



JFSC

**CONSULTATION PAPER
NO. 12 2009**

**THE REGULATION OF
ELECTRONIC MONEY**

**Options for the future regulation of issuers of
electronic money**

ISSUED NOVEMBER 2009

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Robert Kirkby at Jersey Finance Limited (“**Jersey Finance**”) is coordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by 12 February 2010.

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It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.

Glossary of terms

AML/CFT	means anti-money laundering/countering the financing of terrorism
BB(J)L	means the Banking Business (Jersey) Law 1991
EC	means the European Commission
EMIs	means electronic money institutions (as defined in the existing EMD)
e-money	means electronic money
EU	means the European Union
FS(J)L	means the Financial Services (Jersey) Law 1998
Jersey Finance	means Jersey Finance Limited
ML(J)O	means the Money Laundering (Jersey) Order 2008
MSB	means money service business (as defined in the FS(J)L)
SB(J)L	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
SEPA	means the Single Euro Payments Area
the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998
the EPC	means the European Payments Council
the existing EMD	means the EU's Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions
the Minister	means the Minister for Economic Development
the new EMD	means the EC's proposal for a revised Directive on EMIs
the PSD	means the EU's Payment Services Directive (Directive 2007/64/EC)

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1 EXECUTIVE SUMMARY

1.1 What is Electronic Money?

1.1.1 Electronic money (“**e-money**”) is defined in European Union (“**EU**”) Directive 2000/46/EC (“**the existing EMD**”) on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (“**EMIs**”). The existing EMD defines e-money as monetary value as represented by a claim on an issuer which is:

1.1.1.1 stored on an electronic device;

1.1.1.2 issued on receipt of funds of an amount not less in value than the monetary value issued; and

1.1.1.3 accepted as means of payment by undertakings other than the issuer.

1.1.2 It is effectively an electronic alternative to cash and includes:

1.1.2.1 e-money schemes which enable users to store funds on a device (e.g. plastic card or mobile phone) that is used by the bearer to make purchases; and

1.1.2.2 account based e-money schemes where value is stored in an electronic account (e.g. as available through the internet) that the user can access remotely.

1.1.3 Well known examples in the United Kingdom include electronic purses such as sQuidcard, and web-based services such as a PayPal account.

1.1.4 Additionally, electronic travellers’ cheques (smartcards) that can be used to withdraw cash from third parties’ ATMs¹, or to buy goods and services in shops, restaurants and hotels, are likely to constitute e-money. However, where the electronic travellers’ cheques can only be used to withdraw cash from ATMs owned by their issuer these are not likely to be considered as e-money.

1.2 What is proposed and why?

1.2.1 There is currently no specific regulatory regime in Jersey covering the issuing of e-money (although persons who issue e-money are subject to Jersey’s anti-money laundering/countering the financing of terrorism (“**AML/CFT**”) legislation).

1.2.2 The current absence of a specific regulatory regime is considered by the Commission to potentially pose risks both to the reputation of the Island and

¹ Automated Teller Machines (cash dispensing machines).

to consumers. It may also act as a disincentive to the development of e-money products.

1.2.3 This consultation paper seeks respondents' views on four possible options for the future regulation of e-money issuers:

1.2.3.1 **Option 1** is to implement a regulatory regime based on the EU approach. Regulation would be both prudential (setting minimum financial resource requirements) and cover conduct of business (the setting of minimum standards when dealing with consumers). The prudential regime would broadly follow that in a new Directive on EMIs currently being finalised by the EU. The conduct of business regime would broadly follow that in the EU's Payment Services Directive (Directive 2007/64/EC) (the "PSD").

1.2.3.2 **Option 2** is to implement a bespoke regulatory model which, in terms of regulatory requirements, would fall between those of Options 1 and 3.

1.2.3.3 **Option 3** is to extend the existing regulatory regime for money service businesses ("MSBs") to e-money issuers.

1.2.3.4 **Option 4** is to do nothing and maintain the status quo.

1.2.4 The Commission is of the view that there is a need to address the potential risks that the reputation of the Island and consumers may be exposed to because of the current absence of a specific regulatory regime for e-money issuers and that Option 1 would be the most appropriate way to achieve this.

1.3 Who would be affected?

1.3.1 Any of Options 1, 2 or 3 would affect any person issuing, or proposing to issue, e-money in, or from within, Jersey. (This would include an e-money issuer whose sole connection with Jersey was the use of a local service provider for the provision of computer servers on which customer data is processed, although, subject to certain conditions being met, such an e-money issuer would not be required to register with the Commission to operate.)

1.3.2 Options 1, 2 or 3 would also affect any Jersey company issuing, or proposing to issue e-money, anywhere in the world.

2 CONSULTATION

2.1 Basis for consultation

2.1.1 The Commission has issued this consultation paper in accordance with Article 8(3) of the Commission Law, as amended, under which the Commission “*may, in connection with the carrying out of its functions -consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.

2.2 Responding to the consultation

2.2.1 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:

2.2.2.1 prioritise comments and to indicate their relative importance; and

2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3 Next steps

2.3.1 The Commission will discuss responses to this consultation with the Minister for Economic Development (the “**Minister**”). If appropriate, the Commission will seek law drafting time from the States of Jersey’s Law Draftsman with a view to drawing up the necessary law drafting instructions.

3 THE COMMISSION

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Financial Services Commission (Jersey) Law 1998 (the “**Commission Law**”). It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission’s functions

3.2.1 The Commission Law prescribes that the Commission shall be responsible for:

3.2.1.1 the supervision and development of financial services provided in or from within Jersey;

3.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;

3.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;

3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters –

- as are required or authorised by or under any enactment, or
- as the States may, by Regulations, transfer; and

3.2.1.5 such other functions as are conferred on the Commission by any other Law or enactment.

