part has terminated the authority of that body to carry on a regulated business in that other country,
- (viii) the undertaking or an officer of it is convicted of—
 - (I) an offence against this Part or against any other designated enactment or designated statutory instrument, or
 - (II) an offence involving fraud, dishonesty, breach of trust, money laundering or financing terrorism,
 or
- (ix) the undertaking has failed to comply with a condition, requirement or direction imposed under these Regulations and the Bank is of the opinion that the stability and soundness of the person is or has been materially affected by the failure.

(2) In paragraph (1)(b)(viii)(I) “designated enactment” and “designated statutory instrument” have the same respective meanings as in the Central Bank Act 1942.

(3) Before withdrawing a waiver, the Bank shall—

- (a) give notice in writing of the proposed withdrawal to the person concerned, setting out a summary of the relevant evidence and the reasons for the proposal and specifying a reasonable period (not less than 21 calendar days) within which the person may make written representations concerning the proposal, and

(b) consider any representations made by the person within the specified period.

(4) The Bank shall notify the person concerned in writing of the withdrawal of a waiver, setting out the reasons for the withdrawal.

(5) The Bank shall give public notice of the withdrawal of a waiver.

(6) If the Bank withdraws a waiver it shall remove from the Register the entries in relation to the undertaking concerned.

(7) Withdrawal of a waiver under this section takes effect on and from the date of the notice of withdrawal or, if a later date is specified in the notice, on and from that date, irrespective of whether an appeal against the revocation is made under Part VIIA of the Central Bank Act 1942.

Chapter 8

Restrictions on acquiring and disposing of qualifying holdings in electronic money institutions

Interpretation

37. In this Chapter—

“prescribed percentage” means 20%, 30% or 50%;

“proposed acquirer” means a person who proposes to acquire or increase a qualifying holding in an electronic money institution, and includes a group of persons acting in concert to acquire or increase such a holding;

“proposed acquisition” means—

(a) the proposed acquisition of a qualifying holding in an electronic money institution, or

(b) a proposed increase in a qualifying holding in such an institution that results in the size of the holding reaching or exceeding a prescribed percentage;

“qualifying holding”, in relation to an electronic money institution, means a direct or indirect holding—

(a) that represents 10% or more of the capital of, or the voting rights in, the electronic money institution, or

(b) that makes it possible to exercise a significant influence over the management of the electronic money institution.

Restrictions on acquiring and disposing of qualifying holdings in electronic money institutions

38. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in an electronic money institution without having previously notified the Bank in writing of the intended size of the holding.

(2) A proposed acquirer who has a qualifying holding in an electronic money institution shall not, directly or indirectly, increase the size of the holding without having previously notified the Bank in writing of the intended size of the holding if, as a result of the increase—

(a) the percentage of the capital of, or the voting rights in, the electronic money institution that the proposed acquirer holds would reach or exceed a prescribed percentage, or

(b) in the case of a proposed acquirer that is a company or other body corporate, the electronic money institution would become the proposed acquirer's subsidiary.

(3) A person shall not, directly or indirectly, dispose of a qualifying holding in an electronic money institution without having previously notified the Bank in writing of the intended size of the holding.

(4) A person shall not, directly or indirectly, dispose of part of a qualifying holding in an electronic money institution without having previously notified the Bank in writing of the intended size of the holding if, as a result of the disposal—

(a) the percentage of the capital of, or the voting rights in, the electronic money institution that the person holds would fall to or below a prescribed percentage, or

(b) in the case of a person that is a company or other body corporate, the electronic money institution would cease to be the person's subsidiary.

(5) A notification under paragraph (1) or (2) shall include sufficient information to enable the Bank to consider the proposed acquisition according to the nature of the proposed acquirer and the proposed acquisition, and in particular shall include information on who the proposed acquirers are, the individuals to be responsible for their management, how the proposed acquisition is to be financed (including details of any proposed issue of financial instruments) and the structure of the resulting group.

