

SADC Payment Systems

Model Law



CONFIDENTIAL

File ref: 17/7/4/1//3

NATIONAL PAYMENT SYSTEM ACT

NO. XX OF XXXX

ACT

To provide for the oversight, supervision, management, operation, administration and regulation of payment, clearing and settlement systems, the implementation of regional integration and generally for matters connected with payment systems.

PREAMBLE

IN ORDER TO ENSURE THAT –

- (a) there is central bank oversight of the payment, clearing and settlement systems
- (b) the key general principles are established to facilitate an enabling environment for that oversight with clear objectives and an enforceable basis;
- (c) there is proper governance of the National Payment System to ensure its safety, efficiency and effectiveness;
- (d) there is a fair, transparent, equitable, comprehensive and coordinated legal framework for the National Payment System;
- (e) a payments infrastructure with strong interlinkages between funds transfer systems and securities settlement systems is developed to support the stability of the broader financial system and taking into account other public interest considerations;
- (f) electronic communications and information management in payment systems are properly regulated; and
- (g) the harmonisation and convergence of the National Payment System with the national payments systems of other member states of the Southern African Development Community;

BE IT ENACTED by the [National Legislature]¹ of [name of the country] as follows:

¹ Square brackets indicate parts of the model law that have to be filled in by the legislative drafter of the particular country.

ARRANGEMENTS OF SECTIONS

CHAPTER I PRELIMINARY PROVISIONS

1. Short title
2. Commencement
3. Application
4. Interpretation

CHAPTER II MANDATE, FUNCTIONS AND GENERAL POWERS OF THE BANK

5. Mandate of the Bank
6. Functions of the Bank
7. General powers of the Bank
8. Delegated supervisory body

CHAPTER III AUTHORISATION OF SYSTEMS AND PARTICIPANTS

9. Authorisation to establish or operate a payment system
10. Authorisation of clearing house participants
11. Authorisation of settlement system participants and operators
12. Authorisation of sponsorship agreements: tiered indirect participation arrangements
13. Authorisation of payment service providers
14. Prohibition against payment intermediation
15. Third-party service providers

CHAPTER IV DESIGNATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS

16. Designation of payment, clearing and settlement systems
17. Designation notice and revocation
18. Variation or revocation of designation

CONFIDENTIAL

File ref: 17/7/4/1/3

19. Obligations of designated system participants

**CHAPTER V
PAYMENT, CLEARING AND SETTLEMENT**

20. Enforceability of payment instructions
21. Payment system participants' collateral
22. Clearing house rules
23. Netting arrangements
24. Settlement participants' requirements and collateral
25. Settlement finality and irrevocability
26. Failure-to-settle arrangements
27. Interoperability of payment systems

**CHAPTER VI
INSOLVENCY**

28. Interpretation
29. Prior notification of insolvency or winding-up proceedings to the Bank
30. Effect of a declaration of insolvency or winding up order
31. Payment instructions entered before and after institution of insolvency proceedings
32. Conflict of laws
33. Orders for winding up system participants
34. Voluntary winding up of system participants

**CHAPTER VII
ELECTRONIC COMMUNICATIONS AND INFORMATION MANAGEMENT**

35. Interpretation
36. Electronic records management
37. Electronic transactions
38. Provision of information to the Bank
39. Publication and archiving of information
40. Prohibition of use of information for personal gain
41. Confidentiality of information

CONFIDENTIAL

File ref: 17/7/4/1/3

CHAPTER VIII GENERAL PROVISIONS

42. Corrective action by the Bank
43. Indemnification of Bank officials
44. Investigative powers of the Bank
45. Alternative dispute resolution mechanisms
46. Regulations and directives
47. Guidelines
48. Offences and penalties
49. Administrative penalties for contraventions and non-compliance
50. Administrative penalties for delay
51. Repeal or amendment of laws and transitional provisions

SCHEDULE 1

CRITERIA FOR AUTHORISATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEM OPERATORS

1. Legal personality
2. Governance arrangements
3. Financial criteria
4. Pricing criteria
5. Service criteria
6. Managerial and human resources criteria
7. Operational and technical criteria
8. Risk requirements

SCHEDULE 2

LAWS TO BE REPEALED

[To be inserted]

SCHEDULE 3

TRANSITIONAL PROVISIONS

[To be inserted]

CONFIDENTIAL

File ref: 17/7/4/1//3

CHAPTER I PRELIMINARY PROVISIONS

1. Short title

This Act is called the SADC National Payment System Act, 2026

2. Commencement

This Act comes into operation on a date fixed by the [*Minister/President*] by notice in the Government Gazette.

3. Application

This Act applies to the National Payment System Act of SADC Countries and all payment, clearing and settlement systems within it as amendment.