3.3 Guiding principles

3.3.1 The Commission’s guiding principles require it to have particular regard to:

3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of financial service providers;

3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

3.3.1.3 the best economic interests of Jersey; and

3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 ISSUING E-MONEY IN JERSEY

4.1 Overview

- 4.1.1 There is currently no specific regulatory regime in Jersey covering the issuing of e-money. In certain circumstances, it is possible that the issuing of e-money may fall within the regulatory regimes established under the Banking Business (Jersey) Law 1991 (“**BB(J)L**”) or the Financial Services (Jersey) Law 1998 (“**FS(J)L**”). However, because those regimes were not designed with e-money issuers in mind, there are a number of gaps in scope that means that it is possible, by careful structuring, for a person to legitimately issue e-money without being subject to the prudential and conduct of business regimes of the BB(J)L or the FS(J)L.
- 4.1.2 The issuing of e-money does however fall within the scope of AML/CFT legislation. An e-money issuer would be subject to the Money Laundering (Jersey) Order 2008 (“**ML(J)O**”) and required to apply customer due diligence measures, to keep records, and to have policies and procedures in place to prevent and detect money laundering and terrorist financing. The issuer would also be required to register² with the Commission under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “**SB(J)L**”) and be subject to monitoring by the Commission for compliance with the ML(J)O and related regulatory requirements.

4.2 The current gaps in regulatory scope

- 4.2.1 As described in 4.1.1, it may be possible for a person to issue e-money in, or from within, Jersey without falling within the scope of current regulatory provisions:
- 4.2.1.1 By issuing e-money that is non-refundable it is unlikely that the issuer would be considered to be carrying on ‘deposit-taking business’ as defined in Article 3 of the BB(J)L.
- 4.2.1.2 Where an e-money issuer holds, on trust, customer money issued in exchange for e-money it is probable that the issuer would not be required to register under the FS(J)L to carry on ‘trust company business’ by virtue of the exemption for ‘incidental providers of services’ set out in the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000. That exemption applies when a person is carrying on a business or profession the sole or main purpose of which is not trust company business and when acting as trustee:- the person is not separately remunerated for that service; does not separately hold himself or herself out as providing trustee services; and, the trustee service is carried out as an incident of the person’s business or profession.

² Note that there are some limited exceptions to this registration requirement.

- 4.2.1.3 Where an e-money issuer holds, as bailee, customer money issued in exchange for e-money, the activities of the issuer would not fall within the definition of trust company business in the FS(J)L. (Bailment involves the transfer of goods (including money) by the owner (the bailor) to another (the bailee) for a particular purpose. Ownership of the goods remains with the bailor, who has the right to demand their return or direct their disposal).
- 4.2.1.4 Where an e-money product permits the transfer of funds from one person to another the e-money issuer would be considered by the Commission to be a person carrying on business within the 'money service business' ("MSB") category of 'transmitting or receiving funds by wire or other electronic means' (Article 2(9)(c) of the FS(J)L). However, where the e-money product is designed in such a way as to only allow the consumer to pay for goods or services, or to access their own funds (rather than allow person-to-person transfers), the issuer of the e-money would be able to rely upon the exemption from registration under the FS(J)L that is granted by Article 3 of the Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007.

4.3 Risks potentially arising from the current gaps in regulatory scope

- 4.3.1 The current gaps in regulatory scope that may allow an e-money issuer to operate outside of a prudential or conduct of business regulatory regime are considered by the Commission to potentially pose risks both to the reputation of the Island and to consumers.
- 4.3.2 These risks might arise, in particular, as a consequence of:
- 4.3.2.1 An e-money issuer not being required to undergo a comprehensive 'fit and proper' assessment before being authorised to issue e-money so as to assess whether the issuer would meet acceptable standards of integrity and competence and that there would be a satisfactory organisational structure in place with appropriate systems and controls. Although an e-money issuer would be subject to a 'fit and proper' assessment before being registered under the SB(J)L (see paragraph 4.1.2) the assessment is, in line with international standards, limited to receiving confirmation that the issuer and its owners/senior personnel have not been convicted of certain specified criminal offences.
- 4.3.2.2 An e-money issuer not being required to maintain minimum levels of capital and liquid funds to minimise the risk of it being unable to meet its ongoing financial commitments.
- 4.3.2.3 An e-money issuer not being required to segregate, or otherwise restrict its use of, money that consumers hand over in exchange for e-money;

- 4.3.2.4 An e-money issuer not being subject to conduct of business rules setting out minimum required standards of behaviour, when dealing with consumers of the e-money product.
- 4.3.2.5 The absence of ongoing supervision by the Commission of the activities of e-money issuers (save in respect of compliance with statutory and regulatory AML/CFT requirements).
- 4.3.2.6 The inability of the Commission to use powers in regulatory legislation to investigate - and take action - in cases of suspected malpractice or inappropriate behaviour by an e-money issuer (save in respect of investigating and taking action in respect of non-compliance with statutory and regulatory AML/CFT requirements).
- 4.3.3 Although the Commission has not received any evidence to suggest that the current lack of a specific regulatory regime for e-money issuers has been to the detriment of any individual consumer, there is clearly a risk that if an unscrupulous operator were to use the current lack of regulation and ongoing supervision by the Commission to take advantage of consumers then the Commission is unlikely to have the jurisdiction to investigate and enforce corrective action. Potentially, an e-money scheme could hold a significant amount of consumers' money whilst, legitimately, operating in a completely unregulated environment.
- 4.3.4 Addressing these risks could be considered all the more important given that there is an increasing trend globally towards using electronic means for fund transfers and payments. Internationally, greater recognition of the risks associated with e-money is resulting in work on typologies by trade bodies and international standard setters (for example, the Financial Action Task Force). In addition, the absence in Jersey of a specific regulatory regime covering e-money issuers means that the Island is out of line with international developments in this field where the introduction of specific regulation for e-money issuers is common.
 - 4.3.4.1 **What is your view on the Commission's assessment of the risks potentially arising from the current gaps in regulatory scope?**

4.4 Is the absence of a specific regulatory regime a disincentive to develop e-money products?

- 4.4.1 It could be argued that the absence of a specific regulatory regime would be a positive encouragement to developers of e-money in that no specific 'rules' would need to be followed.
- 4.4.2 However, anecdotal evidence suggests that the current absence of a specific regulatory regime covering issuers of e-money may actually act as a disincentive to the development of e-money products within Jersey.
- 4.4.3 This is because, in an era in which consumers increasingly expect financial products to be regulated, entrepreneurs may be reluctant to develop an e-money product that is not able to be marketed as a regulated product.

