

THE NATIONAL PAYMENT SYSTEMS ACT, 2015

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THE UNITED REPUBLIC OF TANZANIA



NO.4 OF 2015

I ASSENT.

A red ink signature of John Magufuli, President of Tanzania, written over a dotted line.
President

A red ink date stamp reading '25th April, 2015' written over a dotted line.

An Act to make provisions for the regulation and supervision of payment systems, regulation of electronic payment instruments, electronic money, payment system service providers, validity and enforceability of netting arrangements, finality and settlement of payment instructions and to make provisions for related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
commencement

1. This Act may be cited as the National Payment Systems Act, 2015 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Application	2. This Act shall apply to Mainland Tanzania as well as Tanzania Zanzibar.
Interpretation	3. In this Act, unless the context requires otherwise-
Cap. 342	<p>“bank” has the meaning ascribed to it under the Banking and Financial Institutions Act;</p> <p>“Bank” means the Bank of Tanzania;</p> <p>“body corporate” means a bank, financial institution or any other public or private company;</p> <p>“clearing house” means a central location or central processing mechanism through which financial institutions agree to exchange payment instructions or other financial obligations;</p> <p>“clearing” means exchange of payment instruments that involve transmitting, reconciling and confirming payment orders or transfer instructions prior to settlement, including the netting of instructions and the establishment of final positions for settlement;</p> <p>“consumer” means a user of electronic payment services provided by a payment system provider;</p> <p>“electronic fund transfer” means transfer of money through an electronic terminal or device from one account to another;</p> <p>“electronic money issuer” means a payment system provider that is licenced to issue electronic money and assumes responsibilities and liabilities for the electronic money issued;</p> <p>electronic money” means monetary value as represented by a claim on its issuer, that is electronically</p>

stored in an instrument or device, issued against receipt of funds of an amount not lesser in value than the monetary value issued, accepted as means of payment by persons or entities other than the issuer and can be redeemed in cash;

“electronic payment service” means a payment service delivered in electronic form by a licenced payment service provider in accordance with this Act;

“final settlement” means the discharge of an obligation by a transfer of funds which is irrevocable and unconditional;

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“financial institution” has the meaning ascribed to it under the Banking and Financial Institutions Act;

“information” means any data, record, return or document in any form or manner whether oral, written, in any visual recording, any sound recording, any electronic, magnetic, mechanical, computer records or other recording on any substance, material, thing or article;

“netting arrangement” means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation to be discharged by a party or parties in the clearing or settlement system;

“netting” means determination of the net payment or net settlement obligations between two or more parties in a clearing or settlement system;

“payment system participant” means a body corporate, acting alone or under an arrangement with

another body corporate to provide electronic payment service licenced under this Act;

“payment instrument” means an instrument in electronic or written form used for ordering transmission or payment of money;

“payment system” means a facility consisting of payment instruments, banking and transfer of money procedures, interbank funds transfer systems or payment system provider’s systems that ensure the circulation of money;

“payment system provider agent” means a sole proprietor or a body corporate that has been contracted through an agency agreement for a payment system provider to perform the functions of selling electronic money and redeeming cash equivalent of the electronic money;

“payment system provider” means a body corporate that provides electronic payment service licenced under this Act;

“settlement” means an act that discharges obligations in respect of funds or securities transfer between two or more parties; and

“systemically important payment system” means a payment system that has a significant impact on the economy which is capable of triggering or transmitting disruptions amongst payment system participants or to the economy if it is not sufficiently protected against risk.

PART II
POWERS AND FUNCTIONS OF THE BANK

Powers and
functions of
the Bank

4. (1) Without prejudice to any other written laws, the Bank shall-

- (a) grant a licence and approval in accordance with this Act;
- (b) regulate, supervise, investigate and oversee the operations of payment systems;
- (c) provide settlement services to payment systems;
- (d) provide settlement services to a clearing-house and a central securities depository;
- (e) own and operate a real-time gross settlement system;
- (f) co-ordinate payment systems activities with relevant stakeholders;
- (g) participate in inter-bank clearing and settlement operations; and
- (h) be responsible for the administration of this Act.

(2) For purposes of this section, the term “central securities depository” means a facility or an institution for holding securities, which enables securities transactions to be processed by book entry in electronic form.

