

Act on the Prudential Supervision of Payment Services
(Payment Services Supervision Act)¹

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¹ This working translation of the *Zahlungsdiensteaufsichtsgesetz* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic

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Part 1

Definitions, Scope, Supervision, Payment Systems

Section 1 – Definitions; exemptions for certain payment institutions

(1) Payment service providers are:

1. credit institutions within the meaning of Article 4 (1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of payment institutions (OJ L 177, p. 1) which are entitled to do business in Germany,
2. electronic money institutions within the meaning of Article 1 (b) and Article (2) (1) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (OJ L 267, 10.10.2009, p. 7),
3. the Federation, the *Länder*, the local authorities and local authority associations, and indirect federal and *Länder* administrative bodies unless they exercise sovereign power,
4. the European Central Bank, the Deutsche Bundesbank and other central banks in the European Union or the other Contracting Parties to the Agreement on the European Economic Area if they are not acting in their capacity as monetary authority or other public authority, and
5. enterprises that provide payment services either commercially or on a scale that requires a commercially equipped business operation without falling under numbers 1 to 4 (payment institutions).

(2) Payment services are:

1. services enabling cash to be placed on a payment account or enabling cash withdrawals from a payment account, as well as all the operations required in order to operate a payment account (deposit and disbursement business),
2. the execution of payment transactions, including transfers of funds to a payment account with the payment service user's payment service provider or with another payment service provider by:
 - a) the execution of direct debits, including one-off direct debits (direct debit business),
 - b) the execution of credit transfers, including standing orders (credit transfer business),

- c) the execution of payment transactions by means of a payment card or a similar payment instrument (payment card business),
- without the granting of credit (payment transaction),
3. the execution of the payment transactions stipulated under number 2 involving the extension of credit within the meaning of section 2 subsection (3) (payment business involving the extension of credit),
 4. issuing payment authentication instruments or accepting and settling payment transactions triggered by payment authentication instruments (payment authentication business),
 5. the execution of payment transactions where the consent of the payer to execute a payment transaction is communicated by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or IT network operator, provided that the operator is acting only as an intermediary between the payment service user and the supplier of the goods or services (digitised payment business), and
 6. services where funds are received from the payer, without a payment account being created in the name of a payer or a payee, for the sole purpose of transferring a corresponding amount to the payee or to another payment service provider acting on behalf of the payee, or where the amount is received on behalf of and made available to the payee (money remittance business).

(2a) Institutions within the meaning of this Act are payment institutions within the meaning of subsection (1) number 5 and electronic money institutions within the meaning of section 1a subsection (1) number 5.

(3) A payment account is an account held in the name of one or several payment service users and serving the execution of payment transactions which shows the accounts receivable and accounts payable between the payment service user and the payment service provider within the business relationship as expressed in the books and for accounting purposes, and determines the payment service user's respective claim on the payment service provider.

(4) A direct debit is a payment transaction initiated by the payee debiting the payer's payment account, in which the payer gives his/her consent to the payee, the payee's payment service provider or the payer's own payment service provider.

(5) A payment authentication instrument is any personalised instrument or procedure that is agreed between the payment service user and the payment service provider for the issue of payment orders and is used by the payment service user to initiate a payment order.

(6) A payment system within the meaning of this Act is a system for processing, clearing, netting and executing payment transactions on the basis of a formal agreement with common rules entered into by a party that operates the system (operator) and at least three participants for transferring funds; any netting and clearing office, central contracting party or clearing house that is independent of the operator shall not be counted. Only payment service providers may participate.

(7) An agent within the meaning of this Act is any legal or natural person acting as an independent businessperson providing payment services on behalf of payment institution or an electronic money institution. The agent's actions are assigned to the payment institution or electronic money institution.

(8) Directors within the meaning of this Act are those natural persons who are appointed according to law or articles of association to manage the business of and represent a payment institution or an electronic money institution organised in the legal form of a legal person or a commercial partnership. In exceptional cases, the Federal Financial Supervisory Authority (BaFin) may also revocably designate as director another person entrusted with managing the business and representing it if said person is trustworthy and has the requisite professional qualifications. Where the designation of a person as director is based on an application by the payment institution or electronic money institution, this designation shall be revoked at the request of the payment institution or the electronic money institution or the director.

(9) A major holding within the meaning of this Act is deemed to exist if at least 10 per cent of the capital or of the voting rights of a third-party enterprise is held in the owner's own or another's interest, either directly or indirectly via one or several subsidiaries or a similar relationship or in cooperation with other persons or enterprises, or if significant influence can be exerted over the management of another enterprise. Section 1 subsection (9), second to fourth sentences, of the Banking Act shall be applied accordingly.

(9a) Initial capital within the meaning of this Act is the tier 1 capital in section 10 subsection (2a), first sentence, numbers 1, 2, 3, or 6 of the Banking Act.

(9b) Secure, low-risk assets within the meaning of this Act are asset items falling into a category set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of 14 June 2006 on the capital adequacy of investment firms and credit institutions as amended by Article 1 (1) (b) of Commission Directive 2009/27/EC of 7 April 2009 amending certain Annexes to Directive 2006/49/EC of the European Parliament and of the Council as regards technical provisions concerning risk management (OJ L 94 of 8.4.2009, p. 97) for which the specific risk capital charge is no higher than 1.6 per cent, but excluding other qualifying items pursuant to point 15 of that Annex. Secure, low-risk assets within the meaning of this Act are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first sentence.

(10) The following are not payment services:

1. payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention,
2. payment transactions from the payer to the payee via a commercial agent or central settler authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee,
3. professional physical transport of banknotes and coins, including their collection, processing and delivery,
4. services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the acquisition of goods or services,
5. money exchange business settled in cash,
6. payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
 - a) a paper-based cheque within the meaning of the Cheque Act or a similar paper-based cheque under the laws of another Member State of the European Union or another Contracting Party to the Agreement on the European Economic Area,

- b) a paper-based bill of exchange within the meaning of the Bills of Exchange Act or a similar paper-based bill of exchange under the laws of another Member State of the European Union or another Contracting Party to the Agreement on the European Economic Area,
 - c) a paper-based voucher,
 - d) a paper-based traveller's cheque, or
 - e) a paper-based postal money order as defined by the Universal Postal Union,
7. payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses or central banks and other participants of the system, and payment service providers,
 8. payment transactions related to securities asset servicing carried out by enterprises falling under number 7 or by credit institutions, financial services institutions or investment management companies as part of their licence under the Banking Act or under the Investment Act,
 9. services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, such as the processing and storage of data, trust and privacy protection services, data and entity authentication, IT and communication network provision, provision and maintenance of terminals and devices used for payment services,
 10. services based 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 for the acquisition within a limited network of service providers or for the acquisition of a limited range of goods or services,
 11. payment transactions executed by means of any telecommunication, digital or IT device, if the goods or services are delivered to and are to be used through a telecommunication, digital or IT device, provided that the operator of the telecommunication, digital or IT system or IT network does not act only as an intermediary between the payment service user and the supplier of the goods and services,

12. payment transactions executed between payment service providers for their own account or between their agents or branches for their own account,
13. payment transactions within a group or between members of an undertaking belonging to the same group,
14. services by service providers that have not concluded a framework contract with customers, in which funds are withdrawn by means of automated teller machines acting on behalf of one or more card issuers, on condition that these providers do not provide any other payment services, and
15. non-professional cash collection and delivery within the framework of a non-profit or charitable activity.

(11) Sections 11, 14, 15, 17, 17a, 20, 21, 29 and 29a shall not be applied to payment institutions that have a licence within the meaning of section 32 subsection (1), first sentence, of the Banking Act insofar as the Banking Act contains an arrangement identical in substance.

(12) The payment services of the Kreditanstalt für Wiederaufbau shall not be regarded as payment services within the meaning of this Act.

Section 1a – Additional definitions for the business of electronic money issuance; exemptions for certain electronic money institutions

(1) Electronic money issuers are:

1. credit institutions within the meaning of Article 4 (1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of payment institutions (OJ L 177 of 30.6.2006, p. 1) stated in section 1 subsection (1) number (1) which are entitled to do business in Germany,
2. the Federation, the *Länder*, the local authorities and local authority associations, and indirect federal and *Länder* administrative bodies insofar as they act as a public authority,
3. the European Central Bank, the Deutsche Bundesbank and other central banks in the European Union or the other Contracting Parties to the Agreement on the European Economic Area if they are not acting in their capacity as monetary authority or other public authority,

4. the Kreditanstalt für Wiederaufbau,
5. enterprises conducting the business of electronic money issuance, without falling under numbers 1 to 4 (electronic money institutions).

(2) The electronic money business is the issuance of electronic money.

(3) Electronic money is all electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of fund for the purpose of making payment transactions within the meaning of section 675f subsection (3), first sentence, of the Civil Code and which is accepted by a natural or legal person other than the issuer.

(4) Average outstanding electronic money is 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.

(5) Electronic money within the meaning of this Act is not a monetary value

1. stored on devices within the meaning of section 1 subsection (10) number 10, or
2. used for payment transactions under section 1 subsection (10) number 11.

(6) An electronic money agent is any natural or legal person working as an independent business operator distributing and redeeming electronic money on behalf of an electronic money institution.

Section 2 – Permitted and prohibited transactions for payment institutions

(1) An institution may not commercially, or on a scale that requires a commercially equipped business operation, accept deposits or other repayable funds from the public outside the limits of subsections (1a) and (2) and its licence under section 8 subsection (1), first sentence, or section 8a subsection (1), first sentence.

(1a) Funds which an electronic money institution receives for the purposes of issuing electronic money shall be exchanged by the electronic money institution for electronic money without delay. Such funds shall not constitute deposits or other repayable funds received from

the public within the meaning of section 1 subsection (1), second sentence, number 1 of the Banking Act if the issuance of the electronic money occurs at the same time or without undue delay after the receipt of the funds to be paid-in in exchange for the issuance of electronic money. Electronic money and the credit balance arising from the issuance of electronic money may not bear interest or be granted other benefits associated with the duration of the holding period.

