

Namibia

## Payment System Management Act, 2023

Act 14 of 2023

Legislation as at 28 July 2023

FRBR URI: /akn/na/act/2023/14/eng@2023-07-28

There may have been updates since this file was created.

PDF created on 13 May 2024 at 11:49.

*Collection last checked for updates: 8 May 2024.*

[Check for updates](#)



### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.laws.africa](http://www.laws.africa)  
[info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.  
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

# Payment System Management Act, 2023

## Contents

Part 1 – INTRODUCTORY PROVISIONS .....	1
1. Definitions .....	1
2. Application of Act .....	5
Part 2 – POWERS AND FUNCTIONS OF BANK .....	5
3. Powers and functions of Bank .....	5
4. Co-operation with other authorities .....	6
Part 3 – PAYMENTS ASSOCIATION OF NAMIBIA .....	6
5. Payments Association of Namibia .....	6
6. Mandate of Association .....	7
7. Constitution and rules of Association .....	7
8. Membership to Association .....	7
Part 4 – LICENSING AND AUTHORISATION .....	8
9. Prohibition on provision of unauthorised payment services .....	8
10. Licensing of payment service providers .....	8
11. Authorisation of payment system operators .....	9
12. Rules of payment system .....	9
13. Use of agent .....	10
14. Liability of payment system operator or payment service provider .....	10
Part 5 – CLEARING AND SETTLEMENT PROVISIONS .....	10
15. Clearing provisions .....	10
16. Settlement provisions .....	11
17. Recognition of eligible collateral arrangements .....	11
18. Netting agreements and netting rules .....	11
19. Tiered participation arrangements .....	12
20. Interoperability and efficiency .....	12
Part 6 – ISSUANCE OF ELECTRONIC MONEY AND OPERATIONS OF TRUST ACCOUNTS .....	12
21. Eligibility to issue electronic money .....	12
22. Opening of trust account .....	13
23. Separation of trust account from assets of payment service provider .....	13
24. Control of operation of trust account .....	13
Part 7 – DESIGNATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS .....	14
25. Powers to designate .....	14
26. Variation and revocation of designation .....	14
27. Exemptions .....	15

Part 8 – CONSUMER PROTECTION .....	15
28. Principles of consumer protection .....	15
29. Transparency of fees and charges .....	15
30. Determining standards for fees and charges .....	15
31. Complaints .....	16
32. Sharing of data .....	16
Part 9 – POWER TO OVERSEE NATIONAL PAYMENT SYSTEM AND ACCESS TO INFORMATION .....	16
33. Power to inspect .....	16
34. Information .....	17
Part 10 – INSOLVENCY PROCEEDINGS .....	18
35. Winding-up of system participant .....	18
36. Utilisation of assets provided as security .....	19
37. Winding-up notice .....	19
Part 11 – DISPUTE RESOLUTION .....	19
38. Settlement of disputes among payment service providers .....	19
39. Settlement of disputes with Bank .....	20
Part 12 – ADMINISTRATIVE PENALTIES AND OFFENCES .....	21
40. Administrative penalties .....	21
41. Offences relating to instruments, devices, software, digital apparatus or material or components of such instruments, devices, software, digital apparatus or material .....	21
Part 13 – GENERAL PROVISIONS .....	22
42. Confidentiality .....	22
43. Indemnity .....	22
44. Directives by Bank .....	22
45. Determinations by Bank .....	23
46. Enforceability of guidelines, standards, circulars, specifications, orders or notices .....	23
47. Regulations .....	23
48. Amendments to Schedule .....	23
49. Repeal of laws .....	24
50. Savings and transitional provisions .....	24
51. Short title and commencement .....	24
Schedule (Section 2(2)) .....	24





Republic of Namibia  
Annotated Statutes

# Payment System Management Act, 2023

## Act 14 of 2023

[Published in Government Gazette 8156 on 28 July 2023](#)

[Assented to on 21 July 2023](#)

[Commenced on 8 August 2023 by Payment System Management Act, 2023: Commencement](#)

[\[This is the version of this document from 28 July 2023 and includes any amendments published up to 8 May 2024.\]](#)

## ACT

To provide for the establishment, management, administration, operation, regulation, oversight and supervision of payment, clearing and settlement systems in Namibia; provide for the continuation of the Payment System Management Body as the Payments Association of Namibia; provide for the powers and functions of the Bank in relation to ensuring an accessible, safe, secure, efficient and effective national payment system; provide for the licensing and authorisation of payment instruments, payment service providers and payment system operators; regulate the issuance of electronic money and operations of trust accounts; provide for the designation of payment, clearing and settlement systems; provide for settlement of disputes between payment service providers and disputes between the Association or payment system operators, payment service providers and the Bank; provide for the repeal of the Payment System Management Act, 2003; and provide for incidental matters.