PART III
PAYMENT SYSTEM

Prohibition to
operate
payment
system

5. A person shall not operate a payment system without a payment system licence issued by the Bank in accordance with this Act.

Eligibility for
licensing
payment
system

6.-(1) A payment system that may be eligible to be licenced by the Bank shall have any of the following objects:

- (a) clearing of payment instructions between financial and non financial institutions;
- (b) settling of obligations arising from the clearing of payment instructions;
- (c) transfer of funds from one account to another using any electronic device;
- (d) transfer of electronic money from one electronic device to the other;
- (e) provision of technological services to facilitate switching, routing, clearing, data management for or on behalf of a payment system provider;
- (f) facilitation of interoperability of payment systems and services between payment systems providers and consumers;
- (g) provision of electronic payment services to the unbanked and under-banked population;
- (h) establishing a payment clearing house;
- (i) provision of financial communication network; or
- (j) any other objects as may be prescribed by the Bank.

(2) For purposes of this section, the term “interoperability” means a seamless transfer of payment instructions or funds from an account of one payment system provider or user to another payment system provider’s or user’s account of a different service provider.

Application
for payment
system licence

7.-(1) A body corporate which intends to operate a payment system shall apply in a prescribed form for a payment system licence.

(2) An application made under subsection (1) shall be accompanied by such information as may be prescribed by the Bank.

(3) The Bank may grant a licence when it is satisfied that the applicant has met the licensing criteria stipulated under this Act including payment of licence fee and any other requirement specified by the Bank.

(4) Within thirty days following receipt of an application or where further information has been required, after receipt of such information, the Bank may either grant or reject the application.

(5) The Bank may, where it grants a licence, impose such terms and conditions, as it may deem appropriate.

(6) A licence shall be valid for a period of five years unless it is otherwise suspended or revoked.

(7) Where an application is rejected the Bank shall give reasons for the rejection.

(8) Subject to subsection (7) -

(a) an applicant whose application is rejected may reapply if the deficiencies that formed the basis for rejection of the initial application have been rectified; and

(b) the Bank may either grant or reject the reapplication.

(9) Where an applicant is aggrieved by the decision made under this section may apply to the Governor of the Bank within thirty days after receipt of such notice of rejection for review of the decision.

Renewal of
payment
system licence

8.-(1) The holder of a licence granted under this Part may, within six months before the expiration of such licence, apply to the Bank for renewal.

(2) On receipt of an application under subsection (1), the Bank may renew the licence upon-

- (a) payment of renewal fee; and
- (b) fulfilment of such terms and conditions applicable for grant of licence.

(3) The Bank may refuse to renew a licence if it is satisfied that the applicant has failed to comply with the conditions contained in the previous licence.

Suspension of
payment
system licence

9.-(1) The Bank may suspend a payment system licence where-

- (a) it is satisfied that a payment system provider has failed to meet communication infrastructure requirements prescribed by the Bank;
- (b) it is satisfied that the affairs of the payment system provider are being conducted in a manner that is detrimental to the interests of its payment system participants or users; or
- (c) the payment system provider is directed to suspend services under any other written law.

(2) Subject to subsection (1), the Bank may call upon a licensee to show cause why the licence shall not be suspended.

(3) Where the licensee fails to show cause to the satisfaction of the Bank, the Bank may suspend the licence or make any other order as it may deem appropriate.

Revocation of
payment
system licence

10.-(1) The Bank may revoke a licence of a payment system provider where -

- (a) any other licence related to payment systems is revoked under any other written law;
- (b) the provider voluntarily requests revocation;
- (c) the provider provides false or misleading information when applying for a licence;
- (d) the provider fails to comply with the terms and conditions of the licence or any remedial measures required under this Act;
- (e) the provider engages in a pattern of unsafe or unsound practices that threaten its financial condition or is detrimental to the interests of the payment system providers or users;
- (f) the provider refuses to permit an inspection or provide information required by the Bank or is otherwise in breach of provisions of this Act;
- (g) the provider ceases to do payment systems business in the United Republic;
- (h) the provider is insolvent as determined by the Bank or court of law; or
- (i) the provider fails to comply with any requirements under this Act.

(2) Subject to subsection (1), the Bank may issue a seven days notice calling upon a licensee to show cause why the licence should not be revoked.

(3) Where the licensee fails to show cause to the satisfaction of the Bank, the Bank may revoke the licence or make any other order as it may deem appropriate.