(2) Insofar as an institution keeps payment accounts for payment service users under the terms of the licence under section 8 subsection (1), first sentence, or section 8a subsection (1), first sentence, the institution may solely perform the settlement of payment transactions via these accounts. Credit balances on payment accounts administered by the institution may not bear interest. The funds received by an institution from the payment service users for the execution of payment transactions shall not be regarded as deposits or other unconditionally repayable funds from the public within the meaning of section 1 subsection (1), second sentence, number 1 of the Banking Act or as electronic money.

(3) Under the terms of its licence under section 8 subsection (1), first sentence, or section 8a subsection (1), first sentence, an institution may only grant credit pursuant to section 19 of the Banking Act to payment service users in relation to payment services within the meaning of section 1 subsection (2) numbers 3 to 5, provided that

1. the granting of the credit is carried out as an ancillary activity and is carried out exclusively in the context of the execution of a payment transaction,
2. a term of no longer than 12 months is agreed in the credit agreement and the loan is to be repaid in full within 12 months, and
3. the loan is not extended from the funds received or held for the purpose of executing a payment transaction.

The first sentence shall apply accordingly to electronic money institutions subject to the proviso that the credit is not granted from the funds received or held for the purpose of issuing electronic money either. A loan extended in compliance with the conditions set out in the first and second sentences shall not be regarded as lending business within the meaning of section 1 subsection (1), second sentence, number 2 of the Banking Act, if it is granted by an institution that is not licensed to operate a lending business as a credit institution. In this case

the payment institution shall, before concluding a consumer loan agreement or an agreement for remunerated financial accommodation, verify the creditworthiness of the consumer. The basis may be provided by information from the consumer and, where necessary, information from bodies which professionally collect, save or amend, for the purpose of transmission, personal data which may be used to evaluate consumers' creditworthiness. In the case of a change to the net loan amount, the information shall be updated. In the event of a substantial increase in the net loan amount, creditworthiness shall be re-evaluated. The provisions on the protection of personal data shall remain unaffected.

Section 3 – Supervision and decision-making in cases of doubt

(1) BaFin shall exercise supervision over institutions under the provisions of this Act.

(2) BaFin may, as part of its statutorily assigned tasks, issue orders to institutions and their directors that are appropriate and necessary to stop or prevent violations of regulatory provisions or to prevent or overcome undesirable developments at an institution which could endanger the safety of the assets entrusted to the institution or could impair the proper conduct of the payment services or the proper conduct of the business of electronic money issuance.

(3) BaFin and the Deutsche Bundesbank shall work together in accordance with this Act; section 7 of the Banking Act shall apply accordingly.

(4) In cases of doubt, BaFin shall decide whether an enterprise is subject to the provisions of this Act. Its decisions shall be binding on the other administrative authorities.

Section 4 – Action against unauthorised payment services as well as the unauthorised conduct of the business of electronic money issuance

(1) Where payment services are provided without the licence required under section 8 subsection (1) (unauthorised payment services) or the business of electronic money issuance is conducted without the licence required under section 8a subsection (1) (unauthorised conduct of business of electronic money issuance), BaFin may order the enterprise as well as its shareholders and the members of its governing bodies to cease business operations immediately and to settle this business without undue delay. It may issue instructions for the settlement of the business and appoint a suitable person as the liquidator. It may announce the measures under the first and second sentences and under section 23a; personal data may only

be published insofar as this is necessary for the purpose of threat prevention. BaFin's powers under the first to third sentences shall also apply in relation to the enterprise involved in the initiation, conclusion or settlement of these transactions as well as in relation to its shareholders and the members of its governing bodies.

(2) The liquidator shall be authorised to file a petition for the initiation of insolvency proceedings over the enterprise's assets. Section 37 subsection (3) of the Banking Act shall apply accordingly.

(3) The liquidator shall receive appropriate remuneration and reimbursement of his/her expenses. The amounts paid shall be refunded separately to BaFin by the enterprise concerned and, at BaFin's request, paid in advance. BaFin may instruct the enterprise concerned to pay the amount set by BaFin directly to the liquidator on BaFin's behalf if there is no reason to suspect that this may affect the liquidator's independence.

Section 5 – Prosecution of unauthorised payment services as well as the unauthorised conduct of business of electronic money issuance

(1) An enterprise about which it is established or about which facts are known which warrant the assumption that it is providing unauthorised payment services, is conducting the business of electronic money issuance without authorisation or that it is, or has been, involved in the initiation, conclusion or settlement of unauthorised payment services or the unauthorised conducting of the business of electronic money issuance, the members of its governing bodies, the shareholders and the employees of this enterprise shall, on request, provide information about all of the business activities and submit documentation to BaFin and the Deutsche Bundesbank. A member of a governing body, a shareholder or an employee shall, upon request, provide information and submit documentation even after they have left the governing body or the enterprise.

(2) BaFin may carry out inspections on the premises of the enterprise as well as on the premises of the persons and enterprises obliged to provide information and submit documentation under subsection (1) insofar as this is necessary to determine the nature or volume of the business or activities; it may entrust the Deutsche Bundesbank with the task of carrying out such inspections. To this end, BaFin's staff and the staff of the Deutsche Bundesbank may enter and inspect such premises during ordinary office and business hours. In order to prevent imminent risks to public order and safety, they shall be authorised to enter

and inspect these premises outside ordinary office and business hours as well, and may enter and inspect premises which also serve as living accommodation; the basic right in Article 13 of the Basic Law shall be limited in this respect.

(3) The staff of BaFin and the Deutsche Bundesbank may search the premises of the enterprise and persons and enterprises obliged to provide information and submit documentation under subsection (1). During the search the staff may, for the purpose of seizing items within the meaning of subsection (4), also search the persons obliged to provide information and submit documentation. The basic right in Article 13 of the Basic Law shall be limited in this respect. Searches of business premises and persons shall be ordered by the court except in the event of imminent danger. Searches of premises which serve as living accommodation shall be ordered by the court. The competent court shall be the local court in whose district the premises are located. An appeal may be lodged against the court decision; sections 306 to 310 and 311a of the Code of Criminal Procedure shall apply accordingly. A written record shall be made of the search. It must specify the responsible official agency, the reason, time and place of the search, its outcome and, if no court order was issued, the facts substantiating the presumption of imminent danger.

(4) The staff of BaFin and the Deutsche Bundesbank may seize items which could be of importance as evidence in determining the facts of the case.

(5) The persons concerned shall tolerate measures taken under subsections (2) and (3), first sentence, as well as subsection (4). The person obliged to provide information may refuse to answer such questions that would expose him/her or one of his/her relatives as designated in section 383 subsection (1) numbers 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or proceedings under the Administrative Offences Act.

(6) Subsections (1) to (5) shall apply accordingly to other enterprises and persons, provided that

1. facts are known which warrant the assumption that they are involved in the initiation, conclusion or settlement of payment services or the business of electronic money issuance which are being provided in another state contrary to a prohibition that applies there, and
2. the competent authority of the other state files a corresponding request with BaFin.

Section 6 – Confidentiality requirement

Persons employed by BaFin and persons commissioned under section 4 subsection (3) of the Financial Services Supervision Act, supervisors appointed under section 16 subsection (2), second sentence, number 3, liquidators appointed under section 4 subsection (1), second sentence and persons employed by the Deutsche Bundesbank, insofar as they are acting to implement this Act, may not, without authorisation, disclose or make use of facts, especially commercial and trade secrets, which have become known to them in the course of their activity and the confidentiality of which is in the interests of the institution or a third party, not even after they have left such employment or their activity has ended. Section 9 subsection (1), second to eight sentences, and subsection (2) of the Banking Act shall apply accordingly.

Section 7 – Access to payment systems

(1) The operator of a payment system may neither directly nor indirectly

1. hinder the access of payment service providers, payment service users or similar payment systems to the payment system by imposing restrictive conditions or using other disproportionate means,
2. treat payment service providers, payment service users or similar payment systems differently with respect to their rights and obligations as participants in the payment system without any objective justification, or
3. restrict payment service providers, payment service users or similar payment systems with respect to the institutional status of the payment service provider.

(2) The operator of a payment system may lay down objective conditions for participation in a payment system insofar as these are necessary to effectively protect the financial and operational stability of the payment system and to prevent the risks connected with participation in a payment system. These risks shall include operational risk, settlement risk and business risk.

(3) Before joining and while participating in a payment system, every payment service provider and every other payment system must show to the operator and to the other participants in the payment system that its own arrangements meet the payment system

operator's objective conditions for participation in the system within the meaning of subsection (2).

(4) Subsection (1) shall not apply to:

1. the systems designated in section 1 subsection (16) of the Banking Act,
2. payment systems that exist exclusively between payment service providers belonging to a corporate group, provided that the individual enterprises are linked by capital, and one of the associated enterprises exercises effective control over the others, or to payment systems that exist within an undertaking belonging to the same group,
3. payment systems where a sole payment service provider, whether as a single legal entity or as a group
 - a) acts or may act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the system, and
 - b) licences the other payment service providers to participate in the system, provided that the other payment service providers have no right to negotiate fees amongst themselves in relation to the payment system, although they may establish their own pricing in relation to payers and payees.

(5) Whoever violates subsection (1) shall be obliged to withdraw the restriction on the person concerned, and to cease and desist if there is a risk of repetition. Whoever intentionally or negligently violates the first sentence shall be obliged to reimburse the person concerned for the damage thus caused. Recourse to the ordinary courts shall be open for these claims.

(6) The tasks and competencies of the antitrust authorities under the Act against Restraints of Competition shall remain unaffected. The antitrust authorities shall strive for a uniform interpretation of this Act which ensures consistency with the Act against Restraints of Competition.

Part 2

Licence, Major Shareholders

Section 8 – Licence for payment institutions

(1) Anyone wishing to provide payment services in Germany as a payment institution commercially, or on a scale that requires a commercially equipped business operation, requires a written licence from BaFin. Section 37 subsection (4) of the Administrative Procedures Act shall be applied.

(2) In addition to the provision of payment services, the licence shall also cover:

1. the provision of operational and closely related ancillary services; ancillary services are services for ensuring the execution of payment transactions, foreign exchange services, services for ensuring data privacy, data storage, data processing and custodial services, provided that these services do not involve accepting deposits,
2. the operation of payment systems in accordance with section 7, and
3. business activities other than the provision of payment services, having regard to applicable Community and national law.