- 4.4.4 In addition, the absence of a specific regulatory regime means that an e-money issuer does not currently have explicit legal certainty as to the regulatory position of their product.
- 4.4.5 Although it is impossible to know the extent, the Commission considers that this disincentive to the development of e-money products could potentially result in lost business opportunities for the Island in this field of e-commerce. Whilst the inability of Jersey-based e-money issuers to use EU 'passporting' provisions³ means that they are unlikely to ever aim for mass markets (although an alternative route into EU markets may become available under the new EMD – see 6.2.1.2) it is thought that there may be opportunities for niche market products to be developed.
- 4.4.6 In addition, this disincentive to develop e-money products may result in Jersey residents not being offered e-money products that may be widely available in other jurisdictions. In particular, mobile phone operators – seen as a potential growth market for e-money products – may be reluctant to offer products in Jersey, due to the lack of regulatory certainty.
- 4.4.6.1 Do you agree that the current absence of a specific regulatory regime may act as a disincentive to develop e-money products? If you disagree, please give your reasons.**

4.5 The current e-money market in Jersey

- 4.5.1 Currently, as a result of the money service business regulatory regime the Commission is aware of one e-money issuer in Jersey. This issuer has been registered under the FS(J)L to carry on money service business as one of its products allows person-to-person transfers and the issuer is therefore unable to utilise the exemption referred to in paragraph 4.2.1.4.
- 4.5.2 It is thought possible that there may be some small scale e-money issuers⁴ in Jersey that have not appreciated that they need to register with the Commission pursuant to the SB(J)L (see paragraph 4.1.2). This is being kept under review by the Commission.

³ 'Passporting' – the ability to offer a product licensed in one EU Member State into any number of other Member States – would not be automatically available to Jersey-based e-money issuers because Jersey is not a member of the EU.

⁴ For example, issuers of payment cards that can be used to purchase goods or services only on the premises of the issuer.

5 REGULATORY DEVELOPMENTS IN THE EU

5.1 Background

- 5.1.1 The existing EMD is the principal EU Directive covering the issuing of e-money. It effectively defines an EMI as a non-bank e-money issuer. The Directive had to be implemented in the national legislation of EU Member States by April 2002.
- 5.1.2 The existing EMD defines e-money as monetary value as represented by a claim on an issuer which is:
 - 5.1.2.1 stored on an electronic device;
 - 5.1.2.2 issued on receipt of funds of an amount not less in value than the monetary value issued; and
 - 5.1.2.3 accepted as means of payment by undertakings other than the issuer.

5.2 Replacement of the existing EMD

- 5.2.1 In 2006, in line with a commitment given when the existing EMD was implemented, the European Commission (the “EC”) carried out an evaluation of the existing EMD. The evaluation process involved consultation with a large variety of stakeholders including EMIs, trade associations, public bodies and the mobile phone industry.
- 5.2.2 The EC’s evaluation concluded that some of the provisions of the existing EMD have hindered the development of the e-money market. In particular, the following aspects of the Directive are considered to have hindered its success:
 - 5.2.2.1 a lack of clarity surrounding the definition of e-money and the scope of the existing EMD, generating legal uncertainty and hindering the development of the market; and
 - 5.2.2.2 an inconsistent legal framework, with a disproportionate prudential regime, inconsistent waivers and passporting procedures, and the application of disproportionate AML/CFT rules to e-money services.
- 5.2.3 In a bid to address the perceived deficiencies in the existing EMD highlighted in the EC’s evaluation, the EC issued, in October 2008, a proposal for a new Directive on EMIs. (The proposal envisaged that the existing EMD would be repealed and replaced with a revised Directive.)

- 5.2.4 The main objectives of the EC's proposal for a revised Directive on EMIs were to:
- 5.2.4.1 enable innovation and the design of new and secure e-money services, creating tangible benefits for consumers, businesses and the wider European economy;
 - 5.2.4.2 provide market access to new players and fostering real and effective competition between all market participants; and
 - 5.2.4.3 modernise the provisions of the existing EMD to ensure consistency with the PSD.
- 5.2.5 The European Parliament considered the EC's proposed new Directive on EMIs in April 2009. It approved it subject to a number of amendments. The EC has welcomed the European Parliament's approval.
- 5.2.6 The new Directive, as approved by the European Parliament, (the "**new EMD**") is subject to the EU's co-decision procedure and has, accordingly, been sent to the EU's Council of Ministers for its approval. It is expected that the Council will endorse the new EMD by the end of 2009: Member States will then have 18 months in which to implement it into national legislation.
- 5.2.7 Notwithstanding that the new EMD is a standalone piece of legislation, the EC's declared long-term objective is to merge the new EMD with the PSD.

5.3 The Payment Services Directive

- 5.3.1 The PSD was adopted by the EU in December 2007. It had to be implemented into each Member State's national legislation by 1 November 2009.
- 5.3.2 Once implemented, the PSD will set a prudential regime for non-bank firms that offer payment services (such as making payment transactions through a payment card or similar, executing money transfers, etc). (Although transferring e-money is a payment service, the prudential rules for e-money issuers who provide such a service will be set by the new EMD.)
- 5.3.3 The PSD also sets conduct of business rules that firms that offer payment services, so-called 'payment service providers', must follow.
- 5.3.4 EMIs fall within the definition of a payment service provider in the PSD and will, accordingly, have to comply with the conduct of business provisions therein.

6 THE FUTURE REGULATION OF E-MONEY IN JERSEY: OPTIONS

6.1 Introduction

6.1.1 This chapter considers four possible options as regards the future regulation of Jersey-based e-money issuers:

- Option 1: Implement a regulatory regime based on the EU approach.
- Option 2: Implement a bespoke regulatory regime.
- Option 3: Extend the MSB regime.
- Option 4: Do nothing.

6.1.2 The options in this chapter build on work initially started with the issue, in mid-2006, to a number of interested parties, of a Discussion Paper that was designed to elicit respondents' views on the possibility of introducing a specific regulatory regime for e-money issuers. The particular focus of that paper was the development of e-money products and did not consider gaps in regulatory scope. Two representative organisations responded to that paper. At that time, one of the organisations favoured the introduction of a specific regime for the regulation of e-money issuers. The other did not see any pressing need for such regulation.