Publication of
Notice of
Revocation

11. Where a licence is revoked under this Part, the Bank shall-

- (a) within three working days following the date of revocation, publish a notice of revocation in newspapers of wide circulation in the United Republic; and
- (b) take any other steps necessary to inform the general public of such revocation.

Prohibition of
undesired
conduct

12.-(1) A payment system provider or a payment system participant shall not engage in any act, which is likely to-

- (a) result in systemic risk; or
- (b) prejudice the integrity, effectiveness or security of the payment system.

(2) The Bank shall direct a payment system provider or a payment system participant who has engaged in an act prohibited in subsection (1) to remedy the situation in such manner as the Bank may deem appropriate.

Cessation to
hold office

13.-(1) Any person who is in the management of a payment system shall cease to hold office, in case of -

- (a) bankruptcy;
- (b) conviction for an offence involving fraud or dishonesty;
- (c) removal from office by a competent authority;
- (d) unsound mind; or
- (e) death.

(2) A person who was in the management of a payment system whose licence was revoked, shall not without the approval of the Bank act in the management of any other payment system.

Offence under
this Part

14. A person who contravenes any provision of this Part commits an offence and is liable on conviction, and if that person is:

- (a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
- (b) a body corporate, to a fine of not less than five hundred million shillings.

PART IV PAYMENT INSTRUMENTS

Prohibition
to issue
payment
instruments
without
licence or
approval

15.-(1) A person shall not issue an electronic payment instrument without a licence or an approval issued by the Bank.

(2) Subject to subsection (1), the Bank shall, where the payment system provider applicant is a—

- (a) non-bank or non-financial institution, issue a licence; or
- (b) bank or financial institution, issue an approval.

Eligibility of
payment
instrument

16. An electronic payment instrument shall be eligible for licensing or approval by the Bank, if it is capable of -

- (a) ordering or transmitting payment instructions;
- (b) storing of information on a device for purposes of effecting payments;
- (c) being accepted for fulfilling payment obligations on point of sales, merchants outlets or over the internet; or

- (d) having any other ability that the Bank may prescribe.

Application
for payment
instrument
licence or
approval

17.-(1) A payment system provider that intends to operate a payment instrument shall apply in a prescribed form for a licence or an approval.

(2) An application made under subsection (1) shall be accompanied by such information as may be prescribed by the Bank.

(3) The Bank shall grant a licence or approval when it is satisfied that the applicant has met the licensing or approval criteria under this Act and any other requirement specified by the Bank.

(4) Within ten days following receipt of an application or where further information has been required, after receipt of such information, the Bank shall either grant or reject application.

(5) Where an application is rejected the Bank shall give reasons for the rejection.

(6) Subject to subsection (5) -

(a) an applicant whose application is rejected may reapply if the deficiencies that formed the basis for rejection of the initial application have been rectified; and

(b) the Bank may either grant or reject the reapplication.

(7) Where an applicant is aggrieved by the decision made under this section may apply to the Governor of the Bank within thirty days after receipt of such notice of rejection for review of the decision.

Suspension
of licence or
approval

18.-(1) The Bank may suspend a licence or an approval of an operating payment instrument where it is satisfied that:

- (a) a payment system provider failed to meet communication infrastructure requirements prescribed by the Bank;
- (b) the payment instrument is detrimental to the interests of the users; or
- (c) the payment system provider was directed to suspend services under any other written law.

(2) Subject to subsection (1), the Bank may call upon a licensee or an approved person to show cause why the licence or approval shall not be suspended.

(3) Where a licensee or approved person fails to show cause to the satisfaction of the Bank, the Bank may suspend the licence or approval or make any other order as it may deem appropriate.

Revocation
of licence or
approval

19.-(1) The Bank may revoke a licence or an approval of a payment instrument where-

- (a) any other licence or approval related to payment systems is revoked under any other written law;
- (b) the provider voluntarily requests revocation;
- (c) the provider provides false or misleading information when applying for the licence or approval; or
- (d) the provider fails to comply with the terms and conditions of the licence or approval.

(2) Subject to subsection (1), the Bank may issue a seven days notice calling upon a licensee or an approved person to show cause why the licence or approval should not be revoked.

(3) Where the licensee or approved person fails to show cause to the satisfaction of the Bank, the Bank may revoke the licence or approval or make any other order as it may deem appropriate.