4. Interpretation

In this Act, unless the context requires otherwise –

“**Bank**” means CBM SARB of South Africa established in terms of section 2(1) of SADC Central Bank Model Law 2009 under SADC **Committee of Central Bank Governors (CCBG)** Supervision ;

“**bank**” means a financial institution that is duly registered and licensed to carry on the business of a bank in terms of SADC Central Bank Model Law 2009 ;

“**business day**” means any day excluding Saturdays, Sundays and public holidays;

“**clearing**” means an exchange of payment instructions through a process of transmitting, reconciling and confirming payment or transfer instructions prior to settlement, which includes the netting of payment instructions and the establishment of final positions for settlement;

“**clearing house**” means a central location or central processing mechanism through which participants agree to exchange payment instructions or other financial obligations or clearing services for a clearing system under this Act;

“**clearing house system operator**” means a juristic person other than a designated settlement system operator that clears on behalf of two or more settlement system participants;

CONFIDENTIAL

File ref: 17/7/4/1/3

“clearing system” means a system for the transmitting, reconciling and confirming payment obligations or payment instructions that may include the clearing or settlement of security transfer transactions, foreign exchange transactions or other transactions if the system clears the payment obligations arising from those transactions;

“collateral” means an asset or third-party commitment which is acceptable to the Bank or to a payment, clearing or settlement system operator in order to secure an obligation of the collateral provided intra-day credit;

“delegated supervisory body” means the body contemplated in section 8;

“designated clearing system” means a clearing system that has been designated as systemically important in terms of section 16:

“designated clearing system participant” means a participant in a designated clearing system;

“designated settlement system” means a settlement system that has been designated as systemically important under this Act and may include a foreign exchange settlement system;

“designated settlement system operator” means an operator of the designated settlement system;

“designated settlement system participant” means a participant in the designated settlement system;

“electronic money” means any monetary value representing a liability for the issuer, which is –

- (a) stored on an electronic device;
- (b) issued on receipt of funds of an amount equal to the monetary value issued;
- and
- (c) accepted as a means of payment by a legal entity or individual other than the issuer;

“final transfer” means an irrevocable and unconditional transfer of funds that affects a discharge of the obligation;

“financial institution” includes a business, organisation or other entity that manages money, credit or capital, such as a bank, credit union, savings-and-loan association, cooperative, securities broker, dealer or investment company;

“information” includes any data, record, return or document in any form or manner whether oral, written, in any visual recording, any sound recording, any electronic, magnetic, mechanical, computer records, or other recording on any substance, material, thing or article;

“large-value payment system” means a funds transfer system that handles large-value and high-priority payments;

“Minister” means the Minister responsible for finance;

CONFIDENTIAL

File ref: 17/7/4/1/3

“National Payment System” means the total payment process including the systems, mechanisms, institutions, agreements, procedures and rules of the individual payment streams that are used for –

- (a) the transfer of money;
- (b) the origination and finalisation of non-value transactions;
- (c) the final settlement of the obligations resulting from the value transactions between banks;

“netting” means the determination of –

- (a) the net payment obligations between two or more clearing system participants within a payment clearing house; or
- (b) the net settlement obligations between two or more settlement system participants within a settlement system;

“non-bank” means an entity involved in the provision of retail payment services whose main business is not related to taking deposits from the public;

“participant” means a person who is recognised in terms of the operational rules of the National Payment System as eligible to exchange, clear or settle through payment, clearing or settlement systems with other participants either directly or indirectly;

“payment instrument” means any instrument enabling the holder or user to transfer funds;

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

“payment services” includes third-party payment, e-money, transfer and remittance services and any other service that the Bank prescribes as a payment service;

“payment service provider” means any entity providing payment services, which includes –

- (a) entities that take deposits and allow transfers of funds to be made from those deposits;
- (b) non-deposit-takers that transfer funds;
- (c) an entity providing a dedicated service for the transfer of funds from payer to beneficiary;

“payment system” means a set of instruments, procedures, and rules for the transfer of funds between participants;

“payment system operator” means an entity that operates a payment, clearing or settlement system;

“person” means a natural or juristic person and includes a trust;

“prescribed” means prescribed by regulation in terms of section 46;

CONFIDENTIAL

File ref: 17/7/4/1/3

“retail payment system” means a funds transfer system that handles a large volume of low value payments in the form of cheques, credit transfers, direct debits, and card payment transactions;

“securities” includes –

- (a) money market financial instruments, shares, stocks and depository receipts in companies and other equivalent equities;
- (b) notes, derivative instruments, bonds, debentures, participatory interests or units in a collective investment scheme;
- (c) instruments based on an index;
- (d) rights in such securities; and
- (e) any security specified by the Bank by notice in the *Government Gazette*;

“securities settlement system” means a system that enables securities to be transferred and settled by book entry according to the applicable multilateral rules;

“settlement” means the active discharging of obligations by the transfer of funds or securities or other instruments between two or more parties;

“settlement system” means a system for the discharge of payment or settlement obligations between participants;

“SADC” means the Southern African Development Community established in terms of the Consolidated Treaty of the Southern African Development Community, 2015;

“systemic risk” means the risk that a settlement system participant will be unable to meet its obligations resulting in a disruption to or a failure of a clearing settlement system that may cause –

- (a) other participants in the clearing and settlement system to be unable to meet their obligations as they become due and payable;
- (b) financial institutions in other parts of the country’s financial system to be unable to meet their obligations as they become due and payable;
- (c) the clearing and settlement system’s clearing house, or the clearing house of another clearing and settlement system within the country’s financial system, to be unable to meet its obligations as they become due and payable; or
- (d) an adverse effect on the stability and integrity of the country’s financial system.

