

PAYMENT SYSTEM MANAGEMENT BILL, 2023

To consolidate and amend the laws relating to the establishment, management, administration, operation, regulation, oversight and supervision of payment, clearing and settlement systems in Namibia; and to provide for incidental matters thereto.

(Signed by the President on202..)

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY PROVISIONS

1. Definitions
2. Application of the Act

PART II GENERAL POWERS AND FUNCTIONS OF THE BANK

3. Powers of the Bank
4. Functions of the Bank
5. Co-operation with other Authorities

PART III PAYMENTS ASSOCIATION OF NAMIBIA

6. Establishment of the Association
7. Mandate of the Association
8. Membership to the Association
9. Constitution and rules of the Association

PART IV LICENSING AND AUTHORISATION

10. Prohibition to provide payment services
11. Licensing of payment service providers
12. Use of Agents
13. Liability of Third Parties
14. Authorisation of payment system operators
15. Rules of a payment system

PART V

PAYMENT, CLEARING AND SETTLEMENT PROVISIONS

[Payment provisions]

16. Clearing provisions
17. Settlement provisions
18. Recognition of eligible collateral arrangements
19. Netting agreements and netting rules
20. Tiered participation arrangements
21. Interoperability and efficiency

PART VI

ISSUANCE OF ELECTRONIC MONEY AND OPERATIONS OF TRUST ACCOUNT

22. Eligibility to issue electronic money
23. Opening of trust account
24. Separation of trust account from assets of electronic money issuer
25. Control of operation of trust accounts

PART VII

DESIGNATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS

26. Powers to designate
27. Variation and revocation of designation
28. Exemptions

PART VIII

CONSUMER PROTECTION

29. Principles of consumer protection
30. Transparency of fees and charges
31. Determining standards for fees and charges
32. Complaints
33. Sharing of Data

PART IV

POWERS TO INSPECT AND ACCESS TO INFORMATION

34. Powers to inspect
35. Information

PART X

INSOLVENCY PROCEEDINGS

36. Winding up of a payment service provider
37. Utilisation of assets provided as security
38. Winding up notice

PART XI

DISPUTE RESOLUTION

39. Settlement of disputes amongst payment service providers
40. Settlement of disputes with the Bank

PART XII

ADMINISTRATIVE PENALTIES AND OFFENCES

41. Administrative penalties
42. Offence relating to instruments, devices, software, digital apparatus or material or components thereof

PART XIII

GENERAL PROVISIONS

43. Confidentiality
44. Indemnity
45. Directives by the Bank
46. Determinations by the Bank
47. Enforceability of subordinate legislation
48. Repeal of Laws
49. Transitional provisions
50. Short title and commencement

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

PART I

PRELIMINARY PROVISIONS

1. Definitions

- (1) In this Act, unless the context otherwise indicates -

“administrative penalties” means penalties imposed by the Bank of Namibia for non-compliance with the provisions of this Act or with a determination, directive or other

subordinate legislation issued by the Bank, without the intervention of a Court, subject to right of appeal as per section 39 of the Act;

“Agent” means an entity appointed by a payment service provider or system participant to perform certain payment services on its behalf;

“authorised officer” means a staff member of the Bank authorised in writing to exercise the powers conferred on such officer by sections 34;

[“Body” means the Payment System Management Body] “Association” means the Payments Association of Namibia established in terms of section [3] 6 of this Act;

“Bank” means the Bank of Namibia as referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020), and any subsequent amendments thereto;

“Bank of Namibia Act” means the Bank of Namibia Act, [1997, Act No. 2 of 1997] 2020 (Act No. 1 of 2020), and any subsequent amendments thereto;

“banking institution”, as defined in section 1 of the Banking Institutions Act, means a public company authorised under the Banking Institutions Act to conduct banking business, or deemed to be so authorised;

“Banking Institutions Act” means the Banking Institutions Act, 1998 (Act No. 2 of 1998), and any subsequent amendments thereto;

“beneficial ownership” in respect of a payment service provider or a payment system operator, means a natural person who, independently or together with a connected person, directly or indirectly, including through bearer share holdings -

(a) owns the payment service provider or payment system operator or the controlling company of such payment service provider or payment system operator; or

(b) exercises effective control of the payment service provider or payment system operator or the controlling company of such payment service provider or payment system operator.”

“Board” means the Board of the Bank referred to in section [4] 9 of the Bank of Namibia Act;

“business days” means any day of the week other than [Saturday] Sunday or public holiday referred to in or declared under, the Public Holidays Act, 1990 (Act No. 26 of 1990), and any subsequent amendments thereto;

“clear” or “clearing” means [the exchange of payment instructions between system participants with a view to reconciling and confirming payment instructions] the process of transmitting, reconciling and confirming the transfer of funds or securities prior to settlement and includes the netting of payment instructions and the establishment of final positions for settlement;

“clearing system” means a system [whereby system participants can exchange data, documents and payment instruments and instructions relating to funds or securities transfers to other system participants] with a set of rules and procedures through which

participants agree and must comply with in exchanging instructions to transfer funds or securities to other participants through a centralised system or at a single location, and may include a mechanism for establishing the final positions of participants for settlement of obligations;

“Companies Act” means the Companies Act, [1973 (Act No. 61 of 1973)] 2004 (Act No. 28 of 2004), and any subsequent amendments thereto;

[“cost-effectiveness” means the pricing of payment or another connected service in a manner that accurately reflects the cost of producing such service];

[“money”] “currency” means notes and coins issued in terms of section [20] 38 of the Bank of Namibia Act and any other currency being legal tender in Namibia;

“designation” means the process of designation of a payment, clearing or settlement system as systemically important systems to regulate and manage systemic risk so that the key functions of the system, its rules, procedures, governance structures, including the identity of owners or individuals on the board of governing committees of such payment systems, meet appropriate international standards; and review risk procedures, including disaster recovery;

“dispute resolution” means the process of solving a dispute using alternative dispute resolution mechanisms as per the High Court Act and Rules of the High Court of Namibia, as amended from time to time;

“electronic money” means monetary value as represented by a claim on its issuer, which is –

- (a) stored electronically, magnetically or digitally;
- (b) issued on receipt of funds (legal tender) of an amount equivalent to the monetary value issued;
- (c) accepted as a means of payment by persons other than the issuer; and
- (d) redeemable upon demand for cash in Namibia dollar;

“electronic money issuer” means a payment service provider authorised under this Act to issue electronic money;

"fees or charges" means costs payable by a user of payment services or **[other]** another connected service;

“Financial Intelligence Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and any subsequent amendments thereto;

“Financial Market Infrastructure” means a multilateral system among participating institutions, including the operator of the system, used for purposes of clearing, settlement, or recording payments, securities, derivatives, or other financial transactions;

“Government Gazette” means the official publication of the Government of the Republic of Namibia;

“High Court” means the High Court of Namibia constituted by Article 80(1) of the Namibian Constitution and referred to in the High Court of Namibia Act, 1990 (Act 16 of 1990), and any subsequent amendments thereto;

“holding company” means a holding company contemplated in section 1(4) of the Companies Act, 2004, and any subsequent amendments thereto;

“Insolvency Act” means the Insolvency Act, 1936 (Act No. 24 of 1936), and any subsequent amendments thereto;

“interoperability” means the ability of different payment systems, networks, applications and other infrastructure of participants or persons to connect or interface;

“Minister” means the Minister responsible for finance;

“national payment system” means the **[payment system as a whole, and includes any payment system, settlement system, clearing system, and payment system arrangement used in the process of effecting payment between payers and beneficiaries]** entire payments ecosystem and includes all the payment systems, clearing systems, settlement systems and the rules, standards, arrangements, procedures, laws, agreements, technologies, payment instruments and institutions that are used in the processing and transferring of funds and securities;