Offence
under this
Part

20. A person who contravenes any provision of this Part commits an offence and is liable on conviction, and if that person is:

- (a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
- (b) a body corporate, to a fine of not less than five hundred million shillings.

PART V ELECTRONIC CHEQUES

Cheque
presentment

21. Any person may present a cheque in an electronic form in a payment system.

Electronic
cheque
presentment

22.-(1) The Bank shall prescribe the manner of electronic cheque presentment for payment through a clearing house.

(2) Subject to subsection (1), a bank may present a cheque for payment to another bank, on whom it is drawn, by electronically transmitting its essential features instead of presenting the cheque itself.

Admissibility
of electronic
image of
cheques as
evidence

23. In the event of proceedings in a court of a law, tribunal or any other judicial proceedings, a cheque or a certified copy of it or the essential details of the cheque retrieved from an electronic medium, which is the subject of

proceedings in a court of a law, tribunal or any other judicial proceedings, shall be admissible as evidence.

PART VI ELECTRONIC MONEY

Prohibition to
issue
electronic
money
without
licence or
approval

24.-(1) A person shall not be an issuer of electronic money without a licence or an approval issued by the Bank.

(2) Subject to subsection (1), the Bank shall, where the payment system provider applicant is a-

- (a) non-bank or non-financial institution, issue a licence; and
- (b) bank or financial institution, issue an approval.

Electronic
money issuer
eligibility
requirements

25. The Bank shall prescribe eligibility requirements for an electronic money issuer, which shall include corporate structure, permissible services and capital adequacy.

Application
for electronic
money
issuance
licence or
approval

26.-(1) A person who intends to issue electronic money shall apply in a prescribed form for an electronic money issuance licence or approval.

(2) An application made under subsection (1) shall be accompanied by such information as may be prescribed by the Bank.

(3) The Bank shall grant a licence or approval when it is satisfied that the applicant has met the licensing criteria under this Act and any other requirement specified by the Bank.

(4) Within thirty days following receipt of an application or where further information has been required, after receipt of such information, the Bank shall either grant or reject the application.

(5) The Bank may, where it grants a licence or approval, impose such terms and conditions as it may deem appropriate.

(6) A licence or an approval shall be valid for a period of five years unless suspended or revoked.

(7) When an application is rejected or revoked, the Bank shall provide reasons for the rejection or revocation.

(8) Subject to subsection (7)-

(a) an applicant whose application is rejected may reapply if the deficiencies that formed the basis for rejection of the initial application have been rectified; and

(b) the Bank may either grant or reject the reapplication.

(9) Where the application is rejected and the applicant is aggrieved by that decision, he may apply for review to the Governor of the Bank within thirty days after receipt of such notice of rejection.

Renewal of
electronic
money
issuance
licence or
approval

27.-(1) The holder of a licence or approval granted under this Part may, six months before the expiry of such licence or approval, apply to the Bank for renewal.

(2) On receipt of an application under subsection (1), the Bank may renew the licence or approval upon-

(a) payment of renewal fee for the licence; and

(b) fulfilment of such terms and conditions applicable for grant of licence.

(3) The Bank may refuse to renew a licence or approval if the applicant has failed to comply with the conditions contained in the previous licence or approval.

Suspension of
licence or
approval to
issue
electronic
money

28.-(1) The Bank may suspend a licence or an approval to issue electronic money where-

- (a) it is satisfied that the affairs of the electronic money issuer are being conducted in a manner that is detrimental to the financial system or to the users of the electronic money; or
- (b) the payment system provider is directed to suspend to offer services under any other written law.

(2) Subject to subsection (1), the Bank may call upon a licensee or an approved person to show cause why the licence or approval shall not be suspended.

(3) Where a licensee or an approved person fails to show cause to the satisfaction of the Bank, the Bank may suspend the licence or approval or make any other order as it may deem appropriate.