(6) The information to be provided in a notification under paragraph (1) or (2) is the same as that required by the form of notification published by the Bank on 25 May 2009 entitled "Acquiring Transaction Notification Form", and includes any document in relation to the proposed acquisition or proposed acquirer concerned required by that form.

Electronic money institution to provide information in relation to certain acquisitions and disposals

39. (1) If an electronic money institution becomes aware of the acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the institution shall inform the Bank in writing of the acquisition or increase without delay.

(2) If an electronic money institution becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to or below a prescribed percentage, the institution shall inform the Bank in writing of the disposal or reduction without delay.

Period for assessment of proposed acquisition

40. (1) Within 2 business days after receiving a completed notification under paragraph (1) or (2) of Regulation 38 from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information (whether in the notification itself or as an attachment) required by Regulation 38 to be provided for the assessment of the proposed acquisition concerned.

(3) Within 60 business days after the date of the written acknowledgement referred to in paragraph (1), the Bank shall carry out the assessment of the proposed acquisition concerned in accordance with Regulation 41.

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th business day of that period, the Bank may request any further information necessary to complete the assessment of the acquisition. If the Bank makes such a request, it shall acknowledge the receipt of any information received in response to the request.

(6) A request under paragraph (5) shall be made in writing and shall specify or describe the additional information needed.

(7) Subject to paragraph (9), if the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

(a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and

(b) 20 business days.

(8) The Bank may request still further information for completion or clarification of information already supplied but such a further request does not interrupt the assessment period.

(9) The Bank may, by notice in writing to a proposed acquirer, extend the interruption referred to in paragraph (7) in relation to a proposed acquisition to 30 business days if the proposed acquirer concerned—

(a) is situated or regulated outside the Community, or

(b) is not subject to supervision under a law of a Member State that transposes Council Directive 85/611/EEC of 20 December 1985⁹ on the coordination of laws, regulations and administrative provisions to undertakings for collective investment in transferable securities (UCITS), Council Directive 92/49/EEC of 18 June 1992¹⁰ on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), Directive 2002/83/EC of 5 November 2002¹¹ concerning life assurance, 2004/39/EC of 21 April 2004¹² on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005¹³ on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC or 2006/48/EC.

Assessment of proposed acquisitions

41. (1) The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of the electronic money institution concerned.

(2) In assessing a proposed acquisition, the Bank—

(a) shall have regard to the likely influence of the proposed acquirer concerned on the electronic money institution concerned, and

(b) shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:

(i) the reputation of the proposed acquirer;

(ii) the reputation and experience of the individuals who will direct the business of the institution as a result of the proposed acquisition;

⁹OJ No. L 375, 31.12.1985, p.3

¹⁰OJ No. L 228, 11.8.1992, p.1

¹¹OJ No. L 345, 19.12.2002, p.1

¹²OJ No. L 145, 30.04.2004, p.1

¹³OJ No. L 323, 9.12.2005, p.1

- (iii) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the institution;
- (iv) whether the institution will be able to comply and continue to comply with the prudential requirements of existing legislation;
- (v) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities; and
- (vi) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005¹⁴ on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing) is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall not examine a proposed acquisition in terms of the economic needs of the market.

(4) Where 2 or more proposals to acquire or increase qualifying holdings in the same electronic money institution have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

Bank to cooperate with competent authorities of other Member States in certain cases

42. (1) In carrying out its assessment of a proposed acquisition, the Bank shall work in full consultation with the relevant competent authorities of other Member States if the proposed acquirer concerned is—

- (a) an insurance undertaking, reinsurance undertaking, credit institution, investment firm or UCITS management company, or the market operator of a regulated market, authorised by a competent authority of another Member State,
- (b) the parent undertaking of such an undertaking, institution, firm, company or market operator, or
- (c) a person that controls such an undertaking, institution, firm, company or market operator.

(2) In paragraph (1)(a) “UCITS management company” and “market operator of a regulated market” respectively have the same meanings as in the European Communities (Markets in Financial Instruments) Regulations 2007.

