



**Financial Services  
Commission**

## **Administrative Notice 9**

### Electronic Money

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## 1. THE LEGISLATION

- 1.1. EU Directive 2009/110/EC (referred to as the Second Electronic Money Directive (“2EMD”)) was transposed into Gibraltar law via the Financial Services (Electronic Money) Regulations 2011 (“EMRs”). The full text of 2EMD can be found on the European Commission’s [website](#).

### This Notice

- 1.2. This notice is given in accordance with EMR 60 and sets out the GFSC’s approach to interpreting and applying the EMRs.
- 1.3. This notice is aimed at existing electronic money issuers and other businesses that are currently considering issuing e-money in and from Gibraltar.
- 1.4. This notice does not have binding force of law nor does it constitute an exhaustive description of an e-money issuer’s obligations: it is intended to provide supportive guidance and direction in terms of the GFSC’s regulatory regime. Reference should also be made to both the EMRs and 2EMD in order to obtain a complete understanding of the applicable obligations in Gibraltar. It may therefore be appropriate in certain circumstances for a firm to seek legal advice if there is any doubt regarding the scope or application of the EMRs to their particular activities.
- 1.5. Firms are advised to contact the GFSC at an early stage to outline their consideration of the relevant legislation and the basis upon which they consider that their proposed activities require authorisation or registration. Any questions or comments may be directed to [information@fsc.gi](mailto:information@fsc.gi) and further information can be found on the GFSC’s [website](#).



## 2. DEFINITIONS

The following terms are used throughout this notice:

**Agent:** a person who provides payment services on behalf of an electronic money institution.

**AML/CTF:** anti-money laundering/counter-terrorist funding.

**Authorised Credit Institution:** a person authorised for the purposes of the Financial Services (Banking) Act 1992 to accept deposits or otherwise authorised as a credit institution in accordance with Article 6 of the Banking Consolidation Directive other than a person in the same group as the EMI.

**Authorised EMI:** Authorised electronic money institution as defined in the EMRs.

**Authority/GFSC:** Gibraltar Financial Services Commission.

**Average Outstanding e-money:** 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 (EMR 2(1)).

**Banking Consolidation Directive:** EEA Directive 2006/48/EC.

**Controller:** has the meaning given in paragraph 4.14.

**Distributor:** a person who distributes or redeems electronic money on behalf of an EMI but who does not provide payment services on its behalf.

**Dormant e-money:** E-money held more than one year after the termination of the e-money contract relating to e-money.

**EEA:** European Economic Area, as constituted from time to time.

**EEA Agent:** an Agent through which an Authorised EMI, in exercise of its passport rights, provides payment services in an EEA state other than Gibraltar.

**EMI:** Electronic Money Institution.

**e-money:** electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which is:

- issued on receipt of funds for the purpose of making payment transactions;
- accepted by a person other than the electronic money issuer;
- not excluded by EMR 3 i.e. monetary value that is:
  - i. stored on instruments that can be used to i) acquire goods or services only in or on the electronic money issuer's premises; or (ii) under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services; or
  - ii. used to make payment transactions executed by any telecommunication, digital or IT device where the goods or services are delivered to and used through such a device, but only where the operator of the device does not only act as an intermediary between the user and the supplier.



**Electronic money issuer:** any of the following persons that issue electronic money:

- Authorised EMIs.
- Small EMIs.
- EEA authorised electronic money institutions.
- Credit institutions.
- The European Central Bank and the national central banks of EEA states, when not acting in their capacity as a monetary authority or other public authority.
- Government departments.
- The Gibraltar Savings Bank.

**EMRs:** Financial Services (Electronic Money) Regulations 2011

**EEA Branch:** a branch established by an authorised electronic money institution, in the exercise of its passport rights, to issue electronic money, provide payment services, distribute electronic money or carry out other activities in accordance with these EMRs in an EEA state other than Gibraltar.

**GFSC:** The Financial Services Commission of Gibraltar.

**Hybrid business:** EMIs that undertake activities that are not related to (but in addition to) issuing e-money and payment services.

**Initial/Ongoing Capital:** The amount of capital specified in **chapter 0**.

**PSD:** Payment Services Directive (EEA Directive 2007/64/EC)

**PSRs:** Financial Services (EEA) (Payment Services) Regulations 2010

**Qualifying Holding:** has the meaning given in paragraph 4.14.

**Register:** The GFSC register.

**Relevant Funds:** has the meaning given in paragraph 6.1.

**Small EMI (or Registered EMI):** Small electronic money institution as defined in the EMRs.

**Unrelated Payment Services:** payments services that are not related to the issuing of e-money.

### 3. THE E-MONEY REGIME: SUMMARY

3.1. This chapter summarises the applicability of the EMR regime in Gibraltar.

#### What is e-money?

3.2. The EMRs define e-money as electronically (including magnetically) stored monetary value represented by a claim on the issuer that is:

- issued on receipt of funds for the purpose of making payment transactions;
- accepted by a person other than the electronic money issuer; and
- **not excluded** by EMR 3, which excludes monetary value that is:
  - i. stored on instruments that can be used to:
    - a. acquire goods or services only in or on the electronic money issuer's premises; or
    - b. under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services; or
  - ii. used to make payment transactions executed by any telecommunication, digital or IT device where the goods or services are delivered to and used through such a device, but only where the operator of the device does not only act as an intermediary between the user and the supplier.

#### E-money issuers

3.3. The EMRs define the following persons, when issuing e-money, as e-money issuers:

- Authorised EMIs;
- Small EMIs;
- EEA authorised EMIs (persons authorised in an EEA state and not in Gibraltar to issue e-money and provide payment services and who exercise passport rights to issue, distribute or redeem e-money or provide payment services in Gibraltar in accordance with 2EMD);
- credit institutions;
- the European Central Bank and the national central banks of EEA states, when not acting in their capacity as a monetary authority or other public authority;
- government departments; and
- the Gibraltar Savings Bank.



- 3.4. A Gibraltar business or a Gibraltar branch of a business with its head office outside the EEA has to be authorised (as an **Authorised EMI**) or registered (as a **Small EMI**) by the GFSC in order to issue e-money.

#### **Authorised EMIs**

- 3.5. Authorised EMIs are subject to the full regulatory regime, including the capital, safeguarding and conduct of business requirements. Different requirements apply to Authorised Credit Institutions, which are regulated in accordance with the requirements of the Financial Services (Banking) Act 1992, which is outside the scope of this notice. However, Part 5 of the EMRs, which relates to the issuance and redeemability of e-money (please see **chapter 7**), as well as Chapter 3 of the PSRs, which relates to the PSR conduct of business requirements, do apply to Authorised Credit Institutions.
- 3.6. Authorised EMIs may provide payment services that are not related to the issuing of e-money (i.e. Unrelated Payment Services) but must notify the GFSC of the types of payment services they wish to provide.

#### **Small EMIs**

- 3.7. An applicant can register as a Small EMI where it has average outstanding e-money that does not exceed €5m and transacts an average of less than €3m on a 12-monthly basis.
- 3.8. Small EMIs differ from Authorised EMIs in that they have no passporting rights and can only provide Unrelated Payment Services if their average monthly total of payment transactions does not exceed €3m with the applicable 12-month period (and they must notify the GFSC of the types of payment services they wish to provide). Some Small EMIs are subject to capital requirements and all are subject to the e-money safeguarding and conduct of business requirements.

#### **Agents**

- 3.9. EMIs may distribute and redeem e-money and provide payment services through Agents as long as such Agents have been registered by the GFSC (please see **chapter 8**).