Revocation of
electronic
money issuer
licence or
approval

29.-(1) The Bank may revoke a licence or an approval of the electronic money issuer where-

- (a) any other licence or approval related to payment systems is revoked under any other written law;
- (b) the issuer voluntarily requests revocation;
- (c) the issuer provided false or misleading information when applying for a licence or approval;
- (d) the issuer failed to comply with the terms and conditions of the licence or approval or any remedial measures required under this Act;
- (e) the issuer engaged in a pattern of unsafe or unsound practices that threaten its financial

- condition or is detrimental to the interests of the payment system providers or users;
- (f) the issuer refused to permit an inspection or provide information required by the Bank or is otherwise in breach of provisions of this Act;
 - (g) the issuer ceased to do electronic money issuance business in the United Republic;
 - (h) the issuer is insolvent as determined by the Bank or court; or
 - (i) the issuer failed to comply with any requirements under this Act.

(2) Subject to subsection (1), the Bank may issue a seven days notice calling upon a licensee or an approved person to show cause why the licence or approval shall not be revoked.

(3) Where a licensee or an approved person fails to show cause to the satisfaction of the Bank, the Bank may revoke the licence or approval or make any other order as it may deem appropriate.

Electronic
money
issuance and
circulation

30.-(1) An electronic money issuer licenced or approved to issue electronic money shall-

- (a) issue electronic money only after equivalent cash is deposited in the trust account or a special account in accordance with this Act;
- (b) ensure that the electronic money issued is equal to the cash deposit held in a trust account or a special bank account in accordance with this Act;
- (c) submit in electronic form to the bank holding the trust account, the names of all subscribers

and users of the electronic money service whose funds are in the trust account, in prescribed period; and

- (d) comply with such requirements, as the Bank shall prescribe.

(2) Redemption of cash from electronic money or purchase of electronic money may be conducted at agents under agency agreements with a payment system provider licenced or approved to issue electronic money.

(3) The Bank shall prescribe agents regulations to govern their conduct that may include compliance with anti-money laundering laws, liquidity requirement, customer due diligence and handling of consumers.

Offence under
this Part

31. A person who contravenes any provision of this Part commits an offence and is liable on conviction, and if that person is:

- (a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
- (b) a body corporate, to a fine of not less than five hundred million shillings.

PART VII

TRUST ACCOUNT AND SPECIAL BANK ACCOUNT

Trust
account

32. A licenced payment system provider who is a non-bank or non-financial institution licenced as an electronic money issuer shall be required to open and maintain a trust account in accordance with this Act.

Special bank
account

33. A licenced payment system provider who is a bank or financial institution licenced as electronic money issuer shall be required to open and maintain a special account in accordance with this Act.

Trust account
management

34.-(1) A licenced electronic money issuer referred in section 32 shall establish a separate legal entity in the form of a trust to manage the trust account whose corporate structure and management has been approved by the Bank.

(2) A legal entity referred to in subsection (1) shall-

- (a) submit an application to the Bank in a prescribed form to open a trust account in a bank to facilitate issuance of electronic money;
- (b) enter into trust account agreement with a bank in the manner prescribed in the regulations; and
- (c) open the trust account at a bank for the purpose of maintaining funds of a customer who has purchased electronic money from the electronic money issuer.

(3) An electronic money issuer and a legal entity referred to in subsection (1) shall-

- (a) not commingle or use the trust account funds with any other funds of any other operations;
- (b) set up safeguard measures to protect the funds from risks that may occasion loss to beneficiaries of the funds;
- (c) mitigate concentration risk on holding the trust account by placing it in different banks as may be prescribed by the Bank;

- (d) ensure that any interest accrued in the trust account is effected directly to benefit the consumer as may be prescribed by the Bank;
- (e) audit and publish financial statements of the trust entity in respect of the trust account;
- (f) submit a report on the operations of the trust account to the Bank on monthly basis or such other intervals as the Bank may prescribe;
- (g) ensure demand of cash withdraw from the account is honoured;
- (h) ensure that the funds in the trust account are at all times equal to the electronic money issued; and
- (i) comply with any other requirement as the Bank may prescribe.

(4) A person who contravenes any provisions of this section commits an offence and is liable on conviction, and if that person is:

- (a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
- (b) a body corporate, to a fine of not less than five hundred million shillings.

Special bank
account
management

35.-(1) A licenced electronic money issuer referred to in section 33 shall-

- (a) submit a notice to the Bank in a prescribed form for opening a special account to facilitate issuance of electronic money;
- (b) open a special account for holding deposits received from a customer who has purchased

- electronic money from the electronic money issuer;
- (c) ensure that the account has records of all customers served under electronic money service;
 - (d) ensure that the special account is protected from risks that may occasion loss to beneficiaries of the funds; and
 - (e) comply with any other requirement as the Bank may prescribe.
- (2) A person who contravenes any provisions of this section commits an offence and is liable on conviction, and if that person is:
- (a) natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
 - (b) a body corporate, to a fine of not less than five hundred million shillings.