¹⁴OJ No. L 309, 25.11.2005, p.15

(3) In a case to which paragraph (1) applies, the Bank shall, without undue delay, provide any other competent authority concerned with any information that is essential or relevant for the assessment of a proposed acquisition. The Bank shall communicate to each such other competent authority all relevant information upon request and all essential information on its own initiative.

(4) A decision by the Bank, in the case of a proposed acquisition in an electronic money institution authorised by the Bank, shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer concerned.

Bank may fix period for completion of acquisition, etc

43. (1) The Bank may fix a maximum period within which a proposed acquisition shall be completed, and may extend any period so fixed.

(2) If the Bank has given notice in relation to a proposed acquisition that the Bank does not oppose the acquisition, the Bank may impose a condition or a requirement, or both, being a condition or a requirement that the Bank considers necessary for the proper and orderly regulation and supervision of electronic money institutions, and may at any time revoke or vary any condition or requirement so imposed.

Notice of Bank's decision

44. (1) If, on completing the assessment of a proposed acquisition, the Bank decides to oppose it, the Bank shall, within 2 business days, but before the end of the assessment period, so inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests. The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(3) If the Bank does not give notice in writing within the assessment period in relation to the proposed acquisition that it opposes the acquisition, the acquisition is taken, for the purposes of any other law that requires the acquisition to be approved by the Bank, to have been so approved.

Bank may oppose certain acquisitions

45. The Bank may oppose a proposed acquisition only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraph (1) or (2) of Regulation 41, or
- (b) the information provided by the proposed acquirer in its notification under Regulation 38 is incomplete, or the proposed acquirer has not provided information in response to a request under paragraph (5) or (8) of Regulation 40.

Decision to oppose proposed acquisition to be appealable

46. A decision by the Bank to oppose a proposed acquisition, to impose a condition or requirement on a proposed acquisition, or to vary such a condition or requirement is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Circumstances in which proposed acquisition not to be completed

47. (1) The proposed acquirer in relation to a proposed acquisition may complete the acquisition only if—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with Regulation 38,
- (b) the Bank has acknowledged that notification in accordance with Regulation 40 (1), and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

(2) If a proposed acquirer purports to complete a proposed acquisition in contravention of paragraph (1)—

- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and
- (b) any exercise of powers based on the purported acquisition of the holding concerned is void.

Effect of section 201 of Companies Act 1963

48. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of sections 201 and 202 of the Companies Act 1963 (No. 33 of 1963), the court shall not make an order under section 201 of that Act in relation to the transaction until after the end of the assessment period in relation to the transaction.

Electronic money institutions to provide information about shareholdings, etc

49. An electronic money institution shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Power of court to make certain orders

50. (1) If the Bank reasonably believes that the control exercised by a person who has a qualifying holding in an electronic money institution is inconsistent with the prudent and sound management of the institution, it may apply to the court for an order under paragraph (3).

(2) On making an application under paragraph (1), the Bank shall serve a copy of the application on the person to whom the application relates. On being served with the notice, that person becomes the respondent to the application.

(3) On the hearing of an application under paragraph (1), the court may, on being satisfied that the Bank's belief is substantiated, make all or any of the following orders:

- (a) an order directing the respondent to dispose of the holding or a specified part of it;
- (b) an order suspending the exercise of the voting rights attached to the relevant shares;
- (c) an order invalidating votes already exercised by holders of those shares.

Powers of Bank to waive the application of all or part of the obligations pursuant to this Chapter

51. The Bank may waive the application of all or part of the obligations pursuant to this Chapter in respect of electronic money institutions that carry out one or more of the business activities which fall within Regulation 28(1)(e).

PART 3

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

Issuance and redeemability

52. 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.

Conditions of redemption

53. 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 or offer.

Fees for redemption

54. (1) Redemption may be subject to a fee only where the fee is stated in the contract in accordance with Regulation 53(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 such fees for redemption must be proportionate and commensurate with the costs actually incurred by the electronic money issuer.

Amount of redemption

55. (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 54.

