

**THE NATIONAL PAYMENT SYSTEMS ACT, 2007**

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GOVERNMENT OF ZAMBIA

# ACT

No. 1 of 2007

Date of Assent: 12th April, 2007

**An Act to provide for the management, administration, operation, supervision and regulation of payment, clearing and settlement systems; to empower the Bank of Zambia to develop and implement payment, clearing and settlement systems policy so as to promote efficiency, stability and safety of the Zambian financial system; and to provide for matters connected with or incidental to the foregoing.**

[13th April, 2007]

ENACTED by the Parliament of Zambia.

Enactment

## PART I PRELIMINARY

- |   |                                 |
|---|---------------------------------|
| 1. This Act may be cited as the National Payment Systems Act, 2007, and shall come into operation on such date as the Minister may, by statutory instrument, appoint. | Short title and commencement    |
| 2. (1) In this Act, unless the context otherwise requires—<br>“Bank of Zambia” means the Bank of Zambia established under the Bank of Zambia Act;                     | Interpretation                  |
| “bank” has the meaning assigned to it in the Banking and Financial Services Act;  | Act No. 43. of 1996<br>Cap. 387 |
| “beneficiary bank” means a bank that receives funds as a result of a payment instruction or order;  |                                 |
| “cheque” means a bill of exchange drawn on a banker payable on demand or at a fixed or determinable future time;  |                                 |
| “chief executive officer” and “chief financial officer” shall have the meaning assigned to them in the Banking and Financial Services Act;                            |                                 |
| “clearing” means the receipt, exchange, and distribution of payment instructions, and “clear” shall be construed accordingly;   | Cap. 387                        |

“ clearing and settlement system ” means a system or arrangement to clear or settle payment obligations or instructions in which —

- (a) there are at least three participants, one of which is a bank;
- (b) clearing or settlement is all or partly in Zambian Kwacha;
- (c) the payment obligations that arise from clearing within the system or arrangement are ultimately settled through adjustments to the account of one or more participants at the Bank of Zambia or other settlement agent;

“ clearing house ” means a corporation, association, partnership or agency that provides clearing or settlement services for a designated payment system but does not include a stock exchange;

“ clearing house rules ” means the common rules or standardised arrangements issued by a clearing house for a payment system that has been approved by the Bank of Zambia under this Act;

“ collateral ” means an asset or third party commitment that is delivered by the participant and accepted by the clearing house to secure a settlement obligation;

“ designate ” means to appoint, assign or recognise a payment, clearing or settlement system, payment system business or participant;

“ designated payment system ” means a payment system designated by the Bank of Zambia under section five;

“ document ” includes a record generated by, or stored in, an electronic medium;

“ electronic medium ” means any digital storage system that preserves records exclusively in a non-rewritable format, verifies the quality and accuracy of the recording process, serialises the units of storage media, creates a time date record whenever information is placed on the storage media and permits the immediate downloading of electronic data stored to any other media, including magnetic media, optical media, electronic media or any other such technology;

“ electronic transmission ” means the transfer of electronic data through guided or unguided electro - magnetic energy or other source from one electronic medium to another;

- “failure to settle” means the inability to settle a settlement obligation by a participant by the minute in the hour and date stipulated in settlement arrangements;
- “failure to settle arrangements” means measures agreed by the participants and approved by the Bank of Zambia to manage a failure to settle;
- “finality of payment” means the irrevocable and unconditional crediting of funds to the account of a payee;
- “finality of settlement” means the irrevocable and unconditional discharge of settlement obligations between participants;
- “financial institution” has the meaning assigned to it in the Banking and Financial Services Act;
- “intermediary” means any receiving bank or participant other than the paying bank or beneficiary bank;
- “irrevocable” in relation to a payment or settlement instruction, means a payment or settlement that can not be countermanded by the payer or paying bank or any other person;
- “money” means a bank note or coin issued by the Bank of Zambia in accordance with the Bank of Zambia Act;
- “netting” means the determination of net settlement obligations between two or more participants within a payment system;
- “netting agreement” means an agreement within a payment system that provides for the netting of present or future payment obligations against the present or future rights to receive payments;
- “netted balance” means an amount calculated in accordance with a netting agreement as the net debt payable by or on behalf of one party to the agreement to, or on behalf of, another party or parties to the agreement for any dealing or transaction under the agreement;
- “participant” means a member of a payment system;
- “paying bank” means a bank which receives a payment instruction;
- “payment obligation” means an indebtedness that is owed by one participant to another as a result of the clearing of payment instructions;