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

### Part 1 – INTRODUCTORY PROVISIONS

#### 1. Definitions

In this Act, unless the context otherwise indicates–

“**administrative penalty**” means a penalty determined by the Bank under [section 40](#)(1) or (2);

“**agent**” means an entity appointed by a payment service provider or system participant to perform certain payment services on behalf of the payment service provider or system participant;

“**Association**” means the Payments Association of Namibia referred to in [section 5](#);

“**authorised officer**” means a staff member of the Bank authorised in writing to exercise the powers conferred on such officer by [section 33](#);

**“Bank”** means the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act [No. 1 of 2020](#));

**“Bank of Namibia Act”** means the Bank of Namibia Act, 2020 (Act [No. 1 of 2020](#));

**“banking institution”** means a banking institution as defined in section 1 of the Banking Institutions Act, 2023 (Act [No. 13 of 2023](#));

**“Banking Institutions Act”** means the Banking Institutions Act, 2023 (Act [No. 13 of 2023](#));

**“beneficial owner”**, in relation to a share, right or an interest held by any natural person or juristic person in a payment service provider or payment system operator, means–

- (a) a natural person who ultimately owns or effectively controls another person, including the natural person on whose behalf the share, right or interest is held;
- (b) a natural person who ultimately owns or exercises effective control over a juristic person, and a natural person is considered to ultimately own or effectively exercise control over a juristic person when that person–
  - (i) owns or controls, directly or indirectly, including through trusts or bearer shareholding for the payment service provider or payment system operator, 25 percent or more of the shares or voting rights of the payment service provider or payment system operator;
  - (ii) owns or controls, directly or indirectly, including through trusts or bearer shareholding for the payment service provider or payment system operator, 25 percent or more of the shares or voting rights of the payment service provider or payment system operator;
  - (iii) has the right, directly or indirectly, to appoint or remove the majority of the board of directors of the payment service provider or payment system operator;
  - (iv) has the power to materially influence the decision-making or policy of the payment service provider or payment system operator;
  - (v) despite less than 25 percent shareholding or voting rights, derives economic benefits, including dividends, rights to profit, enjoyment of assets of the payment service provider or payment system operator or is able to use significant assets of the payment service provider or payment system operator, even if the person has no other formal link to the payment service provider or payment system operator;
  - (vi) otherwise exercises control over the management of the payment service provider or payment system operator in his or her capacity as the executive officer, independent non-executive director, director, manager or partner;

**“Board”** means the Board of the Bank referred to in section 9 of the Bank of Namibia Act;

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

**“clearing”** means the process of transmitting, reconciling and confirming the funds or securities that need to be settled prior to settlement and includes the netting of payment instructions and the establishment of final positions for settlement;

**“clearing system”** means a payment system with a set of rules and procedures through which participants agree and must comply with 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 calculating participants' mutual position with a view to facilitating the settlement of their obligations in the settlement system;

**“Companies Act”** means the Companies Act, 2004 (Act [No. 28 of 2004](#));

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

**“dispute resolution”** means the process of solving a dispute using alternative dispute resolution mechanisms;

**“designation”** means the process of designation of a payment, clearing or settlement system as a systemically important system to regulate and manage systemic risk;

**“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 on demand for cash in Namibia Dollar;

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

**“fees and charges”** means costs payable by a user of payment services or another connected service;

**“Financial Intelligence Act”** means the Financial Intelligence Act, 2012 (Act [No. 13 of 2012](#));

**“financial market infrastructure”** means a multilateral systemically important 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;

**“holding company”** means a holding company contemplated in section 1(4) of the Companies Act;

**“Insolvency Act”** means the Insolvency Act, 1936 (Act [No. 24 of 1936](#));

**“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 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 and settlement system;

**“non-bank financial institutions”** means institutions, other than banking institutions authorised to conduct banking business, that offer payment services;

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

**“payment instruction”** means an order to make a payment or transfer funds;

**“payment instrument”** means any device, procedure or a process authorised by the Bank 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 Schedule;

**“payment service provider”** means a person, including a banking institution, licensed under this Act to provide payment services as specified under the Schedule;

**“payment system”** means an authorised system that enables the payment and transfer of funds or value, and includes–

- (a) a clearing system or settlement system; and
- (b) the rules, procedures, standards, technologies, instructions, institutions, participants, infrastructure and persons related to that system;

**“payment system operator”** means a person authorised under this Act to operate a payment system;

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

**“prescribed”** means prescribed by regulation;

**“regulation”** means a regulation made under [section 47](#);

**“settlement”** means the act of discharging obligations in respect of funds transfer from one system participant to another system participant in the settlement system;