“netting” means the determination of the net payment obligations between two or more participants within a payment clearing house or the determination of the net settlement obligations between two or more participants within the payment system;

“non-bank financial institutions” means institutions other than licensed or registered banking institutions that offer payment services;

“payment clearing house” means an arrangement between two or more system participants governing the clearing of payment instructions between those system participants;

“payment instruction” means an **[instruction by a payer to]** order to make payment or transfer funds;

“payment instrument” means **[an instrument or a process enabling a payer to issue a payment instruction]** any device, procedure or a process by which a payment instruction is issued for the purpose of obtaining money, making payments or transferring funds;

“payment intermediation” means the act of holding onto funds when providing payment services or facilitating payment instructions;

“payment obligation” means an indebtedness that is owed by one system participant to another system participant as a result of the clearing of one or more payment instructions in a payment system;

“payment services” means services relating to the facilitation of payment instructions, the issuance and acquiring of payment instruments or electronic money and any other services incidental to executing payments or transferring of funds, as specified under the Second Schedule of this Act;

“payment service provider” means a person, **[registered as contemplated in section 3(6)(a)]** including a banking institution, authorised under this Act to provide payment services as specified under the Second Schedule of this Act;

“payment system operator” means a person authorised under this Act to operate an authorised systemically important payment system including clearing systems, settlement systems or central securities depositories;

“payment system” **[means a system that enables payments to be effected between a payer and a beneficiary]** includes a clearing system, settlement system or central securities depositories and means an authorised system that enables the payment and transfer of funds or value, and includes the rules, procedures, standards, technologies, instructions, institutions, participants, infrastructure and persons related to that system.

“payment system arrangement” means **[procedures and services for the processing of payment transactions]** rules and procedures for the processing of payment instructions;

“person” means a natural or juristic person;

“settlement” means the **[payment or discharge of outstanding obligation that a system participant owes to another system participant]** act of discharging obligations in respect of funds transfer from one system participant to another system participant in the settlement system;

“settlement account” means a settlement account at the Bank;

“settlement instruction” means an instruction given to the settlement system by or on behalf of a system participant to effect the settlement of a payment obligation or to discharge any other obligation of one system participant to another system participant;

“settlement obligation” means the amount due to be settled as a result of payments, securities or other financial instruments;

“settlement system” means a system established and operated by the Bank or any other authorised payment system operator to facilitate the transfer of funds for the discharge of payment and settlement obligations between system participants;

“subordinate legislation” means any determination, directive, guideline, standard, circular, specification, order or notice issued under any provision of this Act by the Bank;

“subsidiary” means a subsidiary company as defined in section 1(3) of the Companies Act, and includes a subsidiary company of a subsidiary;

“systemic risk” means the risk that failure of one or more system participants, for whatever reason, to meet their payment obligations, including the payment obligations of clearing system participants, or their settlement obligations may result in any or all of the other settlement system participants being unable to meet their respective payment or settlement obligations;

“system participant” means **[a person authorised by the Bank under section 4(1)(b) to participate in the clearing and settlement systems]** a member of a payment system that is

authorised and recognised in the rules of that payment system or is otherwise recognised by the operator of that payment system;

“this Act” includes [**determinations made under section 14**] any determination, directive or other subordinate legislation made or issued under any provision of this Act;

“tiered participation arrangements” means arrangements whereby a system participant who is authorised as an indirect participant in either the clearing or settlement systems relies on the services provided by another system participant who is authorised as a direct participant in clearing or settlement to either clear or settle on their behalf;

“trust account” means a trust banking account referred to in sections 23, 24 and 25 of this Act;”;

“user” means [**a system participant or a service provider, and includes a customer or client of the system participant or service provider**] any person that uses a payment service in their capacity as a payer or a payee or both; and

“virtual assets” means any digital representation of value (whether called a digital payment token or by any other name) that can be digitally stored, traded, or transferred, and can be used for payment or investment purposes and satisfies such other characteristics as specified by the Bank.

2. Application of the Act

- (1) This Act applies to the national payment system of Namibia.
- (2) This Act applies to payment service providers, operators of payment systems, users and any other stakeholders involved in the issuance of payment services as set out under the Second Schedule of this Act.
- (3) The Bank may by notice in the Government Gazette amend, either by addition or deletion, the list of persons to whom the Act applies, as specified under subsection (2).

PART II

GENERAL POWERS AND FUNCTIONS OF THE BANK

3. Powers [and functions] of the Bank

- (1) [**The Bank may exercise the powers and must perform the functions conferred**] The Bank must exercise the powers conferred and imposed on it by this Act, the Bank of Namibia Act and any other law to ensure the safe, secure, efficient and [cost-] effective operation of the national payment system, and accessibility thereof to the public.
- (2) The Bank must ensure fair, open and equitable access to the national payment system.

4. Functions of the Bank

- (1) The Bank must **[oversee, inspect and monitor]** regulate, supervise and oversee the operations of the national payment system [the operation of the Body, system participants and service providers] and all matters relating to payment, clearing and settlement services and systems.
- (2) For purposes of subsection (1) the functions of the Bank are –
- (a) to promote the safety, security, efficiency and accessibility of the national payment system;
 - (b) to regulate, supervise and oversee payment service providers, payment services and payment system operators. In fulfilling this function, the Bank has the power to authorise a payment service provider or a payment system operator and cancel any such authorisation conferred upon such payment service provider or payment system operator in accordance with this Act ;
 - (c) to establish and operate any payment or settlement system[, and to authorise persons to participate in the clearing and settlement systems and to withdraw such autohrisation; and];
 - (d) to authorise and oversee the operations of the Association [Body] by issuing to the [Body] Association a certificate of commencement of business, after having satisfied itself with the [Body's] Association's constitution, rules, [competence] and readiness to [manage the payment system] report on matters relating to the operations of the national payment system;
 - (e) to authorise payment instruments and payment systems as financial market infrastructures in the interest of the national payment system and the public, and to withdraw such authorisation, in accordance with this Act;
 - (f) to authorise payment systems and approve the rules, membership criteria, arrangements, agreements, technical specifications, procedures and standards relating to the operations of payment systems;
 - (g) to issue any determination, directive or other subordinate legislation to govern the operations of the national payment system;
 - (h) to set standards and conditions for payment services, payment instructions and related fees and charges;
 - (i) to conduct payment systems related policy research and advice on financial stability and macro-prudential related matters;
 - (j) to investigate and deal with unlawful and improper practices in the national payment system and impose administrative penalties for non-compliance with the Act and any subordinate legislation made in terms of this Act; and
 - (k) to perform all such acts that are necessary to implement its powers.

- (3) The Board, in writing, may delegate any power or assign any function conferred or imposed on the Bank by or under this Act to the Governor, the Deputy Governors or any officer of the Bank, subject to such conditions as the Board may determine.

[(4) The Bank is not divested or relieved of a power or function delegated or assigned under subsection (3).]

- (4) The Board may withdraw a power or function delegated or assigned under subsection (3) at any time.

5. Co-operation with other authorities

- (1) The Bank may -

- (a) co-operate with local or foreign authorities to ensure effective oversight and supervision of the national payment system and any component thereof.
- (b) collaborate with foreign authorities to adopt measures to integrate the domestic national payment system with cross border payment systems in the promotion of regional and international integration of payment systems.
- (c) co-operate with other relevant authorities, both local and foreign and as may be appropriate, in promoting the safety and efficiency of financial market infrastructures.
- (2) The Bank may enter into a memorandum of understanding with the authorities specified in subsection (1).

