

## SCHEDULE 2

### Capital Requirements

#### PART 2

##### Own funds

###### *Qualifying items*

4. For the purposes of these Regulations “own funds” means the following items, subject to the deductions specified in paragraph 7 and to the limits specified in paragraph 9—

- (a) paid up capital, including share premium accounts but excluding amounts arising in respect of 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; and
  - (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 or loss brought forward as a result of the application of the final profit or loss provided that—
  - (i) interim profits may only be included if they are—
    - (aa) verified by persons responsible for the auditing of the institution’s accounts;
    - (bb) shown to the satisfaction of the Authority that the amount has been evaluated in accordance with the principles set out in Directive [86/635/EEC](#) of the Council of the 8th December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions<sup>(1)</sup>; and
    - (cc) net of any foreseeable charge or dividend;
  - (ii) in the case of an electronic money institution which is the originator of a securitisation, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement to positions in the securitisation are excluded;
- (d) revaluation reserves;
- (e) general or collective provisions if—
  - (i) they are freely available to the electronic money institution to cover normal electronic money issuance and payment services risks where revenue or capital losses have not yet been identified;
  - (ii) their existence is disclosed in internal accounting records; and
  - (iii) their amount is determined by the management of the electronic money institution, verified by a statutory auditor or audit firm (as defined by regulation 25(2)) and notified to the Authority;

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(1) OJ No L 372, 31.12.1986, p.1.

- (f) securities of indeterminate duration and other instruments that fulfil the following conditions—
- (i) they may not be reimbursed on the bearer’s initiative or without the prior agreement of the Authority;
  - (ii) the debt agreement provides for the electronic money institution to have the option of deferring the payment of interest on the debt;
  - (iii) the lender’s claim on the electronic money institution is wholly subordinated to those of all non-subordinated creditors;
  - (iv) the documents governing the issue of the securities provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the electronic money institution in a position to continue trading,
- provided that only fully paid-up amounts are to be taken into account;
- (g) cumulative preferential shares, other than fixed-term cumulative preference shares referred to in paragraph
- (j)
- ;
- (h) the commitments of the members of an electronic money institution set up as a cooperative, comprising—
- (i) that institution’s uncalled capital; and
  - (ii) the legal commitments of the members of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;
- (i) the joint and several commitments of the borrower in the case of an electronic money institution organised as a fund, comprising—
- (i) that institution’s uncalled capital; and
  - (ii) the legal commitments of the borrowers of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;
- (j) fixed-term cumulative preferential shares and subordinated loan capital if—
- (i) binding agreements exist under which, in the event of the winding-up of the electronic money institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled; and
  - (ii) in the case of subordinated loan capital—
    - (aa) only fully paid-up funds are taken into account;
    - (bb) the loans involved have an original maturity of at least five years, after which they may be repaid;
    - (cc) the extent to which they may rank as own funds is gradually reduced during at least the last five years before the repayment date; and
    - (dd) the loan agreement does not include any clause providing that in specified circumstances, other than the winding-up of the electronic money institution, the debt will become repayable before the agreed repayment date.
5. The items specified in paragraph 4(a) to (d) must be—
- (a) available to the electronic money institution for unrestricted and immediate use to cover risks or losses as soon as these occur; and

- (b) net of any foreseeable tax charge at the moment of their calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

6. Own funds are not to include guarantees provided by the Crown or a local authority to an electronic money institution which is a public sector entity for the purposes of the banking consolidation directive.

#### *Deductions from own funds*

7. The deductions from own funds are—
- (a) own shares at book value held by the electronic money institution;
  - (b) intangible assets;
  - (c) material losses of the current financial year;
  - (d) holdings of shares in credit institutions and financial institutions exceeding 10% of their capital;
  - (e) if sub-paragraph (d) applies, the items specified in paragraph 4(f), (g) and (j) held in the relevant credit institution or financial institution;
  - (f) holdings of shares or of the items specified in paragraph 4(f), (g) and (j) held in other credit institutions or financial institutions where—
    - (i) the holding has not been deducted in accordance with sub-paragraph (d) or (e) of this paragraph; and
    - (ii) the total amount of such holdings exceeds 10% of the electronic money institution's own funds calculated before deduction of the items specified in this sub-paragraph and sub-paragraphs (d), (e), (g) and (h);
  - (g) participations which the electronic money institution holds in an insurance undertaking, reinsurance undertaking or insurance holding company; and
  - (h) the following instruments held in an insurance undertaking, reinsurance undertaking or insurance holding company in which the electronic money institution holds a participation—
    - (i) instruments referred to in article 16(3) of Directive [73/239/EEC](#) of the Council on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance<sup>(2)</sup>;
    - (ii) instruments referred to in article 27(3) of Directive [2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance<sup>(3)</sup>.