#### **Distributors**

- 3.10. EMI's may engage Distributors to distribute and redeem e-money but not to provide payment services. Although Distributors do not have to be registered, they do have to be notified to the GFSC (please see **chapter 8**).

## 4. AUTHORISATION AND REGISTRATION

### Introduction

- 4.1. This chapter sets out the application process for Authorised and Small EMIs and the considerations the GFSC takes into account for both type of applications.
- 4.2. EMIs must meet certain standards and provide certain information to enable the GFSC to monitor their business. The GFSC also has the power to fine these EMIs or prevent them from operating in financial services if they do not meet its requirements.

### **I: APPLYING TO BECOME AN AUTHORISED OR SMALL EMI**

- 4.3. In order to become an Authorised EMI or registered as a Small EMI, a firm needs to satisfy the relevant conditions and submit the relevant completed GFSC application form, application fee, and any further information required by the GFSC. For further information relating to E-Money applications and requisite fees, please refer to the [e-money section](#) of the GFSC website.

### **Conditions**

- 4.4. Authorisation or registration may only be granted if the GFSC are satisfied that an applicant fulfils all of the relevant conditions as set out in the EMRs.
- 4.5. In summary, an applicant must:
  - hold sufficient Initial Capital;
  - be a Gibraltar-incorporated entity that has its head office and registered office (if it has one) in Gibraltar or a corporate entity which has a branch that is located in Gibraltar and whose head office is situated outside the EEA;
  - have robust governance arrangements for its electronic money issuance and payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
  - have effective procedures to identify, manage, monitor and report any risks to which it might be exposed;
  - have adequate internal control mechanisms, including sound administrative, risk management and accounting procedures;
  - for authorisation applications, ensure that any person having a Qualifying Holding in the applicant is a fit and proper person;
  - ensure that the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue e-money and provide payment services;
  - have a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly;





- establish and undertake adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with the EMRs (please refer to **chapter 6**);
- for authorisation applications, ensure that any 'close links' (as defined in EMR 6(8)) it has are not likely to prevent the effective supervision of the authorised EMI or, where a close link is located outside of the EEA, the laws of the foreign territory would not prevent effective supervision.

### **Business Plan**

4.6. The business plan must explain how the applicant intends to carry out its business and should clearly and comprehensively set out:

- its proposed activities and the way in which it intends to manage these;
- its marketing strategy, including information about its target customers and territories and marketing objectives;
- details of any Agents and/or Distributors it intends to work with and the countries/jurisdictions in which it will provide its services (and specifying whether these services will be passive or active)
- the resources that are to be made available and the systems that the applicant intends to
- the arrangements that are to be put in place to safeguard customer monies and/or other assets;
- how records will be maintained;
- how and by whom any decisions will be made;
- the level and nature of fees to be charged to customers;
- if the applicant forms part of a larger group, details of the activities of the group and a description of the group structure;
- details of the risk, compliance and operational issues associated with the proposed activities, as well as evidence that it has documented these;
- details of the procedures, processes, policies, systems and controls it intends to put in place (full copies of all of these documents/policies do not necessarily have to be enclosed with the application since a detailed summary may suffice, but these must be immediately available upon request, should the GFSC wish to investigate further).

### **Initial & Ongoing Capital**

4.7. Applicants must hold **at least** EUR 350,000 immediately before the time of authorisation and at all times thereafter as adequate own funds on an ongoing basis (please refer to **chapter 0** for further guidance on how Ongoing Capital must be calculated).

### **Safeguarding Measures**

4.8. Applicants must take adequate measures for the purpose of safeguarding electronic money holders' funds and implement one of the two safeguarding measures specified in **chapter 6**. Applicants must specify the safeguarding measure they intend to use together with relevant details e.g. bank account details, copies of guarantees or insurance policies.

### **Governance arrangements**

4.9. Governance arrangements are the procedures used in the applicant's decision-making and control that provide its structure, direction and accountability. Applicants must ensure that they have robust governance arrangement for its electronic money issuance and payment



business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility. The GFSC requires a clear and comprehensive understanding of what applicant's governance arrangements will be.

#### **Risk management**

- 4.10. Applicants should show how they will effectively identify, manage, monitor and report any risks to which they might be exposed e.g. settlement, operational, counterparty, liquidity, market, financial crime and foreign exchange risk.

#### **Internal controls**

- 4.11. These are the systems and procedures that applicants will be using to safeguard their business from fraud and error and should include sound administrative, risk management and accounting procedures.

#### **AML/CTF Controls**

- 4.12. EMIs are required to establish and maintain appropriate and risk-sensitive AML/CTF policies and procedures to comply with the Crime (Money Laundering and Proceeds), GFSC AML Guidance Notes and other such applicable law. Applicants are required to describe their AML/CTF internal control mechanisms, to include information on:

- customer due diligence measures and ongoing monitoring of business relationships;
- the identity of the firm's money laundering reporting officer;
- reporting (internally and to the Gibraltar Financial Intelligence Unit);
- record-keeping policy;
- risk assessment and management procedures;
- the monitoring and management of compliance with, and the internal communication of, such policies and procedures within the firm.

- 4.13. Applicants should refer to the GFSC AML Guidance Notes and for further guidance.

#### **Qualifying Holdings (for Authorised EMI applicants only)**

- 4.14. A Qualifying Holding is defined in the EMRs by reference to Article 4(11) of the Banking Consolidation Directive and the following persons are considered qualifying holders or "Controllers" of an EMI:

- a person that holds at least 10% of the shares in or capital of the applicant business (or that of its parent);
- a person that is entitled to control or exercise control of at least 10% of the voting power in the applicant business (or its parent); and
- a person that has a shareholding of any size (or voting power) in the applicant business or a parent and is able to **significantly influence** the applicant's management.

- 4.15. The application must contain the following information for each Controller (EMR Schedule 1(8)):

- the size and nature of the qualifying holding; and
- evidence of their suitability taking into account the need to ensure the sound and prudent management of an EMI.



- 4.16. The details of any Qualifying Holding should be submitted on an Individual Questionnaire or Body Corporate Questionnaire as appropriate and applicants should contact the GFSC if they have any doubts as to whether a person should be considered a Controller.

**Close links (for Authorised EMI applicants only)**

- 4.17. Applicants must satisfy the GFSC that any “close links” it has are not likely to prevent the effective supervision of the authorised EMI or, where a close link is located outside of the EEA, that the laws of the foreign territory will not prevent effective regulatory supervision.
- 4.18. A close link can include an owner or controller of 20% or more of the capital or voting rights in the applicant (accordingly, such a person will be required to submit an Individual or Body Corporate Questionnaire).

**The GFSC’s Fit & Proper Test and “Four-Eyes” Principle**

- 4.19. Any relevant persons (i.e. Controllers, directors and managers of the applicant) must satisfy the GFSC’s Fit and Proper test, which is an assessment of:
- honesty, integrity and reputation;
  - competence, ability to conduct business and organisation;
  - financial position.
- 4.20. Applicants are advised to refer to the GFSC website for further guidance on whether it satisfies the Fit and Proper test.
- 4.21. In connection with this, applicants must also satisfy the **four-eyes principle** whereby at least two individuals must effectively direct the business. In the case of a body corporate, the GFSC shall expect these individuals to be either executive directors or persons granted executive powers by, and reporting immediately to, the Board. These provisions are designed to ensure that at least two minds are applied both to the formulation and implementation of the policy of the institution.