6.1.3 If a regulatory regime for e-money issuers were to be introduced, its purpose would be to address - to a greater or lesser extent (depending on the regulatory model developed) - the risks that both the reputation of the Island and consumers may be exposed to because of the current lack of a specific regulatory regime. As indicated in section 4.5, the Commission is aware of one e-money issuer operating in Jersey whose total business product range covers at least £400 million of customer assets. The view could be taken that a market of this size, operating outside of a dedicated regulatory regime, potentially poses an unacceptable level of risk.

6.1.4 In addition, it seems inevitable that the e-money market generally will continue to develop over time and that the amount of e-money in issue will increase. Over the past 2 years, the Commission has received an increasing volume of enquiries from potential e-money issuers, as the market grows in the UK.

6.1.5 A view could also be taken that an appropriate and proportionate regulatory regime might make it easier for Jersey firms to exploit business opportunities that there may be in the e-money field (especially domestically, and possibly internationally) because the issuing of e-money would no longer be an unregulated business activity (see section 4.4). It may also mitigate against Jersey residents not being offered e-money products that may be widely available in other jurisdictions (see paragraph 4.4.6).

- 6.1.6 In anticipation of an application being made to the European Payments Council (“EPC”) for Jersey to be admitted to the Single Euro Payments Area (“SEPA”)⁵, the Commission expects to issue a consultation paper in the first quarter of 2010 discussing the application of PSD-equivalent provisions to ‘payment service providers’. E-money issuers that provide payment services are likely to fall within the definition of a payment service provider. Accordingly, the responses to this consultation paper (in particular, respondents’ views on the four regulatory options described below) will be considered in conjunction with the responses to the SEPA-related consultation paper so that a consistent regulatory approach for the regulation of e-money issuers that are payment service providers is adopted.
- 6.1.7 The Commission would welcome respondents’ views on the options described in more detail below.
- 6.1.8 The Commission is of the view that there is a need to address the potential risks that the reputation of the Island and consumers may be exposed to because of the current absence of a specific regulatory regime for e-money issuers and that Option 1 would be the most appropriate way to achieve this.

6.2 Option 1: A regulatory regime based on the EU approach

- 6.2.1 This option would involve the implementation of a prudential regime that would broadly follow that in the proposed new EMD and a conduct of business regime that would broadly follow that in the PSD. There are a number of reasons for this, as set out below:
- 6.2.1.1 The regime proposed in the new EMD is one based on extensive experience of the development of the e-money market within Europe and detailed dialogue with numerous stakeholders in the e-money market. It could therefore be considered as comprehensively ‘market-tested’.
- 6.2.1.2 Article 8 of the new EMD provides that the competent authorities in Member States may licence branches of an EMI that have their head office in a ‘third country’ (i.e. one outside the EU) so long as the rules applied to the branch do not result in more favourable treatment than that accorded to EMIs that have their head office in a Member State. In addition, Article 8 provides that the EU, “may, through agreements concluded with one or more third countries, agree to apply provisions that ensure that branches of an EMI having its head office outside the EU are treated identically throughout the territory

⁵ The SEPA is a self-regulatory initiative by the EPC and strongly supported by the EC and the European Central Bank. The aim of the SEPA is to remove the barriers to the movement of euro funds across borders and reduce the costs of cross-border euro payments to the level of domestic payments. The SEPA currently covers all Member States of the European Economic Area, Switzerland and Monaco. If Jersey were to remain outside of the SEPA it is likely that the competitive position of Jersey payment service providers (in particular, Jersey banks) would be adversely affected.

of the EU". In the light of this, it is possible that a regulatory regime that is modelled on the new EMD might provide e-money issuers established in Jersey with a greater likelihood of being able to expand their operations into Europe, should they so wish, than would otherwise be the case.

- 6.2.1.3 The EU approach is to require EMIs to follow the conduct of business rules in the PSD. (Note also that under the proposed new EMD, EMIs will be entitled to provide payment services as defined in the PSD.)
- 6.2.2 Whilst the exact method of implementing this option would have to be considered in detail, it would most likely be done through a combination of legislation (through the introduction of a new class of registered business under the FS(J)L) and regulatory Codes of Practice.
- 6.2.3 Option 1 should mitigate, to a significant extent, the risks set out in section 4.3.
- 6.2.4 It should also address the possible disincentive presently caused by the absence of a specific regulatory regime (see section 4.4), although this would depend on the extent to which potential e-money issuers agreed that the regulatory regime was appropriate and proportionate for the e-money product they had in mind.
- 6.2.5 Appendix B describes the key features of an Option 1 regulatory regime.
- 6.2.5.1 Do you consider that Option 1 should be adopted? Please give reasons for your answer.**
- 6.2.5.2 What are your views on the key features of the Option 1 regulatory regime (as described in Appendix B)? If you have any concerns, please state what they are and the reason for them. (If you suggest changes to the regime, please set out your rationale.)**
- 6.2.6 The provisions in the Option 1 regulatory regime concerning the safeguarding of customer funds (see paragraphs 18 and 19 in Appendix B) follow those in the proposed new EMD of requiring an EMI to safeguard customers' funds received in exchange for e-money by ensuring that those funds are segregated from the EMI's working capital and other funds. On the insolvency of an EMI, claims of e-money users would be paid from that safeguarded asset pool as a priority and before all other creditors.
- 6.2.7 The proposed EU safeguarding model is different to that historically adopted by the Commission in relation to regulated businesses⁶ that hold substantive amounts of customer money. For example, investment businesses and trust company businesses are required to ring-fence customers' funds by holding them 'off-balance sheet', in trust, to ensure that they are protected in the event of the insolvency of the regulated business. This approach provides customers

⁶ Except for licensed deposit-takers.

with more security than the proposed EU model but is likely to add to the compliance costs of a business.

6.2.8 Conversely, if the Option 1 regulatory regime for e-money issuers were to require customer funds to be held 'off-balance sheet', on trust, there could be an argument for setting lower financial resource requirements on an issuer, to reflect the reduction in risk to users of the e-money product. The downside of such an approach is that it might prejudice a Jersey-based e-money issuer that sought to enter the EU marketplace – because the Jersey regime would apply financial resources provisions that are more favourable to a Jersey-based e-money issuer than would apply to an EU-based e-money issuer (see paragraph 6.2.1.2).