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

- (a) the total monetary value of the electronic money held, or
- (b) if the electronic money issuer carries out any business activities which fall within Regulation 28(1)(e) 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.

Redemption rights of persons other than consumers

56. Regulations 54 and 55 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 shall be subject to the contract between that person and the electronic money issuer.

Prohibition of interest

57. An electronic money issuer must not award—

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

PART 4

POWERS AND DUTIES OF THE BANK

Chapter 1

*Supervisory powers and duties**Bank as competent authority*

58. The powers of the Bank extend to cover infringement or suspected infringement of Part 3 by electronic money issuers authorised or registered in the State and distributors, agents and branches in the State of electronic money issuers authorised in another Member State.

Supervision

59. (1) The Bank—

- (a) may require an electronic money issuer to provide such information as it requires to monitor the institution's compliance with these Regulations,
- (b) may carry out on-site inspections at—
 - (i) the premises of an electronic money issuer,
 - (ii) any distributor, agent or branch issuing electronic money or providing payment services under the responsibility of an electronic money issuer,
 - (iii) the premises of any entity to which an electronic money issuer's activities are outsourced, and
 - (iv) any premises at which the issuance of electronic money or payment services are, or are suspected of being, conducted,
 and
- (c) may issue recommendations and guidelines.

(2) The Bank may take steps to ensure that an electronic money institution maintains sufficient capital for the issuance of electronic money or the provision of payment services, in particular where the activities not related to the issuance of electronic money of an electronic money institution impair or are likely to impair the financial soundness of the electronic money institution.

Bank's power to give directions

60. (1) If the Bank considers it necessary to do so in the interests of the proper and orderly supervision of the issuance of electronic money, the Bank may give a direction in writing to—

- (a) an electronic money institution,

- (b) another person registered to issue electronic money in the State, or
 - (c) any other person involved in or connected with the issuance of electronic money in the State.
- (2) A direction under paragraph (1)—
- (a) takes effect on the date, or on the occurrence of the event, specified in the direction for the purpose, and
 - (b) ceases to have effect on the earlier of—
 - (i) the date, or the occurrence of the event, specified in the direction for the purpose, or
 - (ii) the expiration of the period of 12 months immediately following the day on which it took effect.
- (3) If a direction under this Regulation has not been complied with or is unlikely to be complied with, the Bank may apply to the court in a summary manner for such order as the court thinks appropriate by way of enforcement of the direction.
- (4) The Bank may direct—
- (a) a credit institution or any institution exempted under section 7 of the Central Bank Act 1971 (No. 24 of 1971), or
 - (b) any other financial institution,

that holds an account of any description of the electronic money institution (including holdings of investment instruments of the electronic money institution to which the direction has been given), to cease making payments from, or entering into other transactions in respect of, the account without the prior authorisation of the Bank.

Exchange of information

61. (1) The Bank shall cooperate with the competent authorities of other Member States and with the European Central Bank and the central banks of other Member States and other relevant competent authorities designated under the laws of other Member States applicable to electronic money issuers.

- (2) The Bank may exchange information with—
- (a) the competent authorities of other Member States responsible for the authorisation and supervision of electronic money institutions,
 - (b) the European Central Bank and the central banks of other Member States, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems, and

- (c) relevant authorities of other Member States designated under laws giving effect to the Electronic Money Directive and other acts of the European Communities applicable to electronic money issuers (for example, acts applicable to the protection of individuals with regard to the processing of personal data and to money laundering and terrorist financing).

Chapter 2

Powers of authorised officers

Interpretation (Chapter 2)

62. In this Chapter “relevant records” means books, records or other documents related to the business of an electronic money issuer.

Power to appoint authorised officers

63. (1) The Bank may, in writing—

- (a) authorise a person as an authorised officer, and
- (b) revoke such an authorisation.

(2) The appointment of an authorised officer may be for a specified period or indefinite.

(3) The Bank shall furnish an authorised officer with a certificate of his or her appointment as an authorised officer.