**“settlement account”** means an account with the Bank used for funds transfers between system participants for settlement purposes;

**“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 to facilitate the transfer of funds for the discharge of payment and settlement obligations between system participants;

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

**“systemically important system”** means a system that has a significant impact on the national payment system which is capable of triggering or transmitting disruptions among system participants or to the entire national payment system if it is not sufficiently protected against risk;

**“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 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 any regulation, determination, directive, guideline, standard, circular, specification, order or notice made or issued under any provision of this Act;

**“tiered participation arrangements”** means arrangements where 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 [section 22](#);

**“user”** means any person that uses a payment service in their capacity as a payer or a payee or both; and

**“virtual asset”** means a digital representation of value–

- (a) that can be digitally transferred, stored or traded;



- (b) that uses a distribution ledger technology or similar technology; and
- (c) can be used for payment or investment purposes,

but does not include digital representations of fiat currencies, and securities or other financial assets regulated under the securities or financial assets law of Namibia.

## 2. Application of Act

- (1) This Act applies to the national payment system of Namibia.
- (2) This Act applies to payment instruments, payment service providers, payment system operators, users and any other stakeholders involved in the issuance of payment services as set out under the Schedule.

## Part 2 – POWERS AND FUNCTIONS OF BANK

### 3. Powers and functions of Bank

- (1) The Bank must exercise the powers conferred and functions imposed on it by this Act, the Bank of Namibia Act and any other law to ensure the safe, secure, efficient and effective operation of the national payment system, and accessibility to the national payment system by the public.
- (2) For purposes of subsection (1) the Bank must–
  - (a) ensure fair, open and equitable access to the national payment system;
  - (b) regulate, supervise and oversee the operations of the national payment system and all matters relating to payment, clearing and settlement services and systems;
  - (c) regulate, supervise and oversee payment service providers, payment system operators, payment services and payment instruments;
  - (d) license payment service providers or authorise payment system operators and cancel any such licences or authorisations conferred on such payment service providers or payment system operators in accordance with this Act;
  - (e) authorise payment services or payment instruments and cancel such authorisations conferred on such payment services or payment instruments in accordance with this Act;
  - (f) establish and operate a payment or settlement system;
  - (g) authorise and oversee the operations of the Association by issuing to the Association a certificate of commencement of business, after having satisfied itself with the Association's constitution, rules, and readiness to report on matters relating to the operations of the national payment system;
  - (h) authorise payment services and payment systems as financial market infrastructures in the interest of the national payment system and the public, and withdraw such authorisation in accordance with this Act;
  - (i) authorise payment systems and approve the rules, membership criteria, arrangements, agreements, technical specifications, procedures and standards relating to the operations of payment systems;
  - (j) issue any determination, directive, guideline, standard, circular, specification, order or notice to govern the operations of the national payment system;
  - (k) set standards and conditions for payment services, payment instructions and related fees and charges;

- (l) conduct payment system related policy research and advice on financial stability and macro-prudential related matters;
  - (m) 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 determination, directive, guideline, standard, circular, specification, order or notice issued or made in terms of this Act; and
  - (n) 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, a Deputy Governor or any staff member of the Bank, subject to such conditions as the Board may determine.
- (4) The Board may withdraw a power or function delegated or assigned under subsection (3) at any time.

#### **4. 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 of the national payment system;
  - (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; and
  - (c) co-operate with other relevant authorities, both local and foreign as may be appropriate, in promoting the safety and efficiency of financial market infrastructures.
- (2) The Bank may enter into an agreement with the authorities specified in subsection (1) to enforce the provisions of this Act.

### **Part 3 – PAYMENTS ASSOCIATION OF NAMIBIA**

#### **5. Payments Association of Namibia**

- (1) Despite the repeal of the Payment System Management Act by this Act, the juristic person known as the Payment System Management Body established under section 3 of that Act–
- (a) continues to exist as a juristic person under the name Payments Association of Namibia; and
  - (b) the Payments Association of Namibia referred to in paragraph (a) is deemed to have been established by this Act.
- (2) The Association–
- (a) must have a constitution which regulates its affairs as contemplated in [section 7](#);
  - (b) may not effect any amendment to its constitution or rules prior to approval of such amendment by the Bank;
  - (c) may not commence with its business operations before it is issued with the certificate referred to under [section 3\(2\)\(g\)](#); and
  - (d) may not be wound-up or placed under judicial management except under the authority of an Act of Parliament.

## 6. Mandate of Association

- (1) The mandate of the Association is to–
  - (a) act as a collaborative platform for its members;
  - (b) subject to the approval of the Bank, set standards for member participation in payment systems and forums;
  - (c) participate in relevant regional and international initiatives and platforms in the promotion of regional and international integration of payment systems;
  - (d) report to the Bank on matters affecting the national payment system; and
  - (e) perform such further functions relating to payment, clearing or settlement system as the Bank may assign to it.
- (2) 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 among members and facilitate collaborative efforts by its members;
  - (c) fair access to payment system services; and
  - (d) competition in the provision of payment system services in line with the applicable domestic competition laws.