6.2.8.1 What are your views on the Option 1 safeguarding measures set out in Appendix B? If you feel that alternative safeguarding measures, including those applied by the Commission to investment and trust company businesses, should be adopted, please explain what they are and give your rationale for them.

6.2.9 Because the Option 1 regulatory regime described in Appendix B is based on the EU model it sets monetary limits (e.g. for minimum capital, own funds, etc) in euro. This is to avoid the possibility that applications by Jersey e-money issuers to access EU markets might be prejudiced as a consequence of exchange rate movements being seen to provide "a more favourable treatment than that accorded to EMIs in the EU" (see 6.2.1.2). There are precedents for using the euro in Jersey legislation where parity to an EU standard benefits the Island (for example, the euro has been used in Jersey's AML/CFT legislation to evidence equality with EU standards).

6.2.9.1 What are your views on setting monetary limits in euro?

6.3 Option 2: A bespoke regulatory regime

6.3.1 Another option would be to implement a bespoke regulatory regime which, in terms of regulatory requirements, would fall between those of Option 1 (a regime based on the EU approach) and Option 3 (extending the existing MSB regime to cover e-money issuers).

6.3.2 The Isle of Man is taking an approach along these lines. Subject to Tynwald (parliamentary) approval it expects to introduce a bespoke regime⁷ in January 2010.

6.3.3 The Isle of Man regime will set financial resource requirements which, at £150,000 (share capital and net tangible assets), are lower than those in the proposed new EMD (principally in recognition of the fact that the Isle of Man regime will require customer funds to be held off-balance sheet, rather than the on-balance sheet treatment under the proposed new EMD). In addition, whilst the Isle of Man regime will set conduct of business standards these are more

⁷ See <http://www.fsc.gov.im/doclibrary/condocs.xml>

principles-based and less prescriptive than those in the PSD. E-money issuers which issue e-money of £50,000 or less per annum will be exempt from the regulatory regime.

- 6.3.4 It would be relatively straightforward to introduce in Jersey a regime along similar lines. This could be done by the introduction of a new class of business under the FS(J)L⁸, secondary legislation to require an e-money issuer to hold customer money off-balance sheet in trust, and the issuance of Codes of Practice that would set high-level conduct of business rules.
- 6.3.5 Such a bespoke regime should mitigate, to a satisfactory extent, the risks set out in section 4.3.
- 6.3.6 It should also address – at least to a certain extent (depending on whether a potential e-money issuer agreed that the regulatory regime was appropriate and proportionate for the e-money product they had in mind) – the possible disincentive presently caused by the absence of a specific regulatory regime (see section 4.4). But such a bespoke regime, which would not be equivalent to the proposed updated EU regime, is likely to limit the opportunities for Jersey-based e-money issuers to offer their product outside the Island, should they wish to do so. In addition, potential Jersey users of the e-money product would not have the same level of consumer protection as that available to users of similar products offered in the EU and, as a consequence, they might find the e-money product less attractive.
- 6.3.6.1 Do you consider that Option 2 should be adopted? Please give reasons for your answer.**
- 6.3.6.2 If Option 2 is your preferred approach, are there elements from the key features of Option 1 (see Appendix B) that you think should be considered for inclusion in a bespoke regime (whether in a modified form or otherwise)? Please give reasons for your answer.**

6.4 Option 3: Extend the existing MSB regime

- 6.4.1 Currently, the definition of MSB in the FS(J)L covers a person that carries on the business of:
- 6.4.1.1 a bureau de change;
 - 6.4.1.2 providing cheque cashing services;
 - 6.4.1.3 transmitting or receiving funds by wire or other electronic means; or
 - 6.4.1.4 engaging in money transmission services.

⁸ Note that this option would be implemented with an exemption from registration (licensing) for e-money issuers whose sole connection with Jersey was the use of a local service provider for the provision of computer servers on which customer data is processed (as described in paragraph 3 of Appendix B).

- 6.4.2 It would be relatively straightforward to add a fifth category to the definition of 'money service business' so that it covered a person who is in the business of issuing e-money⁹.
- 6.4.3 As with Option 2, this option should also address – at least to a certain extent (depending on whether a potential e-money issuer agreed that the regulatory regime was appropriate and proportionate for the e-money product they had in mind) – the possible disincentive presently caused by the absence of a specific regulatory regime (see section 4.4). But an Option 3 regulatory regime, which would be far from equivalent to the proposed updated EU regime, is unlikely to provide opportunities for Jersey-based e-money issuers to offer their product outside the Island, should they wish to do so. In addition, potential Jersey users of the e-money product would not have anywhere near the same level of consumer protection as that available to users of similar products offered in the EU and, as a consequence, they might find the e-money product less attractive.
- 6.4.4 This option would also address some of the risks set out in section 4.3. In particular, an e-money issuer would become subject to a comprehensive 'fit and proper' test and would be subject to ongoing supervision by the Commission. In addition, the Commission would, in relevant circumstances, be able to use the powers it has under the FS(J)L to investigate – and take action – in cases of suspected malpractice or inappropriate behaviour by an e-money issuer.
- 6.4.5 However, this option would inadequately address three of the risks identified in section 4.3. This is because the existing regulatory regime for MSBs does not set minimum initial capital or ongoing own funds requirements, does not require the mandatory segregation of customer money, and sets only limited conduct of business requirements.
- 6.4.6 The reason for this is that MSBs generally have relatively uncomplicated business models, systems and structures. In addition, by the very nature of MSB business, a MSB should not be in possession of any significant amount of customer money.
- 6.4.7 This is significantly different to the type of business model that e-money issuers are likely to operate. They will often have complicated systems and hold a significant amount of customer money.

6.4.7.1 Do you consider that Option 3 should be adopted? Please give reasons for your answer.

⁹ Note that this option would be implemented with an exemption from registration (licensing) for e-money issuers whose sole connection with Jersey was the use of a local service provider for the provision of computer servers on which customer data is processed (as described in paragraph 3 of Appendix B).