(4) The appointment of a person as an authorised officer ceases—

- (a) if the Bank revokes the appointment, at the time of revocation,
- (b) if the person dies, at the time of his or her death,
- (c) if the appointment is for a specified period, at the end of that period,
or
- (d) if the person is, when appointed, an officer of the Bank, and the person ceases to be such an officer, when he or she so ceases.

Powers of authorised officers

64. (1) An authorised officer may, for the purpose of carrying out an investigation under this Part, do all or any of the following at any reasonable time during normal business hours—

- (a) enter any premises (other than a private dwelling) at which the officer has reasonable grounds to believe that the business of an electronic money issuer is, or has been, carried on, or on which there are relevant records,
- (b) search and inspect such premises and any relevant records on the premises,

- (c) secure for later inspection such premises or any part of such premises in which relevant records are kept or in which the officer has reasonable grounds for believing relevant records are kept,
 - (d) require a person who carries on the business of an electronic money issuer and any person employed in connection with such a business to produce to the officer relevant records, and if any such record is in a non-legible form, to reproduce it in a legible form or to give the officer such information as the officer reasonably requires in relation to entries in the relevant records,
 - (e) inspect and take copies of relevant records inspected or produced to the officer (including, in the case of information in a non-legible form, a copy of all or part of the information in a permanent legible form),
 - (f) remove and retain any of the relevant records inspected or produced under this Act for such period as may be reasonable to allow their further examination,
 - (g) require a person to give to the officer information (including information by way of a written report) that the officer reasonably requires in relation to activities covered by this Chapter and to produce to the officer any relevant records that the person has or has access to,
 - (h) require a person by whom or on whose behalf data equipment is or has been used, or any person who has charge of, or is otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to give the officer all reasonable assistance in relation the operation of that equipment, and
 - (i) require a person to explain entries in any relevant records.
- (2) When exercising a power of an authorised officer, an authorised officer shall produce the certificate, together with some form of personal identification, if requested to do so by a person affected by the exercise of that power.
- (3) An authorised officer shall not enter a private dwelling (other than a part of the dwelling used as a place of work) except with the consent of the occupier.
- (4) If a person from whom production of a relevant record is required claims a lien over it, the production of it does not affect the lien.
- (5) An obligation to produce a relevant record or report or to provide information or assistance under this Regulation applies to—
- (a) a liquidator or receiver of, or a person who is or has been an officer or employee or agent of, a payment service provider, or
 - (b) any other person who appears to the Bank or the authorised officer to have a relevant record or report in his or her possession or under

his or her control or the ability to provide information or assistance, as the case may be.

(6) An authorised officer may, if the officer considers it necessary, be accompanied by a member of the Garda Síochána when exercising a power under this Chapter.

Warrants

65. (1) If an authorised officer, while in the exercise of the authorised officer's powers under Regulation 64—

(a) is prevented from entering any premises, or

(b) believes that there are relevant records in a private dwelling,

he or she may apply to a judge of the District Court for a warrant authorising the entry by the authorised officer into the premises or the dwelling.

(2) If on an application under paragraph (1) a judge of the District Court is satisfied, on the information of the applicant authorised officer, that the applicant authorised officer—

(a) has been prevented from entering the premises concerned, or

(b) has reasonable grounds for believing that there are relevant records in the private dwelling concerned,

the judge may issue a warrant under his or her hand authorising the applicant authorised officer, accompanied, if the judge considers it appropriate, by a specified number of members of the Garda Síochána, to enter, if need be by force, at any time within 4 weeks from the date of issue of the warrant, the premises or private dwelling and there exercise the powers set out in Regulation 64.

Chapter 3

Out-of-Court complaint and redress procedures

Out-of-court redress

66. (1) The Financial Services Ombudsman has jurisdiction over the settlement of disputes between electronic money holders (being electronic money holders that are consumers or the operators of undertakings that were at the relevant time micro enterprises) and electronic money issuers concerning rights and obligations arising under these Regulations.

(2) In the case of a cross-border dispute, the Financial Services Ombudsman shall cooperate actively with equivalent bodies in other European Economic Area Member States in resolving them.