## 7. Constitution and rules of Association

- (1) The Association–
  - (a) must, with the approval of the Bank, draw up a constitution that stipulates its governance and operational arrangements; and
  - (b) may, with the approval of the Bank, make and administer technical rules relating to payment instructions and payment instruments.
- (2) Subject to subsection (1), the constitution of the Association must make provision for the appointment to the governing body of the Association of 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 constitution of the Association.
- (3) The constitution and rules of the Association may not be inconsistent with this Act, the Bank of Namibia Act, the Banking Institutions Act and any other applicable law.
- (4) The constitution and rules of the Association must be fair, equitable and transparent.

## 8. Membership to Association

- (1) Membership to the Association is compulsory for taking part in payment services as per the Schedule for–
  - (a) payment service providers;
  - (b) system participants; and
  - (c) other relevant stakeholders as may be determined by the Bank.
- (2) Membership to the Association may, with approval by the Bank, be extended to such other third parties as may be considered necessary by the Association.

- (3) Members of the Association must at all times act in the interest of the national payment system and must exercise the necessary care, skill and diligence in handling the affairs of the national payment system.
- (4) All members of the Association are liable for annual subscription fees to the Association.
- (5) The Association may, with the approval of the Bank, determine or amend the annual subscription fees referred in subsection (4).
- (6) The appointment and removal and duties of the members, as well as the funding model for the operations of the Association, must be stipulated in the constitution of the Association and such other governance documents, as may be determined by the Association and approved by the Bank.

## **Part 4 – LICENSING AND AUTHORISATION**

### **9. Prohibition on provision of unauthorised payment services**

- (1) A person may not provide any type of payment services unless such a person is licensed or authorised by the Bank in accordance with this Act.
- (2) Subsection (1) does not apply to a–
  - (a) payment service offered by the Bank; or
  - (b) payment instrument issued by the Bank.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction 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.

### **10. Licensing of payment service providers**

- (1) A person who intends to offer any of the payment services listed in the Schedule must apply to the Bank for a licence and specify the type of payment services which that person intends to offer.
- (2) An application for a licence referred to in subsection (1) must be made in accordance with a determination issued by the Bank and must be accompanied by the prescribed non-refundable application fee.
- (3) An application for a licence referred to in subsection (1) must include the submission of information, as may be determined by the Bank from time to time, relating to the beneficial ownership of the applicant.
- (4) When issuing a licence, the Bank must specify the type of payment services such person is authorised to offer and further stipulate the terms and conditions accompanying such licence.
- (5) The Bank may, in accordance with a determination, directive, guidelines, standard, circular, specification, an order or notice issued by the Bank, suspend, revoke or vary the conditions of a licence granted to a person to provide payment services under this Act, under the following circumstances–
  - (a) contravention or failure to comply with the provisions of this Act or any determination, directive, guideline, standard, circular, specification, order or notice issued by the Bank;
  - (b) carrying on payment service business in a manner which is detrimental to the stability of the national payment system; and
  - (c) any other circumstances that the Bank may consider material.

- (6) The Bank must determine the operational requirements, reporting and disclosure conditions, permissible activities and other oversight and supervisory requirements in respect of the provision of payment services.
- (7) A person who knowingly or recklessly furnishes a document or information which is false or misleading in connection with an application for a licence commits an offence and is liable on conviction 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.

## **11. Authorisation of payment system operators**

- (1) A person may not operate a payment system without authorisation from the Bank.
- (2) Subsection (1) does not apply to a payment system operated by the Bank.
- (3) A person who wishes to be authorised as a payment system operator must make an application in accordance with a determination issued by the Bank and the application must be accompanied by the prescribed non-refundable fee.
- (4) An application for an authorisation referred to in subsection (3) must include the submission of information, as may be determined by the Bank from time to time, relating to the beneficial ownership of the applicant.
- (5) The Bank may, in accordance with a determination, directive, guideline, standard, circular, specification, an order or notice issued by the Bank, suspend, revoke or vary the conditions of an authorisation granted to a payment system operator under this Act, under the following circumstances—
  - (a) contravention or failure to comply with the provisions of this Act or any determination, directive, guideline, standard, circular, specification, order or notice issued by the Bank;
  - (b) carrying on payment service business in a manner which is detrimental to the stability of the national payment system; and
  - (c) any other circumstances that the Bank may consider material.
- (6) The Bank must determine the terms and conditions, 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 an authorisation commits an offence and is liable on conviction 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. Rules of payment system**