Cap. 387

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- “ payment order ” means an unconditional instruction, in any form, to a participant to place at the disposal of a beneficiary a fixed or determinable amount of money;
  - “ payment instruction ” means an instruction to transfer funds or make a payment;
  - “ payment system ” means a clearing and settlement system operating under clearing house rules;
  - “ payment system business ” means the business of providing money transfer or transmission services or any other business that the Bank of Zambia may prescribe as a payment system business;
  - “ person ” includes a company, a partnership, an association and a group of persons acting in concert, whether or not incorporated;
  - “ purchased payment facility ” means a facility purchased by one person from another in which value is stored, including an electronic purse or store of value facility;
  - “ receiving bank ” means a bank that receives payment instructions from a paying bank or other intermediary;
  - “ settlement ” means the discharge of settlement obligations by the Bank of Zambia or other settlement agent;
  - “ settlement agent ” means the Bank of Zambia or a bank that facilitates settlement between participants within a payment system;
  - “ settlement cycle ” means the period between two moments in time, within a calendar day, or across two or more calendar days, commencing with the initiation of a new settlement cycle date and ending at the moment of the initiation of the following settlement cycle date;
  - “ settlement cycle date ” means the value date applicable to the settlement of payment obligations or settlement obligations settled or to be settled in any particular settlement cycle;
  - “ settlement obligation ” means an indebtedness by one participant to another as a result of any settlement instruction;
  - “ systemic risk ” means the risk that the failure by any participant, for whatever reason, to meet its payment or settlement obligations, or both, within a payment system, may result in any other participant being unable to meet that participant’s payment or settlement obligation, or both; and
  - “ working day ” means any day other than a Saturday, Sunday, public holiday or bank holiday.

(2) In this Act, unless the context otherwise requires, words or expressions used but defined in the Bank of Zambia Act, the Banking and Financial Services Act or the Companies Act shall have the same meaning assigned to them in those Acts.

Act No. 43 of  
1996  
Cap. 387  
Cap. 388

3. Notwithstanding any other law, this Act shall apply to any person engaged in operating or participating in a payment system or payment system business.

Application

## PART II PAYMENT SYSTEM REGULATION

4. (1) Notwithstanding any other law to the contrary, the Bank of Zambia shall be responsible for the implementation of this Act and shall exercise its powers in relation to payment systems in accordance with this Act.

Functions of  
Bank of Zambia

(2) The exercise of the functions, under this Act, by the Bank of Zambia shall be in addition to, and not in derogation of, its functions under any other law.

(3) The Governor of the Bank of Zambia may, in writing, with the approval of the Board of the Bank and subject to such conditions, qualifications and exceptions as the Board may impose—

(a) delegate to any suitably qualified officer of the Bank of Zambia any function conferred on the Bank of Zambia by this Act; or

(b) authorise any suitably qualified person to perform any duty imposed on the Bank of Zambia by this Act.

(4) The assignment of a function to a Bank of Zambia officer or any authorised person shall not prevent the Bank of Zambia from exercising that function.

5. (1) The Bank of Zambia shall regulate and oversee the operations of payment systems in order to ensure the integrity, effectiveness, efficiency, competitiveness and security of the payment systems so as to promote the stability and safety of the Zambian financial system.

Regulation,  
oversight and  
designation of  
payment  
systems

(2) The Bank of Zambia may, for the effective performance of its functions, under subsection (1), designate a particular payment system or such other payment systems as it considers necessary for purposes of this Act.