## **II: Determination of an application (EMR 9)**

- 4.22. Although the GFSC will aim to consider an application as soon as possible, it is required to do so by the EMRs within three months of receiving a complete application. An application is considered to be complete when the GFSC considers that it has received all the information, documents and evidence it requires to make a decision. Applicants will be informed of the GFSC's decision in writing.
- 4.23. An application may be withdrawn at any time before being determined but the application fee is non-refundable.

### **Approval**

- 4.24. Successful applications may be subject to positive or negative conditions (e.g. an obligation on the applicant to refrain from dealing with a particular category of customer). Please refer to the GFSC's website for further information on its regulatory approach to EMI's and general conditions imposed on all EMI's (<http://www.GFSC.gi/GFSC/eMoney.htm#box-a>).
- 4.25. All EMIs are listed on the online [e-money section](#) of the GFSC Register.

### **Refusal**

- 4.26. Applicants will be notified in writing of the GFSC's intention to refuse an application, setting out the reasons for the refusal and allowing 28 days for the applicant to make a representation on the refusal.
- 4.27. Applicants may make written representations or, with 2 weeks' written notice, may attend at the GFSC personally to make oral representations.
- 4.28. Following representations (or if none are made), if the GFSC still decides to refuse an application, it shall send the applicant a final written notice of refusal, stating the reasons for the refusal.
- 4.29. If an applicant wishes to contest the refusal, it may refer the matter to the Supreme Court of Gibraltar and the GFSC will take action in accordance with any directions the court gives.



## 5. NOTIFICATION OF CHANGE IN CIRCUMSTANCES

- 5.1. This chapter describes the notifications that Authorised and Small EMIs must submit to the GFSC as part of their authorised or registered status.
- 5.2. Notifications must be sent when there is a **material** change in any information that an EMI has already provided in respect of:
- its fulfilment of any of the requisite conditions for authorisation or registration;
  - the issuance, distribution or redemption of e-money or the payment services it provides in exercise of its passport rights; or
  - where using an Agent to provide payment services, the matters referred to in EMR 34(6)(b) and (c) (i.e. changes affecting the fitness and propriety of relevant persons and compliance with relevant AML/CTF legislation).
- 5.3. Examples of notifiable material changes to an EMI include changes in:
- **Name and contact details** (i.e. registered name, trading name (if applicable), head office, registered office, accounting reference date, compliance contact, website and email address).
  - **Type of e-money issued or payment services provided.**
  - **Appointment/removal** of directors or persons responsible for managing the issuing of e-money or any payment services, including the reason for the departure and further information if the individual was dismissed due to criminal or fraudulent activities. Appointments should be notified to the GFSC before the change takes place and removals as soon as possible.
  - **Ownership** and any acquisitions of, or increase in control, of an EMI.
  - **Significant changes to the programme of operations or business plan** (e.g. proposed restructuring, reorganisation or business expansion that could have a significant impact on the EMI's resources or risk profile)
  - **Capital requirements:** The GFSC must be notified of any proposed action that would result in an EMI being unable to meet its capital requirements e.g. actions that would result in a material change in the EMI's financial resources and failures in governance arrangements and internal control mechanisms.
  - **Method of safeguarding** e.g. change in the credit institution where the safeguarded funds are held, change in relevant insurance undertaking that insures the safeguarded funds or change in safeguarding method.
  - **Money laundering reporting officer:** The GFSC should be notified as soon as an EMI becomes aware of changes to the MLRO.
  - **Outsourcing arrangements** (for Authorised EMIs only): where the EMI will be relying on a third party to provide any 'operational function relating to the issuance, distribution or redemption of electronic money or the provision of payment services (as specified in EMR 26 (1)).



- **Auditors** (for Authorised EMIs only):

### **Timing**

- 5.4. EMIs should make efforts to notify the GFSC of relevant changes as soon as possible.
- 5.5. In the case of a substantial change that has not yet taken place, the GFSC will expect EMIs to notify it in advance and in any event as soon as possible.
- 5.6. Notifications may be submitted to the GFSC by mail at its main address or by email to one of the EMI's designated GFSC contacts or to [authorisations@GFSC.gi](mailto:authorisations@GFSC.gi) with subject heading "e-money institute notification".

### **Variation of authorisation or registration**

- 5.7. EMRs 5 and 12 require an application for variation of an authorisation or registration to contain:
  - a statement of the desired variation;
  - a statement of the e-money issuance and payment services business that the applicant proposes to carry on if the authorisation/variation is varied; and
  - or be accompanied by, such other information as reasonably required by the GFSC.
- 5.8. Applicants should complete and submit the required information (as set out in paragraph 5.7) in writing and the GFSC may request any further information felt necessary to determine the application.
- 5.9. The process for determining an application for variation is the same as for initial authorisation/registration and the time limit is also 3 months.

### **Cancellation of authorisation/registration (EMR 10)**

- 5.10. The GFSC may cancel an EMI's authorisation/registration where:
  - the EMI has not issued e-money within 12 months of becoming authorised/registered;
  - the EMI requests or consents to the cancellation;
  - the EMI ceases to engage in business activity for more than 6 months;
  - the EMI has obtained authorisation through false statements or any other irregular means;



- the EMI no longer meets or is unlikely to meet certain conditions of authorisation/registration or the requirement to maintain own funds;
- the EMI has issued e-money or provided payment services other than in accordance with its permissions;
- the EMI constitutes a threat to the stability of a payment system;
- the cancellation is desirable in order to protect the interests of consumers; or
- the EMI's issuance of e-money or provision of payment services is otherwise unlawful.

5.11. Where the GFSC propose to cancel an EMI's authorisation/registration (other than at the EMI's request), the EMI will be issued with a written warning, for which the EMI will be permitted to make representations. If the cancellation goes ahead, the EMI will be issued with a final written cancellation notice.

5.12. EMIs can cancel their authorisation/registration by notifying the GFSC in writing and the EMI shall be removed from the e-money section of the Register once the GFSC is satisfied that:

- there are no fees outstanding to the GFSC;
- all customer liabilities have been paid or are covered by suitable arrangements that have been communicated to the GFSC; and
- there is no other reason why the EMI should remain of the e-money section of the Register.



## CAPITAL REQUIREMENTS

- 5.13. The EMRs require Authorised EMIs and certain Small EMIs to hold a minimum amount of capital. The relevant sections of the EMRs are EMR 19 and Schedule 2.
- 5.14. Capital is required in order to ensure that applicants are able to:
- safeguard their customers funds and redeem e-money as and when required;
  - absorb unexpected losses that arise while the business is a going concern as well as those incurred on liquidation; and
  - maintain public confidence.
- 5.15. The term 'Capital Requirements' refers to the amount of capital that must be held by the business for regulatory purposes, which consist of:
- **Initial Capital** i.e. capital that is a condition of authorisation/registration; and
  - **Ongoing Capital** i.e. the amount of capital that an EMI must maintain in order to retain its authorised/registered status.
- 5.16. EMIs can also undertake activities that are not related to issuing e-money and payment services and are referred to as 'hybrid' businesses. The EMRs do not impose any initial or ongoing capital requirements in relation to the business that does not involve issuing e-money or providing payment services. Any other capital requirements imposed because of other legislation e.g. if the EMI is undertaking another regulated activity, have to be met separately and cumulatively.
- 5.17. For the purposes of calculating the capital requirements, EMIs that provide Unrelated Payment Services or that are hybrid businesses must treat each part of the business as a separate business. The capital requirements are expressed in euro and EMIs are expected to meet these requirements regardless of exchange rate fluctuations. Current and historical rates can be found on the European Commission's [InforEur](#) website.
- 5.18. The Capital holding requirements are set out at paragraphs 5.19 to 5.35 and summarised in the table below:





Type of EMI	Initial Capital	Ongoing capital requirement
<b>Authorised EMIs</b>	€350,000	Calculated using Method D below (in relation to the e-money business only) and <b>at least</b> €350,000.
<b>Authorised EMIs</b> that also provide Unrelated Payment Services	No additional requirements with respect to the Unrelated Payment Services.	Calculated using Methods A, B or C below in relation to the Unrelated Payment Services business only (additionally and separately to e-money business) and <b>at least</b> €350,000.
<b>Small EMIs</b> whose business activities generate (or are predicted to generate) Average Outstanding e-money of <b>at least €500,000</b> .	At least <b>2.0%</b> of Average Outstanding e-money.	At least <b>2.4%</b> of Average Outstanding e-money. (as long as €500,000 threshold is not exceeded).
<b>Small EMIs</b> whose business activities generate (or are predicted to generate) Average Outstanding e-money of <b>at least €500,000</b> and that also provide Unrelated Payment Services.	No additional requirements with respect to the Unrelated Payment Services.	No additional requirements with respect to the Unrelated Payment Services.
<b>Small EMIs</b> whose business activities generate (or are predicted to generate) <b>less than €500,000</b> .	No capital requirements.	No capital requirements.

### **I: Initial Capital Requirements**

5.19. The EMRs specify the following capital requirements:

- Authorised EMIs must hold at least €350,000.
- Small EMIs whose business activities generate (or are projected to generate) average outstanding e-money of €500,000 or more must hold an amount of initial capital at least equal to 2.0% of their Average Outstanding e-money.
- If a Small EMI applicant does not have a sufficient period of business history to calculate Average Outstanding e-money then, projected amounts (as outlined in the business plan) may be used subject to any adjustments required by the GFSC.
- There is no initial capital requirement for Small EMIs whose business activities generate (or are projected to generate) Average Outstanding e-money less than €500,000.

**Calculation**

- 5.20. The following **Qualifying Items**, as stipulated in EMR Schedule 2 (4) (a) to (c), can be used to meet Initial Capital requirements:
- a. Paid up Capital**  
Including share premium accounts but excluding amounts arising due to cumulative preference shares.
  - b. Reserves**  
Other than:
    - i. revaluation reserves;
    - ii. fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost; &
    - iii. that part of profit and loss reserves that arises from any gains on liabilities valued at fair value that are due to changes in the electronic money institution's credit standing
  - c. Profit/Loss**  
As further described EMR Schedule 2 (4)(c).

**II: Ongoing Capital****For e-money business**

- 5.21. Authorised EMIs and qualifying Small EMIs must, at all times, maintain Ongoing Capital in accordance with their applicable Ongoing Capital requirements, which must be calculated by using Method D (see paragraph 5.30) for their e-money business.

**Unrelated Payment Services business**

- 5.22. Authorised EMIs that provide Unrelated Payment Services must calculate their cumulative Ongoing Capital requirements by using one of Methods A, B or C (see paragraphs 5.31 to 5.32) and must confirm which method they are going to use in their GFSC application. An Authorised EMI's ongoing capital requirements for Unrelated Payment Services are separate and additional to those of its e-money business.
- 5.23. Regardless of the Method used, the Applicable Ongoing Capital requirements of an EMI must not be lower than €350,000.
- 5.24. The GFSC may direct an Authorised or Small EMI to hold Ongoing Capital up to 20% higher **or** lower than the outcome of its Ongoing Capital calculation for its e-money business, its Unrelated Payment Services or both. In practice, the GFSC tends to require a 20% increase in the Ongoing Capital requirement.



### **III: Calculating Ongoing Capital**

5.25. The following process (which must be undertaken separately for e-money and payment services business) must be followed in order to calculate an EMI's Ongoing Capital:

1. Assess the **Qualifying Items** held (paragraph 5.26)
2. Identify relevant items to which **deductions** will be applied (para 5.27); and
3. Apply **limits** as relevant (paragraph 5.28).

#### **1. Qualifying Items**

5.26. The following Qualifying Items, which are fully described in EMR Schedule 2 (4), can be used to meet Ongoing Capital requirement and are summarised as:

- Paid up capital, including share premium accounts but excluding amounts arising in respect of cumulative preference shares;
- certain reserves;
- profit/loss;
- revaluation reserves;
- general or collective provisions;
- certain securities;
- perpetual cumulative preferential shares;
- the commitments of the members of an EMI set up as a cooperative;
- for EMIs organised as funds, the joint and several commitments of the borrower;
- fixed-term cumulative preferential shares and subordinated loan capital (subject to qualifications);

#### **2. Deductions**

5.27. These are set out fully in EMR Schedule 2 (7) and in summary include:

- the EMIs own shares held by the EMI;
- intangible assets;
- material losses of the current financial year;
- holdings of shares in credit institutions and financial institutions exceeding 10% of their capital as well as securities of indeterminate duration, cumulative preference shares or co-operative society members' commitments held in these institutions;
- participations in insurance or reinsurance undertakings or insurance holding companies ("IHCs").