(3) The licence application must contain the following information and evidence:

1. the business model setting out in particular the type of payment services envisaged,
2. the business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly,
3. evidence that the payment institution has the amount of initial capital under section 9 number 3 at its disposal,
4. a description of measures to comply with the safeguarding requirements in section 13,
5. a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures,

which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate,

6. a description of the internal control mechanisms which the applicant has introduced in order to comply with the requirements in section 22, in the Money Laundering Act and in Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ L 345, p. 1),
7. a description of the applicant's structural organisation, including, where applicable, descriptions of the planned use of agents and branches, as well as a description of outsourcing arrangements, and a description of the type and form of its participation in a national or international payment system,
8. the identity of the major shareholders, the size of their holding, and evidence that they meet the standards that must be applied in the interests of ensuring the sound and prudent management of the payment institution; section 2c subsection (1), fourth sentence, of the Banking Act shall apply accordingly,
9. the identity of the directors, the persons responsible for the management of the payment institution and, insofar as this involves enterprises that engage in other business activities alongside the provision of payment services, the persons responsible for the management of the payment services activities of the payment institution. The application must include evidence that the aforementioned persons are trustworthy and possess the appropriate theoretical and practical knowledge and experience to provide payment services. The applicant must appoint at least two directors; one director is sufficient for small payment institutions,
10. where applicable, the names of the auditors of the annual financial statements and consolidated financial statements,
11. the applicant's legal status and the articles of association, and
12. the address of the applicant's head office or registered office.

(4) BaFin shall inform the applicant whether the licence has been granted or refused within three months of receipt of the complete application.

(5) BaFin may issue the licence subject to conditions that must be in line with the purpose pursued by this Act. It may also, in line with this purpose, restrict the licence to individual payment services. Where the payment institution simultaneously pursues other business activities, BaFin may impose the condition that it shall hive off these transactions or form a separate enterprise for the payment service business, if said transactions impair or could impair the payment institution's financial soundness or the possibilities for auditing it.

(6) The payment institution shall notify BaFin without delay of any materially or structurally substantial change in the actual or legal circumstances, insofar as it affects the correctness of the information and evidence submitted under subsection (3).

(7) BaFin shall announce the granting of the licence in the Federal Gazette.

(8) Insofar as a licence under subsection (1) is required to provide payment services, the entries in public registers may only be effected if proof of the licence is provided to the registration court.

Section 8a – Licence for electronic money institutions

(1) Anyone wishing to conduct the business of electronic money issuance in Germany as an electronic money institution shall require a written licence from BaFin. Section 37 subsection (4) of the Administrative Procedures Act shall be applied.

(2) In addition to the provision of the business of electronic money issuance, the licence under subsection (1) shall also cover:

1. the provision of payment services within the meaning of section 1 subsection (2),
2. the granting of credit in accordance with section 2 subsection (3) and section 12a subsection (1), second sentence,
3. the provision of operational and closely related ancillary services related to the issuance of electronic money or the provision of payment services within the meaning of section 1 subsection (2),
4. the operation of payment systems within the meaning of section 1 subsection (6), without prejudice to section 7,

5. business activities other than the issuance of electronic money in the framework of the applicable Community and national legislation.

(3) Section 8 subsection (3) numbers 2, 5, 6, 8 and 10 to 12 are to be applied accordingly to the content of the licence application. The licence application must additionally contain the following information and evidence:

1. the business model setting out in particular the issuance of electronic money envisaged as well as the type of payment services envisaged,
2. evidence that the electronic money institution has the amount of initial capital under section 9a number 1 at its disposal,
3. a description of measures to comply with the safeguarding requirements in section 13a, and, insofar as payment services are provided, the safeguarding requirements in section 13 as well,
4. a description of the applicant's structural organisation, including, where applicable, a description of the planned use of electronic money agents and branches, and, insofar as payment services are provided, a description of outsourcing arrangements and a description of the type and form of its participation in a national or international payment system, as well as
5. the identity of the directors, the persons responsible for the management of the electronic money institution and, insofar as this involves enterprises that engage in other business activities alongside the provision of payment services and the issuance of electronic money, the persons responsible for the issuance of electronic money and the provision of payment services of the electronic money institution. The application must include evidence that the aforementioned persons are trustworthy and possess the appropriate theoretical and practical knowledge and experience to issue electronic money and provide payment services. The applicant shall appoint at least two directors; one director is sufficient for small electronic money institutions.

Further procedures shall be governed by section 8 subsections (4) and (7).

(4) BaFin may issue the licence subject to conditions that must be in line with the purpose pursued by this Act. Where the electronic money institution simultaneously pursues other

business activities, BaFin may impose the condition that it shall hive off the provision of payment services or the other transactions or form a separate enterprise for the business of electronic money issuance, if these impair or could impair the payment institution's financial soundness or the possibilities for auditing it.

(5) The electronic money institution shall notify BaFin without delay of any materially and structurally substantial change in the actual und legal circumstances, insofar as it affects the correctness of the information and evidence submitted under subsection (3), first and second sentences.

(6) Insofar as a licence under subsection (1) is required to carry out the business of electronic money issuance, the entries in public registers may only be effected if proof of the licence is provided to the registration court.

Section 9 – Refusal of the licence for payment institutions

The licence to provide payment services shall be refused if:

1. the applicant is not a legal person or a commercial partnership,
2. contrary to section 8 subsection (3), the application does not contain sufficient information or documents,
3. the funds required for business operations, in particular sufficient initial capital within the meaning of section 1 subsection (9a) are not available within Germany; the following must be available as initial capital:
 - a) an amount equivalent to at least €20,000 in the case of payment institutions which only provide the payment services stated in section 1 subsection (2) number 6,
 - b) an amount equivalent to at least €50,000 in the case of payment institutions which only provide the payment services stated in section 1 subsection (2) number 5,
 - c) an amount equivalent to at least €125,000 in the case of payment institutions which provide the payment services referred to in section 1 subsection (2) numbers 1 to 4.

Insofar as a payment institution has a licence within the meaning of section 32 subsection (1), first sentence, of the Banking Act, the higher figure under this rule and section 33 subsection (1) of the Banking Act shall apply for calculating the funds required,

4. there are facts which warrant the assumption that the applicant or the major shareholder interest or, if a legal person, a statutory representative or representative pursuant to the articles of association, or, if a commercial partnership, a partner, is not trustworthy or, for other reasons, does not meet the standards that must be applied in the interests of ensuring the sound and prudent management of the payment institution,
5. there are facts that indicate that a director is not trustworthy, or does not have the requisite professional qualifications to manage the payment institution, and no other person is named director under section 8 subsection (3) number 9; requisite professional qualifications assumes that they have a sufficient degree of theoretical and practical knowledge in the respective business operations as well as management experience;
6. the payment institution does not have effective procedures for identifying, controlling, monitoring and reporting risks or adequate internal control procedures under section 22, including sound administrative and accounting procedures or does not fulfil the safeguarding requirements under section 13;
7. there are facts which warrant the assumption that effective supervision of the payment institution is impaired; this is especially the case if
 - a) the payment institution is integrated into a corporate network with other persons or enterprises, or is closely linked within the meaning of section 1 subsection (10) of the Banking Act to such a network which, owing to the structure of the cross-shareholdings or inadequate economic transparency, impairs effective supervision of the payment institution,
 - b) effective supervision of the payment institution is impaired because of the legal or administrative regulations of a third country which apply to such persons or enterprises, or
 - c) the payment institution is a subsidiary of an institution domiciled in a third country which is not effectively supervised in the country in which it is domiciled or has its

head office, or the supervisory body that is responsible for it is not willing to engage in satisfactory cooperation with BaFin,

8. the payment institution does not have its head office in Germany.

Section 9a – Refusal of the licence for electronic money institutions

The licence to conduct the business of electronic money issuance shall be refused if:

1. the funds required for business operations, in particular sufficient initial capital within the meaning of section 1 subsection (9a) are not available within Germany at an amount equivalent to at least €350,000. Insofar as an electronic money institution has a licence within the meaning of section 32 subsection (1), first sentence, of the Banking Act, the higher figure under this rule and section 33 subsection (1) of the Banking Act shall apply for calculating the funds required,
2. contrary to section 8a subsection (3), the application does not contain sufficient information or documents,
3. a ground for refusal under section 9 numbers 1 or 4 to 8 is fulfilled accordingly, or
4. the safeguarding requirements under section 13a are not fulfilled or the prohibition in section 23a is breached.

Section 10 – Expiry and revocation of licence

(1) The licence expires if it is not used within one year of its issue, or if its use is expressly waived.

(2) BaFin may revoke the licence under the provisions of Administrative Procedures Act, and also if:

1. the business operations to which the licence relates have not been engaged in for more than six months,
2. the licence was obtained on the basis of false statements or some other irregular means,
3. facts become known which would warrant the refusal of the licence under sections 9 or 9a, or

4. the continuation of the provision of payment services or the conducting of the business of electronic money issuance would jeopardise the stability of the operated payment system.

(3) Section 38 of the Banking Act shall apply accordingly. Section 48 subsection (4), first sentence, and section 49 subsection (2), second sentence, of the Administrative Procedures Act concerning the period of one year shall not apply.

(4) BaFin shall announce the revocation or expiry of the licence in the Federal Gazette.

Section 11 – Major shareholders

(1) The major shareholder in an institution must meet the standards that must be applied in the interests of ensuring sound and prudent management of the institution. Section 2c subsection (1), first to seventh sentences, subsections (1a) and (1b), second to seventh sentences, subsections (2) and (3) of the Banking Act shall be applied accordingly. Section 2c subsection (1b), first sentence, of the Banking Act shall be applied subject to the proviso that the intended acquisition of, or increase in, the major holding may only be prohibited on the basis of numbers 1 and 3 to 5 there as well as in the case of section 9 number 6.

(2) The Federal Ministry of Finance shall be authorised to promulgate, by means of a statutory instrument and without the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, more specific regulations on the essential documentation and facts which the interested acquirer of a major holding has to provide in the report under subsection (1), second sentence, in conjunction with section 2c subsection (1), second sentence, of the Banking Act insofar as these details are required for the fulfilment of BaFin's tasks. The Federal Ministry of Finance may delegate said authorisation to BaFin by means of a statutory instrument and without the consent of the Bundesrat subject to the proviso that said statutory instrument is promulgated with the agreement of the Deutsche Bundesbank. The associations of the institutions shall be consulted before the statutory instrument is promulgated.