PART VIII

FINALITY OF PAYMENT AND NETTING ARRANGEMENTS

Validity and enforceability of finality of payments and settlement

36.-(1) A payment instruction or settlement in a payment system shall be valid and enforceable.

(2) The payment instruction or settlement under subsection (1), shall be final and irrevocable, and shall not be reversed or set aside by any person from the time the payment instruction or settlement is determined to be final.

(3) Subject to the provision of subsection (2), the Bank shall prescribe the manner of handling payment instructions or settlement made in error.

(4) Where the Bank considers that there is a likelihood for the occurrence of a systemic risk on making of a payment or settlement referred to in subsection (1), it shall-

- (a) prohibit the making of the payment or transfer instruction, or set aside the payment or transfer; and
- (b) issue a written notice to the payment system participants explaining the reasons for such prohibition or setting aside the payment or transfer.

(5) A transaction effected in contravention of this section shall be void.

Validity and
enforceability
of netting
arrangements

37.-(1) A netting arrangement in a payment system shall be valid and enforceable.

(2) A net settlement obligation owed to a payment system provider or payment system participant under a netting arrangement that has not been discharged is provable claim in insolvency proceedings and shall be recovered for the benefit of beneficiaries.

PART IX

WINDING-UP, RECEIVERSHIP OR JUDICIAL MANAGEMENT OF PARTICIPANTS IN A PAYMENT SYSTEM

Winding-up
notice

Cap 212

38.-(1) An order for winding-up or placing under judicial or statutory management in terms of the Companies Act or any other insolvency law issued on a participant in a payment system shall immediately be lodged with the Bank.

(2) The order referred to in subsection (1) shall not affect any settlement of payments or instructions in a payment system made before issuance of the order.

Liquidator,
statutory
manager
bound by
payment
system
instruction
Cap 212

39.-(1) Notwithstanding anything to the contrary, the Companies Act or any other insolvency law, where an order is issued for winding-up or placing the payment system participant under judicial or statutory management, any payment or settlement obligation to which the participant in the payment system that was-

- (a) determined before the issuance of that order;
- (b) to be discharged, transferred on or after the issuance of that order; or
- (c) overdue for settlement on the date of that order, shall be binding upon the participant's liquidator, judicial or statutory manager.

(2) Subsection (1) shall apply to any payment or settlement obligation which was-

- (a) determined through the payment system before the issuance of that order;
- (b) liable for discharge or transfer on or after the issue of that order; or
- (c) overdue for settlement on the date of that order.

Priority of
payment
instructions
in winding-
up
Cap 212

40.-(1) Notwithstanding anything to the contrary in the Companies Act, or any other insolvency law where-

- (a) a participant in a payment system is wound up; and
- (b) there are undelivered transfer instructions that were drawn on the participant and cleared through the payment system before the making of the winding-up order, the undelivered transfer

instructions shall be paid from the participant's estate, and shall rank in preference above any other unsecured claim against the estate.

(2) Subsection (1) shall not be construed as permitting a payment instruction to be paid in preference to any other claim against an estate, where the instruction was certified by the payment system participant or was intended to give the drawee of the instruction a preference over other participants in the payment system or other creditors.

PART X

COLLATERAL AND FAILURE TO SETTLE ARRANGEMENTS

Collateral
arrangement

41.-(1) The Bank shall prescribe the manner of holding adequate liquid assets as collateral for securing or obtaining funds by payment system participants to facilitate settlement of their payment obligations in the payment system.

(2) The collateral referred to in subsection (1) shall be-

- (a) used for fulfilling a participant's obligation as a result of any cause of failure to settle its obligation including insolvency; and
- (b) protected against insolvency.

(3) A participant who operates with inadequate collateral commits an offence and is liable to a fine of not less than five hundred million shillings.

Failure to
settle
arrangements

42.-(1) A payment system provider shall put in place documented failure-to-settle arrangements that prescribe the manner to which settlement failure shall be mitigated in the event of failure to settle obligations by one or more of the participant in the payment system.