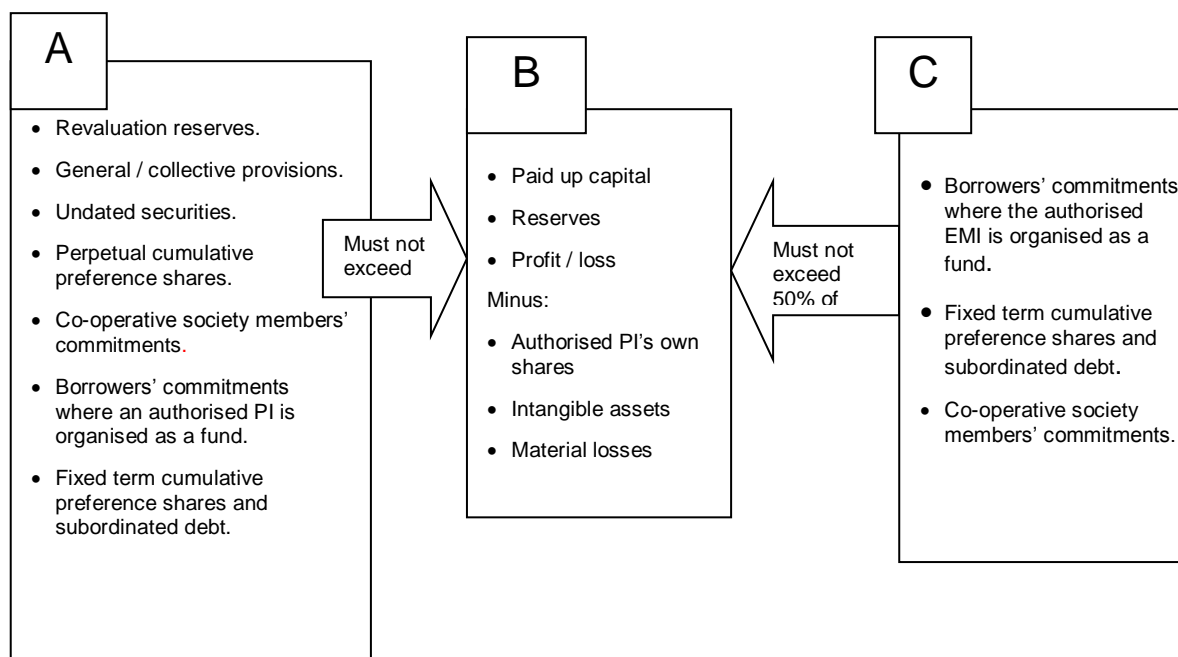
**3. Limits on Qualifying Items:**

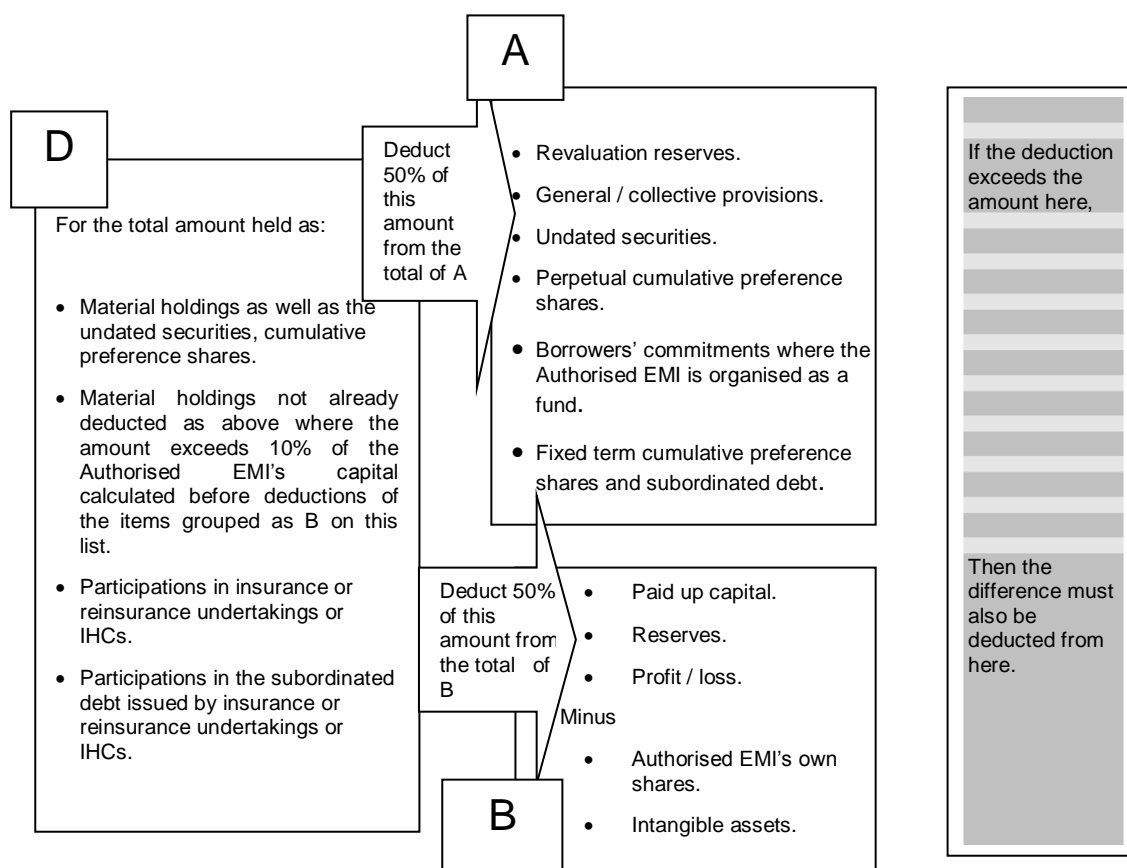
5.28. There are also limits on the Qualifying Items (EMR Schedule 2 (9)), which are listed below and must be applied as follows:

- the items listed in A must not exceed those listed in B; and
- the items listed in C must not exceed 50% of B.

After applying such limits (which may, in temporary and exceptional circumstances, be increased by the GFSC):

- 50% of the total in D, must be deducted from A and the remaining 50% must be deducted from B; and
- the amount, if any, by which the amount to be deducted from A exceeds A must be deducted from B.





#### 4. Calculation of Ongoing Capital requirements

5.29. EMIs that provide Unrelated Payment Services should apply one of Methods A, B or C below in relation to their Unrelated Payment Services business only and Method D in relation to their e-money business. EMIs that only provide e-money services should only apply Method D to calculate their ongoing Capital Requirements.

5.30. **Method A:** 10% of the EMI's preceding year's fixed overheads for the payment services part of the business. The GFSC may adjust the % level if there has been a material change to the business since that last financial year e.g. if the business (or part of it) or if it experiences rapid growth.

5.31. **Method B:** The calculation consists of the sum of the following elements relating to payment volume ("PV") multiplied by the Scaling Factor (see paragraph 5.33):

- 4.0% of the PV up to €5M;
- 2.5% of PV above €5M to €10M;
- 1.0% of PV above €10M to €100M;



- d) 0.5% of the PV above €100M to €250M; and
- e) 0.25% of the PV above €250M.

5.32. **Method C:** The calculation is based on the firm's income over the preceding year and consists of the Relevant Indicator (below, i) multiplied by the Multiplication Factor (below, ii) and the Scaling Factor (5.33):

- i. **Relevant Indicator** ("RI") is the sum of the following from the previous financial year's results:
  - interest income;
  - interest expenses;
  - commissions and fees received; and
  - other operating income.
- ii. **Multiplication Factor** is the sum of:
  - 10% of the RI up to a value of €2.5M;
  - 8% of the RI from €2.5M to €5M;
  - 6% of the RI from €5M to €25M;
  - 3% of the RI from €25M to €50M;
  - 1.5% above €50M.

5.33. The Scaling Factor applied to Methods B and C is based on the type of service provided, and is the higher of the following:

Payment Services	Scaling Factor
Money remittance	0.5
Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.	0.8
Any other payment service	1.0

5.34. **Method D:** The calculation is 2.2% of the Average Outstanding e-money issued by the EMI.

- EMIs that have not completed a sufficiently long period of business to calculate the amount of average outstanding e-money for these purposes should use the projected



figure submitted in the business plan in their authorisation application (subject to any adjustments required by the GFSC).

- If an authorised EMI provides Unrelated Payment Services or is a hybrid business and the amount of outstanding e-money is not known in advance, the authorised EMI may calculate its own funds requirement on the basis of a representative portion being assumed as e-money, as long as a representative portion can be reasonably estimated on the basis of historical data and subject to the GFSC's satisfaction.

5.35. An Authorised EMI that undertakes business other than issuing e-money and providing payment services must not use:

- in its calculation of own funds in accordance with methods A, B or C, any qualifying item included in its calculation of own funds in accordance with method D
- in its calculation of own funds in accordance with method D, any qualifying item included in its calculation of own funds in accordance with methods A, B or C; or
- in its calculation of own funds in accordance with methods A, B, C or D any qualifying item included in its calculation of own funds to meet its capital requirement for any other regulated activity.

## 6. SAFEGUARDING REQUIREMENTS

### Introduction

6.1. EMR 20 requires all EMIs to safeguard funds received in exchange for issued e-money ("Relevant Funds"). If an EMI that has safeguarded funds becomes insolvent, the claims of e-money holders or payment service users (where appropriate) are paid from the asset pool formed from these funds above all other creditors (apart from the liquidator's costs of distributing the assets).

6.2. Additionally, the GFSC may require EMIs as a condition of their licence, to comply with safeguarding requirements regardless of where Safeguarded Funds are received and to demonstrate their ability to safeguard such funds and proactively manage any associated or identifiable risks.