Part 3

Own Funds

Section 12 – Own funds in the case of payment institutions

(1) In the interest of fulfilling their commitments, payment institutions must have adequate own funds under section 10 subsection (2), second to seventh sentences, subsections (2a) and (2b) of the Banking Act. In the cases of section 2 subsection (3), the own funds must, in the opinion of BaFin, at all times be proportionate to the overall amount of credit granted.

(2) In cases where a payment institution belongs to the same group as another payment institution, a credit institution, a financial services institution, an asset management company or an insurance undertaking, BaFin shall take the necessary measures to prevent the multiple use of elements that can be used to calculate liable own funds. This shall also apply if a payment institution engages in other business activities in addition to the provision of payment services.

(3) Provided that the requirements of section 2 subsections (1) to (5) of the Banking Act are complied with, BaFin may waive the application of subsections (1), (2), (4) and (5) to payment institutions which are included in the consolidated prudential supervision of the superordinated institution.

(4) Payment institutions shall the information required for the audit of capital adequacy to BaFin and Deutsche Bundesbank every quarter. The statutory instrument under subsection (6) may provide for a longer reporting period in special cases. When evaluating capital adequacy on the basis of an assessment of the business organisation, risk management, loss database and internal control mechanisms as well as the actual risks of the payment institution, BaFin may require the payment institution to hold an amount of own funds which deviates from the solvency principles by up to 20 per cent.

(5) Payment institutions which have a licence pursuant to section 32 subsection (1) of the Banking Act must determine the capital requirements under this Act and the capital requirements under section 10 subsection (1) of the Banking Act in conjunction with the Solvency Regulation of 14 December 2006 (Federal Law Gazette I, p. 2926) in the applicable version, unless they are exempted from the application of section 10 of the Banking Act.

Provided that the requirements under this Act are higher, they shall be covered by own funds under subsection (1).

(6) The Federal Ministry of Finance shall be authorised to promulgate, by means of a statutory instrument and without the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, more specific regulations on the capital adequacy (solvency) of the payment institutions, in particular on

1. the calculation methods,
2. the content, nature, amount and form of the information required under subsection (4),
3. reporting obligations in the event of non-compliance with capital requirements, and
4. the media, transmission routes and data formats allowed for data transmission.

The Federal Ministry of Finance may delegate said authorisation to BaFin by means of a statutory instrument and without the consent of the Bundesrat subject to the proviso that said statutory instrument is promulgated with the agreement of the Deutsche Bundesbank. The associations of the payment institutions shall be consulted before the statutory instrument is promulgated.

Section 12a – Own funds in the case of electronic money institutions

(1) In the interest of fulfilling their commitments, electronic money institutions must have adequate own funds in accordance with section 10 subsection (2), second to seventh sentences, subsections (2a) and (2b) of the Banking Act. In the cases of section 2 subsection (3), the own funds must, in the opinion of BaFin, at all times be proportionate to the overall amount of credit granted.

(2) In cases where an electronic money institution belongs to the same group as another electronic money institution, a payment institution, a credit institution, a financial services institution, an asset management company or an insurance undertaking, BaFin shall take the necessary measures to prevent the multiple use of elements that can be used to calculate liable own funds. This shall also apply if an electronic money institution engages in other business activities in addition to the business of electronic money issuance.

(3) Section 12 subsections (3) to (5) shall be applied accordingly.

(4) The Federal Ministry of Finance shall be authorised to promulgate, by means of a statutory instrument and without the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, more specific regulations on the capital adequacy (solvency) of the electronic money institutions, in particular on

1. the calculation methods,
2. the content, nature, amount and form of the information required under subsection (3) in conjunction with section 12 subsection (4),
3. reporting obligations in the event of non-compliance with capital requirements, and
4. the media, transmission routes and data formats allowed for data transmission.

The Federal Ministry of Finance may delegate said authorisation to BaFin by means of a statutory instrument and without the consent of the Bundesrat subject to the proviso that said statutory instrument is promulgated with the agreement of the Deutsche Bundesbank. The associations of the payment institutions shall be consulted before the statutory instrument is promulgated.

Part 4

Provisions on the Prudential Supervision of Institutions, Immediate Enforceability

Section 13 – Safeguarding requirements for receiving funds as part of providing payment services

(1) Institutions shall safeguard the funds which they have received from payment service users or via another payment service provider to execute payment transactions using one of the methods described in the second sentence. The funds

1.
 - a) may not at any time be comingled with the funds of any other natural or legal persons other than the payment service user for whom they are being held,
 - b) must, if they are still in the hands of the institution at the end of the business day following the day on which they were received and have yet not been delivered to the payee or transferred to another payment service provider, be deposited in an

open trust account with a credit institution or invested in safe, low-risk liquid assets as defined by BaFin, and

- c) shall be separated from the institution's other assets in such a way that, in the event of insolvency, they do not become part of the institution's insolvency estate, and its creditors cannot access them by way of individual enforcement,

or

- 2. they must be covered by an insurance policy or some other comparable guarantee from an insurance undertaking or a credit institution authorised to do business within the scope of this Act, which does not belong to the same group as the institution itself, for an amount equivalent to that which would have to be maintained separately in the absence of the insurance policy or other comparable guarantee and which is payable in the event that the payment institution is insolvent.

(2) Where an institution is required to safeguard funds under subsection (1) and where a portion of those funds is to be used for future payment transactions while the remaining amount must be used for services that are not payment services, subsection (1) shall also apply to the portion of the funds to be used for future payment transactions.

(3) During its ongoing business operations, the institution shall, upon request, show and prove to BaFin that it has taken adequate measures to meet the requirements stated in subsections (1) and (2). Where proof is not provided or the measures are not adequate, BaFin may call on the institution to submit the necessary proof or to take the arrangements that are appropriate and necessary to overcome the existing shortcomings; BaFin may set a reasonable deadline. Where the proof is not provided or the arrangements are not taken by the deadline set, BaFin may take measures under section 16 subsection (2).

Section 13a – Safeguarding requirements for receiving funds for the issuance of electronic money

(1) Electronic money institutions shall safeguard the funds which they have received for the issuance of electronic money or as part of providing payment services to execute payment transactions in accordance with section 13 subsection (1), second sentence, number 1, letters a) to c) or number 2. Section 13 subsection (1), second sentence, number 1 letter b) shall apply subject to the proviso that the secure, low-risk assets are composed under section 1

subsection (9b). In exceptional circumstances BaFin may exclude assets covered by section 1 subsection (9b) if these are not, as a result of an evaluation of the security, maturity date, value or other risk factors, to be categorised as secure, low-risk assets.

(2) Provided that funds are received for the purpose of issuing electronic money through payment by means of a payment authentication instrument, these funds shall be safeguarded as soon as they are credited to the electronic money institution's payment account or to be made available to the electronic money institution in accordance with section 675s of the Civil Code, and at the latest five business days within the meaning of section 675n subsection (1), fourth sentence, of the Civil Code, following the issuance of the electronic money.

(3) Section 13 subsections (2) and section 3 shall apply accordingly.

(4) BaFin may determine which of the methods described in section 13 subsection (1), second sentence, the electronic money institution is to use to safeguard the funds.

Section 14 – Information and audits

(1) On request, an institution, the members of its governing bodies as well as its employees and the agents acting for the institution as well as electronic money agents, its branches and outsourcing enterprises, shall provide information on all business matters and submit documentation to BaFin, the persons and agencies which BaFin uses carry out its duties and the Deutsche Bundesbank. Even without a specific reason, BaFin may conduct audits of the institutions, their branches, agents, electronic money agents and outsourcing enterprises and delegate the execution of the audits to the Deutsche Bundesbank. BaFin's staff, the staff of the Deutsche Bundesbank as well as any other persons whom BaFin uses to perform the audits may, for this purpose, enter and inspect the business premises of the institution, the subsidiary, agent, the electronic money agent or the outsourcing enterprise during ordinary office and business hours. The persons concerned shall acquiesce to the measures taken under the second and third sentences.

(2) BaFin and the Deutsche Bundesbank may send representatives to the shareholders' meetings or general meetings, as well as to meetings of the institution's supervisory bodies. These representatives may address the meetings. The persons concerned shall acquiesce to the measures taken under the first and second sentences.

(3) At BaFin's request, institutions shall convene the meetings stipulated in subsection (2), first sentence, schedule meetings of the administrative and supervisory bodies, and announce subjects on which resolutions are to be taken. BaFin may send representatives to a meeting scheduled under the first sentence. These representatives may address the meeting. The persons concerned shall acquiesce to the measures taken under the second and third sentences. Subsection (2) shall remain unaffected.

(4) Any person who is obliged to provide information may refuse to answer such questions that might expose him/her or one of his/her relatives as designated in section 383 subsection (1) numbers 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or to proceedings under the Administrative Offences Act.

Section 15 – Dismissal of directors, transfer of powers of the governing bodies to special commissioners

(1) In the cases mentioned in section 10 subsection (2) numbers 3 and 4, BaFin may, instead of revoking the licence, demand the dismissal of the responsible directors and also prohibit these directors from pursuing their business activities with other institutions.

(2) Subject to the conditions set forth in subsection (1), BaFin may delegate in full or in part powers that are incumbent upon the institution's governing bodies to a special commissioner who seems suitable to exercise the powers; section 45c subsections (6) and (7) of the Banking Act shall apply accordingly.

(3) BaFin may also demand the dismissal of a director and also prohibit this director from pursuing his/her activities at payment institutions if he/she has intentionally or recklessly violated the provisions of this Act, the Money Laundering Act, the regulations promulgated for the implementation of these laws, or orders from BaFin, and persists in such behaviour despite warning by BaFin.

Section 16 – Measures in special cases, filing for insolvency

(2) Where own funds fall below the higher of the amounts to be determined under section 9 number 3 and section 12 for payment institutions and below the amounts to be determined under section 9a number 1 and section 12a for electronic money institutions, BaFin may

1. prohibit or restrict withdrawals by the proprietors or shareholders as well as the distribution of profits, or
2. order the institution to take measures to reduce risks insofar as these arise from certain types of transactions and products, particularly from the extension of loans or the use of certain payment systems.