(3) Without prejudice to the generality of subsection (1) and subject to this Act, the Bank of Zambia may—

(a) regulate entry criteria of participants to a payment system;

- (b) issue and vary guidelines to be followed by participants with respect to payment orders;
- (c) prescribe rules and arrangements relating to the operation of payment systems and in particular provide for—
  - (i) netting agreements;
  - (ii) risk-sharing and risk-control mechanisms;
  - (iii) finality of settlement and finality of payment;
  - (iv) the nature of financial arrangements among participants;
  - (v) the operational systems and financial soundness of a clearing house; and
  - (vi) such other matters pertaining to systemic risk; and
- (d) give such directives to participants as may be necessary to ensure the integrity, effectiveness, efficiency or security of the payment system.

Requirements for designation

6. The Bank of Zambia shall prescribe the requirements to be complied with by an applicant who intends to operate a payment system that is to be designated under this Act.

Application for designation of payment system

7. (1) Any person who intends to operate a payment system shall apply to the Bank of Zambia, in the prescribed form, for designation of the system.

(2) An application made, under subsection (1), shall be accompanied by any documentation and include any information as may be prescribed by the Bank of Zambia.

(3) The Bank of Zambia shall determine an application for designation of a payment system within a period of ninety days from the date of receipt of the duly completed application.

(4) Where the Bank of Zambia is satisfied that the applicant has complied with the requirements for designation, prescribed under this Act, the Bank of Zambia shall, on the payment of a prescribed fee, register the applicant and grant a certificate of designation of the payment system.

(5) A certificate of designation issued under subsection (4) shall be valid from the date of issue and shall remain valid until the designation is revoked.

(6) The Bank of Zambia may refuse to register an applicant and grant a certificate of designation of a payment system where the applicant does not comply with the requirements for designation.

(7) The Bank of Zambia may revoke the designation of any payment system if the participants contravene any provision of this Act or fail to comply with any guideline issued, or directives given, by the Bank of Zambia.

(8) The Bank of Zambia shall, in writing, notify an applicant of the designation or revocation of the designation of the payment system and publish such designation or revocation in the *Gazette*.

(9) Any person aggrieved by the Bank of Zambia's refusal to designate a payment system or revocation of any designation of a payment system may appeal in accordance with section *forty-one*.

8. A payment system that is in operation at the coming into effect of this Act shall be deemed to be a designated payment system but the participants shall apply to the Bank of Zambia for designation within one hundred and eighty days from the date of the commencement of this Act.

Existing payment systems

9. (1) Where the Bank of Zambia determines that—

Directives by Bank of Zambia

- (a) a clearing house for a designated payment system is engaging in or is about to engage in any act, omission or course of conduct; or
- (b) a participant is engaging in or is about to engage in any act, omission or course of conduct with respect to its participation in a designated payment system; or
- (c) the designated payment system is operating or is about to operate in a way;

that results or is likely to result in systemic risk being inadequately controlled or a course of conduct which does not provide efficiency or competitiveness, the Bank may issue a directive, in writing, to the clearing house or participant as the case may be, within such time as the Bank considers necessary to—

- (i) cease or refrain from engaging in the act, omission or course of conduct;
- (ii) perform such acts as are necessary to remedy the situation; and
- (iii) provide the Bank with any information or documents it may require.

(2) Where the Bank of Zambia considers that —

- (a) systemic risk is being inadequately controlled or a course of conduct does not provide efficiency or competitiveness; or

- (b) the clearing house fails or the participants fail to comply with a directive that has been issued under subsection (1); or
- (c) the designated payment system does not have a clearing house located in Zambia; or
- (d) systemic risk is being inadequately controlled due to an act, omission or course of conduct by a participant with respect to its participation in the designated payment system;

the Bank of Zambia may issue a directive in writing, to the clearing house or the participants requiring them, within ninety days, to undertake the actions specified under subsection (3).

(3) The clearing house participants who are issued with a directive under subsection (2) shall—

- (a) cease or refrain from engaging in the stated acts, omissions or courses of conduct with respect to their participation in the designated payment system;
- (b) perform such acts with respect to their participation as the Bank of Zambia considers necessary to remedy the situation; or
- (c) provide the Bank of Zambia with such information and documents as the Bank of Zambia may require.

