



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

BANK OF NAMIBIA

No. 66 2012

DETERMINATION UNDER THE PAYMENT SYSTEM MANAGEMENT ACT, 2003 (ACT NO. 18 OF 2003)

In my capacity as Governor of the Bank of Namibia (The Bank), and under the powers vested in the Bank by virtue of Section 14 of the Payment System Management Act, 2003, as amended (Act No. 18 of 2003), I hereby issue the Determination on Issuing of Electronic Money in Namibia (PSD-3), which Determination shall become effective on 1 March 2012.

I.W. SHIMI
GOVERNOR

Windhoek, 1 March 2012

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PART I PRELIMINARY

1. **Short Title** - Issuing of Electronic Money
2. **Application** - This determination shall apply to all persons who intend to issue e-money in Namibia in terms of Section 5 of the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended (the Act). Both banks and non-bank actors are permitted to apply for authorisation to issue e-money. Permission to offer specific e-money-related services is subject to authorisation by the Bank. Current e-money issuers shall be subjected to an

assessment process, based on this Determination, in order to ensure full compliance with all requirements for issuing e-money in Namibia. Current e-money issuers must be able to demonstrate their full compliance within six months after issuance of this Determination.

3. **Definitions** - In this Determination, unless the context otherwise indicates, the words and expressions used herein shall have the same meaning assigned to them in the Payment System Management Act, 2003 (Act No. 18 of 2003) as amended and cognate expressions shall have corresponding meanings:
- 3.1. **“Act”** - means the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended).
 - 3.2. **“Agent”** means an entity appointed by an e-money issuer to perform certain e-money-related services on its behalf.
 - 3.3. **“Agent Accounts”** means electronic money accounts that are designed to facilitate the transfer and usage of individual and business e-money funds and accounts.
 - 3.4. **“Business Accounts”** means e-money accounts that are designed for businesses, organizations, and government entities.
 - 3.5. **“Capital”** means that for the purposes of section 11.4 of this Determination, funds, the composition and proportions of which will be determined by the Bank.
 - 3.6. **“Customer Due Diligence”** or **“CDD”** means actions taken by an e-money issuer to ensure that prospective and current customers are properly identified and that their financial activities are actively monitored, as required under the Financial Intelligence Act, Act 3 of 2007.
 - 3.7. **“Electronic money”** or **“E-money”** means a designated payment instrument which has monetary value as represented by a claim on its issuer, that is:
 - 3.7.1. Stored electronically;
 - 3.7.2. Issued on receipt of funds;
 - 3.7.3. Accepted as a means of payment by persons other than the issuer; and
 - 3.7.4. Redeemable upon demand for cash denominated in Namibian Dollars.
 - 3.8. **“Electronic money issuer”** or **“E-Money issuer”** means any bank or non-bank entity authorized to issue electronic money under this Determination.
 - 3.9. **“Individual Accounts”** means e-money accounts that are intended to be used by individuals.
 - 3.10. **“Interoperability”** means the ability of e-money products and services from different e-money issuers to interact and exchange information.
 - 3.11. **“Outstanding Electronic Money Liabilities”** means the aggregate of all unredeemed e-money funds held in individual, business, and agent accounts.
 - 3.12. **“Real-time transactions”** means no delay between when the e-money of the payer is debited and when the e-money of the payee is credited.

4. **Authorisation** - Authority for the Bank to issue this Determination is provided in section 14 of the Act.

PART II: STATEMENT OF POLICY

5. **Purpose** - This determination states the minimum requirements that potential issuers of e-money shall meet before issuing e-money in Namibia.
6. **Scope** - This determination shall apply to all persons who intend to issue e-money in Namibia
7. **The Position of the Bank** - It is the Bank's position that E-Money is a payment instrument that requires authorisation from the Bank before being issued. This is to ensure the safety and stability of the National Payment System.
8. **Application of the Act** - Unless expressly stated otherwise, the provisions of the Act, as well as the related determinations and directives, shall apply to all E-Money Issuers.

PART III: IMPLEMENTATION

9. Authorisation to issue electronic money in Namibia -

9.1. Initial Authorisation: Any entity wishing to issue e-money in Namibia must apply to the Bank for authorisation. An application for authorisation shall include all documents, data, or other information as prescribed by the Bank.

9.2. Licence Renewal: An e-money issuer's license to issue e-money shall be renewed annually upon payment of the required fees, provided that the e-money issuer is in full compliance with the requirements of this Determination.

9.3. Notification of Significant Changes to E-Money Services: E-money issuers shall notify the Bank of any significant proposed change to the scope or nature of the e-money services provided. Such notification shall be provided at least 30 days prior to the date on which the change is to take effect. Examples of significant changes include (but are not limited to) the following:

- 9.3.1. Change in electronic delivery mechanism used to provide services;
 - 9.3.2. Change in partnerships used to provide services;
 - 9.3.3. Large increase in transaction volume (e.g. through contract to provide payment services to a large company or government entity);
 - 9.3.4. Large increase in the size of agent network.
- If the Bank has any objections or concerns with respect to the proposed change, it will communicate these concerns to the e-money issuer within 30 days of receipt of notification. In such an event, the e-money issuer shall not proceed with the change until and unless it receives the Bank's approval.