- (1) A payment system operator must, with the approval of the Bank, draw up rules to govern the payment system, which rules must 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) the management of payment systems related risks;
  - (d) for the manner of determining when a payment instruction is final and irrevocable;
  - (e) common 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 determine other matters that may be specified in the rules of a payment system.
  - (3) Any rules made under subsection (1) must comply with the requirements of this Act and any determination, directive, guideline, standard, circular, specification, order or notice issued by the Bank.
  - (4) The Bank may direct the payment system operator to 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 in accordance with a determination, directive, guideline, standard, circular, specification, an order or notice issued by the Bank.
  - (5) The rules on access to a payment system, including clearing systems and settlement systems must be objective, fair and effective.

### **13. Use of agent**

- (1) A payment service provider or system participant 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 determines.
- (3) A payment service provider or system participant is 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 or system participant 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 or system participant must comply with such guidelines as may be issued by the Bank.

### **14. Liability of payment system operator or payment service provider**

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

## **Part 5 – CLEARING AND SETTLEMENT PROVISIONS**

### **15. Clearing provisions**

- (1) A person may not participate in a clearing system unless such a person is–
  - (a) the Bank;

- (b) a system participant 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 on conviction 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.

## **16. Settlement provisions**

- (1) A person may not participate in the settlement system unless such person is the Bank or a system participant authorised by the operator of the settlement system.
- (2) A system participant authorised in terms of subsection (1) must open and maintain a settlement account in the books of the settlement 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 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 settlement instruction that has been duly effected in terms of subsection (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.
- (6) The Bank may determine the conditions, rules and procedures, regarding the discharging of settlement instructions and determination of settlement obligations.
- (7) The conditions, rules or procedures determined in terms of subsection (6) must be incorporated in settlement 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 on conviction 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. Recognition of eligible collateral arrangements**

- (1) The 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 the settlement system operator for any advance that the settlement system operator may provide to that participant, in accordance with the lending arrangements of the Bank as stipulated under the applicable agreements, procedures and policies, to enable the settlement of the participant's negative multilateral position of the participant, 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.

## **18. 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 is valid and enforceable, and both the system operator and system 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 after consultation with its participants.
- (4) Any amendment effected to the netting agreements and rules is subject to the approval of the Bank.

## **19. 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) The Bank may issue a determination, directive, guideline, standard, circular, specification, order or notice in respect of tiered participation arrangements.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction 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.

## **20. Interoperability and efficiency**

- (1) The Bank must ensure interoperability in the national payment system.
- (2) The Bank may determine the conditions, rules, and criteria for interoperability in the national payment system.
- (3) Except for statutory deductions and such other prescribed requirements as may be prescribed by the Minister with the concurrence of the Bank, 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 6 – ISSUANCE OF ELECTRONIC MONEY AND OPERATIONS OF TRUST ACCOUNTS**

## **21. Eligibility to issue electronic money**

- (1) A person may not issue electronic money unless such person is–
  - (a) the Bank; or
  - (b) a payment service provider licensed in accordance with [section 10\(4\)](#).
- (2) Except for the Bank or a banking institution, a payment service provider permitted to issue electronic money may not–
  - (a) engage in banking business within the meaning of the Banking Institutions Act;
  - (b) treat funds received in exchange for electronic money as deposits within the meaning of the Banking Institutions Act; or
  - (c) engage in any other activity outside the scope of authorised electronic money services by the Bank.
- (3) For purposes of electronic money issued by the Bank under subsection (1)(a), electronic money refers to currency issued digitally by the Bank.



- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction 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.

## 22. Opening of trust account

- (1) A payment service provider must open and maintain a separate trust account at a banking institution to hold and facilitate the transfer of 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 account referred to in subsection (1) is 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) The Bank may, for review purposes, request a payment service provider to provide additional information or records which the Bank considers necessary in order to evaluate the audit results or audit report submitted.
- (6) 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 undertake and implement the internal audit programme of the payment service provider.
- (7) A person who contravenes or fails to comply with this section commits an administrative offence and is liable to an administrative penalty as contemplated in [section 40\(2\)](#).

## 23. Separation of trust account from 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 [section 22\(1\)](#) are exempted from the provisions of the Insolvency Act, the Banking Institutions Act or any other law of Namibia.
- (2) Funds in the trust account are not liable to attachment at the instance of or on behalf of a creditor of that payment service provider.
- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction 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.

## 24. Control of operation of trust account

- (1) If a payment service provider–
  - (a) becomes insolvent;
  - (b) is liquidated or placed under judicial management, whether provisionally or finally;
  - (c) has its banking business authorisation or payment service provider licence revoked or transferred by the Bank;
  - (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, on application made by the Bank or by a person having a direct and substantial interest in the trust account of that payment service provider, appoint a representative to control and administer that trust account with such rights, duties and powers as the Master may consider necessary.