PART III

PAYMENTS ASSOCIATION OF NAMIBIA

6. Establishment of the Association

- (1) The Bank **[and banking institutions must cause to be established by a constitution a juristic person to be known as the Payment System Management Body with the object of managing the national payment system, and organizing, setting technical standards, regulation the participation of its members in the national payment system and all matters affecting payment obligations and the clearing and netting of payment obligations]** must by constitution establish a juristic person to be recognised as the Payments Association of Namibia.
- (2) The Association may not –
- (a) commence with its business operations before it is issued with the certificate referred to under section 4(2)(d);

- (b) effect any amendment to its constitution or rules before such amendment is approved by the Bank; and
- (c) dissolve without the approval of the Bank.

7. Mandate of the Association

- (1) The mandate of the Association is to –
 - (a) report to the Bank on matters affecting the national payment system;
 - (b) act as a collaborative platform;
 - (c) set standards for member participation in payment systems and forums, that will be subject to the Bank's approval; and
 - (d) participate in relevant regional and international initiatives and platforms in the promotion of regional and international integration of payment systems.
- (2) Pursuant to subsection 7(1), the Association must ensure that the standards, criteria and conditions determined by it promote –
 - (a) efficiency, transparency, interoperability, effectiveness and safety of the national payment system;
 - (b) co-operation amongst members and facilitate collaborative efforts by its members;
 - (c) fair access by its members to payment system services; and
 - (d) competition in the provision of payment system services, in line with the applicable domestic competition laws.

8. Membership to the Association

- (1) **[Subject to subsection (3),]** Membership to **[for]** the Association **[Body]** is compulsory for –

[the Bank and every banking institution]
 - (a) payment service providers; and
 - (b) other relevant stakeholders as may be determined by the Association,

part-taking in payment services as per the Second Schedule to this Act.
- (2) Membership to the Association may be extended to such other third parties as may be deemed necessary by the Association in consultation with the Bank.

- (3) A system participant in a clearing or settlement system will automatically become a member of the Association.
- (4) The Association must appoint an independent non-executive chairperson and at least two independent non-executive directors with the relevant expertise pertaining to payment systems, as well as various disciplines, as may be determined in the Association's constitution.
- (5) Members of the Association must at all times act in the interest of the national payment system and must further exercise the necessary care, skill and diligence in handling the affairs of the national payment system, as may be determined by the Association from time-to-time and approved by the Bank if need be.
- (6) All members of the Association are liable for annual subscription fees to the Association as may be determined by the Association, subject to approval by the Bank.
- (7) The appointment, removal, duration and duties of the members, as well as the funding model for the operations of the Association, must be stipulated in the Association's constitution and such other governance documents, as may be determined by the Association in consultation with the Bank.

9. Constitution and rules of the Association

- (1) The **[Body]** Association **[shall]** must have a constitution that stipulates its governance and operational arrangements, which **[shall be]** is subject to approval by the Bank.
- (2) The constitution and rules of the **[Body which may]** Association must not be inconsistent with this Act, the Bank of Namibia Act **[and]**, the Banking Institutions Act and any other applicable law. **[must be fair, equitable, transparent and must among others]**
- (3) The constitution and rules of the Association must be fair, equitable and transparent.

[, and must, among others –

- (a) **provide for the terms and conditions for admission as a member of the Body that must be complied with before admission is granted, and the circumstances under which such membership may be suspended or terminated;**
- provide for the terms and conditions for the establishment of any committee or forum of the Body to deal with various**
- (b) **[register a person who is not a syste aspects of the national payment system;**
- (c) **enable the Bank, when discharging its responsibilities regarding the monitoring, regulation, and supervision of payment, clearing and settlement**

systems, to adequately oversee the affairs and operation of the Body and its members.]

m participant as a payment service provider, and authorise such person to provide payment system services if that person meets the requirements and conditions set out in the Body's criteria and rules;

cancel the registration of a payment service provider if the payment service provider contravenes or fails to comply with any term or condition of its registration;

determine and administer operational and technical policies; operational and technical criteria, conditions and standards; payment instrument standards; electronic notification and message standards; and format for electronic files pertaining to the national payment system;

The Body must ensure that the standards, criteria, and conditions determined by it under section subsection [4(a)] 1(d) have the effect of encouraging appropriate payment system co-operation and competition in the provision of payment system services, ensuring fair access by [system] participants to payment system services, and facilitating oversight of the national payment system by the Bank

- (d) act as a forum for the consideration of matters of mutual interest concerning its members, and deal with and promote any other matter of interest to its members and foster co-operation between them;
- (e) perform such further functions relating to the payment, clearing or settlement systems, as the Bank may assign to it.]

PART IV

LICENSING AND AUTHORISATION

10. Prohibition to provide payment services

- (1) A person must not provide any type of payment services or operate a payment system unless such a person is authorised by the Bank in accordance with this Act.
- (2) Subsection (1) will not apply to –
 - (a) a payment system operated by the Bank; or
 - (b) a payment service offered by the Bank; or
 - (c) a payment instrument issued by the Bank.

- (3) A person that contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

11. Licensing of payment service providers

- (1) A person that wishes to offer any of the payment services stated in the Second Schedule of this Act must apply to the Bank for authorisation and specify the type of payment services they intend to offer.
- (2) An application for authorisation referred to in subsection (1), must be made in accordance with a determination, directive or other subordinate legislation issued by the Bank and must be accompanied by the prescribed non-refundable fee.
- (3) An application for authorisation referred to in subsection (1), must further include the submission of information related to the beneficial ownership of the applicant as detailed in the Financial Intelligence Centre's Industry Guidance Note No. 1 of 2015 on Identification and Verification of Beneficial Ownership Information, as may be amended from time-to-time, and such other subordinate legislation as the Bank may issue in respect of beneficial ownership.
- (4) In issuing authorisation, the Bank must specify the type of payment services such person is authorised to issue and further stipulate the terms and conditions accompanying such authorisation.
- (5) The Bank may suspend, revoke or vary the conditions of an authorisation granted to a person to provide payment services under this Act.
- (6) The Bank may prescribe the operational requirements, reporting and disclosure conditions, permissible activities and other oversight and supervisory requirements as may be determined by the Bank in respect of the provision of payment services.
- (7) The Bank may amend the Second Schedule either by adding or deleting the types of payment services permissible within the national payment system. Any amendments to the Second Schedule must be done in consultation with affected persons.
- (8) Any amendments effected to the Second Schedule must be published by notice in the Government Gazette to give effect to the particular payment service and distributed to affected persons.
- (9) A person who knowingly or recklessly furnishes a document or information which is false or misleading in connection with an application for authorisation or a license, commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

12. Use of agents

- (1) A payment service provider may appoint an agent to undertake services on its behalf by entering into an agency agreement.

- (2) The agency agreement must provide for –
 - (a) non-exclusive use of an agent;
 - (b) compliance with anti-money laundering and combating financing of terrorism laws;
 - (c) consumer protection mechanisms; and
 - (d) any other requirement that the Bank prescribes.
- (3) A payment service provider will be liable to its users for the acts and omissions of its agents, performed within the scope of the agency agreement.
- (4) A payment service provider must publish on its website an updated list of its agents and provide the Bank with an updated list of agents on a quarterly basis.
- (5) A payment service provider must comply with such guidelines as may be issued by the Bank.

13. Liability of Third Parties

- (1) Where a payment system operator or a payment service provider relies on third parties for the performance of operational functions, it must take steps to ensure that this Act is complied with.
- (2) A payment system operator or a payment service provider will be liable for any acts of its employees, or any agent, branch or entity from which activities are outsourced.

