MFSA MALTA FINANCIAL SERVICES AUTHORITY

FINANCIAL INSTITUTIONS RULE FIR/03
TAKING UP, PURSUIT OF AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF FINANCIAL INSTITUTIONS AUTHORISED TO ISSUE ELECTRONIC MONEY UNDER THE FINANCIAL INSTITUTIONS ACT 1994

Contents

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	2011	Publishing of the requirements to the taking up, pursuit of and prudential supervision of the business of financial institutions authorised to issue electronic money under the financial institutions act 1994
2.00	2019	Amendments to incorporate the deletion of article 3(7) of the Financial Institutions Act following the transposition of Directive 2015/2366

TAKING UP, PURSUIT OF AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF FINANCIAL INSTITUTIONS AUTHORISED TO ISSUE ELECTRONIC MONEY UNDER THE FINANCIAL INSTITUTIONS ACT 1994

INTRODUCTION

1. In terms of Article 13(2) of the Financial Institutions Act 1994 ("the Act"), the competent authority ("the Authority") as appointed under Article 3 of the Malta Financial Services Authority Act may make Financial Institutions Rules ("the Rules") as may be required to carry into effect any of the provisions of the Act. The Financial Institutions Rules and any amendment or revocation thereof shall be officially communicated to financial institutions and the Authority shall make copies thereof available to the public, also through publication on the Authority's website.

2. The objective of the Rule on the taking up, pursuit of and prudential supervision of the business of financial institutions authorised to issue electronic money in terms of the Third Schedule to the Act ("the Rule") is to lay down all the regulatory and supervisory procedures the Authority will adopt in respect of such financial institutions. It also includes a summary of the provisions of the Act that, in the Authority's opinion are most relevant.

3. The Rule is modelled on the requisites of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions ("the Directive") and is being issued pursuant to Article 5(4)(b) of the Act.

4. It should be emphasised that this Rule is not intended to provide a complete summary of the Act or of any other Financial Institutions Rule. Therefore, it must not be construed as being a substitute for a reading of the Act and the Rules. The responsibility of observing the law rests on the financial institution itself, its Board of Directors and its management. Therefore, all parties concerned should be fully conversant with the provisions of the Act and the Rules affecting the prudent management of financial institutions and seek legal and/or technical advice as necessary. In this respect, the Authority emphasises that prospective applicants for a licence of an electronic money institution (as defined in paragraph 8 of this Rule) are still required to peruse the Financial Institutions Rule FIR/01 – *Application Procedures*

and Requirements for Authorisation of Licences under the Financial Institutions Act 1994 ("FIR/01") and comply with any requirements as may be necessary.

SCOPE AND APPLICATION

5. This Directive recognises the following categories of electronic money issuers:

   (a) credit institutions licensed under the Banking Act (Cap 371), or their equivalent under the laws of a Member State or an EEA State, and includes branches of credit institutions which have their head offices outside the Community;
   (b) electronic money institutions as defined in the Rule (see paragraph 8 below), or their equivalent under the laws of a Member State or an EEA State, and includes branches thereof which have their head offices outside the Community;
   (c) post office giro institutions which are entitled under national law to issue electronic money;
   (d) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
   (e) Member States or their regional or local authorities when not acting in their capacity as public authorities.

6. In the case of credit institutions, the activity of issuing electronic money is listed in the Schedule to Article 2(2) of the Banking Act and they shall therefore be authorised to issue electronic money through their actual banking licence. Therefore, in this regard, this specific activity will be regulated and supervised within all the statutory and regulatory criteria for credit institutions as provided for by the Banking Act and the Banking Rules taking into consideration any of the contents of this Rule as may be applicable. Particularly, credit institutions undertaking the activity of issuing electronic money shall be subject to the provisions on *issuance and redeemability* and *prohibition of interest* as laid down in this Rule.

   Alternatively, a credit institution may carry out the activity of issuing electronic money through a subsidiary financial institution which shall be subject to the prudential supervisory regime applicable to financial institutions undertaking the activity of issuing electronic money.

   However, the Act and the Rule and any other applicable Rules shall apply to electronic money issuers included under category (b) of paragraph 5 above.

7. This Rule shall not apply to the following:

(a) monetary value stored on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;

An instrument shall be considered to be used within such a limited network if it can be used only either for the purchase of goods and services in a specific store or chain of stores, or for a limited range of goods or services, regardless of the geographical location of the point of sale. Where such an instrument develops into a general-purpose instrument, the exemption from the scope of this Rule shall no longer apply. Instruments which can be used for purchases in stores of listed merchants shall not be exempted as such instruments are typically designed for a network of service providers which is continuously growing.