- (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 7 – DESIGNATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS

### 25. Powers to designate

- (1) If the Bank is of the opinion that a payment system is a systemically important system, the Bank must designate that payment system as a designated payment, clearing or settlement system in the national payment system in the manner and on the terms and conditions as the Bank may determine by notice in the *Gazette*.
- (2) In determining whether to designate under 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 provider;
  - (c) whether the designation is in the interest of the national payment system as per the objectives of this Act referred to in [section 3](#); and
  - (d) whether the designation is in the public interest.
- (3) 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 to by the Bank.
- (4) 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.
- (5) A participant in, or an operator of, a designated payment system is for purposes of this Act a designated system participant or operator.

### 26. Variation and revocation of designation

- (1) The Bank may vary or revoke any designation made under [section 25](#), including any terms or conditions of the designation by giving notice in the prescribed form and manner to the designated entity to show cause within 30 business days why its designation or any terms or conditions of designation applicable to it may not be revoked by the Bank.
- (2) In determining whether or not to vary or revoke a designation, the Bank may have regard to any of the following factors–
  - (a) failure to comply with any term or condition 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 matter that the Bank considers appropriate.
- (3) Subject to subsection (2), the Bank must consider the submissions made by the designated entity, if any, before publishing the variation or revocation in a notice in the *Gazette*.
- (4) Any variation or revocation made under subsection (1) does not affect–
  - (a) the validity or enforceability of any rules of the payment system; or
  - (b) any payment to or out of the settlement account of the settlement system or netting or settlement that took place before the notice in the *Gazette*.

## 27. Exemptions

- (1) The Minister may, after consultation with the Bank, exempt any person or category of persons from any of the provisions of this Act by notice in the *Gazette*.
- (2) The Minister may grant an exemption under 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.
- (3) The Minister may at any time vary or revoke an exemption granted under subsection (1) if doing so will allow the Bank to execute its functions as specified under this Act.

## Part 8 – CONSUMER PROTECTION

### 28. Principles of consumer protection

- (1) The Bank must determine consumer protection principles applicable to all payment service providers and payment system operators, which principles must include provisions for treating users fairly and equitably in the provision of payment services or participation in a payment system.
- (2) A payment service provider and a payment system operator must ensure transparency and the disclosure of clear, sufficient and timely information on the fundamental benefits, risks and terms and conditions of a payment service rendered or the participation in a payment system in an objective and accessible form.
- (3) A payment service provider and a payment system operator must ensure that sufficient and accessible information is provided to users on their rights and responsibilities.
- (4) A person who contravenes or fails to comply with this section commits an administrative offence and is liable to an administrative penalty as contemplated in [section 40\(2\)](#).

### 29. Transparency of fees and charges

- (1) A payment service provider that 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 or fails to comply with this section commits an administrative offence and is liable to an administrative penalty as contemplated in [section 40\(2\)](#).

### 30. Determining standards for fees and charges

- (1) The Bank may determine standards and impose conditions to ensure the fees and charges related to the provision of payment services payable by a user are in the public interest, promote competition and efficiency 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.

### **31. 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 complainant 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.

### **32. Sharing of data**

Despite anything to the contrary provided in any other law, 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 9 – POWER TO OVERSEE NATIONAL PAYMENT SYSTEM AND ACCESS TO INFORMATION**

### **33. Power to inspect**

- (1) A person authorised by the Bank in writing 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.
- (2) An authorised officer may during an examination or inspection–
  - (a) inspect and retain 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.
- (3) An authorised officer 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 (1) 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 Article 13 of the Namibian Constitution by authorising interference with the privacy of any person's home, correspondence or communication, is enacted on the authority conferred by that Article.
- (6) An authorised officer executing the powers conferred under subsections (3) to (4) may be accompanied by police officials where it is warranted.
- (7) A person may not, without lawful or reasonable excuse—
  - (a) refuse to permit an authorised officer 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) fail or refuse, subject to Article 12(1)(f) of the Namibian Constitution, 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;
  - (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 in exercising, performing or executing his or her powers, duties or functions under this section.
- (8) A person who contravenes or fails to comply with subsection (7) commits an offence and is liable on conviction 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.