14. Authorisation of Payment System Operators

- (1) A person must not operate a payment system, without authorisation from the Bank.
- (2) An application for authorisation as a payment system operator referred to in subsection (1) must be made in accordance with a determination, directive or other subordinate legislation issued by the Bank and must be accompanied by the prescribed non-refundable fee.
- (3) An application for authorisation referred to in subsection (1), must further include the submission of information related to the beneficial ownership of the applicant as detailed in the Financial Intelligence Centre's Industry Guidance Note No. 1 of 2015 on Identification and Verification of Beneficial Ownership Information, as may be amended from time-to-time, and such other subordinate legislation as the Bank may issue in respect of beneficial ownership.
- (4) In issuing the authorisation, the Bank must specify the terms and conditions which a payment system operator must comply with.
- (5) The Bank may suspend, revoke or vary the conditions of an authorisation granted to a payment system operator under this Act.

- (6) The Bank may prescribe the operational requirements, reporting and disclosure conditions, permissible activities and other oversight and supervisory requirements as may be determined by the Bank in respect of the authorised payment system operator and its participants.
- (7) A person who knowingly or recklessly furnishes a document or information which is false or misleading in connection with an application for authorisation, commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

15. Rules of a payment system

- (1) A payment system operator must have written rules to govern the payment system, which rules should provide for –
- (a) the governance, management and operations of the payment system;
 - (b) the access criteria and conditions for suspension, exclusion or termination of system participants;
 - (c) rules on the management of payment systems related risks;
 - (d) rules determining when a payment instruction is final and irrevocable;
 - (e) common rules and standards for the execution, clearing and settlement of payment instructions;
 - (f) risk management and business continuity procedures;
 - (g) fees, charges and penalties payable by system participants; and
 - (h) rights and obligations of the system participants.
- (2) The Bank may prescribe other matters that may be specified in the rules of a payment system.
- (3) Any rules made under subsection (1) are subject to the approval of the Bank and must comply with the requirements of this Act and any subordinate legislation issued by the Bank.
- (4) The Bank may vary or revoke any rules made by a payment system operator under subsection (1) where it considers it appropriate to do so having regard to the public interest, the interest of the system participants and any other matter the Bank considers relevant.
- (5) The rules on access to a payment system, including clearing systems and settlement systems must be objective, fair, effective.

PART V**PAYMENT, CLEARING AND SETTLEMENT PROVISIONS****[5. Payment provisions**

- (1) A person may not issue a payment instrument unless such –**
 - (a) instrument is registered with the Bank upon application made to it by such person in writing;**
 - (b) person is a system; or**
 - (c) person is exempted by the Minister under subsection (2) or is one of a category of persons so exempted.**
- (2) The Minister, after consultation with the Bank, by notice in the *Gazette* may exempt any person or category of persons from the provisions of subsection (1), if the Minister is satisfied that such exemption is in the public interest and will not cause undue risk to the national payment system.**
- (3) A person who is not a system participant may not provide any of the payment services unless such person-**
 - (a) is registered as a service provider; or**
 - (b) is authorised by the Bank under subsection (4)**
- (4) The Bank, after consultation with the Body, and upon such conditions as it may determine, may authorise a person referred to in subsection (3) to provide any of the payment system services without being registered with the Body as service provider.**
- (5) A person who contravenes subsection (1) or (3) commits an offence.]**

[7.Payment intermediation provisions

- (1)[A person may not accept money or payment instructions, as a regular feature of such person's business, from any other person for purposes of making payment on behalf of that other person to a third person to whom that payment is due, unless the person so accepting money or payment instructions**
 - (a) is a system participant or its agent;**
 - (b) is the Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992), or the Post Office Savings Bank referred to in section 1 of that Act, or its agent; or**
 - (c) is a person or one of a category of persons exempted by the Minister under subsection (3).**

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

- (a) by a holding company from its subsidiary, or by a subsidiary from its holding company, or by a subsidiary from another subsidiary of the same holding company; or
- (b) by an agent of the holding company or subsidiary referred to in paragraph (a).

(3) The Minister, by notice in the *Government Gazette*, after consultation with the Bank and Body may exempt any person or category of persons from subsection (1), if the Minister is satisfied that such an exemption is in the public interest and will not cause undue risk to the national payment system.

(4) A person who contravenes subsection (1) commits an offence.]

16. Clearing provisions

(1) A person [may] must not participate in a clearing system unless such a person is –

- (a) The Bank;
- (b) a system participant [**or its agent**] authorised by the operator of the clearing system; or
- (c) a person exempted by the Bank to participate in the clearing system.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

17. Settlement provisions

(1) A person [may] must not participate in a settlement system unless such person is the Bank or a system participant authorised by the operator of the settlement system.

(2) Every system participant must open and maintain settlement accounts in the books of the system operator, on such terms and conditions as the Bank or the operator of the settlement system may specify.

(3) A system participant must effect the discharge of any payment obligation or settlement obligation in [**money**] currency or by means of an entry passed through the settlement system to the credit of the settlement account of the beneficiary system participant.

(4) A discharge of a [**payment obligation or settlement obligation**] settlement instruction that has been duly effected in terms of subsection [(2)] (3) is final and irrevocable.

- (5) Despite the provisions of the Insolvency Act, a settlement instruction that has been finally and irrevocably effected in terms of subsection (4) may not be revoked, reversed, netted, set-off or set aside.

[When a system participant is wound up –

- (a) **the Registrar of the High Court must lodge with the Bank a copy of the application for winding-up if it was made, and the winding-up order within 14 business days of issuance of the order; and**
- (b) **despite sections 341(2) and 348 of the Companies Act, the winding-up order does not affect any settlement that has become final and irrevocable before the lodgement of the copy of that order with the Bank in terms of paragraph (a).]**
- (6) The Bank **[after consultation with the Body]** may determine such conditions, rules and procedures, regarding the **[issuing] discharging** of settlement instructions and **[discharging] determination** of settlement obligations.
- (7) The conditions, rules or procedures determined in terms of subsection (6) must be incorporated in settlement **[contracts] agreements** to be entered into between the settlement system operator and system participants.
- (8) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

18. Recognition of eligible collateral arrangements

- (1) A settlement system operator may, in its rules and procedures, have collateral arrangements whose value may be realised for the satisfaction of outstanding rights and settlement obligations within the settlement system.
- (2) A system participant must pledge eligible collateral to a settlement system operator for any advance that a settlement system operator may provide to that participant, in accordance with the Bank's lending arrangements as stipulated under the applicable agreements, procedures and policies, as may be amended from time to time, to enable the settlement of the participant's negative multilateral position, if any, or to enable that participant to meet its additional settlement obligations.
- (3) The collateral referred to in subsection (2) must be in the form of financial and non-financial assets eligible collateral issued by the Government of Namibia or determined by the Bank from time-to-time.
- (4) The Bank may determine financial collateral arrangements in a payment system.

19. Netting agreements and netting rules

- (1) A clearing or settlement system must have netting agreements and rules which must stipulate the rights and obligations of participants and the clearing or settlement system operator.
- (2) A netting arrangement in a payment system will be valid and enforceable, and both the system operator and participants in such a payment system must fulfil their respective obligations in order to give effect to the netting arrangement.
- (3) A system operator may amend the netting agreements and rules of a payment system in consultation with its participants. Any amendment effected to the netting agreements and rules is subject to the approval of the Bank.