**10. The Bank of Zambia may participate in a payment system under this Act.**

Participation of  
Bank of Zambia  
in payment  
systems

Regulation and  
oversight of  
payment  
system  
business

Designation of  
payment  
system  
business

### PART III

#### PAYMENT SYSTEM BUSINESS

**11. The Bank of Zambia shall regulate and oversee the operations of payment system business in order to ensure the integrity, effectiveness, efficiency, competitiveness and security of the payment system so as to promote the stability and safety of the Zambian financial system.**

**12. (1) A person intending to conduct or offer to conduct any payment system business shall apply for designation by the Bank of Zambia.**

**(2) Any person conducting an existing payment system business at the coming into effect of this Act shall apply to the Bank of Zambia for designation within one hundred and eighty, days of the commencement of this Act.**

(3) The Bank of Zambia shall prescribe the requirement to be complied with by an applicant for designation of a payment system business under this Act.

(4) The Bank of Zambia shall, if it is satisfied that the applicant has complied with the requirements, prescribed under this section, designate the payment system business and grant a certificate to the applicant in respect of the designation.

(5) The provisions relating to validity of a certificate, refusal to register, revocation of a designation, notification and publication in the *Gazette*, as specified under section *seven*, shall apply, with the necessary modifications, to a payment system business.

(6) Any person aggrieved by the Bank of Zambia's refusal to designate a payment system business or revocation of any designation of a payment system business may appeal in accordance with section *forty*.

(7) Any person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

13. (1) Subject to subsection (2), a person shall not conduct or offer to conduct payment system business as an intermediary unless that person is —

Restriction on  
payment  
system business

- (a) a participant;
- (b) designated as a payment system business under section *twelve*; or
- (c) exempted by the Bank of Zambia under this Act.

(2) Subsection (1) may not be construed as prohibiting the acceptance of money or payment instructions—

- (a) by any person acting as the duly appointed agent of the person to whom the payment is due;
- (b) by a holding company from its subsidiary or by a subsidiary from its holding company or by one subsidiary from another subsidiary of the same holding company; or
- (c) for purposes of effecting a money lending transaction by an agent.

## PART IV

### PRESENTMENT AND ELECTRONIC TRANSMISSION OF CHEQUES

Presentment of  
cheque for  
payment

**14.** Notwithstanding the Bills of Exchange Act, 1882, where a banker on whom a cheque is drawn has, by notice published in the *Gazette*, specified an address at which cheques drawn on the banker may be presented, the cheque is presented at the proper place if it is presented at such *gazetted* place.

Alternative  
means of  
presentment of  
cheques

**15.** (1) Subject to subsection (3), a banker may present a cheque for payment to a banker, on whom it is drawn, by electronically transmitting its essential features or by transmitting it by other means instead of presenting the cheque itself.

(2) Where a cheque is presented for payment, under subsection (1), physical presentment of the cheque at the premises of the drawee's bank or at a reasonable hour of a working day is not necessary.

(3) Notwithstanding subsection (1), the banker who presented the cheque and the banker on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.

(4) Where, before the close of the working day or the next working day following presentment of a cheque under subsection (1), the banker on whom the cheque is drawn requests the banker by whom the cheque was presented to present the cheque itself, the presentment under this section shall not apply and the subsequent presentment of the cheque shall be subject to the Bills of Exchange Act, 1882.

(5) A request under subsection (4) for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.

(6) For the purpose of this section, subsection (4) of section *fifty-two* of the Bills of Exchange Act, 1882 shall not apply.

(7) The Bank of Zambia may prescribe the essential features of a cheque.

Admissibility of  
payment order

**16.** In the event of court 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 the court proceedings, shall be admissible as evidence.