(2) A payment system provider shall submit to the Bank the failure-to-settle document referred to in subsection (1).

PART XI GENERAL PROVISIONS

Submission
of returns

43.-(1) A payment system provider shall submit returns relating to operation of the payment system or electronic payment service as may be prescribed by the Bank.

(2) The Bank may use or share information obtained under subsection (1) for public consumption.

(3) A person who fails to comply with this section the Bank may impose a penalty of ten million shillings for everyday during which non compliance continues and such penalty may be recovered from any balances held in the Bank or through any other legal recourse.

Access to
information

44.-(1) The Bank shall have access to information relating to any payment system and may request, in writing, that information be furnished by payment system provider within fourteen days from the date of request.

(2) A person who fails to comply with this section the Bank may impose a penalty of ten million shillings for every day during which non compliance continues and such penalty may be recovered from any balances held in the

Bank or through any other legal recourse.

Confidentiality

45.-(1) An information obtained in terms of section 44 shall be confidential and may not be disclosed by any director or officer of the Bank unless such disclosure is required by law.

(2) Notwithstanding subsection (1), the Bank may disclose any information to another agency responsible for regulating or supervising payment system providers consequent upon information sharing agreement whether in the United Republic or abroad, as long as that information is needed and is to be used for supervisory or oversight purposes and that its confidentiality will be maintained.

Retention of
payment
system records

46.-(1) A payment system provider shall maintain record of all electronic payment transactions and information obtained or generated in the operation or administration or management of the payment system for such period as may be prescribed by the Bank.

(2) Retention of records under subsection (1) shall be in electronic and non-electronic form based on the manner of generation or obtaining of such record to ensure preservation of its originality.

(3) Subject to subsection (1), a person who intends to destroy electronic payment transaction records under this Act shall apply to the Bank for approval.

(4) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than five hundred million shillings.

Protection of
customer
information

47.-(1) Without prejudice to any other written laws a payment system provider shall-

- (a) protect the privacy of a participant and customer information; and
- (b) not disclose information of a participant or customer unless the disclosure is made in compliance with the law, an order of a court or with the express consent of the system participant or customer concerned.

(2) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than a hundred million shillings.

Time to effect
transfer of
funds to
customer's
account

48.-(1) A payment system provider, upon receipt of funds in the settlement account in respect to its customer, shall immediately transfer the funds to the customer's account.

(2) Subject to subsection (1), the Bank shall prescribe the specific time of effecting transfer of the funds on a customer's account with respect to the payment system type.

(3) A person who contravenes the provisions of this section is liable to a fine of fifteen percent per day of the funds delayed to be transferred in the customer's account.

Investigations,
inspections,
supervision
and oversight

49.-(1) For the purpose of conducting investigation, inspection, supervision and oversight under this Act, the Bank may in writing authorize its officers to-

- (a) enter and search the premises of a person that the Bank has reason to believe is providing or carrying on a payment system or providing an electronic payment service contrary to this Act;

- (b) inspect any books, computers, servers, accounts and records or take any relevant thing or information that will assist in the investigation of that person and take copies or make extracts from them; and
- (c) implement supervision and oversight on a payment system provider and the risks to which it is subjected to.

(2) In supervising and overseeing a payment system provider that operates both within the United Republic and in any other country, the Bank may enter into arrangements for sharing supervisory and oversight information on a reciprocal basis with the appropriate supervisory or oversight authorities within or outside the United Republic

Compounding
of offences

50.-(1) The Governor of the Bank or an officer specifically authorised by the Governor of the Bank by notice published in the *Gazette* may, subject to and in accordance with this section, if he is satisfied that a person has committed an offence under this Act, compound such offence by accepting from such person a sum of money.

(2) a sum of money payable under subsection (1) shall-

- (a) not exceed the maximum fine provided by this Act for that offence;
- (b) include all reasonable expenses and other payments which the Bank may have incurred in the seizure, storage, maintenance or removal of any articles seized in connection with the offence.

(3) The power conferred by this section shall be exercised where a person admits that he has committed the offence and agrees in writing in the prescribed form.

(4) The Governor of the Bank or officer exercising powers under this section shall issue the person from whom he receives any sum of money under subsection (2) a receipt in the prescribed form.

(5) The sum of money received under this section shall be paid into the Consolidated Fund after deduction of expenses and payments.