### Unrelated Payment Services

6.3. EMIs are also entitled to provide payment services that are unrelated to the issuance of e-money (i.e. Unrelated Payment Services) and funds received for these services must also be safeguarded in accordance with the PSRs as if they were payment institutions, using the segregation or insurance/guarantee method as described below.

### Safeguarded funds and timing

6.4. Relevant Funds received in the form of payment by a payment instrument only have to be safeguarded when they are credited to the EMI's payment account or are otherwise made available to the EMI and by no later than the end of five business days after the date on which the e-money is issued. This five-day window relates to e-money paid for by a payment



instrument such as a credit or debit card **but** where e-money is paid for by cash and even if the cash payment is received by a person (such as an Agent or Distributor) acting on the EMI's behalf, the e-money must be safeguarded at the time of e-money issue.

- 6.5. Some EMIs will receive funds in respect of non-payment services e.g. an EMI with a foreign exchange business. Such "hybrid" businesses are only required to safeguard the funds received for e-money. In the event that the precise portion attributable to the e-money is variable or unknown in advance, the EMI may make a reasonable estimate based on relevant historical data of the portion that is likely to be e-money and subject to the GFSC's approval. Relevant historical data might include the proportion generally used as e-money by the EMI in question or by similar customers generally.

#### **Methods of safeguarding**

- 6.6. There are two ways in which an EMI may safeguard Relevant Funds:

Option 1: the segregation method; or

Option 2: the insurance or guarantee method

#### **Option 1 – The Segregation Method (EMR 21)**

- 6.7. This method requires an EMI to segregate Relevant Funds from any other funds it holds including its working capital and funds received for Unrelated Payment Services.
- 6.8. Relevant Funds must be held separately from funds received for the execution of payment transactions not related to issuing e-money. This requirement applies as soon as funds are held by the EMI and includes money received on its behalf by Agents or Distributors.
- 6.9. An EMI must, at the end of the business day following the day of receipt of Relevant Funds:
- i. deposit the Relevant Funds in a separate account held with an Authorised Credit Institution; or
  - ii. invest the Relevant Funds in secure and low risk assets that are approved by the GFSC as "liquid" in accordance with EMR 21(6)(a) and place those assets in a separate account with an authorised custodian.





- 6.10. Assets shall be considered secure, low risk and liquid, and an EMI can invest in them and place them in a separate account with an authorised custodian in order to comply with the safeguarding requirement, if they are:
- i. items that fall into one of the categories set out in Table 1 of point 14 of Annex 1 to Directive 2006/49/EC (Directive on the capital adequacy of investment firms and credit institutions) 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; and
  - ii. units in an undertaking for collective investments in transferable securities (UCITS), which invests solely in the assets mentioned in paragraph i above.
- 6.11. The safeguarding account in which the Relevant Funds or equivalent assets are held must be named and identifiable in a way that shows it is a safeguarding account (rather than, for example, an account used to hold money belonging to the EMI). It must be clear to any administrator that the funds are held for the purpose of safeguarding e-money.
- 6.12. The safeguarding account must not be used to hold any other funds or assets including safeguarding or segregation of funds from other services or the protection of funds received for foreign exchange deals. Additionally, no person **other** than the EMI may have an interest or right over the safeguarding accounts or assets referred to in **chapter 6.9**.
- 6.13. Authorised custodians include firms authorised by the GFSC to safeguard and administer investments and EEA firms authorised as investment firms under section 6 the Financial Services (Markets in Financial Instruments) Act 2006 (“MIFIA”) and that hold investments under the standards in MIFIA section 13.
- 6.14. To ensure it is clear what funds have been segregated and in what way, an EMI must keep records of any:
- i. Relevant Funds segregated;
  - ii. Relevant Funds placed in a deposit account with an Authorised Credit Institution; and
  - iii. assets placed in a custody account.
- 6.15. The EMRs do not prevent EMIs from holding more than one safeguarded account but EMIs may not share their safeguarding accounts (e.g. where a corporate group contains several EMIs, each must have its own safeguarding account).

#### **Option 2 – the Insurance or Guarantee Method (EMR 22)**

- 6.16. This method involves arranging for the Relevant Funds to be covered by:
- an **insurance policy** with an authorised insurer;
  - a **guarantee** from an authorised insurer; or an Authorised Credit Institution.



- 6.17. The policy or guarantee will need to cover all Relevant Funds, not just funds held overnight or longer.
- 6.18. The proceeds of the insurance policy or guarantee must be payable in an insolvency event into a separate account held by the EMI. The separate account must be named in a way that clearly demonstrates it is a safeguarding account (rather than an account used to hold money belonging to the EMI). The account must not be used for holding any other funds, and no one other than the EMI may have any interest in or right over the funds in it (except as provided by EMR 24).
- 6.19. Neither the Authorised Credit Institution nor the authorised insurer can be part of the corporate group to which the EMI belongs.
- 6.20. An “authorised insurer” means a person authorised to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive 73/239/EEC of 24 July 1973 on the business of direct insurance other than life insurance and other than a person in the same group as the EMI.

#### **Protection from the claims of other creditors**

- 6.21. Where an EMI that has chosen to deposit customer funds in a bank account or invest them in secure, low-risk and liquid assets, is placed in administration or “wound-up”, these funds shall form part of the EMI’s asset pool. The claims of the e-money holder/payment service user will be paid from the asset pool above all other creditors. EMR 24 or PSR 9 ensure that, provided the funds are safeguarded in accordance with one of the prescribed methods, the users’ funds shall be protected from the claims of other creditors. The claims of the e-money holder/payment service users are not subject to the priority of expenses of an insolvency proceeding except in respect of the liquidator’s costs of distributing the asset pool.

#### **Systems and controls**

- 6.22. EMIs must maintain organisational arrangements that are sufficient to minimise the risk of loss, or reduction of, Relevant Funds or assets through fraud, misuse, negligence or poor administration. This requirement is in addition to the general requirements for EMIs to have effective risk management procedures and adequate internal control mechanisms in place.
- 6.23. An EMI’s auditor is required to tell the GFSC if it becomes aware in its capacity as an auditor that, in its opinion, there may be or has been a breach of any requirements imposed by or under the EMRs that is of material significance (EMR 25). This may be in relation to the issuing of e-money and/or the provision of unrelated payment services, and includes a breach of the safeguarding requirements and the organisational arrangements required.
- 6.24. In maintaining their organisational arrangements, EMIs should exercise all due skill, care and diligence in selecting, appointing and periodically reviewing credit institutions, custodians



and insurers involved in the safeguarding arrangements (“Third Parties”) and should also consider:

- i. the expertise and market reputation of the Third Party;
- ii. any legal requirements or market practices related to the holding of Relevant Funds or assets that could adversely affect e-money holders or payment service users’ rights or the ability to safeguard their funds (e.g. where the local law of a third country credit institution holding a safeguarding account would not recognise the priority afforded to e-money account holders/payment service users on insolvency);
- iii. the need for diversification of risks;
- iv. the capital and credit rating of the Third Party;
- v. the amount of Relevant Funds or assets placed, guaranteed or insured as a proportion of a Third Party’s capital and (in the case of a credit institution) deposits; and
- vi. the level of risk in the investment and loan activities undertaken by the Third Party and its affiliates (to the extent that information is available).

6.25. EMIs should have arrangements in place to ensure that Relevant Funds received by Agents and Distributors are safeguarded in accordance with the EMRs and PSRs (as applicable).