8. Where shares in another credit institution, financial institution, insurance undertaking, reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the Authority may direct that any or all of the items specified in paragraph 7(d) to (h) are not to be deducted from own funds.

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(2) OJ No L 005, 7.1.78, p.27.

(3) OJ No L 345, 19.12.02, p.1.

*Limits on qualifying items*

**9.** —

- (1) The limits referred to in paragraph 4 are—
  - (a) that A must not exceed B; and
  - (b) that C must not exceed 50% of B.
- (2) After applying such limits—
  - (a) 50% of the total of the items specified in paragraph 7(d) to (h) must be deducted from A and the remaining 50% must be deducted from B; and
  - (b) the amount, if any, by which the amount to be deducted from A exceeds A must be deducted from B.
- (3) In this paragraph—
  - (a) “A” means the total of the items specified in paragraph 4(d) to (j);
  - (b) “B” means the total of the items specified in paragraph 4(a) to (c) less the total of the items specified in paragraph 7(a) to (c); and
  - (c) “C” means the total of the items specified in paragraph 4(h) to (j).

**10.** The Authority may in temporary and exceptional circumstances direct that an electronic money institution may exceed one or more of the limits described in paragraph 9(1).

**11.** An electronic money institution must not include in its own funds calculation—

- (a) any item used in an equivalent calculation of own funds by an electronic money institution, authorised payment institution, credit institution, investment firm, asset management company or insurance undertaking in the same group; or
- (b) in the case of an electronic money institution which carries on activities other than electronic money issuance or the provision of payment services, any item included in an own funds calculation required by or under any other enactment.

**12.** An authorised electronic money institution that carries on activities other than the issuance of electronic money and the provision of payment services related to the issuance of electronic money must not use—

- (a) in its calculation of own funds in accordance with Method A, B or C, any qualifying item included in its calculation of own funds in accordance with Method D;
- (b) in its calculation of own funds in accordance with Method D, any qualifying item included in its calculation of own funds in accordance with Method A, B or C.

*Own funds requirement*

**13.** An authorised electronic money institution must calculate its own funds requirement—

- (a) in accordance with such of Method A, Method B or Method C as the Authority may direct in respect of any activities carried on by the authorised electronic money institution consisting of payment services that are not related to the issuance of electronic money; and
- (b) in accordance with Method D in respect of any activities carried on by the authorised electronic money institution that consist of the issuance of electronic money and payment services that are related to the issuance of electronic money.

**14.** Where a small electronic money institution is required by regulation 19(2) to maintain own funds, it must calculate its own funds requirement as an amount equal to 2% of the average outstanding electronic money of the institution.

*Adjustment by the Authority*

- 15.** The Authority may direct in respect of an authorised electronic money institution that—
- (a) an amount of own funds resulting from a calculation made in accordance with paragraph 13(a) is to be up to 20% higher or up to 20% lower;
  - (b) an amount of own funds resulting from a calculation made in accordance with paragraph 13(b) is to be up to 20% higher or up to 20% lower; or
  - (c) the sum of the amounts of own funds resulting from calculations made in accordance with paragraph 13(a) and (b) is to be up to 20% higher or up to 20% lower.

**16.** The Authority may direct in respect of a small electronic money institution that an amount of own funds resulting from a calculation made in accordance with paragraph 14 is to be up to 20% higher or up to 20% lower.

**17.** A direction made under paragraph 15 or 16 must be on the basis of an evaluation of the relevant electronic money institution including, if available, and where the Authority considers it appropriate, any risk-management processes, risk loss database or internal control mechanisms of the electronic money institution.

**18.** The Authority may make a reasonable charge for making an evaluation required under paragraph 17.

*Provision for start-up electronic money institutions*

**19.** If an electronic money institution has not completed a full financial year's business, references to a figure for the preceding financial year are to be read as the equivalent figure projected in the business plan provided in the electronic money institution's application for authorisation or registration, subject to any adjustment to that plan required by the Authority.