[Despite anything to the contrary in the Insolvency Act or Banking Institutions Act, if a system participant is wound up or placed under judicial management, or a curator is appointed to a system participant, any provision contained in a written netting agreement to which the system participant is a party, or any netting rule or practice applicable to the system participant, is binding upon the liquidator, judicial manager or curator, in respect of –

- (a) **any payment or settlement instruction which has been delivered to another system participant, a service provider or the Bank before the winding-up order, judicial management order or appointment of the curator, and which instruction –**
 - i. is subject to calculation and determination through clearing or netting; or**
 - ii. may result in a payment or settlement obligation, which obligation is to be discharged on or after the date of the winding-up order, judicial management order or appointment of the curator, or the discharge of which was overdue on the date of the winding-up order, judicial management order or appointment of the curator, as the case may be; or**
- (b) **any payment or settlement obligation –**
 - i. which has been determined through netting before the issue of the winding-up order or judicial management order or appointment of the curator; or**
 - ii. which is to be discharged on or after the date of the winding-up order, judicial management order or the appointment of the curator, or the discharge of which was overdue on the date of the winding-up order, judicial management order or appointment of the curator.]**

20. Tiered participation arrangements

- (1) A person may not participate in a clearing or settlement system under a tiered participation arrangement without authorisation from the Bank.
- (2) Under subsection (1), the Bank will issue the relevant determination, directive or other subordinate legislation in respect of tiered participation arrangements.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

21. Interoperability and efficiency

- (1) The Bank must ensure interoperability in the national payment system.
- (2) Pursuant to subsection (1), the Bank may determine the conditions, rules, and criteria for interoperability in the national payment system.
- (3) Save for statutory deductions, home loan deductions and savings products deductions, all other forms of preferential treatment in the national payment system are prohibited.
- (4) The Bank may determine efficiency in the national payment system.

PART VI

ISSUANCE OF ELECTRONIC MONEY AND OPERATIONS OF TRUST ACCOUNTS

22. Eligibility to issue electronic money

- (1) A person must not issue electronic money unless such person is –
 - (a) the Bank; or
 - (b) a payment service provider licensed in accordance with section 12(3) of this Act.
- (2) Save for the Bank or a banking institution, a payment service provider permitted to issue electronic money must not –
 - (a) engage in banking business within the meaning of the Banking Institution Act;
 - (b) treat funds received in exchange for electronic money as deposits within the meaning of the Banking Institution Act; or
 - (c) engage in any other activity prohibited by the Bank.
- (3) For purposes of electronic money issued by the Bank under subsection (1)(a), electronic money refers to central bank issued digital currency as defined in the Bank of Namibia Act.

- (4) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

23. Opening of trust account

- (1) Save for the Bank or a banking institution, a payment service provider licensed to issue electronic money must open and maintain a separate trust account at a banking institution to hold and facilitate funds exchanged for electronic money solely for the benefit of the electronic money users.
- (2) A trust account created in terms of subsection (1) must contain a reference to this section.
- (3) A payment service provider must ensure that the trust accounts referred to under subsection (1) are audited on an annual basis by a qualified independent auditor and in line with generally accepted accounting principles and good governance practices.
- (4) A payment service provider must submit the results or report from the audit conducted on its trust account to the Bank.
- (5) Pursuant to subsection (3), the Bank may for review purposes request a payment service provider to provide additional information or records the Bank considers necessary in order to evaluate the audit results or audit report submitted. The Bank may further review the internal audit programme of a payment service provider to ensure that sufficiently trained and skilled officers of appropriate standing, to the satisfaction of the audit committee, in the payment service provider undertake and implement the internal audit programme of the payment service provider;
- (6) A person who contravenes this section commits an administrative offence and will be liable to an administrative sanction or penalty as determined under section 39(2) of this Act.

24. Separation of trust account from the assets of payment service provider

- (1) In the event that a payment service provider is wound-up, all funds held in the trust account referred to in subsection 23(1) and subsection 23(2) will be exempted from the provisions of the Insolvency Act, the Banking Institution Act or any other applicable domestic law.
- (2) Funds in the trust account must not be liable to the attachment at the instance of or on behalf of a creditor of that payment service provider.
- (3) A person who contravenes this section commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

25. Control of operation of the trust account

(1) If a payment service provider –

- (a) becomes insolvent; or
- (b) is liquidated or placed under judicial management, whether provisionally or finally; or
- (c) has its bank license or payment service provider license revoked or transferred by the Bank; or
- (d) is declared by a court of competent jurisdiction to be incapable of managing its affairs; or
- (e) abandons the payment service provider operations or ceases to issue electronic money,

the Master of the High Court may, upon application made by the Bank or by a person having an interest in the trust account of that payment service provider, appoint a representative to control and administer that trust account with such prescribed rights, duties and powers in relation thereto as the Master may deem fit.

(2) A person aggrieved by a decision of the Master in terms of subsection (1), may, within 30 days after the decision becomes known to him or her, appeal against that decision to a competent court, and the court may confirm or vary the decision or give such other decision as in its opinion the Master ought to have given.

PART VII

DESIGNATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS

26. Powers to designate

(1) If the Bank is of the opinion that a payment, clearing or settlement system is a systemically important system, it must designate it as a designated payment, clearing or settlement in the national payment system under terms and conditions as the Bank may determine.

(2) In determining whether to designate as per subsection (1), the Bank must consider:

- (a) whether a disruption in the operation of the payment system could further disrupt or impact the efficient functioning of the national payment system, its participants and affect public confidence in the financial system of Namibia;

- (b) whether the payment system is widely used in Namibia and the designation is necessary to ensure efficiency or competitiveness in any of the services provided by the payment system operator or payment service providers;
 - (c) whether the designation is in the interest of the national payment system as per the objectives of this Act referred to under section 4 of this Act; and
 - (d) whether the designation is in the public interest.
- (3) Pursuant to subsection (1), the Bank may determine the criteria for -
- (a) designation and access to the national payment system; and
 - (b) designation and authorisation to participate in the clearing and settlement systems.
- (4) The notice referred to under subsection (1) must specify-
- (a) the type of payment system that is subject to designation; and
 - (b) the terms and conditions to which the designation is subjected by the Bank.
- (5) A participant in, or operator of, a designated clearing or settlement system is for purposes of this Act deemed to be a designated system participant or operator.

27. Variation and revocation of designation

- (1) The Bank may vary or revoke any designation made under section 26, including any terms or conditions of the designation by-
- (a) giving notice in the prescribed form and manner to the designated entity to show cause within a 30 day period why its designation, or any terms or condition of designation applicable to it may not be revoked by the Bank; and
 - (b) considering such submissions, if any, by publishing the variation or revocation in a notice in the *Government Gazette*.
- (2) In determining whether or not to vary or revoke a designation, the Bank may have regard to any, or all, of the following factors -
- (a) failure to comply with any conditions to which the designation is subject to;
 - (b) whether or not the designated entity has ceased to operate;
 - (c) whether or not the designated entity has knowingly furnished information or documents which are false or misleading in any material respect to the Bank in connection with the designation of the entity;

- (d) whether the system is no longer relevant; and
 - (e) any other matters that the Bank considers appropriate.
- (3) Any variation or revocation made under subsection (1) does not affect -
- (a) the validity or enforceability of any rules of the payment, clearing or settlement system; or
 - (b) any payment to or out of the account of a settlement system or netting or settlement that took place before the notice in the Government Gazette.

28. Exemptions

- (1) The Bank, by notice in the Government Gazette may exempt any person or category of persons from the provisions of this Act, subject to such conditions as the Bank may prescribe and whether the Bank is satisfied that such an exemption is in the public interest and will not cause undue risk to the national payment system.
- (2) The Bank may at any time vary or revoke an exemption provided under subsection (1) if doing so will allow the Bank to execute its functions, as specified under this Act.

PART VIII

CONSUMER PROTECTION

29. Principles of consumer protection

- (1) The Bank must prescribe consumer protection principles applicable to all payment service providers, which principles will include provisions of treating users fairly and equitably in the provision of payment services.
- (2) payment service provider should ensure transparency and the disclosure of clear, sufficient and timely information on the fundamental benefits, risks and terms and conditions of a payment service offered in an objective and accessible form.
- (3) Payment service providers should ensure sufficient and accessible information to users on their rights and responsibilities.
- (4) A person who contravenes this section commits an administrative offence and will be liable to an administrative sanction or penalty as determined under section 39(2) of this Act.