6.26. Where Relevant Funds are segregated in a different currency from that of receipt but the e-money holder or payment service user has not instructed the EMI to convert it in this way, the EMI should ensure that the amount held is adjusted regularly to an amount at least equal to the currency in which they are liable to the e-money holder/payment service user, using an appropriate exchange rate, such as the previous day’s closing spot exchange rate.

6.27. An EMI’s records should enable it, at any time and without delay, to distinguish Relevant Funds and assets held for one e-money holder/payment service user from those held for any other e-money holder/payment services and from its own money. The records should be sufficient to show and explain its transactions concerning Relevant Funds and assets. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for e-money holders/payment service users.

#### **Fund Reconciliations**

6.28. An EMI should carry out internal reconciliations of records and accounts of the entitlement of e-money holders/payment service users to Relevant Funds and assets with the records and accounts of amounts safeguarded. This should be done as often as necessary and as soon as reasonably practicable after the date of the reconciliation to ensure the accuracy of the records and accounts. Records should be maintained that are sufficient to show and explain the method of internal reconciliation and its adequacy.

6.29. EMIs should regularly carry out reconciliations between its internal accounts and records and those of any Third Parties as regularly as necessary and as soon as reasonably practicable after the date to which the reconciliation relates. In determining whether the



frequency of reconciliation is adequate, EMIs should consider the risks the business is exposed to, such as the nature, volume and complexity of the business, and where and with whom the Relevant Funds and assets are held.

- 6.30. An adequate method of reconciliation is for a comparison to be made and any discrepancies identified between:
- i. the balance on each safeguarding account, as recorded by the EMI, with the balance on that account as set out on the statement or other form of confirmation issued by the firm that holds those accounts (e.g. the bank); and
  - ii. the balance, currency by currency, on each e-money holder transaction account as recorded by the EMI/credit union, with the balance on that account as set out in the statement or other form of confirmation issued by the firm that holds the account.
- 6.31. Where a reconciliation reveals a discrepancy, EMIs should identify the reason for this and correct it as soon as possible, unless the discrepancy arises only due to timing differences between internal and external accounting systems. Where a discrepancy cannot be resolved and subject to further investigation and resolution, EMIs should assume that the correct records are those showing a greater amount of Relevant Funds or assets that should be safeguarded.
- 6.32. EMIs should notify the GFSC in writing and without delay if they have not, in any material aspect, complied with, or are unable to comply with, the safeguarding requirements in EMR 20 or PSR 9.

#### **Effect of an insolvency event**

- 6.33. If an insolvency event (as described in EMR 24) occurs in relation to an authorised EMI or a small EMI that has implemented safeguarding requirements, then (save for the costs of distributing the asset pool) the claims of e-money holders and payment service users will be paid from the Relevant Funds and assets that have been segregated (the “asset pool” as defined in EMR 24) above all other creditors.
- 6.34. No right of set-off or security can be exercised in respect of the asset pool, except to the extent that it relates to the fees and expenses of operating a safeguarding account.



## **7. EMR CONDUCT OF BUSINESS REQUIREMENTS**

7.1. This chapter describes the requirements set out in Part 5 of the EMRs relating to the issuance and redeemability of e-money, also referred to as the 'conduct of business requirements'.

7.2. Part III of the PSRs also set out conduct of business requirements for all payment service providers (including EMIs and Authorised Credit Institutions) that includes requirements for information to be provided to payment service users and rules on the respective rights of payment service users and providers. EMIs should refer to the GFSC Payment Service Guidance to consider how the PSR conduct of business requirements relate to their business of issuing e-money and the payment services that they provide.

### **E-money Issuance**

7.3. On receipt of funds from a customer, an EMI must issue e-money at par value and, subject to anti-money laundering checks, without delay.

7.4. This means that EMIs are prohibited from issuing e-money at a value that is either lower or higher (i.e. at a discount) than the monetary value issued to the EMI.

7.5. It is important to note that funds received by an EMI's Agent shall be considered to have been received by the EMI itself. It is therefore not acceptable for an EMI to delay in enabling the customer to spend its e-money because it is waiting to receive funds from its Agent or Distributor.

### **E-money Redemption**

7.6. The EMRs state that an EMI must redeem the monetary value of any e-money held at par value and whenever the redemption is requested by an e-money holder.

7.7. It is therefore unacceptable for an EMI to:

- contractually limit or vary an e-money holder's right to redemption of their e-money;
- impose a time-limit on an e-money holder's right to redemption (subject to EMR 43, which permits EMIs to refuse a redemption request if more than 6 years have passed after the termination of the e-money holder's contract with the EMI); or
- impose a minimum monetary threshold for redemption.

**E-money contract**

- 7.8. The contract between the EMI and e-money holder must clearly and prominently set out the conditions, which e-money holders must be made aware of before entering the contract, of e-money redemption and any applicable fees.
- 7.9. In E-money contracts that involve the use of a payment instrument (e.g. a pre-paid payment card), payer customers must be informed that they will be liable for up to €150 due to unauthorised transactions arising from the loss or theft of a payment instrument or where they have failed to keep its personalised security features (such as a PIN or security password) safe.

**Redemption Fees (EMR 41)**

- 7.10. Provided that it is agreed and transparent in the contract, EMIs may charge a redemption fee where:
- redemption is requested before termination of the contract;
  - the e-money holder terminates the contract before an agreed termination date; or
  - where redemption of e-money is requested more than 1 year after the date of termination of the contract i.e. 'Dormant e-money'.
- 7.11. References to the termination of an e-money contract are to the point in time when the e-money holder's right to use the e-money for the purpose of making payment transactions ceases.
- 7.12. Any fee charged by the EMI must be proportionate and commensurate with the costs actually incurred by the EMI e.g. the redemption fee for redeeming dormant e-money can directly relate to the costs incurred in retaining records of and safeguarding such dormant e-money (on the basis that any such costs must relate to redemption rather than making payments). If challenged, the EMI must be able to justify the level of the fee charged by reference to costs that it has incurred, either in the act of redeeming the dormant e-money, or in retaining records and safeguarding the dormant e-money.
- 7.13. It would be acceptable for an EMI to deduct a redemption fee from the redemption of Dormant e-money as long as the fee reflects only valid redemption related costs and the contractual provisions relating to fee redemption are set out clearly and prominently. In such circumstances, if the amount of a valid redemption fee is greater than the value of the dormant e-money, it would be reasonable for the issuer to cease to safeguard those dormant e-money funds (as there is no use in requiring issuers to safeguard dormant e-money funds that can no longer be spent or redeemed). The EMI would, however, be required to show the e-money holder that this is how the e-money balance has been used, in the event of the e-money holder later seeking redemption.
- 7.14. The above rules on redemption do not apply to a person (other than a consumer) who accepts e-money (for example, a merchant who has accepted e-money in payment for goods



or services). For such persons, redemption rights will be subject to the contractual agreement between the parties.

#### **Prohibition of interest (EMR 45)**

- 7.15. EMIs are not allowed to grant interest or any other benefits related to the length of time the e-money is held.

### **8. AGENTS AND DISTRIBUTORS**

- 8.1. An EMI may distribute or redeem (but may not issue) e-money through an Agent or a Distributor.
- 8.2. This chapter provides guidance in relation to Agents and Distributors, the Agent registration process and the requirements governing the use of Distributors.
- 8.3. EMIs are responsible for anything done or omitted by an Agent or Distributor to the same extent as if they had undertaken the act or omission themselves. The GFSC therefore expects EMI's to have appropriate systems and controls in place to effectively monitor and oversee the activities of their Agents and Distributors.