**PART V**  
**SETTLEMENTS**

- |   |   |
|---|---|
| <p><b>17.</b> (1) Notwithstanding anything in any other law—</p> <ul style="list-style-type: none"> <li>(a) the clearing house rules of a designated payment system are valid and binding on the clearing house, the participants and the Bank of Zambia and any action may be taken or payment made in accordance with the clearing house rules; and</li> <li>(b) the obligation of a participant or a clearing house to make payment to a participant and the right of a participant or clearing house to receive payment from a participant or clearing house shall be netted and a net settlement or close-out amount shall be determined in accordance with the clearing house rules, if they so provide.</li> </ul> <p>(2) The Bank of Zambia shall approve all clearing house rules.</p> | Validity of<br>clearing house<br>rules, etc                     |
| <p><b>18.</b> (1) A participant shall operate with adequate collateral as provided in the rules and procedures of that payment system.</p> <p>(2) A participant who operates with inadequate collateral, contrary to subsection (1), shall be liable to a penalty not exceeding fifty thousand penalty units for every day that participant operates without collateral.</p>  | Collateral  |
| <p><b>19.</b> The Bank of Zambia may suspend any participant that operates with inadequate collateral for such period and on such terms as may be determined under guidelines issued by the Bank of Zambia.</p>   | Suspension of<br>participant due<br>to inadequate<br>collateral |
| <p><b>20.</b> (1) The discharge of settlement obligations between participants shall be effected in money or by means of entries passed on books of the Bank of Zambia or any other settlement agent.</p> <p>(2) A settlement that has been effected in terms of subsection (1) above shall be final and irrevocable and shall not be the subject of any provision or order that operates as a stay to the finality of the settlement.</p>  | Discharge of<br>settlement<br>obligations                       |
| <p><b>21.</b> Every designated payment system shall have failure to settle arrangements which shall be approved by the Bank of Zambia.</p>  | Failure to settle<br>arrangements                               |
| <p><b>22.</b> Notwithstanding that all or part of the administration or operation of a designated payment system is conducted outside Zambia or that its settlement rules are governed by the laws of</p>   | Application of<br>Zambian law in<br>certain<br>proceedings      |

a foreign jurisdiction, where in any judicial proceedings in Zambia a court determines that the rights and obligations of any person arising out of, or in connection with, the administration or operation of the designated payment system are governed in whole or in part by Zambian law, the Zambian law shall apply in determining those rights and obligations.

**Winding-up of participants by court**

**23.** (1) Notwithstanding any other law, where a participant is wound up by a court of competent jurisdiction a copy of the winding-up order, which shall record the date and the minute in the hour that the order is passed, shall be lodged with the Bank of Zambia and served on any other settlement agent required to be notified.

(2) Notwithstanding any other law, a winding-up order shall take effect from the minute in the hour and date that it is made against the participant concerned and such order shall not affect any finality of settlement at the end of the settlement cycle.

**Winding-up of participants by Bank of Zambia Cap. 387**

**24.** (1) Notwithstanding any other law, where a participant is wound up by the Bank of Zambia under the Banking and Financial Services Act, the winding up order shall state the minute in the hour and date on which the resolution is passed and the Bank of Zambia shall serve the order on the participant concerned and notify any other settlement agent required to be notified.

(2) Notwithstanding any other law, a resolution shall take effect from the minute in the hour and date that the winding up order is made against the participant concerned and such resolution shall not affect any finality of settlement at the end of the settlement cycle.

## PART VI

### GENERAL AND ENFORCEMENT PROVISIONS

**Netting agreements**

**25.** (1) This section shall apply to participants notwithstanding any other law to the contrary.

(2) Where a participant is wound up, placed under receivership or a curator is appointed, any provision contained in a written netting agreement to which the participant is a party or any netting rules applicable to that participant shall be binding upon the liquidator, receiver or curator, as the case may be, in respect of any payment or settlement obligation—

(a) which has been determined through netting prior to the issue of the winding-up or receivership order or the appointment of the curator; and