*Method A*

**20.**—(1) “Method A” means the calculation method set out in this paragraph.

(2) The own funds requirement is 10% of the authorised electronic money institution's fixed overheads for the preceding financial year.

(3) If a material change has occurred in an authorised electronic money institution's business since the preceding financial year, the Authority may direct that the own funds requirement is to be a higher or lower amount than that calculated in accordance with sub-paragraph (2).

*Method B*

**21.**—(1) “Method B” means the calculation method set out in this paragraph.

(2) The own funds requirement is the sum of the following elements multiplied by the scaling factor—

- (a) 4% of the first 5,000,000 euro of payment volume;
- (b) 2.5% of the next 5,000,000 euro of payment volume;
- (c) 1% of the next 90,000,000 euro of payment volume;
- (d) 0.5% of the next 150,000,000 euro of payment volume; and
- (e) 0.25% of any remaining payment volume.

(3) “Payment volume” means the total amount of payment transactions that are not related to the issuance of electronic money executed by the authorised electronic money institution in the preceding financial year divided by the number of months in that year.

(4) The “scaling factor” is—

- (a) 0.5 for an authorised electronic money institution providing a payment service specified in paragraph 1(f) of Schedule 1 to the Payment Services Regulations 2009;
- (b) 0.8 for an authorised electronic money institution providing the payment service specified in paragraph 1(g) of Schedule 1 to those Regulations; and
- (c) 1 for an authorised electronic money institution providing any other payment service.

#### *Method C*

**22.**—(1) “Method C” means the calculation method set out in this paragraph.

(2) The own funds requirement is the relevant indicator multiplied by—

- (a) the multiplication factor; and
- (b) the scaling factor;

subject to the proviso in sub-paragraph (7).

(3) The “relevant indicator” is the sum of the following elements—

- (a) interest income;
- (b) interest expenses;
- (c) gross commissions and fees received; and
- (d) gross other operating income.

(4) For the purpose of calculating the relevant indicator—

- (a) each element must be included in the sum with its positive or negative sign;
- (b) income from extraordinary or irregular items may not be used;
- (c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
- (d) the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
- (e) the relevant indicator must be calculated over the previous financial year; and
- (f) audited figures must be used unless they are not available in which case business estimates may be used.

(5) The “multiplication factor” is the sum of—

- (a) 10% of the first 2,500,000 euro of the relevant indicator;
- (b) 8% of the next 2,500,000 euro of the relevant indicator;
- (c) 6% of the next 20,000,000 euro of the relevant indicator;
- (d) 3% of the next 25,000,000 euro of the relevant indicator; and
- (e) 1.5% of any remaining amount of the relevant indicator.

(6) “Scaling factor” has the meaning given in paragraph 21(4).

(7) The proviso is that the own funds requirement must not be less than 80% of the average of the previous three financial years for the relevant indicator.

**23.**—(1) “Method D” means the calculation method set out in this paragraph.

(2) The own funds requirement in respect of the activity of issuing electronic money and providing payment services that are related to the issuance of electronic money is an amount equal to 2% of the average outstanding electronic money of the authorised electronic money institution.

**24.—**(1) Where—

(a) an electronic money institution provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 32(1)(b) to (d) and (2); and

(b) the amount of outstanding electronic money is unknown in advance,

the institution may calculate its own funds requirement on the basis of a representative portion assumed to be used for the issuance of electronic money and payment services related to the issuance of electronic money, provided that such representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an electronic money institution has not completed a sufficiently long period of business to compile historical data adequate to make the calculation under sub-paragraph (1), it must make an estimate on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

#### *Application of accounting standards*

**25.** Except where this Schedule provides for a different method of recognition, measurement or valuation, whenever a provision in this Schedule refers to an asset, liability, equity or income statement item, an electronic money institution must, for the purpose of that provision, recognise the asset, liability, equity or income statement item and measure its value in accordance with whichever of the following are applicable for the purpose of the institution's external financial reporting—

(a) Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by the Accounting Standards Board;

(b) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Accounting Standards Board;

(c) International Financial Reporting Standards and International Accounting Standards issued or adopted by the International Accounting Standards Board;

(d) International Standards on Auditing (United Kingdom and Ireland) issued by the Auditing Practices Board; and

(e) the Companies Act 2006.