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

This is a situation where, for instance, a mobile phone or other digital network subscriber (i.e. the electronic money holder and/or payment service user) pays the network operator directly and there is neither a direct payment relationship nor a direct debtor-creditor relationship between the network subscriber and any third party supplier of goods or services delivered as part of the transaction.

DEFINITIONS

8. In this Rule, unless the context otherwise requires, the following definitions shall apply:

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

"electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for

the purpose of making payment transactions as defined in Article 2 of the Act and which is accepted by a natural or legal person other than the electronic money issuer;

The definition of electronic money covers electronic money held on a payment device in the possession of the electronic money holder (i.e. a physical device) or stored remotely at a server and managed by the electronic money holder through a specific account for electronic money (i.e. a non-physical device).

"*electronic money institution"* means a financial institution that has been licensed in accordance with the Act or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive (2009/110/EC) to issue electronic money. For the purposes of this Rule, financial institutions authorised to undertake activities listed in the Third Schedule to the Act shall be referred to as "electronic money institutions";

"*electronic money issuer*" means entities referred to in paragraph 5;

ACTIVITIES

9. In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:

(a) the provision of payment services listed in paragraph 2 – List of Activities – of the Second Schedule to the Act;
(b) the granting of credit related to payment services referred to items (d) and(e) of paragraph 2 – List of Activities - of the Second Schedule to the Act, only if the requirements listed therein are met;
(c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a) above;
(d) the operation of payment systems as defined in Article 2 of the Act;
(e) business activities other than the issuance of electronic money, having regard to the applicable law regulating such activities.

10. Credit referred to in point (b) of paragraph 9 above shall not be granted from funds received in exchange of electronic money and held in accordance with the safeguarding requirements as per paragraphs 32 to 34 of this Rule and the applicable provisions of FIR/01.

11. Without prejudice to Article 5(6) of the Act, electronic money institutions that are proposing to undertake the additional activities listed in paragraph 9 above shall seek the Authority's prior written authorisation in line with the provisions of paragraphs 15 and 15A of FIR/01.

12. Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of Article 2(1) of the Banking Act.

13. Any funds received by the electronic money institution from the electronic money holder shall be exchanged for electronic money without delay. In view of the specific character of electronic money as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of a limited amount and not as a means of saving, such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of Article 2(1) of the Banking Act.

GENERAL PRUDENTIAL AND COMPLIANCE REQUIREMENTS FOR ELECTRONIC MONEY INSTITUTIONS

14. Article 5(4)(b) of the Act, empowers the Authority to apply any or all of the provisions contained in the Rules to a financial institution issuing electronic money as it may deem appropriate in view of its assessment of the operational and financial risks faced by the financial institution. Paragraphs 16 to 49 of this Rule under their respective sub-headings lay down the compliance criteria that the Authority will apply in respect of electronic money institutions.

15. In line with the provisions of paragraph 6 of this Rule the measures set out in paragraphs 16 to 49 will not be applicable to credit institutions that issue electronic money since the Authority would be already regulating and supervising such institutions in line with the provisions of the Banking Act and the Banking Rules.

Licensing

16. Pursuant to Article 4(2) of the Act, the Authority will apply the provisions of Financial Institutions Rule FIR/01 on the *Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act* in respect of prospective electronic money institutions as appropriate.

17. Any company desirous of establishing the business of a financial institution issuing electronic money operating in or from Malta shall, before commencing such business, apply in writing to the Authority for a licence. The Authority furthermore requires that all applications for a licence shall be filed in accordance with its official application forms as applicable, and shall follow the procedures stated in paragraphs 34 to 40 of FIR/01.

Initial Capital Requirements

18. Electronic money institutions shall be required to hold, at the time of authorisation, initial capital[1] amounting to not less than EUR 350,000.

Own Funds

19. Pursuant to Article 5A of the Act, electronic money institutions are expected to adopt the Own Funds Rule (BR/03) and may furthermore, in terms of Article 14 of the Act, be requested to submit the computation of the institution's own funds as per Annex 1 of the Own Funds Rule (BR/03).

20. Electronic money institutions are required to hold, at all times, own funds calculated in line with the provisions of paragraph 21 to 25 below or the initial capital amount laid down in paragraph 18 of this Rule, whichever is the higher.

21. The own funds of an electronic money institution for the activity of issuing electronic money shall be calculated utilising *Method D* of the Directive. This method stipulates that the own funds shall amount to at least 2% of the average outstanding electronic money.

    In the event that an electronic money institution undertakes payment services **not** related to the issuance of electronic money, the own funds requirement for this activity shall be calculated in accordance with one of the three methods A, B and C as may be directed by the Authority and as laid down in paragraph 22 of the Financial Institutions Rule on the *Supervisory regulatory requirements of institutions authorised under the Financial Institutions Act 1994 – FIR/02.*

    Electronic money institutions shall at all times hold own funds that are at least equal to the **sum** of the requirements referred to in this paragraph.