- (b) which is to be discharged on or after the date and minute in the hour of the winding-up or receivership order or the appointment of the curator, the discharge of which was overdue on the date and minute in the hour of the winding-up or receivership order or the appointment of the curator.
- 26.** (1) Notwithstanding anything to the contrary contained in the Banking and Financial Services Act, Companies Act, Bankruptcy Act, Preferential Claims in Bankruptcy Act or any other law, any asset of a participant provided as collateral for settlement obligations prior to the issue of any order for that participant's winding-up may be utilised by the Bank of Zambia—
- (a) to the extent required for the discharge of such settlement obligations;
  - (b) as collateral for the discharge of its settlement obligations in terms of a written agreement with any clearing house; or
  - (c) in accordance with the Banking and Financial Services Act.
- 27.** (1) A participant and a clearing house shall submit such returns relating to the operation of the payment system, as may be prescribed by the Bank of Zambia.
- (2) Any person who fails to comply with subsection (1) commits an offence.
- 28.** (1) A participant and a clearing house shall maintain a record of all documentation obtained or generated in the operation and administration of its payment system or the management or operation of a clearing house, as the case maybe, for a period of six years from the date of issue of each particular document.
- (2) The retention of any document under subsection (1) may be effected by electronic medium.
- 29.** (1) The Bank of Zambia shall have access to information relating to any payment system and may request, in writing, that information be furnished by a participant or clearing house within fourteen days from the date of request.
- (2) Any person who fails to comply with a request made under subsection (1) commits an offence.
- (3) The information obtained under subsection (1) shall be confidential and may not be disclosed by any director or officer of the Bank of Zambia unless such disclosure is necessary, in the public interest, to protect the integrity, effectiveness, efficiency or security of a payment system or promote the safety and stability of the Zambian financial system, or is by law required.

Utilisation of collateral

Cap.387,  
Cap.388,  
Cap. 83,  
Cap. 82.

Returns

Retention of records

Access to information and confidentiality

Documents	<p><b>30.</b> Any document required by the Bank of Zambia from a participant or a clearing house shall—</p> <ul style="list-style-type: none"> <li>(a) in the case of a document prepared by the participant or clearing house which has no prescribed form, be signed by the chief executive officer and the chief financial officer of the participant or clearing house or any other authorised person; and</li> <li>(b) in the case of a document prepared by the participant or clearing house in the prescribed form, be signed by the person holding the office or offices as required by the text of the prescribed form.</li> </ul>
False documents	<p><b>31.</b> Any person who issues or takes part in the issue of a document which is false in any material particular, and every other person who signed it or took part in its issue, knowing or reasonably believing it to be false, commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.</p>
Misleading names	<p><b>32.</b> (1) A person, other than a participant, shall not use a name or any language or any words or symbol indicating the designation of the payment system in that persons' name or in any prospectus, advertisement or statement or any document that is published or that describes its business in Zambia.</p> <p>(2) Any person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.</p>
Dishonoured cheques	<p><b>33.</b> (1) Any person who wilfully, dishonestly or with intent to defraud issues a cheque on an insufficiently funded account or causes to be issued a cheque to be drawn on that account and which cheque when it is presented for payment is dishonoured, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.</p> <p>(2) A participant in the payment system shall report to the Bank of Zambia immediately a cheque is dishonoured, arising from being issued dishonestly or with intent to defraud.</p> <p>(3) A participant in the payment system shall compile lists of dishonoured cheques with their details and forward them to the Bank of Zambia every quarter.</p> <p>(4) Where an offence under this section is committed by a corporation, every director or senior officer involved in the management of the corporation shall, on conviction, be liable as</p>

if such director or officer had personally committed the offence, unless the director or person proves to the satisfaction of the court that the act constituting the offence under this section, was done without the knowledge , consent or connivance of that director or officer or that the director or officer took sufficient steps to prevent the commission of the offence.

(5) For the purposes of subsection (1),

“insufficiently funded account” means an account which has inadequate funds to meet the value of the cheque presented or which has no money at all; and  
“ intent to defraud ” has the meaning assigned to it by section *three hundred and forty-five* of the Penal Code.

34. The Bank of Zambia may, by its officers or agents duly authorised in writing—

- (a) enter and search the premises of a person that the Bank of Zambia has reason to believe is providing or carrying on a payment system or clearing house contrary to this Act; and
- (b) inspect any books, accounts and records of that person and take copies of, or make extracts from, them.

35. (1) Any person who breaches any provision of this Act, for which no specific offence has been created, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(2) Where an offence under this Act is committed by a participant or clearing house and is proved to have been committed with the consent and connivance of any director or officer of the participant or clearing that director or officer shall be deemed to have committed the offence.

36. A transaction entered into in contravention of this Act is not void or ineffective by reason only of the contravention and shall not be avoidable at the instance of participant or clearing house.