Chapter 4

*Appeals**Appealable decisions*

67. The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

- (a) a decision under Regulation 9—
 - (i) refusing to grant an authorisation to operate as an electronic money institution, or
 - (ii) granting such an authorisation subject to conditions or requirements;
- (b) a decision under Regulation 27 to withdraw such an authorisation;
- (c) a decision under Regulation 33(5) or 78(3) to give a direction under that section to a person registered as a small electronic money institution;
- (d) a decision under Regulation 36 to withdraw a waiver granted under Regulation 33(2);
- (e) a decision under Regulation 60 to give a direction to a person;
- (f) a decision under Regulation 77(3) to revoke an authorisation granted under Regulation 77(2).

PART 5

OFFENCES

Offence — operation as an electronic money institution without authorisation, etc.

68. A person commits an offence if the person contravenes any of paragraphs (1) to (6) of Regulation 6.

Offence — false or misleading information in application, etc.

69. Without prejudice to the generality of Regulation 71, a person commits an offence if the person—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular in an application for authorisation to operate as an electronic money institution,
 - (b) knowingly or recklessly makes a statement which is false or misleading in a material particular to the Bank in relation to—
 - (i) the obtaining of an authorisation to operate as an electronic money institution, or
 - (ii) an approval, waiver or permission from the Bank concerning the operation of an electronic money institution,
- or
- (c) knowingly or recklessly provides information which is false or misleading in a material particular to the Bank in purported compliance with a requirement of or under Chapter 8 of Part 2.

Offence — misappropriation of users' funds

70. A person who is a director, officer or employee of an electronic money institution commits an offence if he or she fraudulently misappropriates users' funds.

Offence — failure to keep appropriate records, etc.

71. (1) A person who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, any record or document required under these Regulations, or makes or is privy to the making of a false entry therein, commits an offence.

(2) It shall be a defence for a person prosecuted for an offence under paragraph (1) to prove that he or she had no intention to defeat the law.

(3) A person who fraudulently disposes of, alters or makes an omission in any record or document referred to in paragraph (1), or who is privy to such disposal of, altering or making of an omission in any such record or document, commits an offence.

Offences — obstruction of authorised officer, etc.

72. (1) A person who obstructs or interferes with an authorised officer in the exercise of the authorised officer's powers under these Regulations commits an offence.

(2) A person who, without reasonable excuse, refuses or fails to comply with a request or requirement of an authorised officer made in accordance with these Regulations commits an offence.

(3) A person commits an offence if the person knowingly or recklessly gives an authorised officer information which is false or misleading in a material particular.

Offence — provision of false or misleading information under these Regulations

73. An electronic money issuer commits an offence if the issuer, in purported compliance with a requirement under these Regulations—

- (a) knowingly or recklessly provides an answer or explanation, makes a statement or produces information to the Bank that is false or misleading in a material particular, or
- (b) knowingly omits or withholds material information from the Bank.

Penalties

74. A person who commits an offence under these Regulations is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

Prosecution of offences

75. (1) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Bank.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851 (14 & 15 Vict. c. 93), summary proceedings for an offence under these Regulations to which that provision applies may be instituted—

- (a) within 12 months from the date on which the offence was committed, or
- (b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify the proceedings comes to that person's knowledge.

whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(3) For the purposes of paragraph (2)(b), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that paragraph came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this paragraph and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

Offences — directors and others of bodies corporate and unincorporated bodies

76. Where an offence under these Regulations is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the body, or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the body, or a person purporting to act in that capacity,

that person is taken to have also committed the offence and may be proceeded against and punished accordingly.

PART 6

TRANSITIONAL

Electronic Money Issuers active before 30 April 2011

77. (1) A person (not being an individual nor a person to which Regulation 78 applies) that commenced before 30 April 2011, in accordance with the European Communities (Electronic Money) Regulation 2002 (S.I. No. 221 of 2002), to carry on the activities of an electronic money institution in the State may continue to issue electronic money until 30 October 2011.