6.5 Option 4: Do nothing

- 6.5.1 Another option would be to maintain the status quo. There are a number of factors that would lend support to this approach.
- 6.5.2 These include the fact that, to date, no consumers are known to have suffered any loss due to the absence of a specific regulatory regime for e-money issuers. Nor has the absence of a regulatory regime resulted in adverse comment for Jersey when independent assessments of the Island's regulatory framework have been carried out.
- 6.5.3 In addition, the Commission has not been inundated with applications from potential e-money issuers, although it is conceivable that, the absence of a specific regulatory regime deters potential applicants from approaching the Commission in the first place.
- 6.5.4 However, this option would not address the risks set out in section 4.3. In addition, doing nothing would not address the disincentive referred to in section 4.4. This may mean that Jersey residents could be denied access to e-money products available to consumers in other jurisdictions and the Island may miss business opportunities in this sphere of e-commerce.
- 6.5.4.1 What are your views on doing nothing (Option 4)? Please give reasons for your answer.**

6.6 Other options?

- 6.6.1 The Commission would welcome any suggestions that respondents may have on other possible approaches to developing a regulatory regime for e-money issuers.
- 6.6.1.1 Are there any other options that the Commission should consider? Please give reasons for your answer.**

7 COST BENEFIT ANALYSIS

COST	Option 1 (EU approach)	Option 2 (Bespoke)	Option 3 (Extend the MSB regime)	Option 4 (Do nothing)
Cost of developing the regulatory regime.	Development cost of this option would be the highest.	Development cost should fall between that for Options 1 and 3.	Cost should be relatively low.	Not applicable.
Cost to e-money issuers in changing their systems and procedures to comply with the regulatory regime.	Unless the e-money issuer has based their systems and procedures on the existing EU approach, costs are likely to be high.	Cost should fall between that for Options 1 and 3.	Cost should be relatively low.	Not applicable.
Cost of holding the mandated minimum financial resources.	Likely to be the highest cost option.	Cost should fall between that for Options 1 and 3.	Not applicable (the MSB regime does not set minimum levels of financial resources).	Not applicable
Ongoing regulatory fees ¹⁰	This would be the most complex regulatory regime to monitor compliance with so ongoing regulatory fees would be the highest for this option.	Fee level should fall between that for Options 1 and 3.	Of the three options which would implement a regulatory regime, this option - with a fairly simple regulatory regime - is likely to have the lowest level of regulatory fees.	Not applicable

¹⁰ Although the Commission does not envisage any increase in headcount upon implementation of a regulatory regime, it is possible that more staff might be needed if a significant number of e-money issuers were to be licensed at some future point.

BENEFIT	Option 1 (EU approach)	Option 2 (Bespoke)	Option 3 (Extend the MSB regime)	Option 4 (Do nothing)
Mitigation of the risks described in section 4.3.	Although no regulatory regime can eliminate risk, this option is likely to provide the highest level of mitigation.	Moderate risk mitigation.	Limited risk mitigation.	No mitigation.
Addresses anecdotal evidence that the absence of a specific regulatory regime covering issuers of e-money may act as a disincentive to the development of e-money products.	Should address this, provided that potential e-money issuers agreed that the regulatory regime was appropriate and proportionate for the product they have in mind.	Should address this, provided that potential e-money issuers agreed that the regulatory regime was appropriate and proportionate for the product they have in mind.	Should address this to an extent but consumers may recognise that the regime would provide less protection for them than regimes based on Options 1 or 2.	No.
Provides explicit legal certainty as to the regulatory position of e-money.	Yes.	Yes.	Yes.	No.
Would provide e-money issuers established in Jersey with a greater likelihood of being able to expand their operations into Europe, should they so wish, than would otherwise be the case	Yes.	Is unlikely to be deemed close enough (or “equivalent”) to the EU regime, and is therefore unlikely to provide any substantial benefits in attempting to gain access to EU markets.	No.	No.

8 SUMMARY OF QUESTIONS

REFERENCE	QUESTION
4.3.4.1	What is your view on the Commission's assessment of the risks potentially arising from the current gaps in regulatory scope?
4.4.6.1	Do you agree that the current absence of a specific regulatory regime may act as a disincentive to develop e-money products? If you disagree, please give your reasons.
6.2.5.1	Do you consider that Option 1 should be adopted? Please give reasons for your answer.
6.2.5.2	What are your views on the key features of the Option 1 regulatory regime (as described in Appendix B)? If you have any concerns, please state what they are and the reason for them. (If you suggest changes to the regime, please set out your rationale.)
6.2.8.1	What are your views on the Option 1 safeguarding measures set out in Appendix B? If you feel that alternative safeguarding measures, including those applied by the Commission to investment and trust company businesses, should be adopted, please explain what they are and give your rationale for them.
6.2.9.1	What are your views on setting monetary limits in euro?
6.3.6.1	Do you consider that Option 2 should be adopted? Please give reasons for your answer.
6.3.6.2	If Option 2 is your preferred approach, are there elements from the key features of Option 1 (see Appendix B) that you think should be considered for inclusion in a bespoke regime (whether in a modified form or otherwise)? Please give reasons for your answer.
6.4.7.1	Do you consider that Option 3 should be adopted? Please give reasons for your answer.
6.5.4.1	What are your views on doing nothing (Option 4)? Please give reasons for your answer.
6.6.1.1	Are there any other options that the Commission should consider? Please give reasons for your answer.

APPENDIX A

List of representative bodies and other organisations who have been sent this consultation paper.

- Citizens Advice Bureau
- Jersey Consumer Council
- Jersey Finance Limited
- The Jersey Chamber of Commerce

APPENDIX B

Key features of a regulatory regime based on the EU approach (“Option 1”) (see section 6.2)

Regulated activity

1. A person that wishes to issue e-money, in or from within Jersey, would be required to be registered with the Commission pursuant to the FS(J)L to carry on a new class of ‘financial service business’ given the provisional title of ‘electronic money business’.

(If a ‘waiver regime’ were to be established (see paragraph 20) this registration requirement would not apply to a small firm that utilises the waiver.)