30. Transparency of fees and charges

- (1) A payment service provider which imposes a fee or charge on a payment service is required to give notice to the user that a fee or charge is being imposed.
- (2) A person who contravenes this section commits an administrative offence and will be liable to an administrative sanction or penalty as determined under section 39(2) of this Act.

31. Determining standards for fees and charges

- (1) The Bank may determine standards and impose conditions on fees or charges related to the provision of payment services, where it determines that it is in the public interest to do so. [The functions of the Bank are to ensure that the fees or charges payable by a user are in the public interest, promote competition, efficiency and cost-effectiveness in service delivery and comply with the standards determined by the Bank;]
- (2) The Bank may take remedial actions if the Bank is of the opinion that fees or charges are not in the public interest, do not promote competition or efficiency in payment service delivery, or do not comply with the standards determined by the Bank.

32. Complaints

- (1) A user of a payment service provider who is aggrieved by an act or omission of the payment service provider may make a complaint in writing to the payment service provider for remedial action.
- (2) A complaint made under subsection (1) must be dealt with by the payment service provider and a written reply, stating the decision of the payment service provider, must be given to the complainant as soon as practicable, but not later than 15 business days from the date of receipt of the complaint.
- (3) Where the complainant is dissatisfied with the decision of the payment service provider, or does not receive the decision within the period referred to in subsection (2), such user may lodge a complaint with the Bank.
- (4) The Bank may issue such instructions or guidelines as may be necessary for purposes of this section.

33. Sharing of Data

The sharing of data between payment service providers, payment system operators and such other third parties as authorised by the Bank, may only be conducted in accordance with standards as determined by the Bank from time-to-time.

PART IV**POWERS TO OVERSEE THE NATIONAL PAYMENT SYSTEM, INSPECT AND ACCESS TO INFORMATION**

34. Powers to inspect

- (1) The Bank must regulate, supervise and oversee the operations of the national payment system.
- (2) The Bank may, with or without prior notice, enter and inspect the premises of a payment system operator or a payment service provider and its agents to carry out its functions under this Act. The Bank may during an examination or inspection –
 - (a) inspect and retain, during an examination or inspection, any book, account, other documents, equipment, apparatus, machinery, and any other item or record of a payment system operator or payment service provider for purposes of such examination or inspection; and
 - (b) interview any staff of such a payment system operator or payment service provider to conduct an examination or inspection.
- (3) An authorised officer of the Bank who seeks to exercise any power or perform any function under this section in relation to any person must produce his or her written authorisation by the Bank for examination or inspection when so requested by that person.
- (4) A person in charge or in control of premises entered by an authorised officer under subsection (2) must provide such reasonable facilities and assistance as the authorised officer may require for performing a function under this section, including -
 - (a) providing access to any computer on the premises and rendering assistance to the authorised officer to search any data contained in such computer, and
 - (b) on request of the authorised officer, provide any data contained in that computer in printed form to the authorised officer.
- (5) This section, in so far as it provides for a limitation on the fundamental rights contemplated in sub-article (1) of Article 13 of the Namibian Constitution by authorising interference with the privacy of any person's home, correspondence or communication, is enacted upon the authority conferred by sub-article (2) of that Article.
- (6) An authorised officer executing the powers conferred under subsections (4) to (6) may be accompanied by police officials where warranted.
- (7) A person must not, without just cause –
 - (a) refuse to permit an authorised officer of the Bank to enter premises or to conduct an examination or inspection in terms of this section;

- (b) fail or refuse to produce any book, record, statement or other document which the authorised officer requires to be produced to him or her for examination or inspection;
 - (c) fail or refuse to explain any entry in a book, record, statement or other document which the authorised officer requires him or her to explain;
 - (d) subject to Article 12(1)(f) of the Namibian Constitution, refuse or fail to answer any question which the authorised officer lawfully directs at such person in exercising, performing or executing the authorised officer's powers, duties or functions under this section.
 - (e) fail or refuse to provide the authorised officer with reasonable facilities and assistance required by the authorised officer;
 - (f) knowingly furnish false or misleading information to the authorised officer; or
 - (g) remove or tamper with any book, record, statement or other document seized by the authorised officer; or
 - (h) hinder or obstruct or interfere with an authorised officer of the Bank in exercising, performing or executing his or her powers, duties or functions under this section.
- (8) A person who contravenes this section commits an administrative offence and will be liable to an administrative sanction or penalty as determined under section 39(2) of this Act.

35. Information

- (1) The Bank has access to any information relating to –
- (a) payment, clearing and settlement systems; and
 - (b) The **[Body]** Association, a system participant and a payment service provider in respect of any matter regulated by or under this Act.

[Any person in possession of information referred to in subsection (1) must provide such information to the Bank at any time and in such form, as the Bank may require from such person in writing.]

- (2) The Bank may, by notice in the form or manner prescribed, require any person to provide to the Bank, within the period specified in the notice, all such information in its possession relating to their participation in the national payment system.

- (3) Without prejudice to the generality of subsection (2), the Bank may in a notice issued under that subsection, require the Association, any payment service provider or payment system operator to provide, whether in the form of a periodic return or otherwise –
- (a) any information relating to:
 - (i) the operation of the payment, clearing or settlement system in which they participate; and
 - (ii) the pricing of, or other forms of consideration for, payment and related services offered by that payment service provider;
 - (b) information relating to the participation or other involvement of that payment service provider in the payment, clearing and settlement system; and
 - (c) such other information as the Bank may require for the purposes of this Act.
- (4) The information requested by the Bank under subsection (3) must be requested:
- (a) in the course of performing functions under any law;
 - (b) for the purpose of legal proceedings;
 - (c) when required to do so by a competent court;
 - (d) if in the opinion of the Bank, disclosure is in the public interest, or it is already publicly available.
- (5) The Bank may impose a fine not exceeding of N\$100 000 on a payment service provider or payment system operator for every day during which contravention or non-compliance continues for -
- (a) non-submission; or
 - (b) incomplete submission; or
 - (c) inaccurate submission, of the required information, data, statement or returns.
- (6) Despite anything to the contrary in any law relating to the retention of records, the Bank, payment system operators and [system participants] payment service providers must retain all records obtained by them during the course of the operation and administration of the payment, clearing and settlement systems for a period of [five] 5 years as from the date of record and for longer upon specifically being requested to do so by the Board and/or any other competent authority as defined in the Financial Intelligence Act, 2012 as amended.

[16. Retention of records

Despite anything to the contrary in any law relating to the retention of records, the Bank, system participants and service providers must retain all records obtained by them during the course of the operation and administration of the payment, clearing and settlement systems for a period of five years as from the date of record.]