(2) Where there is a danger of the discharge of the institution's obligations towards its creditors, in particular to the safety of the assets entrusted to it, or where there are grounds for suspecting that effective supervision of the institution is not possible, BaFin may take temporary measures to avert this danger. In particular, it may

1. issue instructions to the institution's management,
2. prohibit owners and directors from pursuing their business activities or restrict the exercise of these activities, and
3. appoint supervisors.

(3) Where the preconditions of subsection (2), first sentence, are met, BaFin may, in order to prevent insolvency proceedings, temporarily

1. forbid the acceptance of funds and granting of loans,
2. issue a ban on sales and payments by the institution,
3. order the closure of institution for business with customers, and
4. prohibit the acceptance of payments that are not intended for repaying debts to the institution.

Section 45c subsection (2) number 8, subsections (6) and (7), section 46 subsection (1), third to sixth sentence, and section 46c of the Banking Act shall apply accordingly.

(4) Where an institution becomes insolvent or over-indebted, the directors must notify BaFin of this without undue delay enclosing informative documents; the directors shall also send such a notification, accompanied by the corresponding documentation even if the institution is expected to be unable to meet its existing payment obligations when they fall due (imminent insolvency). Insofar as these persons are obliged under other statutory instruments to request

the initiation of insolvency proceedings in the event of insolvency or over-indebtedness, the notification obligation under the first sentence shall replace the obligation to request the initiation of insolvency proceedings. Insolvency proceedings concerning the assets of an institution shall take place in the event of insolvency, over-indebtedness or, under the preconditions of the fifth sentence, even in the event of imminent insolvency. The petition for the initiation of insolvency proceedings against the assets of an institution which has a licence under section 8 subsection (1) or section 8a subsection (1) may be filed only by BaFin. In the case of imminent insolvency, BaFin may, however, only file the petition with the consent of the institution, and only if the measures under subsection (3) appear unlikely to succeed. The insolvency court shall consult BaFin before appointing the insolvency administrator. The order to initiate proceedings shall be served on BaFin separately.

Section 17 – Submission of annual financial statements, management report and audit reports

(1) In the first three months of the financial year, an institution shall prepare annual financial statements for the past financial year and submit to BaFin and the Deutsche Bundesbank respectively the prepared annual financial statements and, later, the certified annual financial statements and the management report without undue delay. The annual financial statements must include the auditor's certified opinion or a note on the auditor's refusal to issue a certified opinion. The auditor shall submit the report on the audit of the annual financial statements (audit report) to BaFin and the Deutsche Bundesbank without undue delay after the completion of the audit.

(2) An institution that prepares consolidated financial statements or a group management report shall submit these documents to BaFin and the Deutsche Bundesbank without undue delay. Where an audit report is prepared by a group auditor, this auditor shall submit the audit report to BaFin and the Deutsche Bundesbank without undue delay after the completion of the audit. The provisions of this subsection shall apply accordingly to non-consolidated financial statements under section 325 subsection (2a) of the Commercial Code.

Section 17a – Notification requirement when appointing the auditor; appointment in special cases

(1) The institution shall notify BaFin and the Deutsche Bundesbank of an auditor or group auditor without undue delay following his/her appointment. Within one month of the receipt

of the notification, BaFin may request the appointment of another auditor if this appears necessary to achieve the object of the audit.

(2) At BaFin's request, the court of register of the registered office of the institution shall appoint an auditor if:

1. the appointment under subsection (1), first sentence, has not been notified without undue delay after the end of the financial year,
2. the institution does not without undue delay comply with the request to appoint another auditor under subsection (1), second sentence,
3. the auditor chosen has declined to accept the audit mandate, is no longer active, or is prevent from concluding the audit in time, and the institution has not appointed another auditor without undue delay.

The appointment by the court shall be final. Section 318 subsection (5) of the Commercial Code shall apply accordingly. At BaFin's request, the court of registration may dismiss an auditor appointed under the first sentence.

Section 18 – Special duties of the auditor

(1) When auditing annual or interim financial statements, the auditor shall also audit the institution's financial situation. When auditing the annual financial statements, the auditor shall in particular ascertain whether the institution has met its notification requirements under section 29, also in conjunction with any statutory instrument under section 29 subsection (2). The auditor shall also examine whether the institution has met

1. its obligations under the Money Laundering Act and Regulation (EC) No 1781/2006, and
2. its obligations under section 2 subsection (3), under section 12 also in conjunction with the statutory instrument under subsection (6) thereof, under section 12a, under sections 13, 13a, 19 to 22 as well as section 30, also in conjunction with the statutory instrument under subsection (3) thereof.

(2) The auditor shall inform BaFin and the Deutsche Bundesbank without undue delay if facts become known to the auditor during the audit which justify the restriction of or refusal to give the audit opinion, jeopardise the existence of the institution or may significantly impair its

development, which constitute a substantial violation of the regulations on the institution's licence conditions or the pursuit of business under this Act, or reveal serious violations by the directors of the law, articles of association or partnership agreement. At the request of BaFin or the Deutsche Bundesbank, the auditor shall explain the audit report to them and inform them of any other facts which have become known during the audit which suggest that the business of the institution is not being conducted properly. The notification, explanatory and disclosure requirements under the first and second sentences shall also apply in relation to an enterprise which is closely linked to the institution provided that the auditor becomes aware of the relevant facts while auditing the institution. The auditor shall not be liable for the accuracy of facts which he/she reports in good faith under this subsection.

(3) The Federal Ministry of Finance may, in agreement with the Federal Ministry of Justice and after consultations with the Deutsche Bundesbank, promulgate more specific regulations by means of a statutory instrument and without the consent of the Bundesrat on the object of the audit, the timing of its execution, and the contents of audit reports, insofar as this is necessary for the fulfilment of BaFin's tasks, in particular in order to identify abuses which may jeopardise the safety of the assets entrusted to the institution or may impair the proper conduct of the payment services or the proper conduct of the business of electronic money issuance, as well as in order to obtain consistent documents for assessing the transactions conducted by the institution. It may delegate this authorisation to BaFin by means of a statutory instrument and without the consent of the Bundesrat.

(4) Section 29 of the Banking Act shall remain unaffected. Without prejudice to subsections (1) to (3). BaFin may also issue provisions in respect of the institution relating to the content of the audit which the auditor must also take into consideration when auditing the annual financial statements. In particular, BaFin may determine the focal points of the audits.

Section 19 – Use of agents

(1) Where an institution intends to provide payment services through an agent, it shall send the following information to BaFin and the Deutsche Bundesbank:

1. the name and address of the agent,
2. a description of the internal control mechanisms used by the agent to meet the requirements of the Money Laundering Act, and

3. the identity of the directors and the persons responsible for the management of an agent to be used to provide payment services, as well as evidence that they are trustworthy and have the requisite professional qualifications.

(2) Where an institution uses an agent, it shall ensure that said agent is trustworthy and has the requisite professional qualifications, meets the legal requirements when providing payment services, informs the payment service user about his/her status prior to or during the commencement of the business relationship and about the termination of this status without undue delay. The institution must keep the necessary evidence that it meets its obligations under the first sentence for at least five years after the termination of agent status.

(3) BaFin may prohibit an institution which has not properly conducted the selection or monitoring of its agents or has breached the duties transferred to it in connection with the keeping of the register of payment institutions under section 30 subsection (1) or the register of electronic money institutions under section 30a, from integrating agents within the meaning of subsections (1) and (2) into the institution. The prohibition may relate to the execution of payment services by individual agents or to the integration of agents in general.

(4) Where an institution intends to provide payment services by engaging an agent in another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area, it must follow the procedure under section 25. BaFin shall inform the competent authorities of the other state of its intention to enter the agent into the register of payment institutions under section 30 subsection (1) number 3 or into the register of electronic money institutions under section 30a subsection (2) in conjunction with section 30 subsection (1) number 3 and shall take the opinion of the other state into account before the registration is made.

(4a) Where the conditions which were notified under subsection (1) change, the institution shall notify BaFin and the Deutsche Bundesbank of these changes in writing at the latest one month before the changes go into effect.

(5) In consultation with the Deutsche Bundesbank, the Federal Ministry may, by means of a statutory instrument and without the consent of the Bundesrat, promulgate more specific regulations on the nature, extent and form of the proof within the meaning of subsection (2), second sentence, insofar as this is necessary for the fulfilment of BaFin's tasks. It may delegate this authorisation by means of a statutory instrument and without the consent of the

Bundesrat to BaFin subject to the proviso that BaFin's statutory instruments are promulgated with the agreement of the Deutsche Bundesbank. The associations of the institutions shall be consulted before the statutory instrument is promulgated.

Section 20 – Outsourcing

(1) Depending on the nature, scope, complexity and risk content of outsourcing to another enterprise activities and processes that are essential for conducting payment services, electronic money transactions or other any of an institution's other typical services under this Act, institutions must make adequate arrangements to avoid excessive additional risks. Outsourcing may impede neither the proper conduct of these transactions and services nor the business organisation. In particular, the institution must ensure ongoing appropriate and effective risk management which incorporates the outsourced activities and processes. Outsourcing may not lead to any delegation of responsibility of the persons specified in section 8 subsection (3) number 9 to the outsourcing enterprise. In the event of any outsourcing, the institution shall remain responsible for compliance with the legal provisions to be observed by the institution. Outsourcing may not hinder BaFin in fulfilling its tasks; its rights of information and audit as well as its means of monitoring must, in relation to the outsourced activities and processes, also be ensured by appropriate arrangements, even if operations are outsourced to an enterprise domiciled abroad. This shall apply accordingly to the performance of the tasks of the institution's auditors. Outsourcing shall require a written agreement which lays down the institution's rights to ensure compliance with the aforementioned conditions, including the right to give instructions and the right to give notice, as well as the corresponding duties on the part of the outsourcing enterprise.

(2) An institution shall inform BaFin and the Deutsche Bundesbank if it intends to outsource essential operational tasks of payment services or the business of electronic money issuance. An operational task shall be deemed essential if inadequate fulfilment or non-fulfilment of thereof would materially impair permanent compliance with the licence requirements or with other obligations of the institution under this Act, its financial performance, or the soundness or continuity of its payment services or of the business of electronic money issuance.

(3) Where BaFin's right to audit and means of monitoring are impaired in the event of outsourcing under subsection (1), BaFin may, in individual cases, issue orders that are

appropriate and necessary for eliminating this impairment. BaFin's powers under section 22 subsection (4) shall remain unaffected.