2. In addition, as with other types of financial service business under the FS(J)L, a Jersey company would be required to be registered with the Commission pursuant to the FS(J)L before carrying on electronic money business anywhere in the world.
3. An e-money issuer whose sole connection with Jersey was the use of a local service provider for the provision of computer servers on which customer data is processed¹¹ would be exempted from the requirement to register with the Commission to carry on ‘electronic money business’. However, this exemption from registration under the FS(J)L would be subject to: (i) the e-money issuer notifying the Commission of its reliance upon the exemption and providing the identity and location of the local service provider; and (ii) the e-money issuer being subject to an overseas regulatory regime that the Commission considers is functionally equivalent to the Jersey regime. (Note that, although the e-money issuer would be exempt from registration, the investigatory powers in the FS(J)L would remain ‘switched on’. This would ensure that, in relevant cases (for example, where malpractice was suspected), the Commission could carry out appropriate enquiries and, importantly, co-operate with, and pass relevant information to, the overseas regulatory body responsible for supervising the activities of the e-money issuer.)
4. It is proposed that e-money would be defined as in the proposed new EMD, namely:

“Any 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 4(5) of the PSD¹²] and which is accepted by a natural or legal person other than the issuer.”

¹¹ Where the local service provider provides servers to back-up data, but does not provide the servers that hold the original data, the Commission’s view is that the e-money issuer would not fall within the scope of the FS(J)L because it would not be carrying on electronic money business “in or from within Jersey”.

¹² A payment transaction is defined in Article 4(5) of the PSD as, “an act, initiated by the payee or the payer, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

5. The intention of the Commission is to apply to persons that wish to carry on electronic money business (i.e. to issue e-money) its 'Licensing Policy in respect of those activities that require registration under the FS(J)L'. That policy statement sets out the criteria that the Commission will use to judge whether the applicant would be considered fit and proper to undertake the financial service business applied for. A copy of that policy statement can be found on the Commission's website at [http://www.jerseyfsc.org/pdf/PS_FS\(J\)L_Licensing%20Policy_May_2009.pdf](http://www.jerseyfsc.org/pdf/PS_FS(J)L_Licensing%20Policy_May_2009.pdf).
6. A deposit-taker registered under the Banking Business (Jersey) Law 1991 would be permitted to issue e-money without having to register under the FS(J)L to carry on electronic money business. However, this concession would be subject to prior notification being given to the Commission by the deposit-taker of its intention to issue e-money. Other than the e-money redeemability provisions (see paragraphs 24 to 26), conduct of business requirements (see paragraphs 27 to 31) and AML/CFT requirements (see paragraphs 32 to 34) deposit-takers would not be subject to the other aspects of the proposed regulatory regime for e-money issuers. This is because the regulatory regime that a deposit-taker operates under the Banking Business (Jersey) Law 1991 is no less rigorous than that proposed for e-money issuers.
7. The principal characteristic of e-money is that it is an electronic surrogate for coins and banknotes only likely to be used for making payments of limited amounts and not used as a means of saving. Accordingly, Article 2 of the BB(J)L would be amended to make it clear that funds received by an e-money issuer in exchange for e-money would not constitute a "deposit" under that law.

Negative scope

8. To ensure consistency with the approach under the new EMD, two particular types of service would be taken outside of the proposed regulatory regime under the FS(J)L, as set out below.
9. The regulatory regime would not apply to services based on e-money devices that can be used to acquire goods or services only in the premises used by the issuer or under commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services. Examples of such e-money devices are store cards, public transport cards and electronic meal vouchers.
10. The regime would only apply to an e-money service provided through a mobile phone or a computer (e.g. via the internet) to purchase digital goods or services, where the operator of the service was acting as an intermediary between the consumer and the supplier of the goods and services¹³.

¹³ The coverage of the proposed EMD in this area has yet to be clarified. However, it is expected, for example, that a mobile phone operator would be outside of scope where it only allows a phone user to use credit from a top-up card to purchase a digital product or service (e.g. an 'application') directly from the mobile phone operator itself.

Initial capital

11. An e-money issuer would be required to hold a minimum initial capital of the equivalent of €350,000.

(If a 'waiver regime' were to be established (see paragraph 20) this initial capital requirement would not apply to a small firm that utilises the waiver.)

Own funds

12. An e-money issuer would be required to hold a minimum amount of 'own funds' to provide a buffer against financial risks that may arise from the operations of the e-money issuer.

(Note that if a 'waiver regime' were to be established (see paragraph 20) the 'own funds' requirements would not apply to a small firm that utilises the waiver.)

13. Where the e-money issuer's only business activity is the issuing of e-money, the amount of own funds that would have to be held would be an amount of at least 2% of the average outstanding e-money. (The new EMD refers to this calculation as *Method D*.)

14. Where the e-money issuer carries on other business activities (on top of the issuing of e-money) the e-money issuer would be required to hold an amount of 'own funds', in respect of those business activities, calculated using one of three methods (the new EMD refers to these as *Methods A, B and C*¹⁴). The method which would have to be used would be specified by the Commission based on the perceived risks arising from the nature and scope of the business activities carried on:

- *Method A* would require an amount of 'own funds' that is calculated as a percentage of an e-money issuer's fixed overheads.
- *Method B* would require an amount of 'own funds' that is calculated as a percentage of the e-money issuer's annual aggregate amount of payment transactions.
- *Method C* would require an amount of 'own funds' that is calculated as a percentage of the e-money issuer's income.

15. Therefore, where the sole business activity of the e-money issuer is the issuing of e-money, the amount of own funds that would be required would be calculated on the basis of Method D. However, where other business activities are also carried on, an additional amount of own funds, calculated on the basis of Method A, B or C (as determined by the Commission), would also have to be held.

16. The Commission would have the power to vary the required total amount of own funds by +/- 20% depending on relevant factors such as the quality of the e-money issuer's risk management and internal control processes.

¹⁴ Methods A, B and C have been taken from the PSD.

17. Where the calculations referred to in paragraph 15 (as adjusted by a maximum of +/- 20% by the Commission, as referred to above) produce a total own funds figure of below €350,000, the minimum own funds requirement would be fixed at the equivalent of €350,000 (i.e. equal to the initial capital requirement).

Safeguarding requirements

18. An e-money issuer would be required to safeguard customers' funds received in exchange for e-money by ensuring that those funds are segregated from the issuer's working capital and other funds. On the insolvency of an issuer, claims of e-money users would be paid from that safeguarded asset pool as a priority and before all other creditors.
19. An e-money issuer would be required to hold customers' funds in a designated client account with an authorised bank or invested in certain types of secure, liquid assets placed in a separate account with an authorised custodian. 'Authorised' would mean a bank or custodian (of substantial size) prescribed by Order.