### 34. Information

- (1) The Bank is entitled to have access to any information relating to—
  - (a) payment, clearing and settlement systems; and
  - (b) the Association, a system participant, a payment service provider and a payment system operator in respect of any matter regulated by or under this Act.
- (2) The Bank may, by notice in writing, 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 or payment system operator;

- (b) information relating to the participation or other involvement of that payment service provider or payment system operator 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 Bank may request the information referred to in subsection (3)–
  - (a) in the course of performing its functions under any law;
  - (b) for the purpose of legal proceedings;
  - (c) when required to do so by a competent court; or
  - (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 an administrative penalty not exceeding 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;
  - (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 or access to the records, the Bank, payment system operators and payment service providers must have 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 years as from the date of record and for longer on specifically being requested to do so by the Bank or any other competent authority as defined in the Financial Intelligence Act.

## Part 10 – INSOLVENCY PROCEEDINGS

### 35. Winding-up of system participant

- (1) Despite anything to the contrary in the Insolvency Act, Companies Act, Banking Institutions Act or any other law–
  - (a) a system participant may not commence proceeding for a voluntary winding-up or judicial management; or
  - (b) a person may not apply for winding-up or judicial management of a system participant, unless such system participant or person has given the Bank 14 business days written notice of his or her intention to apply for winding-up or judicial management.
- (2) 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 15 business 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 is not liable to attachment, garnishee proceedings or seizure under the Insolvency Act, Banking Institutions Act or any other law.
- (4) Despite anything to the contrary in the Insolvency Act, 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 a system participant is a party or any netting rule or practice applicable to the system participant, is binding on the liquidator, judicial manager or curator in respect of–

- (a) any payment or settlement instruction which has been delivered to another system participant 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; 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.

### **36. 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 which the system participant, 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.

### **37. Winding-up notice**

- (1) The Bank, on receipt of the notice referred to under [section 35\(1\)](#), must notify–
  - (a) all relevant domestic or foreign payment system operators and regulatory bodies; and
  - (b) other system participants, payment service providers or agents,of the winding-up of the system participant.
- (2) The clearing system operator and settlement system operator must enforce the winding-up order immediately on being notified by the Bank of the order referred to in [section 35\(2\)\(a\)](#).
- (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 do not restrict or preclude any person from enforcing his or her rights under any 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 11 – DISPUTE RESOLUTION**

### **38. Settlement of disputes among 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 the date of the written statement.
- (3) The parties must agree on a conciliator and in the event that they fail to agree, the Bank may appoint a conciliator to settle the dispute between the parties and the cost of conciliation must be shared equally between the parties.
- (4) 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 where—
  - (a) the parties must agree on a mediator, and in the event that the parties fail to agree on a mediator, the Bank may appoint the mediator;
  - (b) the mediator must familiarise himself 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.
- (5) If the parties are unable to settle the matter by—
  - (a) conciliation under subsection (2); and
  - (b) mediation under subsection (4),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 Bank which then must appoint an arbitrator, with legal expertise, on their behalf.
- (6) The arbitrator referred to in 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) Except for instances where the arbitrator awards costs to a particular party, the parties involved in an arbitration are 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](#)) governs arbitration proceeding as contemplated in this section.
- (9) The arbitrator must reach his or her decision in the matter within 30 business days after his or her appointment unless the parties agree to an extension of that period.
- (10) A decision of the arbitrator is final and binding on the parties.
- (11) Where the parties to a dispute have entered into an agreement, the dispute resolution provisions of the said agreement take precedent over the provisions of this section.

### **39. Settlement of disputes with Bank**

- (1) If the Association or a payment service provider or a payment system operator is aggrieved by a decision taken by the Bank under this Act and a dispute arises between them, the dispute must be settled as provided in this section.
- (2) If the Association or a payment service provider or a payment system operator wishes to settle the dispute, it must furnish the Bank with full particulars of its grievance in writing, and the parties must attempt to settle the dispute by conciliation within 15 business days of receipt of particulars by the Bank.
- (3) If the parties are unable to settle the matter as contemplated in subsection (2) they must attempt to settle the dispute within a further period of 30 business days through mediation.



- (4) If the parties are unable to settle the matter by–
  - (a) conciliation under subsection (2); and
  - (b) 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 Director of the Namibia Law Society who then must appoint an arbitrator on their behalf.
- (5) The arbitrator referred to under 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) Except for instances where the arbitrator awards costs to a particular party, the parties involved in an arbitration are jointly liable for equal settlement of the arbitrator's fees and any other costs associated with the arbitration proceedings.
- (7) The Arbitration Act, 1965 (Act [No. 42 of 1965](#)) governs arbitration proceeding as contemplated in this section.
- (8) A decision of the arbitrator is final and binding on the parties.