(6) Where any proceedings are brought against any person for an offence against this Act, it shall be a good defence if such person proves that the offence with which he is charged has been compounded under this section.

(7) The order for compounding offences under this section shall be treated as an order or decree of the High Court and shall be enforced as the order or decree of the High Court.

Consumer
protection in
payment
system

51.-(1) The Bank shall prescribe consumer protection requirements relevant to payment system services.

(2) Subject to subsection (1), a payment system provider shall provide a consumer with-

- (a) terms and conditions that are transparent, fair, legible, in comprehensible language and provide the rights and obligations of the parties;
- (b) complaints handling and dispute resolution mechanism; and
- (c) full disclosure of relevant information for the use of the electronic payment service including

pricing of the products and services.

(3) A payment system provider shall not mislead a consumer in any advertisement or purport to offer a service that is not approved in accordance with this Act.

Availability of
payment
system services

52. A payment system provider shall ensure that services are available to the users throughout the prescribed operational period.

Cyber-crimes
in payment
systems

53.-(1) A person who gains access to another person's financial data, record or transaction with the aid of any device, electronic device or any scheme or method that facilitate retrieval of information and data without permission commits an offence.

(2) A person shall not intentionally and without lawful excuse produce, sell, procure for use, import, export, distribute or deal with-

- (a) a device that is designed or adapted for the purpose of accessing financial information;
- (b) a computer password, access code or any data by which a computer system is capable of being accessed; or
- (c) the computer program with intent that may be used by him or another person for the purpose of committing an offence.

(3) A person who contravenes the provisions under this section commits an offence and on conviction is liable to a fine of ten million shillings or three times the value of the property illegally obtained whichever is greater, or to imprisonment for a term not exceeding five years, or both.

Cooperation
between
regulators in
payment
systems

54. The Bank shall cooperate with other regulators and Government agencies relevant to payment systems in areas of monitoring, supervision of payment systems, enhancing efficiency of Government payments, tax payments and other financial payments.

Immunity

55. An action or other proceedings shall not lie or be instituted against any officer or employee of the Bank in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of powers conferred by this Act.

Regulations,
directives, and
circulars

56.-(1) The Governor of the Bank may make regulations and rules in the *Gazette* which are consistent with this Act for proper and effective implementation of this Act.

(2) Without prejudice to subsection (1), the Governor of the Bank shall make regulations in areas of:

- (a) licensing requirements;
- (b) participating in payment systems;
- (c) electronic payment instrument, electronic money, electronic cheque;
- (d) payment system provider's agents;
- (e) finality of payments and settlement;
- (f) collateral arrangement;
- (g) specific time of effecting transfer of the funds on customer's account;
- (h) trust account management;

- (i) retention period for payment system transactions information; and
- (j) consumer protection requirements.

(3) The Governor of the Bank may, without publishing in the *Gazette*, may issue directives, standards, guidelines, orders and circulars regulating the manner by which the objectives of this Act may be carried out.

Transitional
provision

57.-(1) A person who, before the commencement of this Act, obtained a written approval of the Bank to operate a payment system or issue a payment instrument, shall within six months of commencement of this Act apply for a licence in accordance with this Act.

(2) A person referred to in subsection (1), who continues to-

- (a) operate a payment system;
- (b) issue a payment instrument;
- (c) issue electronic money; or
- (d) issue any other payment system services,

after expiry of six months following the date of commencement of this Act commits an offence and is liable on conviction to a fine of not less than one hundred million shillings or to imprisonment for a term of not exceeding five years, or to both.

PART XII

CONSEQUENTIAL AMENDMENTS

AMENDMENT OF THE BILLS OF EXCHANGE ACT (CAP. 215)

Construction
Cap. 215

58. This Part shall be read as one with the Bills of Exchange Act hereinafter referred to as the "principal Act".

Amendment of
section 41

59. The principal Act is amended in section 41, by adding subsection (4) as follows:

“(4) Notwithstanding subsection (1), a cheque may be presented in a payment system electronically.”.

Amendment of
section 52

60. The principal Act is amended in section 52, by inserting the following proviso in subsection (4):

“Provided that, this subsection shall not apply in electronic presentment of cheque or a bill in any other written law.”.

Passed in the National Assembly on the 23rd March, 2015.



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Clerk of the National Assembly