22. Where an electronic money institution carries out any payment services not linked to the issuance of electronic money or any of the activities referred to in points (b) to (e) of paragraph 9 of this Rule, and the amount of outstanding electronic money is unknown in advance, the electronic money institution shall calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be

[1] The Act defines "initial capital" as *"paid up capital and reserves as defined in a Financial Institutions Rule".* Accordingly, for the purposes of this Rule, initial capital is the sum of items 1.1.5 and 1.1.12 excluding items 1.1.9 and 1.1.11 of Appendix 1 and 2 of BR/03.

reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

Where an electronic money institution has not completed a sufficient period of business, its own funds requirement shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan, subject to any adjustment to the plan having been required by the Authority.

23. An electronic money institution may, based on an evaluation by the Authority of the institution's risk-management processes, risk loss databases and internal control mechanisms, be required by the Authority to hold an amount of own funds which is up to 20% higher or 20% lower than the amount of own funds which would result from the application of the relevant method/s chosen in accordance with paragraph 21.

24. Where an electronic money institution belongs to the same group as another electronic money institution, credit institution, financial institution undertaking payment services, investment firm, asset management company or insurance undertaking, it may not make use of multiple elements eligible for own funds. This shall also apply where the electronic money institution has a hybrid character and carries out activities other than the issuance of electronic money.

25. The average outstanding electronic money, as defined in paragraph 8 of this Rule, shall be calculated on a monthly basis on the first calendar day of the calendar month. For each calendar day of the previous six months, the **total** amount of financial liabilities (i.e. electronic money in issue) at the end of each calendar day is determined. This amount is summed for each calendar day over the period of six months and then divided by the number of calendar days of the six month period.

ELECTRONIC MONEY INSITUTITONS BENEFITING FROM THE RIGHT TO PASSPORT

26. An electronic money institution may exercise a European right to issue electronic money in another Member State or EEA State either through the establishment of a branch or under the freedom to provide services if it satisfies the applicable provisions.

EU/EEA ELECTRONIC MONEY INSTITUTIONS BENEFITING FROM THE RIGHT TO "PASSPORT"

27. An electronic money institution licensed or holding an equivalent authorisation in another Member State or EEA State may issue electronic money in Malta either through the establishment of a branch or under the freedom to provide services.

Where an electronic money institution wishes to 'passport' the provision of services in Malta, it is to communicate the following information to its home regulatory authority:

(a) The name and the head office address of the electronic money institution;
(b) The activities it intends to provide;

and additionally, in the case of establishment:

(a) the address of the proposed branch;
(b) the names of those responsible for the management of the proposed branch; and
(c) the organisational structure of the proposed branch.

ESTABLISHMENT OF BRANCHES OF INSTITUTIONS NOT BENEFITING FROM THE RIGHT TO PASSPORT

28. The establishment of a branch of an electronic money institution having its head office outside the Community shall follow the procedure set in paragraphs 48 to 50 of FIR/01.

AGENTS AND DISTRIBUTION NETWORK

29. An electronic money institution shall **not** issue electronic money through an agent or distributor. It may nonetheless **distribute** and **redeem** electronic money through such agents or distributors which act on its behalf according to the requirements of its business model. The appointment of such agents by the institution shall be undertaken in terms of Article 8A of the Act. However, the intended use of such third party natural or legal persons for the distribution and redemption of electronic money shall be indicated in the information accompanying the official application documentation, in line with the procedure stated in paragraph 34 of FIR/01.

30. Electronic money institutions wishing to distribute electronic money in another member state by engaging such natural or legal persons shall be required to follow the notification procedures laid down in Articles 8 et sequitur of the Act.

31. Electronic money institutions shall be allowed to provide services listed under the First and Second Schedules to the Act through such natural or legal persons which act on their behalf only if the third party is appointed by the institution as an agent in terms of Article 8A of the Act and in accordance with the procedures and rules laid down in the said Article, as may be applicable. The agent who is appointed by the institution can only act as agent with respect to those activities for which the institution is licensed. Such an agent shall be listed in the public register of agents undertaking payment services in terms of Article 8D of the Act, in the event that payment services not related to the issuance of electronic money are being undertaken through the agent.

SAFEGUARDING REQUIREMENTS

32. The Authority requires electronic money institutions to safeguard funds which have been received in exchange for electronic money that has been issued in accordance with paragraph 63 of FIR/01. Funds received in the form of payment by *payment instrument* as defined in Article 2 of the Act need not be safeguarded until they are credited to the 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 Central Bank of Malta Directive No 1. In any event, such funds shall be safeguarded by no later than five business days after the issuance of the electronic money.