(Note that if a 'waiver regime' were to be established (see paragraph 20) the safeguarding requirements would not apply to a small firm that utilises the waiver.)

Limited exemption for small firms

20. Consideration would be given to introducing a 'waiver' regime similar to that proposed in the new EMD which would allow an e-money issuer to be exempt from the authorisation requirements (paragraph 1) and the provisions on initial capital (paragraph 11), own funds (paragraphs 12 to 17) and safeguarding (paragraphs 18 and 19) where:
 - the e-money issuer generates less than €5 million on average of outstanding e-money; and
 - none of the natural persons responsible for management and operation have been convicted of money laundering/terrorist financing or other financial crimes.

21. 'Waived' firms would still be subject to the conduct of business rules.

22. 'Waived' firms would be required to notify the Commission that they were carrying on business in reliance upon the waiver regime.

Prohibition of interest

23. An e-money issuer would be prohibited from paying interest (or any other benefit) related to the length of time during which a customer holds the e-money.

Redeemability

24. Issuers of e-money would be required to allow the holder of the e-money to redeem, on demand and at par value, its monetary value.

25. A redemption fee would only be able to be charged where: (a) redemption is requested before the termination of the contract; (b) where the contract provides for a termination date and the customer holding the e-money terminated the contract before this date; or (c) where redemption is requested more than one year after the date of termination of the contract. The fee charged would have to be proportionate and commensurate with the actual costs incurred by the issuer.
26. The contract between the issuer and the holder of the e-money would be required to clearly state the conditions of redemption (including the fee level).

Conduct of Business requirements

27. In common with other types of business regulated by the Commission, an e-money issuer would have to adhere to Codes of Practice requiring the issuer to conduct its business in accordance with certain fundamental principles, namely:
- to conduct its business with integrity;
 - to have the highest regard for the interests of its customers;
 - to organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems;
 - to be transparent in its business arrangements;
 - to maintain and be able to demonstrate the existence of both adequate financial resources (as described in paragraphs 11 and 15) and adequate professional indemnity insurance;
 - to deal with the Commission and other authorities in Jersey in an open and co-operative manner; and
 - to not make misleading, false or deceptive statements.
28. The EU regime for EMIs requires them to comply with the conduct of business rules in the PSD (Titles III and IV). The Jersey regime would require e-money issuers to comply with materially equivalent provisions. The detailed provisions would be consulted on in due course (although the PSD provisions can be viewed on the European Commission's website¹⁵) but in broad terms these would cover the matters described in paragraphs 29 and 31 below.
29. Title III to the PSD establishes the conditions for the provision of information to consumers. The information that must be disclosed includes:
- the name and address of the e-money issuer, its regulator and registration number;
 - a description of the main characteristics of the e-money product;
 - information on charges, interest and exchange rates;

¹⁵ See http://ec.europa.eu/internal_market/payments/framework/index_en.htm

- the means of communication for transmission of information, the manner and frequency of information and the customer's right to receive information on request;
- information on steps necessary to keep the e-money device/product safe, how to notify the e-money issuer on becoming aware of loss, theft or misappropriation, and conditions for blocking the e-money device/product;
- the liability of the customer, how the customer must notify the e-money issuer of an incorrect transaction, the e-money issuer's liability for execution, and conditions for refund; and
- the form for making changes to the contract, the duration of the contract, the rights of the customer to terminate, and information on the complaints and redress procedures.

30. The intention is that, in line with a discretion in the PSD¹⁶, the Jersey regime would relax some of the information requirements for an e-money device where:

- the device can be used only to execute individual payment transactions of €30 or less, or in relation to payment transactions executed wholly within Jersey, €60 or less;
- the device has a spending limit of €150, or where payment transactions must be executed wholly within the Jersey, €300; or
- the device may be used to store a maximum of €500 at any time.

31. Title IV to the PSD sets out the statutory rights and obligations of providers and customers of an e-money product. These include:

- consent and withdrawal of consent to a transaction;
- limits on use of an e-money product/service;
- liability for unauthorised transactions;
- conditions for refunds;
- refusal or revocation of transactions;
- value dating; and
- liability in respect of the non-execution or defective execution of a transaction.

¹⁶ See Article 34 of the PSD. Implemented in the UK through Regulation 35 of the Payment Services Regulations 2009, which can be viewed at http://www.opsi.gov.uk/si/si2009/uksi_20090209_en_1

AML/CFT

32. An e-money issuer would (as at present, see paragraph 4.1.2) be subject to the ML(J)O and thus required to meet that Order's requirements in relation to the carrying out of due diligence on its customers, keeping records, and having in place policies and procedures to prevent and detect money laundering and terrorist financing. An e-money issuer would be subject to monitoring by the Commission for compliance with the ML(J)O and related regulatory requirements, pursuant to the provisions of the SB(J)L.
33. However, Article 18 of the ML(J)O, which provides for simplified customer due diligence measures, would (in line with proposed changes to the EU's Third Money Laundering Directive) be extended to cover electronic money business where:
- if it is not possible to recharge the e-money device, the maximum amount stored electronically is no more than €250; or
 - if it is possible to recharge the device, a limit of €2,500 is imposed on the total amount transacted in a calendar year, except when an amount of €1,000 or more is redeemed in that same calendar year by the bearer of the e-money device.
34. Note, however, that as a consequence of bringing the issuing of e-money into the scope of the FS(J)L, a person that was registered under the FS(J)L to carry on 'electronic money business' would not need to separately register under the SB(J)L (in most cases, a change from the current position as described in paragraph 4.1.2).
35. An e-money issuer that could utilise the exemption from registration under the FS(J)L referred to in paragraph 3 would also be exempted from having to comply with the ML(J)O.

Reporting requirements

36. An e-money issuer would, as a minimum, be required to provide to the Commission audited annual accounts and an accompanying report.
37. Additional intra-year reporting is also likely to be imposed, in particular to monitor compliance with the 'own funds' requirements.

Registration fees

38. A e-money issuer would be required to pay a fee to the Commission to cover the costs of processing an application for registration under the FS(J)L.
39. In addition, in line with other sectors regulated by the Commission, e-money issuers would be charged an annual fee of an amount that, in aggregate, would produce sufficient funds to cover the costs of the Commission in supervising the sector.