PART X

INSOLVENCY PROCEEDINGS

36. Winding up of a payment service provider

- (1) Notwithstanding anything in the Insolvency Act, Companies Act, Banking Institutions Act or any other law, a payment service provider is not permitted to apply for winding-up or judicial management, unless such payment service provider has given the Bank 14 business days written notice of its intention to apply for winding up or judicial management.
- (2) When a payment service provider is wound up –
 - (a) the Registrar of the High Court must lodge with the Bank a copy of the application for winding-up if it was made, and the winding-up order within [14] 15 days of issuance of the order; and
 - (b) despite sections 346(2) and 353 of the Companies Act, the winding-up order does not affect any settlement that has become final and irrevocable before the lodgement of the copy of that order with the Bank in terms of paragraph (a).
- (3) A settlement account of any system participant must not be liable to attachments, garnishee proceedings or seizures under the Insolvency Act, Banking Institutions Act or any other law.
- (4) Despite anything to the contrary in the Insolvency Act [or], the Banking Institutions Act or any other law, if a system participant is wound up or placed under judicial management, or a curator is appointed to a system participant, any provision contained in a written netting agreement to which [**the system participant**] a service provider is a party, or any netting rule or practice applicable to the system participant, is binding upon the liquidator, judicial manager or curator, in respect of –
 - (a) any payment or settlement instruction which has been delivered to another system participant, a payment service provider or to the Bank prior to the winding up order, judicial management order or appointment of the curator, and which instruction –
 - (i) is subject to calculation and determination through clearing or netting; or
 - (ii) may result in a payment or settlement obligation, which obligation is to be discharged on or after the date of the winding-up order, judicial management order or appointment of the curator, or the discharge of which was overdue on

the date of the winding-up order, judicial management order or appointment of the curator, as the case may be; or

- (b) any payment or settlement obligation –
 - (i) which has been determined through netting prior to the issue of the winding-up order or judicial management order or appointment of the curator; or
 - (ii) which is to be discharged on or after the date of the winding-up order, judicial management order or the appointment of the curator, or the discharge of which was overdue on the date of the winding-up order, judicial management order or appointment of the curator.

37. Utilisation of assets provided as security

Despite anything to the contrary in the Insolvency Act or any other law, any asset of a [system participant] service provider which the [system participant] service provider, prior to the issue of its winding-up order, has provided to the Bank as security for a loan in respect of its settlement obligation, may be utilised by the Bank to the extent required for the discharge of that settlement obligation.[or]

[(b) in terms of a written agreement with a service provider, to the service provider as security in respect of its payment obligation, may be utilised by the service provider to the extent required for the discharge of that payment obligation.]

38. Winding up notice

- (1) The Bank upon receipt of the notice referred to under section 34(2) must notify –
 - (a) all relevant domestic or foreign payment system operators and regulatory bodies;
and
 - (b) other system participants, payment service providers or agents required to be notified.
- (2) The clearing system operator and settlement system operator must enforce the winding-up order immediately upon being notified by the Bank of the order under subsection (1).
- (3) Any system participant in respect of whom a winding-up order has been effected must cease to participate in any clearing or settlement system in the national payment system.
- (4) In the event of insolvency of a foreign system participant, the rights and obligations of that foreign participant relating to settlement will be governed by the laws of Namibia.

- (5) The provisions of this section must not restrict or preclude any person from enforcing his rights under the law in so far as it does not affect the finality of payment instructions or settlement obligations or the validity and enforceability of a netting arrangement under this Act.

PART XI

DISPUTE RESOLUTION

39. Settlement of disputes amongst payment service providers

- (1) Any dispute arising among payment service providers must be settled in accordance with this section.
- (2) Any payment service provider who is aggrieved by another payment service provider must submit a written statement setting out full particulars of the grievance to the other party to which the grievance relates, and the parties must attempt to settle the matter by conciliation within 15 business days from date of the written statement.
- (3) If the parties are unable to settle the matter as contemplated in subsection (2), they must attempt to settle the matter within a further period of 30 business days through mediation whereby-
- (a) the parties must agree on a mediator;
 - (b) the mediator must familiarize him or herself with the parties' respective contentions;
 - (c) the mediator and all parties must discuss the matter at one or more meetings attended by all of them and attempt to settle the matter by consensus; and
 - (d) the parties must share the mediator's costs equally between them.
- (4) If the parties are unable to settle the matter by conciliation under subsection (2), or by mediation under subsection (3), the matter may be referred to arbitration by a single arbitrator, and where the parties fail to agree on an arbitrator, the parties must notify the President of the Namibia Law Society who then must appoint an arbitrator on their behalf.
- (5) The arbitrator referred to in subsection (4) must, as far as possible, be a person appointed on account of his or her knowledge of the law and payment systems.
- (6) Save for instances where the arbitrator awards costs to a particular party, the parties involved in an arbitration will be jointly liable for equal settlement of the arbitrator's fees and any other costs associated to the arbitration proceedings.

- (7) The Arbitration Act, 1965 (Act No. 42 of 1965) will govern arbitration proceeding as contemplated in this section.
- (8) The arbitrator must reach his or her decision in the matter within 30 days after his or her appointment unless the parties agree to an extension of that period.
- (9) A decision of the arbitrator must be final and binding on the parties.
- (10) Where the participants to a dispute have entered into an agreement, the dispute resolution provisions of the said agreement must take precedent over the provisions of this section.

40. Settlement of disputes with the Bank

- (1) If the **[Body]** Association or a **[system participant]** payment service provider or a payment system operator considers itself aggrieved by a decision taken by the Bank under this Act and a dispute arises between them, it must be settled as provided in this section.
- (2) If the **[Body]** Association or a **[system participant]** payment service provider or a payment system operator desires to settle the dispute, it must furnish the Bank with full particulars of its grievance in writing, and thereafter the parties must attempt to settle the dispute by **[agreement]** conciliation within **[seven]** 15 business days of receipt of particulars by the Bank.
- (3) If the parties **[do not succeed in settling the dispute]** are unable to settle the matter as contemplated in subsection (2), they [may] must attempt to settle the dispute [by mediation] within a further period of **[10]** 30 business days through mediation.
- (4) "Mediation" as contemplated in subsection (3) means a process as prescribed by section 39(3) - **[whereby -**
 - (a) **the parties agree on a mediator;**
 - (b) **a mediator familiarises himself or herself with the position held by each party;**
 - (c) **a mediator and the parties discuss the dispute at their meeting convened for that purpose;**
 - (d) **the parties at or following their meeting with a mediator attempt to settle the dispute by agreement; and**
 - (e) **the parties share the mediator's costs equally.]**

(5) If the parties are unable to settle the matter by **[agreement through mediation]** conciliation under subsection (2), or by mediation under subsection (3), **[the dispute, if it is to continue, must be referred to]** the matter may be referred to arbitration by a single arbitrator, and where the parties fail to agree on an arbitrator, the parties must notify the President of the Namibia Law Society who then must appoint an arbitrator on their behalf.

[If the parties are unable to settle [a dispute by agreement through mediation in accordance with subsection (3), the dispute, if it is to continue, must be referred to

—

(a) **a single arbitrator appointed by both parties; or**

(b) **an arbitrator or arbitrators appointed, at the request of both parties, by a credible body whose business is the facilitation and promotion of disputes resolution by means of mediation or arbitration.]**

(6) The arbitrator referred to under subsection (5) must, as far as possible, be a person appointed on account of his or her knowledge of the law and payment systems.

(7) Save for instances where the arbitrator awards costs to a particular party, the parties involved in an arbitration will be jointly liable for equal settlement of the arbitrator's fees and any other costs associated to the arbitration proceedings.

(8) The Arbitration Act, 1965 (Act No. 42 of 1965) **[applies with the necessary changes to an arbitration contemplated in this section]** will govern arbitration proceeding as contemplated in this section.

(9) A decision of the arbitrator must be final and binding on the parties.

PART XII

ADMINISTRATIVE PENALTIES AND OFFENCES

41. Administrative penalties

- (1) The Bank may impose administrative penalties on any person for **[any delay] non-compliance [in complying]** with any **[directive, determination, guideline, standard, circular, specification, order or notice]** subordinate legislation issued by the Bank [in] under this Act.
- (2) The Bank may determine in a determination, directive or other subordinate legislation the appropriate administrative sanction or penalties for non-compliance with section 23, section 30 and section 32 of this Act.
- (3) Before making a decision to impose any administrative penalty on a person, the Bank must serve on the person a written notice calling on the person to show cause as to why the penalty should not be imposed on the person.
- (4) If a **[satisfactory explanation]** response is not received within 14 business days from the date of receipt of the written notice referred to in subsection (2), the Bank may impose an administrative penalty in an amount not exceeding N\$100 000 for each day of non-compliance, which amount may not exceed N\$1 000 000 in total.
- (5) Despite the provisions of subsection (1), persons are not precluded from approaching the High Court or any competent court to appeal against the decision taken by the Bank to impose an administrative penalty. In such instances, the appeal process must be conducted in accordances with the Rules of the relevant court and such person must ensure that it issues the Bank with the relevant notice of its intention to appeal the Bank's decision.
- (6) In the event that a person appeals against a decision taken by the Bank to impose an administrative penalty, the Bank must reserve such a decision until the appeal process is concluded and waive the administrative penalty amount calculated during the appeal process.