Section 21 – Record keeping

Without prejudice to other legal provisions, institutions shall keep all documents for at least five years for prudential supervisory purposes. Section 257 subsections (3) and (5) of the Commercial Code as well as section 147 subsections (5) and (6) of the Fiscal Code shall apply accordingly. Section 257 subsection (4) of the Commercial Code shall remain unaffected.

Section 22 – Special organisational duties of payment institutions and electronic money institutions as well as safeguards against money laundering

(1) An institution must have a proper business organisation. The persons specified in section 8 subsection (3) number 9 shall be responsible for the institution's proper business organisation. A proper business organisation shall comprise, in particular,

1. appropriate measures for corporate governance, control mechanisms and procedures to ensure that the institution meets its obligations,
2. the maintaining and updating of a loss database as well as the complete documentation of business activities which ensures full monitoring by BaFin for its area of responsibility,
3. an adequate disaster recovery plan for IT systems, and
4. without prejudice to the duties under section 9 subsections (1) and (2) of the Money Laundering Act, adequate risk-management and adequate control mechanisms, as well as procedures and data-processing systems which ensure compliance with the requirements of the Money Laundering Act and Regulation (EC) No 1781/2006. In circumstances which, on the basis of practical knowledge of the methods used in money laundering and terrorist financing, are dubious or unusual, the institution must investigate these in the context of the current business relationship and individual transactions. An institution may collect and use personal data insofar as this is necessary to fulfil this duty. The institution must record and retain appropriate information in accordance with section 8 of the Money Laundering Act about the circumstances within the meaning of the second sentence. The reasons why the assumptions have not been verified are to be explained to BaFin.

(2) Sections 6a, 24c, 25c subsection (1), third sentence, subsections (4) and (5), section 25d subsections (1) and (2), section 25f, section 25h and section 25i of the Banking Act as well as section 93 subsections (7) and (8) in conjunction with section 93b of the Fiscal Code shall apply accordingly to institutions within the meaning of this Act.

(3) Notwithstanding section 3 subsection (2), first sentence, number 2 of the Money Laundering Act, the due diligence duties under section 3 subsection (1) numbers 1 and 3 as well as section 8 subsections (1) to (3) of the Money Laundering Act shall apply to institutions within the meaning of this Act when accepting cash in the context of providing payment services under section 1 subsection (2) regardless of any thresholds specified in the Money Laundering Act or in this Act.

(3a) Subsection (3) shall to be applied accordingly to agents within the meaning of section 1 subsection (7).

(4) In individual cases, BaFin may issue orders to an institution that are suitable and necessary for putting into place the arrangements specified in subsection (1), third sentence, numbers 1 to 4. BaFin may lay down criteria which, if they are met, allow institutions to dispense with using data-processing systems under subsection (1), third sentence, number 4.

(5) BaFin shall monitor compliance with the duties contained in Regulation (EC) No 1781/2006 and in Article 8 of Regulation (EC) No 924/2009 by institutions within the meaning of this Act insofar as they are payment service providers within the meaning of Article 2 (5) of Regulation (EC) No 1781/2006 or payment service providers within the meaning of Article 2 (5) of Regulation (EC) No 924/2009 and BaFin shall issue orders that are suitable and necessary for this purpose.

Section 23 – Immediate enforceability

Objection to and appeals against measures taken by BaFin on the basis of sections 4, 5, 10 subsection (2) numbers 2 to 4, section 14 subsection (1), sections 15, 16, 17a subsection (1), second sentence, section 19 subsection (3) and section 30 subsection (2), the latter also in conjunction with section 30a subsection (2), also in conjunction with section 26 subsections (3) and (4) respectively, shall have no postponing effect.

Part 4a

Special provisions for the business of electronic money issuance and the distribution and redeemability of electronic money

Section 23a – Prohibition on the issuance of electronic money via other persons

Electronic money institutions may not issue electronic money via natural or legal persons who act on behalf of the electronic money institution.

Section 23b – Obligations of the electronic money issuer when issuing and redeeming electronic money

(1) The electronic money issuer shall always issue electronic money at the par value of the funds received. At the request of the electronic money holder, the issuer shall be obliged to redeem the electronic money for legal tender at par value at any time. Before the contract has terminated, the electronic money holder's request for redemption may relate to a portion of the funds.

(2) The electronic money issuer shall be obliged to inform the electronic money holder, before the holder is bound by any contract or offer, about the conditions for the redemption of the electronic money including in this respect any fees to be agreed. The conditions shall be clearly and prominently stated in the contract between the electronic money issuer and the electronic money holder.

(3) The electronic money issuer may only then demand a fee for the redemption of electronic money if this was provided for in the contract. Such an agreement shall be permissible only in the event that

1. the electronic money holder requests redemption before termination of the contract,
2. the contract was concluded for a particular period and is terminated before the expiry of this period by the electronic money holder giving notice, or
3. the electronic money holder requests redemption more than one year after the termination of the contract.

The fee must be proportionate to the actual costs incurred by the electronic money issuer.

(4) Notwithstanding subsection (1), third sentence, in the case of a request for redemption upon termination of the contract or up to one year after the termination of the contract, the total amount of the electronic money held by the electronic money issuer shall be redeemed. Where an electronic money institution carries out one or more activities under section 8a subsection (2) number 5 and where the electronic money holder requests a total amount after termination of the electronic money contract, this amount shall be redeemed in legal tender if it is unknown in advance what proportion of the funds is to be used as electronic money.

(5) The arrangements in subsection (1), third sentence, and subsections (3) and (4) may only be derogated from to the detriment of the electronic money holder if the holder is not a consumer.

Section 23c – Distribution and redemption of electronic money by electronic money agents

(1) Electronic money institutions may use electronic money agents within the meaning of section 1a subsection (6) for the distribution and redemption of electronic money. Section 19 subsection (1) shall apply accordingly subject to the proviso that proofs of the trustworthiness and professional qualifications are not to be submitted; section 19 subsection (4a) shall also apply accordingly.

(2) BaFin may prohibit an electronic money institution which has not properly selected or monitored its electronic money agents from integrating electronic money agents into the electronic money institution. The prohibition may also relate to the distribution or redemption of electronic money or to the integration of electronic money agents overall.

(3) Provided that an electronic money institution intends to distribute or redeem electronic money via electronic money agents in another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area, section 19 subsection (4) shall be applied accordingly in conjunction with section 25.

Part 5

Cooperation with other Authorities, Branches, Cross-border Services

Section 24 – Cooperation with other authorities

In their supervision of payment institutions that provide payment services or conduct the business of electronic money issuance in another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area, BaFin and, insofar as it acts under this Act, the Deutsche Bundesbank shall cooperate with the competent authorities of these states; sections 8 and 9 of the Banking Act shall apply accordingly.

Section 25 – Establishment of a branch, cross-border services

(1) An institution licenced under section 8 subsection (1) or section 8a subsection (1) which intends to establish a branch in another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area shall notify BaFin and the Deutsche Bundesbank of this without undue delay in accordance with the second sentence. The notification must contain

1. the name of the state in which the branch is to be established,
2. a business plan setting out the nature of the planned business operations, the organisational structure of the branch and any intention to use agents,
3. the address in the state in which the institution maintains a branch from which the institution's documents can be requested and to which correspondence can be served, and
4. the identify the head of the branch.

(2) Subsection (1), first sentence, shall apply accordingly to the intention to provide payment services or to conduct the business of electronic money issuance in another Member State of the European Union or another Contracting State of the Agreement on the European Economic Area by means of cross-border services. □ The notification shall specify the state in which the cross-border service is to be provided, a business plan setting out the intended activities, and information on whether agents or electronic money agents are to be used in this state.

(3) BaFin shall provide the competent authorities of the state in which the institution maintains a branch or provides cross-border services with the corresponding information under subsection (1), second sentence, or subsection (2), second sentence, within one month of receiving the notifications under subsection (1) or subsection (2).

(4) BaFin and the Deutsche Bundesbank shall have the rights under section 14 directly in relation to foreign branches and in relation to agents, electronic money agents, and outsourcing enterprises which are made use of by a domestic institution in other European Economic Area states. In the case of on-site inspections, BaFin or the Deutsche Bundesbank shall obtain the consent of the competent authorities in the host Member State in advance via BaFin.

(5) Where the conditions notified under subsection (1), second sentence, or subsection (2), second sentence, change, the institution shall notify BaFin, the Deutsche Bundesbank and the competent agencies in the host state about the changes in writing at least one month before the changes go into effect.

Section 26 – Enterprises domiciled in another state of the European Economic Area

(1) An institution domiciled in another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area may provide payment services in Germany without a licence from the BaFin via a branch or by way of cross-border services, if the enterprise has been licensed by the competent authorities of the other state, the transactions are covered by the licence, and the enterprise is supervised by the competent authorities under provisions which correspond to those of Directive 2007/64/EC of the European Parliament and the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319 p. 1) or of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L267 of 10.10.2009, p. 7). Section 14 of the Industrial Code shall remain unaffected.

(2) Where, in the case of subsection (1), BaFin has factual evidence indicating that, in connection with the intended engagement of an agent or establishment of a branch, money laundering within the meaning of section 261 of the Criminal Code or terrorist financing

within the meaning of section 1 subsection (2) of the Money Laundering Act is taking place, has taken place or has been attempted, or that the engagement of the agent or establishment of the branch increases the risk of money laundering or terrorist financing taking place, BaFin shall inform the competent authorities of the state of origin. The competent authority of the state of origin shall be deemed to be the authority which may refuse to register the agent or the branch in the respective register of payment institutions or register of electronic money institutions, or, if a registration has already been made, may delete this registration.

(3) Section 17 of the Financial Services Supervision Act as well as sections 4, 5, 14 subsections (1) and (4), section 22 subsection (1) number 4, subsections (2) and (3), section 28 and section 29 subsection (1) numbers 6 and 7 shall be applied to branches within the meaning of subsection (1), first sentence, with the proviso that one or several branches of the same enterprise shall be regarded as one institution. BaFin and the Deutsche Bundesbank shall be notified in writing of any changes in the business plan, especially in the type of business planned and the organisational structure of the branch, the address and the directors at least one month before such changes go into effect. Section 17 of the Financial Services Supervision Act as well as sections 4, 5 and 14 subsections (1) and (4) shall apply accordingly to activities in the way of cross-border services under subsection (1), first sentence.