10. General conditions for using agents to provide electronic money services -

10.1. **Use of Agents:** Issuers of e-money may offer any or all approved e-money services through agents acting on their behalf, provided that issuers comply with all provisions in this Determination relating to the use of agents. If using an agent, the e-money issuer is held fully responsible and liable for ensuring that the agent complies with all legal and regulatory requirements related to the provision of e-money services.

10.2. **General Conditions for Use of Agents:** Prior to establishing agreements with specific agents with respect to the provision of e-money services, an e-money issuer

must be able to offer services through agents safely and effectively. The Bank shall prescribe a list of required actions to be taken before notifying the Bank of an e-money issuer's intention to offer services through agents.

- 10.3. **Notification of Intention to Offer Services through Agents:** An e-money issuer that has met the general conditions for offering e-money services through agents may submit a notification to the Bank of its intention to contract a specific agent or agents to provide services on its behalf. The Bank shall prescribe the information that must be included with this notification, which must be submitted at least 14 days prior to the proposed date for commencement of services.

11. **Specific requirements for issuing e-money in Namibia -**

- 11.1. **Characteristics of E-Money:** E-money issuers shall ensure that e-money schemes must abide to the following:

- 11.1.1. E-money issuers may not pay interest or other compensation to customers for funds held in electronic wallets. E-money shall be redeemed at par value.
- 11.1.2. Electronic wallets are subject to transaction and balance limits, as provided in a Circular that will be issued by the Bank.
- 11.1.3. Customer funds held on electronic wallets are not deposits, and acceptance of customer funds by e-money issuers shall not constitute deposit-taking. Customer funds shall be treated as "accounts payable" for accounting purposes.
- 11.1.4. E-money issuers are not permitted to offer credit or otherwise intermediate customer funds. E-money issuers are not permitted to engage in banking business, and they are only permitted to deposit customer funds in pooled deposit accounts, as described in this Determination.

- 11.2. **Safe storage of customer funds:** In order to ensure that customer funds are protected against loss, e-money issuers shall be required to comply with the following requirements:

- 11.2.1. E-money funds received from customers and agents must be pooled and deposited in accounts with one or more licensed Namibian banking institutions.
- 11.2.2. Pooled funds must be held in trust on behalf of the customers and agents of the e-money issuer. Pooled funds held in trust must be legally protected from creditors' claims in the event of insolvency.
- 11.2.3. Except with respect to interest paid under the conditions described below, pooled funds may only be used to fund customer and agent transactions, such as redemptions or other transactions that result in a net reduction in the value of outstanding e-money liabilities.
- 11.2.4. At all times, the aggregate value of the pooled funds must equal at least 100% of the value of all outstanding e-money liabilities. These funds shall be reconciled on a daily basis, with any deficiencies addressed within one business day.
- 11.2.5. E-money issuers are permitted to earn interest on pooled funds. However, issuers may only withdraw interest earned (or use interest to pay fees or charges related to the administration of the pooled account) if the remaining aggregate value of the pooled funds would equal at least 100% of the value of all outstanding e-money liabilities.
- 11.2.6. The Bank reserves the right to waive or modify one or more of the aforementioned requirements in exceptional circumstances, when in the Bank's sole determination:

- (i) compliance with a requirement would be unduly burdensome; and
- (ii) waiver or modification of such a requirement would not affect the safety of customer funds.

11.3. Transaction and balance limits: Individual accounts, business accounts, and agent accounts shall be subject to transaction and balance limits, as may be determined by the Bank from time to time. In establishing these limits, the Bank will consider factors such as:

- 11.3.1. Customer needs;
- 11.3.2. Market and economic conditions;
- 11.3.3. Money laundering and terrorist financing risk;
- 11.3.4. Other risk mitigation measures taken by e-money issuer(s); and
- 11.3.5. Any other relevant factors.

11.4. Minimum capital requirements:

11.4.1. E-money issuers shall be required to comply with the following initial and ongoing minimum capital requirements:

Initial Requirement	Ongoing Requirement
N\$ 2.5 million	The greater of: (i) N\$2.5 million; or (ii) 2% of outstanding electronic money liabilities.

For the purposes of calculating “outstanding electronic money liabilities”, the e-money issuer shall use the **greater of:**

- (i) outstanding electronic money liabilities at the end of the prior business day; or
- (ii) average outstanding electronic money liabilities over the previous six months.

11.4.2. The Bank may -

- i. on application in writing and on good cause shown, in writing permit an e-money issuer to, for such limited period of time as the Bank may specify, have capital funds which are lower than the capital funds determined under section 11.4.1 of this Determination;
- ii. determine that the capital requirements of an E-Money issuer contemplated in section 11.4.1 shall, on a consolidated basis, apply to, and the capital be reflected in the consolidated accounts of, the E-Money issuer, its holding company or the affiliate or associate of the E-Money issuer or its holding company.