37. Any act, matter or thing done by any director, officer or person authorised by the Bank of Zambia in the exercise or performance, in good faith, of any power or function under this Act shall not give rise to any action, claim, liability, suit or demand against the director, officer or person concerned.

38. The Bank of Zambia may, on such terms and conditions as may be prescribed, exempt any class of participants from any provision of this Act and may provide for a variation or

Cap. 87

Investigations

General offence,  
penalty and  
offences

Validity of  
certain acts by  
participants

Immunity of  
Bank of Zambia  
officials

Exemptions

Disputes  
between  
participants

Cap. 40

Decisions of  
Bank of  
Zambia

Appeals and  
Appeals  
Tribunal

revocation of that exemption, by notice published in the *Gazette*, to the affected class of participants.

**39.** (1) Where any dispute arises between participants, the participants shall in the first instance attempt to settle the dispute by mutual agreement within seven days of the aggrieved party notifying the other party of such grievance.

(2) Where the parties fail to settle the dispute within seven days the parties may refer the dispute to arbitration in accordance with the Arbitration Act.

**40.** (1) Where the Bank of Zambia makes any decision under this Act it shall by notice in writing—

- (a) inform the applicant or other person affected by the decision on the reasons for the decision; and
- (b) invite the applicant or person to make any written representation in relation to the decision within a time specified in the notice.

(2) The Bank of Zambia may, on receipt of any representation under paragraph (b) of subsection (1), re-affirm, revoke or vary its decision and shall notify the applicant accordingly.

(3) A decision of the Bank of Zambia shall remain in force unless set aside by a Tribunal on an appeal or by a court.

**41.** (1) If any applicant or person is aggrieved by a decision of the Bank of Zambia, made under subsection (2) of section forty, that applicant or person may, within fourteen days of receipt of the decision, notify the Minister of that applicant's or persons' wishes to appeal against the decision.

(2) The Minister shall, within thirty days of a notification under subsection (1), convene an Appeal Tribunal consisting of—

- (a) a Chairman who is an advocate of the High Court of Zambia of not less than seven years standing; and
- (b) two other persons having qualifications relevant to the kind of appeal concerned.

(3) An Appeal Tribunal constituted under this section shall—

- (a) determine its own procedure and shall not be bound by rules of evidence;
- (b) afford the appellant the right to appear in person or be represented;

- (c) determine the appeal on its merits, having regard to this Act and the public interest; and
- (d) have the power to confirm, vary or quash the decision which is the subject of appeal.

(4) A decision of an Appeals Tribunal shall be final and binding on the parties to the appeal except on a point of law.

**42.** (1) The Minister, on the recommendation of the Bank of Zambia, may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed by regulation or that is necessary or convenient to be so prescribed to give effect to this Act.

(2) Any regulation made, under subsection (1), may, for any contravention of the regulations, provide for fines not exceeding five hundred thousand penalty units and for a term of imprisonment not exceeding three years, or to both.

**43.** (1) The Bank of Zambia may prescribe rules or other regulatory guidelines or directives as the Bank of Zambia may consider necessary for the administration or better carrying out of this Act.

(2) Any guidelines or directives issued by the Bank of Zambia shall be by notice in the *Gazette*.

(3) Without prejudice to the generality of subsection (1), the Bank of Zambia may in statutory rules issued under subsection (1), provide for—

- (a) the essential features of a cheque;
- (b) rules on finality of settlement;
- (c) netting agreements and rules governing such agreements;
- (d) for the conduct of different types of payment system business;
- (e) collateral to be provided by each participant;
- (f) operating procedures of a payment system;
- (g) procedures to be followed for the hearing of grievances and appeals and the making of decisions on those matters;
- (h) the fees and charges to be paid under this Act for any services rendered or to recover the costs incurred by the Bank in the administration of this Act; and
- (i) the recovery of any fee or charge levied under this Act as a debt due to the Bank.

(4) Any regulation made, under subsection (1), may, for any contravention of the regulations, provide for fines not exceeding two hundred thousand penalty units and for a term of imprisonment not exceeding three years, or to both.

Regulations

Rules guidelines  
or directives by  
Bank of Zambia