(4) Section 17 of the Financial Services Supervision Act as well as sections 4, 5 and 14 subsections (1) and (4) shall be applied accordingly to agents or electronic money agents of an institution within the meaning of subsection (1), first sentence.

(5) Where BaFin ascertains that an enterprise within the meaning of subsection (1), first sentence, is failing to meet its supervisory obligations, BaFin shall request that the enterprise rectify the shortcoming within a specified period. Where the enterprise fails to comply with this request, BaFin shall notify the competent authorities of the other state. Where the other state fails to take any measures or its measures prove to be insufficient, BaFin may, after having informed the competent agencies of the other state, take the necessary measures; if necessary, BaFin may prohibit the enterprise from conducting new business in Germany. In urgent cases, BaFin may take the necessary measures before initiating the procedure.

(6) After having first informed BaFin, the competent authorities of the other state may, either themselves or through their authorised representatives, verify the information needed for the supervision of the branch at the branch concerned. At the request of the competent authorities

of the other state, BaFin's staff and staff of the Deutsche Bundesbank may support them with the verification under the first sentence or perform the review on their behalf; here BaFin and the Deutsche Bundesbank have the rights under section 14 or, in the event that facts warrant the assumption or where it is established that foreign enterprises are providing unauthorised payment services or conducting the business of electronic money issuance without authorisation, or that this enterprise is conducting unauthorised transactions under the Banking Act, under the Insurance Supervision Act or under the Investment Act or breaches comparable provision in the home state, the rights under section 5 as well.

Section 27 – Branches of enterprises domiciled outside the European Economic Area

(1) Where an enterprise domiciled outside the Member States of the European Union or the other Contracting States to the Agreement on the European Economic Area maintains a branch in Germany that provides payment services or conducts the business of electronic money issuance, the branch shall be deemed to be an institution within the meaning of this Act. Where the enterprise maintains several branches in Germany, they shall be deemed to be one institution.

(2) This Act shall apply to the institutions specified in subsection (1) subject to the following proviso:

1. The enterprise shall appoint at least two natural persons residing in Germany who are authorised to manage the enterprise's business and to represent it in respect of the institution's field of business. Such persons shall be deemed to be directors. They shall be registered for entry in the commercial register. One director shall suffice for small institutions with a small business volume.
2. The institution shall be obliged to keep separate books and render separate accounts to BaFin and the Deutsche Bundesbank in respect of the business it conducts and the enterprise assets serving its business operations. The provisions of the Commercial Code on commercial books of account for credit institutions and financial services institutions shall apply accordingly in this respect. On the liabilities side of the annual statement of assets and liabilities, the amount of working capital made available to the institution by the enterprise and the amount of operating surpluses left to the institution to bolster its own funds shall be shown separately. The excess of liability items over asset items or the

excess of asset items over liability items shall be shown undivided and separately at the end of the statement of assets and liabilities.

3. The statement of assets and liabilities to be drawn up under number 2 at the end of each financial year, together with a statement of income and expenses and notes to the annual financial statements shall be deemed to be the annual financial statements (section 17). Section 340k of the Commercial Code shall apply accordingly to the auditing of the annual financial statements with the proviso that the auditor shall be chosen and appointed by the directors. The annual financial statements of the enterprise for the same financial year shall be submitted together with the annual financial statements of the institution.
4. The sum of the amounts shown in quarterly reporting under section 12 subsection (4) as the current operating capital made available by the enterprise to the payment institution and the amount of the operating surpluses left to the institution to bolster its own funds, less the amount of any credit balance on inter-branch account shall be deemed to be the institution's own funds.

Part 6

Out-of-court Complaint Procedures

Section 28 – Complaints about payment service providers

(1) Payment service users and the bodies under the second sentence may at any time submit to BaFin complaints on account of alleged violations by a payment service provider within the meaning of section 1 subsection (1) numbers 1 to 5 of this Act and sections 675c to 676c of the Civil Code and Article 248 of the Introductory Act to the Civil Code. Bodies entitled to submit a complaint are:

1. qualified agencies under section 3 subsection (1) number 1 of the Injunctive Relief Act,
2. incorporated associations for the promotion of commercial interests
 - a) which in particular on the basis of their personnel, material and financial resources, are actually able to carry out their tasks pursuant to the articles of association of pursuing commercial interests, and

b) which have a significant number of member enterprises providing payment services on the same market, if the violation affects the interests of the members and is likely to not inconsiderably distort competition, or

3. chambers of industry and commerce.

(2) Complaints must be submitted in writing to, or taken on record at BaFin and should explain the facts of the case as well as the grounds for complaint. In the case of complaints by payment service users on account of alleged violations by payment service providers of sections 675c to 676c of the Civil Code and Article 248 of the Introductory Act to the Civil Code, BaFin shall in its reply indicate the procedure for out-of-court dispute resolution under section 14 of the Injunctive Relief Act.

(3) Section 24 shall apply accordingly insofar as the alleged violations relate to a cross-border matter.

Section 28a – Complaints about electronic money issuers

(1) Holders of electronic money and the bodies under the second sentence may at any time submit to BaFin complaints on account of alleged violations by an electronic money issuer within the meaning of section 1a subsection (1) numbers 1 to 5 of this Act and sections 675c to 676c of the Civil Code and Article 248 of the Introductory Act to the Civil Code. The bodies entitled to submit a complaint shall be the agencies, associations and chambers stated in section 28 subsection (1), second sentence.

(2) Complaints shall be submitted in writing to, or taken on record at BaFin and should explain the facts of the case and the grounds for complaint. Section 28 subsection (2), second sentence, and subsection (3) shall apply accordingly.

Part 7

Notifications, Register of Payment Institutions, Register of Electronic Money Institutions, Penalty Provisions, Administrative Fine Provisions and Transitional Provisions

Section 29 – Notifications

(1) An institution shall notify BaFin and the Deutsche Bundesbank without undue delay of:

1. the intention to appoint a director or to authorise a person to solely represent the institution in all aspects of its business, specifying the facts that are important for assessing trustworthiness and professional qualifications, as well as the realisation of such an intention,
2. the retirement of a director and the revocation of the authorisation to solely represent the institution in all aspects of its business,
3. changes in the legal form, unless a licence is already required under section 8 or section 8a, and changes in the firm name,
4. the acquisition or disposal of a major holding in its own institution, the reaching, exceeding or falling below a holding threshold of 20 per cent, 30 per cent or 50 per cent of the voting rights or the capital, and the fact that the institution becomes or ceases to be the subsidiary of another enterprise, as soon as the institution becomes aware of the impending change in this ownership structure,
5. a loss of amounting to 25 per cent of the liable capital,
6. relocation of the office or domicile,
7. the discontinuation of business operations,
8. the emergence, of, change in or termination of a close link within the meaning of section 1 subsection (10) of the Banking Act with another natural person or another enterprise,
9. the intention to merge with another institution within the meaning of this Act or the Banking Act, and
10. the intention to outsource and the realisation of the outsourcing.

(1a) An electronic money institution must notify every substantial change to the measures taken to safeguard funds under section 13a subsections (1) and (2) to BaFin and the Deutsche Bundesbank in advance.

(1b) Directors, the persons responsible for the management of the institution and, insofar as this involves institutions which engage in other business activities alongside the provision of payment services and the issuance of electronic money,

the persons responsible for the management of the payment services activities and the business of electronic money issuance of the institution, shall notify BaFin and the Deutsche Bundesbank without undue delay of:

1. the commencement and termination of an activity as director or as member of the supervisory board of another enterprise, and
2. the acquisition and disposal of a direct holding in an enterprise as well as changes in the amount of the holding.

(2) In consultation with the Deutsche Bundesbank, the Federal Ministry of Finance may, by means of a statutory instrument and without the consent of the Bundesrat, promulgate more detailed provisions on the nature, scope, timing and form of the notifications and submission of documentation provided for under this Act, as well as on the permissible data carriers, transmission channels and data formats, and may supplement the existing notification requirements through the obligation to submit summary reports and summary lists, insofar as this is necessary for the performance of BaFin's tasks. It may delegate this authorisation by means of a statutory instrument and without the consent of the Bundesrat to BaFin subject to the proviso that BaFin's statutory instruments are promulgated with the agreement of the Deutsche Bundesbank. The associations of the institutions shall be consulted before the statutory instrument is promulgated.

Section 29a – Monthly returns and additional information

(1) An institution shall submit a monthly return to the Deutsche Bundesbank without undue delay after the end of each month. The Deutsche Bundesbank shall forward these returns to BaFin along with its comments; BaFin may waive the forwarding of certain returns.

(2) In the cases of section 12 subsection (2) and section 12 subsection (2), BaFin may stipulate whether and how an institution must submit a consolidated monthly return to the Deutsche Bundesbank without undue delay after the end of each month.

(3) In consultation with the Deutsche Bundesbank, the Federal Ministry of Finance may, by means of a statutory instrument and without the consent of the Bundesrat, promulgate more detailed provisions on the content, nature, scope, timing, as well as on the permissible data carriers, transmission channels and data formats of the monthly returns, especially in order to gain an insight into the development of the institution's assets position and profitability, as

well as on additional information, insofar as this is necessary for the performance of BaFin's tasks. The Federal Ministry of Finance may delegate this authorisation to BaFin by way of a statutory instrument, subject to the proviso that the statutory instrument is issued in consultation with the Deutsche Bundesbank.

Section 30 – Register of payment institutions

(1) BaFin shall keep on its website register of payment institutions to be updated on an ongoing basis in which it shall enter

1. every domestic payment institution to which it has granted a licence under section 8 subsection (1), along with the date of issue and the scope of the licence and, where applicable, the date of the licence's expiry or revocation,
2. the branches set up by domestic payment institutions, specifying the state in which the branch has been set up, its size and when it commenced business operations, and
3. the agents who are working for a payment institution under section 19 subsection (2) as well as the date on which the respective agent began and ended his/her work.

(2) Where there are facts that suggest that information about an agent communicated to BaFin by a payment institution under section 19 subsection (1) is not accurate, BaFin may refuse to enter the agent into the register of payment institutions.