33. Pursuant to paragraph 63 of FIR/01, secure, low-risk assets are assets falling into one of the categories set out in Table 1 of Article 366(1) of the CRR for which the specific risk capital charge is no higher than 1.6%, but excluding other qualifying items as defined in Article 336(4) of the CRR.

    Secure, low-risk assets are also units in an undertaking for collective investment in transferrable securities (UCITS) which invests solely in assets as specified in the first subparagraph.

    Provided that all such secure, low-risk assets shall also be liquid. The authority may in exceptional circumstances and with adequate justification, based on an evaluation of security, maturity, value or other risk elements of assets as specified above, determine which of those assets do not constitute secure, low-risk assets.

34. Safeguarding requirements in line with paragraph 63 of FIR/01 shall be applicable to electronic money institutions undertaking payment services listed in the Second Schedule to the Act that are not linked to the activity of issuing electronic money.

    Given the crucial importance of safeguarding, an electronic money institution shall inform the Authority in advance of any material change in measures taken for safeguarding of funds that have been received in exchange for electronic money issued. Such a material change may include *inter alia* a change in the safeguarding method, a change in the credit institution where safeguarded funds are deposited or a change in the insurance undertaking which insured or guaranteed the safeguarded funds.

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

35. An electronic money institution is required to issue electronic money at par value on receipt of funds. Furthermore, the electronic money institution shall ensure that, at any moment, upon request by the electronic money holder, it is in a position to redeem the monetary value of the electronic money held, at par value and without delay.

36. The contract between the electronic money institution and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto, and the electronic money holder shall be informed of those conditions before being bound by any contract or offer.

37. Redemption should, in general, be granted free of charge. However, redemption may be subject to a fee, which shall be proportionate and commensurate with the actual costs incurred by the electronic money institution, only if stated in the contract in accordance with paragraph 36 and only in any of the following cases:

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

38. Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money in whole or in part.

39. Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the contract:

(a) the total monetary value of the electronic money held shall be redeemed; or
(b) where the electronic money institution carries out one or more business activities falling under point (e) of paragraph 9 of this Rule and it is unknown in advance what portion of the funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.

40. Notwithstanding paragraphs 37 to 39, redemption rights of a person, other than a consumer who accepts electronic money, shall be subject to the contractual agreement between the electronic money institution and that person.

PROHIBITION OF INTEREST

41. An electronic money institution shall not be allowed to grant interest or any other benefit unless such benefits are not related to the length during which the electronic money is held. In this respect, offering rewards to customers such as anniversary gifts are not permissible whereas the offering of discount vouchers for use when purchasing particular products for customers who for instance hold electronic money above a particular minimum threshold or who undertake a set number of transactions, is allowable.

LIQUIDITY REQUIREMENTS

42. In view of the nature of the business activities of an electronic money institution the Authority recognises that an electronic money institution may need to maintain continuous liquidity. This constitutes a vital element in the prudential operations of the electronic money institution. Therefore, the Authority will apply the liquidity requirements (Maturity Ladder) as defined in the Liquidity Rule (BR/05) as may be applicable to an electronic money institution.

STATUTORY PRUDENTIAL INFORMATION

43. Pursuant to Article 14 of the Act and to paragraph 62 of FIR/01, electronic money institutions shall be required to submit information in accordance with paragraphs 28 to 31 of FIR/02 on a monthly or quarterly basis, as may be applicable.

AUDITED FINANCIAL STATEMENTS

44. The Authority expects an electronic money institution to follow the provisions of Banking Rule BR/07 on the *Publication of Annual Report and Audited Financial Statements*, as appropriate and applicable to the business carried out by the electronic money institution.

45. The Authority, furthermore, requires that for supervisory purposes, electronic money institutions shall provide separate accounting information for the activities of issuing electronic money and providing payment services and the activities referred to in points (c) to (e) of paragraph 9 of this Rule. Such accounting information shall be subject to an auditor's report by the institution's statutory auditors or an audit firm.

CREDIT AND COUNTRY RISK PROVISIONING

46. In general, the Authority considers that Banking Rule BR/09 on *Credit and Country Risk Provisioning* may be relevant for the prudential supervision of an electronic money institution.

47. At the same time, the Authority recognises the limited credit granting activity of an electronic money institution as referred to in point (b) of paragraph 9 of this Rule and shall consequently apply Banking Rule BR/09 strictly as may be appropriate in relation to such activities of the electronic money institution.

CONSOLIDATED SUPERVISION

48. The Authority will apply Banking Rule BR/10 on the *Supervision on a Consolidated Basis of Credit Institutions* as it deems appropriate and in line with the provisions of paragraphs 38C to 38F of FIR/02.

ADMINISTRATIVE PENALTIES

49. Any person who breaches any of the provisions of this Rule as provided for under Article 23(1) of the Act, is liable to the penalties provided for under the said sub-article.

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