

Banking Newsletter

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Financial Services
Commission

E-money directive and other amendments to the Banking Ordinance 1992

Background

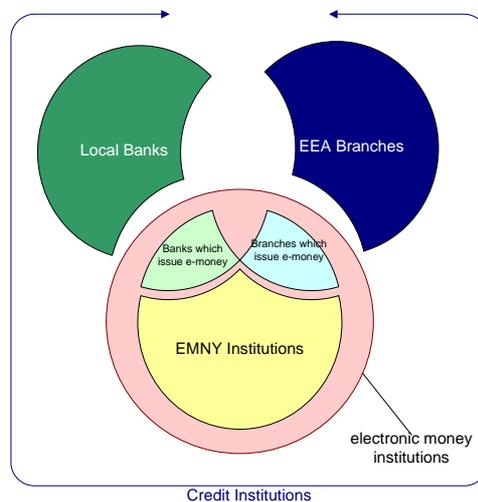
The purpose of this newsletter is to inform interested parties on upcoming legislation to give effect to the EU Directive 2000/46/EC ("E-Money Directive") as well as other amendments proposed to take effect on the Banking Ordinance 1992 ("the Ordinance").

An amending Ordinance to the Banking Ordinance 1992 be shortly be published which will effect a substantial number of changes to the principal ordinance. Rather than making available the amending Ordinance, the FSC can make available a full copy of the Banking Ordinance as it will look like once the amendments have been effected. This version of the Banking Ordinance has been highlighted for ease of reference. In addition, the FSC will also publish an Administration Notice required to complete the transposition of the e-money directive. Should you wish to receive a copy of the amended Ordinance and/or the Administrative Notice, please contact David Parody via e-mail on dparody@fsc.gi

1. E-Money Directive Transposition

What is e-money?

The closest analogy that Gibraltar presently has to e-money would be mobile phone pre-paid cards where cash is exchanged for credit on mobile phone usage. However, this fails to meet the criteria of e-money as it lacks two characteristics [1] that it can be redeemed for cash at any given time and [2] that it can be used to purchase other goods. E-money need not necessarily be stored on plastic or smart cards either. It is possible for e-money to exist with PCs as a "wallet" where the e-money can be redeemed for goods and services over the internet, for example.



What is an e-money institution?

Essentially, an e-money institution is one that issues e-money. The E-Money Directive envisages that existing banks as well as especially formed institutions, whose only business is that of issuing E-Money, be permitted to act as such.

So there will be local banks, as well as branches, some of whom issue e-money as part of their business and those who do not. The E-Money Directive however takes this one step further as it introduces a new type of credit institution (the EU term for a bank or building society) which are those



institutions which only issue e-money. These electronic money institutions, are afforded the rights to passport using the banking passport.

The EU has considered that electronic money institutions should be subject to prudential and supervisory regimes in much the same way as banks. However, in doing so the EU has recognised that a different set of prudential standards should apply. In the main, these relate to capital adequacy requirements.

Amendments to transpose part of the E-Money Directive

The amendments ensure that such institutions are captured within the Ordinance making the Commissioner apply the same entry standards to electronic money institutions as apply to banks wishing to establish themselves.

New sections, 11A to 11E, deal with the prohibition of the conduct of this activity without the authorisation of the Commissioner of Banking as well as defining the scope of the authorisation and the repayment of unauthorised collection of funds in exchange for illegal e-money.

There are two things to note at this stage:

[1] E-money can only be stored to a total value of Euro 120 on any one device.