42. Offences relating to instruments, devices, software, digital apparatus or material or components thereof

- (1) A person who -
 - (a) makes, adapts or repairs;
 - (b) buys or sells;
 - (c) exports from or imports into Namibia; or
 - (d) possesses or uses,

any instrument, device, apparatus, material or a component thereof that the person knows or reasonably ought to have known that it has been used or is intended for use in forging or falsifying a payment instrument, or for use in defrauding a lawful holder of a payment instrument, commits an offence.

- (2) A person who contravenes this section commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

PART XIII

GENERAL PROVISIONS

43. Confidentiality

- (1) The Governor, a Deputy Governor, a member of the Board or committee established under this Act, an agent of the Bank, a staff member or any other person exercising a power or performing a function under this Act may not disclose to a person information or data relating to the affairs of the Bank, except –
- (a) for purposes of exercising a power or performing a function under this Act;
 - (b) for the purposes of the performance of his or her functions in terms of this Act, the Bank of Namibia Act or the Banking Institutions Act;
 - (c) when the disclosure of such information is necessary to protect the integrity, effectiveness and security of the national payment system;
 - (d) where it is disclosed to a person who is lawfully authorised to receive the information;
 - (e) for purposes of complying with an agreement or an understanding between the Bank and other central banks, supervisory authorities or any other person; or
 - (f) **[when required to do so on authority of the Board or under any law or by a court of law.]** when required to do so by a court of law or under any new law.
- (2) Subsection (1) applies to any other person who receives information disclosed under paragraph (a) or (b) of that subsection.
- (3) The Bank may share information or data with other central banks and international institutions subject to such conditions as the Bank may impose.
- (4) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

[(1) A person may not directly or indirectly disclose to another person any confidential information that he or she has obtained in the performance of his or her functions for or on behalf of the Bank, except -

(c) when required to do so on authority of the Board or under any law or by a court of law.

(2) A person who contravenes subsection (1) commits an offence section .]

44. Indemnity

(1) The Governor, a Deputy Governor, a member of the Board or an employee of the Bank or the **[Body]** Association or any other person performing a function or exercising a power under this Act is not personally liable for any loss or damage arising out of any act done or omitted to be done in good faith under this Act, unless it is established that the act or omission was committed in a grossly negligent manner or intentionally. **[such damage or loss is due to the Governor's, Deputy Governor's, member of the Board, or employee of the Bank or the Body's negligence or failure to comply with this Act.]**

(2) The provisions of subsection (1) must extend to persons and agents employed by the Bank in the exercise or performance or purported exercise or performance of any power or function under this Act.

45. Directives by the Bank

(1) If the Bank knows or reasonably believes that any person participating in the national payment system engages in or is about to engage in any act, omission or course of conduct, that –

(a) results or is likely to result in systemic risk; or

(b) is detrimental to or may be detrimental to the national payment system; or

(c) is or will be contrary to the public interest **[in]**, the integrity, effectiveness or security of the national payment system; or

(d) **[is contrary to any provision of this Act,]**

the Bank may issue a directive in writing requiring the person, within the period specified in the directive –

- (i) to cease or refrain from engaging in the act, omission or course of conduct, or to perform such acts specified in the directive as are necessary to remedy the situation;
 - (ii) to provide the Bank with such information and documents relating to the matter as specified in the directive; and
 - (iii) to conform to the requirements set out in the directive.
- (2) Any person who **[neglects, refuses or fails to comply with]** contravenes a directive issued under subsection (1) **[commits an offence]** is liable to an administrative penalty as determined by the Bank.
 - (3) **[Irrespective of whether criminal proceedings have been or may be instituted against a person in respect of an offence referred to in subsection (2),]** The Bank may apply to the High Court for an order directing such person to comply with a directive issued under subsection (1).

46. Determinations by the Bank

- (1) The Bank, by notice in the Government Gazette, may make determinations **[and any other subordinate legislation]** not inconsistent with this Act relating to –
 - (a) any matter which is required or permitted by this Act to be determined by the Bank; and
 - (b) all other matters which the Bank considers necessary or expedient to determine for the efficient functioning of the national payment system.
- (2) A person who contravenes a determination made under subsection (1) **[commits an offence]** is liable to an administrative penalty as determined by the Bank.

47. Enforceability of subordinate legislation

- (1) Despite the provisions of section 43 and section 44 of the Act, the Bank may issue any other subordinate legislation to enforce any provision of this Act.
- (2) Pursuant to subsection (1), the Bank must ensure that the issuance of such subordinate legislation is not inconsistent with this Act;
- (3) A person who contravenes this provision is liable to an administrative penalty as determined by the Bank.

48. Repeal of laws

The Payment System Management Act, 2003 (Act No. 18 of 2003) and the Payment System Management Amendment Act, 2010 (Act No. 6 of 2010) are hereby repealed in their entirety.

49. Transitional provisions

- (1) Subject to the provisions of section 47, the laws specified in the First Schedule are hereby repealed to the extent set out in the third column of the First Schedule.
- (2) Any determination, directive, guideline, circular, exemption, notice, standard, specification or instructions made or in force, under any provision of any law repealed by subsection (1) must be deemed to have been made under the corresponding provision of this Act.
- (3) Any person who immediately before the commencement of this Act, was—
 - (a) a system participant for the clearing of payment instructions or the netting or settlement of obligations arising from the clearing of payment instructions; or
 - (b) issuing payment instruments; or
 - (c) conducting the business of a payment service provider,
may continue to operate the system or issue the payment instrument or conduct the business of a payment service provider.
- (4) All applications which had been submitted to the Bank prior to the commencement of this Act must be assessed in terms of this Act.

50. Short title and commencement

- (1) This Act -
 - (a) is called the Payment System Management Act, [2003] 2022; and
 - (b) commences on a date to be determined by the Minister by notice in the Government *Gazette*.
-

FIRST SCHEDULE

(Section 46)

LAWS REPEALED

No and year of law	Short title	Extent of repeal
Act No. 18 of 2003	Payment System Management Act	The whole
Act No. 6 of 2010	Payment System Management Amendment Act	The whole

SECOND SCHEDULE

(Section 12 (1))

PAYMENT SERVICES

1. The issuance of a payment instrument such as card, electronic fund transfer and electronic money or any other type of payment instrument issued as may be deemed as legal tender.
2. Payment intermediation services.
3. Payment services that enable or facilitate the depositing of cash, withdrawal of cash and transfer of funds.
4. The facilitation of payment instructions and provision of gateway services at merchant point of sale, electronic commerce platforms including mobile applications and websites.
5. The transfer of funds from one account to another using digital and electronic means.
6. The provision of digital payment services in the form of tokens, quick response codes application programming interfaces and other digital instruments and digital means of payments.
7. The provision of technological services to facilitate switching, routing and acquiring of payment instructions.
8. The provision of technological services to aggregate payment instructions and intergrate payment systems and payment services.
9. The issuance of virtual assets for purposes of facilitating payments or transfers.
10. Any other payment service that is functional to the transfer of funds, the issuance of electronic money and other payment instructions.