(2) If a person referred to in paragraph (1) satisfies the Bank that the person complies with the requirements in Chapters 2, 3, 4 and 8 of Part 2, the Bank shall grant authorisation to the person and shall register the person. The Bank shall notify the person before granting the authorisation.

(3) The Bank may revoke an authorisation granted under paragraph (2) as if the authorisation had been granted under Chapters 2, 3, 4 and 8 of Part 2.

Certain small electronic money issuers active before 30 April 2011

78. (1) A person who—

(a) in accordance with the European Communities (Electronic Money) Regulations 2002 commenced before 30 April 2011 to carry on the activities of an electronic money institution in the State, and

(b) qualified for a waiver under Regulation 19 of the Regulations referred to in paragraph (a),

may continue to issue electronic money within the State and not be subject to Part 2 until 30 April 2012.

(2) If a person referred to in paragraph (1) notifies the Bank that the person intends to continue the issuance of electronic money and provide a payment service, and satisfies the Bank that it qualifies as a small electronic money institution, the Bank shall register the person as a small electronic money institution.

(3) The Bank may direct that a person referred to in paragraph (2) shall not engage in one or more of the activities which fall within Regulation 28(1).

PART 7

AMENDMENT AND REVOCATION OF OTHER LEGISLATION

Amendment of Central Bank Act 1942

79. (1) The Central Bank Act 1942 (No. 22 of 1942) is amended as set out in Part 1 of the Schedule.

Amendment of European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992

80. The European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992) are amended as set out in Part 2 of the Schedule.

Amendment of Payment Services Regulations

81. The Payment Services Regulations are amended as set out in Part 3 of the Schedule.

Revocation of European Communities (Electronic Money) Regulations 2002

82. The European Communities (Electronic Money) Regulations 2002 (S.I. No. 221 of 2002) are revoked.

AMENDMENT OF OTHER LEGISLATION

PART 1

AMENDMENT OF CENTRAL BANK ACT 1942

Item	Provision amended	Amendment
1	Section 33AK(10), paragraph (o) of the definition of "Supervisory Directives"	Delete "(No. 37 of 2007), and" and substitute "(No. 37 of 2007),".
2	Section 33AK(10), paragraph (p) of the definition of "Supervisory Directives"	Delete "Directive 97/5/EC." and substitute "Directive 97/5/EC, and".
3	Section 33AK(10), definition of "Supervisory Directives"	After paragraph (p), insert the following: “(q) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.”.
4	Section 33ANB (1)(a)	Delete subparagraph (i) and substitute the following: “(i) a provision of the European Communities (Payment Services) Regulations 2009 (S.I. No. 383 of 2009) or the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011),”.
5	Schedule 2, Part 2	At the end, insert the following: “51. S.I. No. 183 of 2011 European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011) The whole instrument”

PART 2

Regulation 80

AMENDMENT OF EUROPEAN COMMUNITIES (LICENSING AND SUPERVISION OF CREDIT INSTITUTIONS) REGULATIONS 1992

Item	Provision amended	Amendment
1	Regulation 2	Substitute for the definition of “credit institution” the following: “ ‘credit institution’ means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;”.
2	Regulation 2	Substitute for the definition of “financial institution” the following: “ ‘financial institution’ means an undertaking, other than a credit institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 16 of the Schedule;”.
3	Schedule	The Schedule is amended by inserting, after item 15, the following: “16. Issuing electronic money.”.

AMENDMENT OF PAYMENT SERVICES REGULATIONS

Item	Provision amended	Amendment
1	Regulation 33(6)	Delete “to (4)” and substitute “to (5)”.
2	Regulation 113	<p>Delete paragraph (2) and substitute the following:</p> <p>“(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under these Regulations to which that provision applies may be instituted—</p> <p>(a) within 12 months from the date on which the offence was committed, or</p> <p>(b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person’s knowledge,</p> <p>whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned to committed.</p> <p>(3) For the purposes of paragraph (2)(b), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that paragraph came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this paragraph and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.”.</p>
3	Schedule 1	<p>Delete point 5 and substitute the following:</p> <p>“5. Issuing payment instruments or acquiring payment transactions.”.</p>



GIVEN under my Official Seal,
21 April 2011.

