

**COMMENTS/PROPOSED AMENDMENTS ON THE DRAFT BILL:  
PAYMENT SYSTEM MANAGEMENT BILL  
FEBRUARY 2023**

#	INSTITUTION	PROVISION OF AMENDMENT BILL	COMMENT	PROPOSED AMENDMENT	RESPONSE FROM INITIATOR
1	General view from attendees	Section 1 – Definition of Beneficial Ownership	A suggestion was made that the definition of beneficial ownership should be amended to rather make reference to section 1 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) given that the FIA will have an all-inclusive definition in respect of beneficial ownership.	<i>“beneficial ownership” means beneficial ownership as referred to in <u>section 1 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), and any subsequent amendments thereto</u></i>	The Bank agrees with the proposal and has incorporated same in the revised PSM Bill as submitted to the FIC on 24 February 2023.
2	Jacques van der Smit – Bankers Association of Namibia	11(3) Licensing of Payment Service Providers	It was suggested that the provision should not make reference to the Financial Intelligence Centre’s <i>Industry Guidance Note No. 1 of 2015 on Identification and Verification of Beneficial Ownership Information</i> , as it is not the normal nor preferred drafting style. Additionally, prudential regulators will be expected to introduce their own subordinate legislation in relation to the submission of information for beneficial ownership purposes. In this regard, the provision should be amended to reflect the aforesaid.	<i>An application for authorisation referred to in subsection (1), <u>must further include the submission of information related to the beneficial ownership of the applicant, as may be determined by the Bank from time-to-time.</u></i>	The Bank agrees with the proposal and has incorporated same in the revised PSM Bill as submitted to the FIC on 24 February 2023.
2	Jacques van der Smit – Bankers Association of Namibia	14(3) Authorisation of Payment Service Providers	It was suggested that the provision should not make reference to the Financial Intelligence Centre’s <i>Industry Guidance Note No. 1 of 2015 on Identification and Verification of</i>	<i>An application for authorisation referred to in subsection (1), <u>must further include the submission of information related</u></i>	The Bank agrees with the proposal and has incorporated same in the revised PSM Bill as submitted to the FIC on 24 February 2023.

			<p><i>Beneficial Ownership Information</i>, as it is not the normal nor preferred drafting style. Additionally, prudential regulators will be expected to introduce their own subordinate legislation in relation to the submission of information for beneficial ownership purposes. In this regard, the provision should be amended to reflect the aforesaid.</p>	<p><u><i>to the beneficial ownership of the applicant, as may be determined by the Bank from time-to-time.</i></u></p>	
4	Katherine Amakali Cronje & Co –	35 (6) Information	<p>A suggestion was made that the provision consider extending access or physical retention of electronic data as well.</p>	<p><i>Despite anything to the contrary in any law relating to the retention of records or <u>access thereto</u>, the Bank, payment system operators and [system participants] payment service providers must have <u>access to and 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.</u></i></p>	<p>It is the Bank’s view that physical retention of electronic data may prove to be a challenge in some instances given the uptake of cloud services. This is however managed through the service level agreements entered into between the owner of the information and their cloud service provider, where the rights and obligations of both parties are clearly stipulated – inclusive of access to and retention of the electronic data hosted by the service provider.</p> <p>Nonetheless, the Bank has inserted reference to access, as a means to address the concern, inclusive of the aforesaid scenario (cloud services). Also, it is important to stress that given the day and age we are living in, ‘records’ in this context applies to both physical and electronic copies.</p>