(3) The Federal Ministry of Finance may, by means of a statutory instrument and without the consent of the Bundesrat, promulgate more specific regulations on the content and management of the register of payment institutions and the cooperation obligations of the payment institutions, their branches and agents in relation to the management of the register of payment institutions. It may in particular grant the payment institution editorial access to the page of the register of payment institutions to be created for the payment institution and delegate responsibility for the accuracy and timeliness of this page to the payment institution. The Federal Ministry of Finance may delegate this authorisation to BaFin by means of a statutory instrument and without the consent of the Bundesrat.

Section 30a – Register of electronic money institutions

BaFin shall keep on its website a separate register of electronic money institutions to be updated on an ongoing basis in which it shall enter every domestic electronic money institution to which it has granted a licence under section 8a subsection (1), along with the date of issue and the scope of the licence and, where applicable, the date of the licence's expiry or revocation.

(2) Branches and agents of the electronic money institution shall be entered in accordance with section 30 subsection (1) numbers 2 and 3 and subsection (2).

(3) The Federal Ministry of Finance may, by means of a statutory instrument and without the consent of the Bundesrat, promulgate more specific regulations on the content and management of the register of electronic money institutions and the cooperation obligations of the electronic money institutions, their branches and agents in relation to the management of the register of electronic money institutions. It may in particular grant the electronic money institution editorial access to the page of the register of electronic money institutions to be created for the electronic money institution and delegate responsibility for the accuracy and timeliness of this page to the electronic money institution. The Federal Ministry of Finance may delegate this authorisation to BaFin by means of a statutory instrument and without the consent of the Bundesrat.

Section 30b – Advertising

(1) In order to counteract undesirable developments in the advertising of institutions, BaFin may prohibit certain types of advertising.

(2) Before general measures under subsection (1) are taken, the associations of the institutions and the consumer protection associations shall be consulted.

Section 31 – Penalty provisions

(1) Anyone who

1. contrary to section 2 subsection (1) or subsection (3), first sentence, accepts deposits or other repayable funds or grants credit,

2. provides payment services without the licence under section 8 subsection (1), first sentence,
- 2a. conducts the business of electronic money issuance under section 8a subsection (1), first sentence,
3. contrary to section 16 subsection (4), first sentence, first half-sentence, fails to make a notification, fails to make a notification in full or within the prescribed time, or
4. contrary to section 23a, issues electronic money,

shall in the cases of numbers 3 and 4 be punished by imprisonment of up to three years or by a monetary fine and in the cases of numbers 1, 2 and 2a by imprisonment of up to five years or a monetary fine.

(2) Where the perpetrator acts negligently, the punishment in the cases of numbers 3 and 4 shall be imprisonment of up to one year or a monetary fine and, in the cases of numbers 1, 2, and 2a, imprisonment of up to three years or a monetary fine.

Section 32 – Administrative fine provisions

(1) Anyone who contravenes an enforceable order under section 4 subsection (1), second sentence, also in conjunction with the fourth sentence, concerning an instruction for settlement or an enforceable order under section 15 subsection (1) or subsection (3) shall be deemed to have committed an administrative offence.

(2) An administrative offence shall be deemed to have been committed by any person who intentionally or recklessly

1. contrary to section 17 subsection (1), first or third sentences, subsection (2), first or second sentence, or section 29a subsection (1), first sentence, the latter also in conjunction with subsection (2) as well as a statutory instrument under subsection (3), first sentence, fails to submit annual financial statements, a management report, an audit report, consolidated financial statements, a group management report, or monthly report, or fails to do so in full or within the prescribed time
2. contrary to section 25 subsection (1), first sentence, or section 29 subsection (1) numbers 4 to 9 or number 10, fails to make a notification in full or within the prescribed time.

(3) An administrative offence shall be deemed to have been committed by anyone who intentionally or recklessly

1. contrary to section 5 subsection (1), fails to provide information, fails to do so in full or within the prescribed time, or fails to submit documentation, fails to do so in full or within the prescribed time,
2. contrary to section 5 subsection (5), first sentence, also in conjunction with subsection (6) fails to acquiesce to a measure,
3. contravenes an enforceable condition under section 8 subsection (5), first sentence,
4. contrary to section 14 subsection (1), first sentence, fails to present information, fails to do so in full or within the prescribed time, or fails to submit documentation, fails to do so in full or within the prescribed time,
5. contrary to section 14 subsection (1), fourth sentence, fails to acquiesce to a measure,
6. contrary to section 14 subsection (3), first sentence, fails to take a specified measure there or does not do so within the prescribed time,
7. contrary to section 16 subsection (3), first sentence, or section 22 subsection (4), first sentence, contravenes an enforceable order,
8. contravenes an enforceable order under section 22 subsection (2) in conjunction with section 6a subsection (1) of the Banking Act,
9. contrary to section 22 subsection (2) in conjunction with section 24c subsection (1), first sentence, of the Banking Act, fails to maintain a file correctly, does not do so within the prescribed time or in full,
10. contrary to section 22 subsection (2) in conjunction with section 24c subsection (1), fifth sentence, of the Banking Act, fails to ensure that BaFin has automated access to data at all times,
- 10a. contravenes an enforceable order under section 22 subsection (2) in conjunction with section 25i subsection (4) of the Banking Act,

11. contrary to section 22 subsection (3) in conjunction with section 3 subsection (1) number 1, also in conjunction with section 4 subsections (3) or (4), first sentence, of the Money Laundering Act, fails to identify the contracting party or does not do so in full,
12. contrary to section 22 subsection (3) in conjunction with section 3 subsection (1) number 3 of the Money Laundering Act fails to clarify the existence of an economic beneficiary, or
13. contrary to section 22 subsection (3) in conjunction with section 8 subsection (1) of the Money Laundering Act, fails to record information gathered or obtain, or fails to do so correctly or in full.

(4) In the cases referred to in subsection (1), the administrative offence may be punished by an administrative fine of up to five hundred thousand euros, and in the cases of subsection (3) numbers 1 and 2, by an administrative fine of up to one hundred and fifty thousand euros, and in the other cases by monetary fine of up to fifty thousand euros.

Section 33 – Competent administrative authority

The administrative authority within the meaning of section 36 subsection (1) number 1 of the Administrative Offences Act shall be BaFin.

Section 34 – Notification in criminal matters

In criminal proceedings against owners or directors of institutions as well as against major shareholders in institutions or their legal representatives on account of the violation of their professional duties or other criminal offences in the course of, or in connection with, the carrying on of a trade or the operation of another economic enterprise, the court, the criminal prosecution authority or the criminal enforcement authority shall, if a public charge is brought, transmit to BaFin

1. the indictment or the petition in lieu of an indictment,
2. the application for the issue of an order of summary punishment, and
3. the decision concluding the proceedings together with the grounds for the decision,

where an appeal has been lodged against the decision, the decision shall be transmitted together with a reference to the appeal lodged. Section 60a subsections (1a) to (3) of the Banking Act shall apply accordingly.

Section 35 – Transitional provisions

(1) For credit institutions which, on 31 October 2009, have a licence under section 32 subsection (1) of the Banking Act for the giro business within the meaning of section 1 subsection (1), second sentence, number 9 of the Banking Act in the version applicable prior to 31 October 2009, the licence under section 8 subsection (1) shall be deemed granted for all payment services within the meaning of section 1 subsection (2) on the date on which this Act enters into force. Where the credit institution waives this within two months of 31 October 2009 by written declaration to BaFin referring to this provision, the licence shall be deemed not to have been granted from the outset.

(2) Enterprises which, with a licence under section 32 subsection (1) of the Banking Act, began

1. canvassing for payment orders under section 1 subsection (1a), second sentence, number 6 of the Banking Act in the version applicable before 31 October 2009, or
2. issuing or administering credit cards, unless the card issuer was also the provider of the service on which the payment process was based, under section 1 subsection (1a), second sentence, number 8 of the Banking Act in the version applicable before 31 October 2009,

before 25 December 2007, shall be allowed to continue their activity until 30 April 2011 without a licence under section 8. Until the date on which the licence under section 8 goes into effect, the provisions of the Banking Act, with the exception of section 2b subsection (2), sections 10, 11 to 18, 24 subsection (1) number 9, of sections 24a, 33 subsection (1), first sentence, number (1), of section 35 subsection (2), number 5 and of sections 46a to 46c of the Banking Act, shall continue to be applied to enterprises which conduct business under the first sentence numbers 1 or 2. For enterprises under the first sentence which are exempt under section 2 subsection (4) of the Banking Act, the provisions of the Banking Act shall continue to be applied with the exception of sections 2c, 10 to 18, 24, 24a, 25 to 38, 45, 46 to 46c and 51 subsection (1) of the Banking Act.

(3) Activities that were begun before 25 December 2007 without violating the licence requirement under section 32 subsection (1) of the Banking Act may be continued until 30 April 2011 without a licence under section 8. Insofar as they are necessary to safeguard compliance with the obligations under the Money Laundering Act or the fulfilment of the enterprise's duty arising under the Money Laundering Act, sections 14 and 22 subsection (1), third sentence, number 4 shall remain unaffected.

(4) Enterprises within the meaning of section 53b subsection (7) of the Banking Act which began the activities specified in Appendix I, number 4 of Directive 2006/48/EC prior to 25 December 2007 in line with national law, and which meet the requirements of section 53b subsection (7), first sentence, number 7 of the Banking Act, may exercise these activities within Germany without a licence from BaFin, notwithstanding section 8, if they notify these activities to the competent authorities of the state of origin by 25 December 2009.

(5) Sections 7 and 28 shall remain unaffected in the cases of subsections (1) to (4).

Section 36 – Transitional provisions for electronic money institutions

(1) For electronic money institutions which, on 30 April 2011, have a licence under section 32 subsection (1) of the Banking Act for the business of electronic money issuance, the licence under section 8a subsection (1) shall be deemed granted from 30 April 2011 to the extent which the licence has been granted under section 32 subsection (1) of the Banking Act. At the same time these electronic money institutions shall be entered into the register for electronic money institutions under section 30a. If the electronic money institution waives this within two months after 30 April 2011 by written declaration to BaFin referring to this provision, the licence shall be deemed not to have been granted from the outset.

(2) Electronic money institutions which have an exemption, under section 2 subsection (5) of the Banking Act in the version applicable until 29 April 2011, for the business of electronic money issuance, may still continue to issue electronic money until 30 April 2012 without a licence under section 8a.