## **Part 12 – ADMINISTRATIVE PENALTIES AND OFFENCES**

### **40. Administrative penalties**

- (1) A payment service provider, payment system operator or person who contravenes or fails to comply with a determination, directive, guideline, standard, circular, specification, order or notice issued by the Bank under this Act is liable to an administrative penalty not exceeding N\$100 000 for every day of contravention or non-compliance.
- (2) The Bank may determine, in a determination or directive, the appropriate administrative penalty not exceeding N\$100 000 for every day of non-compliance with [section 22](#), [section 28](#) or [section 29](#).
- (3) A person who is aggrieved by a decision taken by the Bank to impose an administrative penalty may appeal to the High Court against such decision.
- (4) In the event that a person appeals against a decision taken by the Bank to impose an administrative penalty, the Bank must not enforce such a decision until the appeal process is concluded and waive the administrative penalty during the appeal process.

### **41. Offences relating to instruments, devices, software, digital apparatus or material or components of such instruments, devices, software, digital apparatus or material**

- (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, digital apparatus, material or a component of such instrument, device, digital apparatus, material that the person knows or reasonably ought to have known that it has been used or is intended for use in–
  - (i) forging or falsifying a payment instrument or for use in defrauding a lawful holder of a payment instrument; or

- (ii) unlawfully interfering with the payment system or a payment service, commits an offence.
- (2) A person who contravenes this section commits an offence and is liable on conviction 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 13 – GENERAL PROVISIONS

### 42. Confidentiality

- (1) The Governor, a Deputy Governor, a member of the Board, an agent of the Bank, an employee of the Bank or any other person exercising a power or performing a function under this Act may not disclose to another person information or data relating to the affairs of the Bank, except–
  - (a) for the purposes of exercising a power or performing a function under this Act, the Bank of Namibia Act or the Banking Institutions Act;
  - (b) when the disclosure of such information is necessary to protect the integrity, effectiveness and security of the national payment system;
  - (c) where it is disclosed to a person who is lawfully authorised to receive the information;
  - (d) for purposes of complying with an agreement or an understanding between the Bank and other central banks, supervisory authorities or any other person; or
  - (e) when required to do so by a court of law or under any relevant law.
- (2) Subsection (1) applies to a 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 for purposes of and subject to such conditions as the Bank may impose.
- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

### 43. Indemnity

The Governor, a Deputy Governor, a member of the Board or an employee or agent of the Bank or the 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.

### 44. Directives by 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;
  - (b) is detrimental to or may be detrimental to the national payment system;
  - (c) is or will be contrary to the public interest, the integrity, effectiveness or security of the national payment system,

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 contravenes or fails to comply with a directive issued under subsection (1) is liable to an administrative penalty as determined by the Bank as contemplated in [section 40\(1\)](#).
- (3) The Bank may apply to the High Court for an order directing such person to comply with a directive issued under subsection (1).

#### 45. Determinations by Bank

- (1) The Bank, by notice in the *Gazette*, may issue determinations 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) is liable to an administrative penalty as determined by the Bank as contemplated in [section 40\(1\)](#).

#### 46. Enforceability of guidelines, standards, circulars, specifications, orders or notices

- (1) Despite [section 44](#) and [section 45](#), the Bank may issue any guideline, standard, circular, specification, order or notice which is not inconsistent with this Act to enforce any provision of this Act.
- (2) A person who contravenes or fails to comply with any guideline, standard, circular, specification, order or notice made under subsection (1) is liable to an administrative penalty as determined by the Bank as contemplated in [section 40\(1\)](#).

#### 47. Regulations

- (1) The Minister may, on the recommendation of the Bank, make regulations relating to–
  - (a) any matter which under this Act is required or permitted to be prescribed; or
  - (b) any matter which the Minister considers necessary or expedient for the effective carrying out of the objects of the Bank or the achievement of the purpose of this Act.
- (2) A regulation made under this section may provide for a fine not exceeding N\$100 000 or imprisonment for a period not exceeding three years or both such fine and such imprisonment for any contravention or failure to comply with the regulation.

#### 48. Amendments to Schedule

- (1) The Minister may, on the recommendation of the Bank and after consultation with payment service providers and payment system operators, amend the Schedule either by adding or deleting the types of payment services permissible within the national payment system.
- (2) The Minister must publish any amendments made under subsection (1) in the *Gazette* and such amendments take effect on publication in the *Gazette*.

#### 49. 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 repealed.

#### 50. Savings and transitional provisions

- (1) Any regulation, determination, directive, guideline, circular, exemption, order, notice, standard, specification or instructions made, issued or granted, under any provision of any law repealed by [section 49](#) is deemed to have been made, issued or granted under the corresponding provision of this Act.
- (2) The membership of the Bank and every banking institution in the Body established under any law repealed by [section 49](#) continues and is deemed to be membership to the Association subject to the provisions 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;
  - (b) issuing payment instruments; or
  - (c) authorised to conduct 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 and finalised in terms of this Act.

#### 51. Short title and commencement

This Act is called the Payment System Management Act, 2023 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

### Schedule (Section 2(2))

#### 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 integrate 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.