
STATUTORY INSTRUMENTS

2011 No. 99

The Electronic Money Regulations 2011

PART 3

PRUDENTIAL SUPERVISION AND PASSPORTING

Safeguarding

Insolvency events

24.—(1) Subject to paragraph (2), where there is an insolvency event—

- (a) the claims of electronic money holders are to be paid from the asset pool in priority to all other creditors; and
- (b) until all the claims of electronic money holders have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with regulation 21(2)(a) or (b) or 22(1)(b).

(2) The claims referred to in paragraph (1)(a) shall not be subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

(3) An electronic money institution must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

(4) In this regulation—

“asset pool” means—

- (a) any relevant funds segregated in accordance with regulation 21(1);
- (b) any relevant funds held in an account in accordance with regulation 21(2)(a);
- (c) any relevant assets held in an account in accordance with regulation 21(2)(b);
- (d) any proceeds of an insurance policy or guarantee held in an account in accordance with regulation 22(1)(b);

“insolvency event” has the same meaning as in regulation 22;

“insolvency proceeding” means—

- (a) winding-up, administration, receivership, bankruptcy or, in Scotland, sequestration;
- (b) a voluntary arrangement, deed of arrangement or trust deed for the benefit of creditors; or
- (c) the administration of the insolvent estate of a deceased person;

“security right” means—

- (a) security for a debt owed by an electronic money institution and includes any charge, lien, mortgage or other security over the asset pool or any part of the asset pool; and
- (b) any charge arising in respect of the expenses of a voluntary arrangement.