#### **Differentiating between Agents and Distributors**

- 8.4. The differences between Agents and Distributors are summarised as follows:
- i. Agents may distribute or redeem (but not issue) e-money and also provide payment services (including Unrelated Payment Services);
  - ii. Distributors may only distribute or redeem e-money.
  - iii. EMIs must register Agents, whilst Distributors only have to be notified to the GFSC.



- 8.5. An Authorised EMI may engage a Distributor to distribute or redeem e-money in another member state and may engage a Distributor in the exercise of its passporting rights, subject to EMR 28.

#### **Registering an Agent or notifying the GFSC of a Distributor**

- 8.6. Agents need to be registered with, and Distributors notified to the GFSC using the [EMDAD Form](#) available on the GFSC website.
- 8.7. In general, the information required for the registration of an Agent (EMR 34) includes:
- i. the name and address of the Agent
  - ii. a description of the anti-money laundering internal control mechanisms in place (which should be as robust as those implemented by the EMI for its own operations); and
  - iii. the identity of the directors and persons responsible for the management of the Agent and details evidencing that they are fit and proper persons.

#### **Anti-money laundering internal control mechanisms for Agents**

- 8.8. EMIs are required to provide a description of the internal control mechanisms that will be used by the Agent to comply with the Crime (Money Laundering and Proceeds) Act 2007 and the GFSC AML/CFT Guidance Notes, or in the case of an EEA Agent, the Third Money Laundering Directive.
- 8.9. The internal controls in place to deal with the Agents should be as robust as those implemented by the EMI for its own operations. Where Agents are based in another EEA member state, Authorised EMIs must ensure that its Agent's (as well as its own) AML systems and controls comply with the host state's applicable legislation.
- 8.10. EMI's must take reasonable measures to satisfy itself that the Agent's money laundering internal controls mechanisms remain appropriate throughout the agency relationship.

#### **Persons responsible for the management of the Agent**

- 8.11. The applicant must also provide:
- the identities of the persons responsible for the management of the Agent; and
  - evidence that they are fit and proper persons (in accordance with [GFSC guidance](#)).
- 8.12. Details of relevant individuals must be submitted on an Individual Questionnaire Form (available in the applications section of the GFSC website) and must accompany submission of the EMDAD form.



**Decision-making**

- 8.13. The GFSC is required to consider an application to register an Agent and process the notification to engage a distributor within a reasonable time period of having received a complete application and will aim to do so within 28 days.
- 8.14. Where an [EMDAD](#) form is part of the EMI's application for authorisation or registration, it will be determined in accordance with the timetable for that application.
- 8.15. At any time after receiving an Agent application or Distributor notification and before determining it, the GFSC may require the EMI to provide it with such further information reasonably considered necessary to determine the application (in accordance with EMR 34(5)).
- 8.16. Once an application has been submitted, an EMI has a duty to notify the GFSC of any significant changes to the information in the original notification.
- 8.17. Since EMIs retain ultimate responsibility for anything done, or omitted by, their Agents or Distributors, the GFSC will expect EMI's to have appropriate systems and controls in place to effectively oversee their Agents' or Distributors' activities and may request that EMI's produce further satisfactory evidence of the same.

**Refusal**

- 8.18. The GFSC may object to the registration of an Agent or the engagement of a Distributor where:
- it has not received all the required information or it is not satisfied that such information is correct;
  - it is not satisfied that the Agents/Distributors systems and controls are adequate;
  - it is not satisfied that the directors and persons responsible for the management of the Agent are fit and proper persons; or
  - it has reasonable grounds to suspect that, in connection with the provision of services through the Agent:
    - i. money laundering or terrorist financing within the meaning of the Money Laundering Directive is taking place, has taken place or been attempted; or
    - ii. the provision of services through the Agent could increase the risk of money laundering or terrorist financing.

**Changes and Cancellation of Agents/Distributors**

- 8.19. EMIs must notify the GFSC (by emailing one of its designated GFSC contacts) as soon as possible:
- if it intends to cancel the registration of an Agent or Distributor; or
  - of any material changes to its Agents or Distributors
- 8.20. The impact of any changes shall be assessed against the GFSC registration requirements and if approved, the e-money section of the GFSC Register shall be updated accordingly. The EMI shall be contacted if more information is required and if the change is not approved, the Agent's registration shall be revoked accordingly.
- 8.21. If an Agent or Distributor is based outside of Gibraltar, the EMI should also request to change its passport details.

**Programme Notifications**

- 8.22. EMIs are also required, by submitting a Program Notification form, to inform the GFSC of:
- any new e-money or payment service programs it intends to operate; and
  - any new program managers it intends to contract with.



## 9. PASSPORTING

### Introduction

- 9.1. This chapter describes the regulatory requirements of “passporting” set out in Part 3 of the EMRs, which is the cross-border issuance, distribution or redemption of e-money or provision of payment services into another EEA state.
- 9.2. Passporting rights under 2EMD are only available to Authorised EMIs (except branches of entities that have their head office located outside the EEA) and not Small EMIs.
- 9.3. An Authorised EMI may choose to issue, distribute or redeem e-money or provide payment services by:
- establishing a presence in another EEA Member state, (the ‘host’ state) on an establishment basis, referred to as an ‘**Establishment**’ passport, or
  - carrying out cross-border activities, without establishing a presence in the host state on a freedom of services basis, referred to as a ‘**Services**’ passport.

### Passport notification (EMR 28)

- 9.4. Authorised EMIs that intend to issue, distribute or redeem e-money or provide payment services via an Establishment or Services passport must notify the GFSC using forms [EMDB](#) (Establishment) or [EMDS](#) (Services), which are available on the GFSC website.
- 9.5. Once the GFSC is satisfied that it has received a **complete** Passport notification and does not object to the same, it shall forward this to the host state competent authority as soon as practicable and no later than one month following the date of receipt.
- 9.6. If the passport notification includes the use of an Agent or Distributor that has not already been notified to the GFSC, EMI’s must ensure that an [EMDAD](#) form (see **chapter 8**) is also submitted in relation to said Agents/Distributors: the passport and Agent/Distributor notification shall be processed simultaneously.
- 9.7. An Authorised EMI will be able to start providing services in another EEA state in accordance with its Passport notification provided that that the host state competent authority does not have any objections or concerns that need to be addressed or fails to respond within a month of submission of such notification.
- 9.8. Reference should be made to the [EMDB](#) and [EMDS](#) forms themselves for further guidance on how to complete these.



## 10. REPORTING

- 10.1. In order to help the GFSC comply with its supervisory responsibilities, EMIs are required to provide the GFSC with the information set out below.

Required information/purpose	Reporting format	Frequency
Quarterly Returns	Form	Quarterly
Business plan/confirmation of changes to business plan	Email notification	Annual
Annual report and accounts	Form	Annual
Programme Notification Forms	Form	As required per change or new programme

## 11. FREQUENTLY ASKED QUESTIONS

### 11.1. What should a payment institution do if it wants to issue E-money?

Such a payment institution should submit an application to become an EMI because e-money authorisation / registration is granted under separate legislation with different conditions.

### 11.2. Are EMIs covered by the Gibraltar Deposit Guarantee Scheme?

EMIs are not covered by the Gibraltar Deposit Guarantee Scheme and it will not protect you if an EMI fails. However, all EMIs must safeguard funds received from customers for e-money issued, to protect the customer if the firm fails.

### 11.3. What is the procedure for complaining about an EMI?

The complaint procedure under the EMRs is the same as for payment service providers under the PSRs, which can be found on the [website](#).