11.5. Anti-Money Laundering & Combating the Financing of Terrorism (AML/CFT): As “accountable institutions” under the FIA, e-money issuers are responsible for ensuring that e-money payment instruments are not misused for money laundering, terrorist financing, or other “unlawful activity” regulated under the FIA and its accompanying regulations. E-money issuers must fully comply with Customer Due Diligence (CDD) and all other requirements under the FIA and its accompanying regulations.

If e-money issuers wish to offer certain services via agents, they are required to train their agents to perform CDD and maintain records on their behalf. E-money issuers must monitor their agents to ensure compliance with the FIA and its accompanying regulations.

12. Risk Management and Mitigation -

12.1. Mitigation of Key Risks: E-money services present a variety of risks that must be effectively mitigated, including e-banking risk, outsourcing risk, and risk related to the use of retail agents. E-money issuers shall comply with risk mitigation measures as prescribed by the Bank.

12.2. Customer Protection: E-money issuers shall take steps to ensure that customers understand the services which they are using - including the inherent risks of using such services - and are protected from fraud and other forms of customer abuse. In addition, the roles, responsibilities, and rights of all parties must be clearly communicated. The Bank shall prescribe specific requirements in respect to disclosure and customer protection.

12.3. Real-time Transactions: To avoid settlement risk, all e-money transactions affecting the value held on an e-wallet must be processed in real time. No delay is permitted between when the e-wallet of the payer is debited and when the e-wallet of the payee is credited.

13. Contractual Requirements -

13.1. Minimum requirements for contracts with agents or service providers: E-money issuers must ensure that agreements with agents and service providers are governed by written contracts.

14. Additional Requirements for Non-Bank Electronic Money Issuers -

14.1. Non-bank e-money issuers limited to provision of e-money services only: With the exception of banking institutions, an e-money issuer may not engage in any activities other than issuing e-money and providing services related to the issuance of e-money. Any party (other than a banking institution) that wishes to offer e-money services in addition to other services must establish a separate entity whose activities shall be limited to the issuance of e-money and the provision of related services.

The Bank may consider requests for a waiver from this requirement in exceptional circumstances. To receive a waiver, an e-money issuer must prove that compliance with such a requirement would be unduly burdensome and that granting a waiver would not compromise the Bank's ability to effectively supervise the e-money issuer.

15. Competition & Interoperability of Electronic Money Services -

15.1. Interoperability: In order to incentivise innovation and allow for maximum flexibility during initial market development, interoperability will not be mandated initially. However, e-money issuers must use technical standards and specifications that ensure that interoperability is feasible at low cost in the future.

15.2. Reservation of right to require interoperability and/or non-exclusivity: The Bank reserves the right to require interoperability and/or non-exclusivity at a future date, after providing e-money issuers with notice and sufficient time to conform as

determined by the Bank. E-money issuers should ensure their ability to comply with such a mandate in a timely and cost-effective manner.

16. Fees payable - E-money issuers shall be required to pay certain fees, such as authorisation fees and licence renewal fees. These fees shall be prescribed by the Bank.

17. Reporting requirements - E-money issuers shall be required to submit reports as prescribed by the Bank. In order to ensure that it is able to effectively supervise e-money issuers, the Bank reserves the right to inspect all e-money-related records, data, or other relevant information, whether in the possession of the e-money issuer or its agent(s).

18. Suspension of the authorisation -

18.1. The Bank shall suspend an authorisation to issue e-money under any of the following circumstances where:

18.1.1. The owner is carrying on business in a manner which is detrimental to the stability of the National Payment System, or is incapable of providing services as per agreed service level standards;

18.1.2. There is a violation of any of the provisions of this determination or any other applicable laws or regulations; and/or any other circumstances which the Bank may consider material to warrant suspension.

18.1.3. The Bank of Namibia shall ensure that all due diligence processes are followed before suspension of an e-money issuer is instituted.

19. Cancellation of the authorisation -

19.1. The Bank may cancel an authorisation to issue e-money under the following circumstances:

19.1.1. The owner fails to comply with this determination and remedial measures required by the Bank following an inspection of the affairs of the e-money issuer;

19.1.2. It is determined that an authorisation was obtained on the strength of misrepresented, inaccurate, or misleading information furnished to the Bank at the time of application;

19.1.3. There is a violation of any of the provisions of this determination, the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended or any other applicable laws or regulations;

19.1.4. The scheme is considered not to be conducive to the national interest of Namibia;

19.1.5. The E-money Issuer ceases to operate or becomes insolvent; and/or

19.1.6. Any other circumstances which the Bank may consider material to warrant cancellation.

The Bank of Namibia shall ensure that all due diligence processes are followed before cancellation of an authorisation to issue e-money is instituted.

20. Penalties - An e-money issuer, person or entity that contravenes or otherwise fails to comply with this Determination shall be subject to penalties as provided under the Payment System Management Act, Act 18 of 2003, as amended.

- 21. Effective Date** - The effective date of this Determination shall be 1 March 2012.
- 22. Enquiries** - All enquiries related to this determination shall be forwarded to:

Director: Payment and Settlement Systems
Bank of Namibia
P.O. Box 2882
71 Robert Mugabe Avenue
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