MICHAEL NOONAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Statutory Instrument implements Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ No. L 275, 27.10.2009, p.39).

The purpose of the revised Electronic Money Directive (2009/110/EC) is to promote the emergence of a single market for electronic money services in the European Union that is innovative and secure while ensuring there is competition between players on the market and that it is accessible to new entrants.

The Statutory Instrument designates the Central Bank of Ireland as the competent authority for the purposes of the Electronic Money Directive.

A detailed summary of each of the Parts of the Regulations is included below.

Part 1 — Preliminary Provisions

Part 1 of the Regulations sets out that the Regulations will come into effect on 30 April 2011, and that the Central Bank of Ireland (“the Bank”) will be the competent authority in Ireland. It also sets out the scope of the Regulations and includes definitions of terms used in the Regulations.

Part 2 — Requirements for the taking up, pursuit and prudential supervision of business of Electronic Money Institutions

Part 2 of the Regulations sets out those institutions that may issue electronic money. In this regard, banks, building societies, credit unions¹⁵, certain public authorities, central banks, etc. may issue electronic money without having to seek authorisation. It therefore also sets the requirements that relate to the authorisation of electronic money institutions and registration of small electronic money institutions, the conditions of the authorisation including the capital requirements, initial capital, and safeguarding requirements for electronic money holders’ funds and payment services users’ funds, etc.

Part 2 also stipulates the conditions for electronic money institutions to establish a branch or provide services in another Member State, the conditions by which the Bank may withdraw an authorisation, and sets out rules on outsourcing arrangements including the use of agents and distributors, and the additional activities that electronic money institutions may engage in.

Part 2 of the Regulations also sets out the legal framework in relation to the acquisitions regime for electronic money institutions, providing for a similar treatment to that of other types of financial institutions. The Regulations set out a clear and transparent notification and decision-making process for the Bank;

¹⁵Credit unions may only issue electronic money subject to the following requirements: approval by the Registrar of Credit Unions to issue electronic money under the Credit Union Act 1997, and meeting the safeguarding requirements in Chapter 6 of Part 2 of these Regulations.

the period allowed for the Bank to carry out the assessment and limits on interruptions to the assessment period where more information or clarification is required; sets out the prudential criteria for the supervisory assessment; and contains a defined set of assessment criteria for the proposed acquirer.

Part 3 — Issuance and Redeemability of Electronic Money

Part 3 of the Regulations sets out the requirements to be met by all electronic money issuers when issuing and redeeming electronic money. Electronic money must be issued and redeemed at par value and issuers are not permitted to award interest on the outstanding balances. Redemption must be provided at any time upon request. Redemption may be subject to proportionate fees to cover actual costs in certain cases.

Part 4 — Powers and Duties of the Bank

Part 4 of the Regulations makes provision in respect of the Bank. In particular, it confers on the Bank functions in relation to the supervision and enforcement of certain provisions of the Regulations. It also sets out the requirements in relation to the Bank cooperating and exchanging information with other competent authorities in the EEA. It also provides for out-of-court redress and appeals procedures, giving the Financial Services Ombudsman jurisdiction over the settlement of disputes.

Part 5 — Offences

Part 5 of the Regulations provides for criminal offences, including making it an offence for a person to issue electronic money in the State unless it is a person that may issue electronic money under Regulation 6, providing false or misleading information, obstruction of an authorised officer, misappropriation of users' funds, and failure to keep appropriate records.

Part 6 — Transitional Arrangements

Part 6 of the Regulations makes transitional provisions for persons who have issued electronic money before 30th April 2011 to continue to do so for a limited time while they take steps to comply with these Regulations.

Part 7 — Amendments and Revocation of other Legislation

Part 7 of the Regulations makes amendments to certain other primary and secondary legislation and revokes the existing European Communities (Electronic Money) Regulations 2002 (S.I. No. 221 of 2002).

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