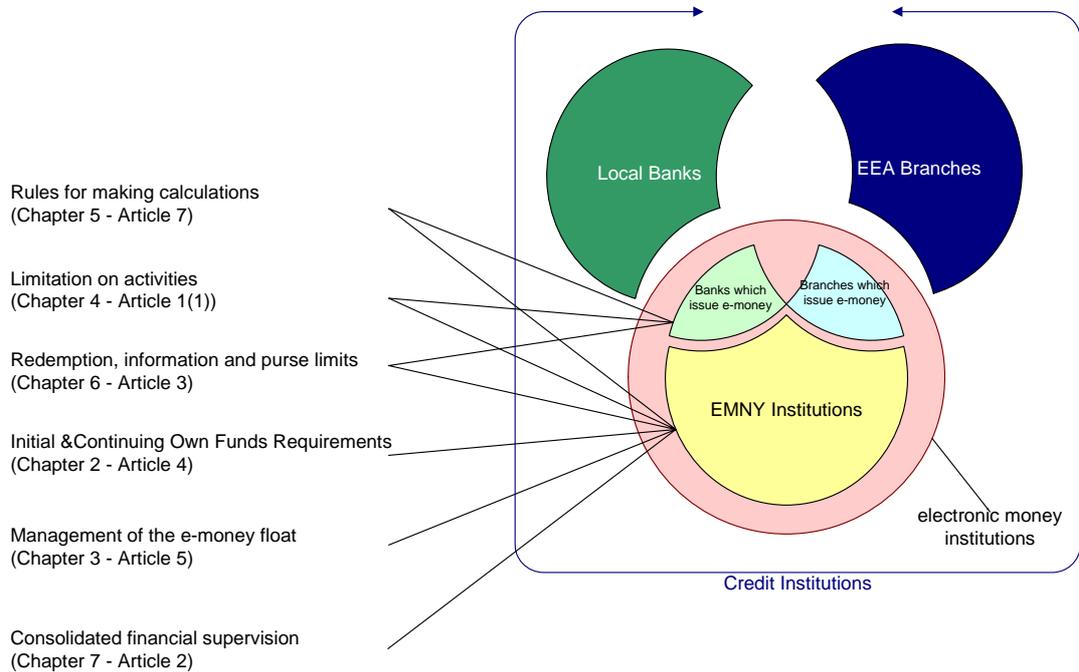
[2] E-money is not considered to be a deposit and therefore is not subject to deposit guarantee arrangements.

Various articles of the E-Money Directive are not transposed in full or in part by the amendments to the Ordinance. Instead this is delegated to the Administrative Notice issued under section 16 of the Ordinance. As presently worded, Section 16 of the Ordinance would not necessarily cover the issue of an Administrative Notice in this respect and hence why an amendment to this section will also be effected.

The Administrative Notice applies the remaining Articles of the E-Money Directive, like so:



Application of the Chapters of the Administrative Notice on E-Money



The amendments to section 23 amend the Ordinance to capture electronic money institutions within the criteria that the Commissioner needs to apply when consider applications for a licence.

Amendments to section 35 and the new 35A implement the capital requirements for these institutions.

The amendments to sections 59, 60 and 60A extend the Commissioners powers to these institutions whilst the amendments to section 64 enables the Commissioner to withdraw the licence if the conditions are met.

2. Miscellaneous Amendments

The FSC considers that a number of amendments to the Ordinance are required in order to ensure the smooth administration of the Ordinance as well as correction of a number of sections whose referencing is no longer relevant.

Prescribed form

The present Ordinance uses the Banking Regulations to prescribe forms to be used for the application for licences, changes in controllers, managers etc. This means that every time that the FSC considers it necessary to update one of these forms, amendments to the Regulations would have to be effected, taking up valuable resources. The amendments would ensure that the forms etc would be set and amended by the FSC as it felt necessary. This is already in place under the Financial Services Ordinances 1989 and 1998.

One of the initial advantages for this new process is that it would use the same individual questionnaire for new managers etc under the Financial Services Ordinances as it would under the Banking Ordinance. At present applicants need to complete two different forms for the same purpose.



References to the Financial Services Ordinances

The Banking Ordinance presently makes incorrect or is missing references to both or one of these Ordinances. The amendments rectify this.

Items 7 to 12 business

The amendments streamlines the manner in which investment business is defined in the Ordinance.

Changes in controller

The removal of the words “incorporated in Gibraltar” will give the power to the Commissioner to object to new controllers of third country branches that operate in Gibraltar.

Notice of disposal of shares

Rectifies incorrect reference to Commission

Powers to assist supervisory authorities

The removal of EEA from this section will enable the Commissioner to co-operate with non EEA supervisory authorities on regulatory matters in the same way as it can with EEA supervisors.



Paper licences

The FSC views the issue of “paper” form licences as outdated and placing administrative burdens upon it. Whilst the amendments would still required banks to be “licensed” no physical licence would be issued other than a letter of authorisation from the Commissioner. The requirements, therefore to display these at their premises etc would be done away with as would the requirements to obtain copies of damaged or defaced licences, etc.

The FSC would continue to publish licences granted or surrendered in the Gazette and its own web-site.

3. Changes in references

Lastly number of changes are effected throughout the Ordinance to reflect that many of the banking directives have been consolidated into one single EU Directive.

Similarly, the rewording of Schedule 3 of the Ordinance has been made to reflect the revised text of the consolidation directive.

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