“third-party payment services provider” means a person who as a regular feature of that person’s business, accepts money or payment instructions from any other person for purposes of making payment on behalf of that other person to a third person to whom that payment is due, and is authorised or licensed to do so under this Act.

CHAPTER II

MANDATE, FUNCTIONS AND GENERAL POWERS OF THE BANK

CONFIDENTIAL

File ref: 17/7/4/1/3

5. Mandate of the Bank

- (1) The mandate of the Bank is to –
 - (a) ensure the proper functioning of the National Payment System in order to preserve the safety, stability, integrity, transparency, accountability, effectiveness and efficiency of payment, clearing and settlement systems and the financial system as a whole;
 - (b) ensure fair, open and equitable access to the National Payment System;
and
 - (c) oversee payment, clearing and settlement systems and their participants.

6. Functions of the Bank

- (1) In order to discharge its mandate in section 5, the Bank has the following specific functions:
 - (a) To supervise payment, clearing and settlement systems and their participants;
 - (b) To coordinate the payment, clearance and settlement systems within the National Payment System;
 - (c) To monitor the reliability and efficiency of payment systems on a regular basis;
 - (d) To promote stability of the National Payment System through cooperative and consultative governance arrangements with stakeholders, domestic regulatory authorities and regional and other international authorities;
 - (e) To promote policies that –
 - (i) ensure financial inclusion and consumer protection;
 - (ii) counter money laundering and the financing of terrorism.

7. General powers of the Bank

- (1) In addition to the powers conferred in terms of this Act, the Bank may, in order to discharge its functions in section 6 –
 - (a) establish, own or operate a payment, clearing and settlement system;
 - (b) provide payment, clearing and settlement services;
 - (c) be a participant in a payment, clearing and settlement system;
 - (d) act as a custodian or a settlement agent, or both, for a clearing house;
 - (e) determine the operational rules of the National Payment System;

CONFIDENTIAL

File ref: 17/7/4/1/3

- (f) provide a guarantee of settlement to designated clearing or settlement system participants against a collateral;
- (g) make liquidity available to designated clearing or settlement system participants in the form of loans against a collateral;
- (h) adopt measures to support regional integration and convergence of payment systems in SADC; and
- (i) perform all such acts that are necessary to implement its mandate in terms of section 5 and perform its functions in terms of section 6.

8. Delegated supervisory body

- (1) Subject to subsection (2), the Bank may delegate any of its functions to a delegated supervisory body subject to such conditions as the Bank may determine.
- (2) The Bank may not delegate the power to make regulations under section 46 to the delegated supervisory body.
- (3) The Bank shall issue a certificate in the prescribed form and publish it in the *Government Gazette* stating the delegated authority's powers and functions.
- (4) The Bank may withdraw its recognition in terms of subsection (1) for any reason in the prescribed manner with effect from a date contained in the notice of withdrawal published in the *Government Gazette*.

CHAPTER III**AUTHORISATION OF SYSTEMS AND PARTICIPANTS****9. Authorisation to establish or operate a payment system**

- (1) Subject to subsections (2) and (3), no person may without the authorisation of the Bank –
 - (a) establish, own or operate any payment, clearing or settlement system;
 - (b) perform any payment services;
 - (c) conduct or offer to conduct a payment, clearing or settlement system business as an intermediary; or
 - (d) issue payment instruments.

CONFIDENTIAL

File ref: 17/7/4/1/3

- (2) Subject to such conditions as the Bank may prescribe, nothing in subsection (1) prevents a person from providing payment services if that person does so through an authorised provider of those services.

- (3) Any contravention of subsection (1) is an offence.

CONFIDENTIAL

File ref: 17/7/4/1//3

10. Authorisation of clearing house participants

- (1) No person may clear payment instructions unless authorised as a clearing house participant by the Bank under one of the following categories:
 - (a) banks and sponsored banks;
 - (b) non-banks and sponsored non-banks.
- (2) Any person who clears in contravention of this section commits an offence.

11. Authorisation of settlement system participants and operators

- (1) No person, other than the Bank, may be a participant or operator of a settlement system without the authorisation of the Bank.
- (2) Only the following persons may be authorised by the Bank to be participants in a settlement system:
 - (a) a bank;
 - (b) a designated settlement system operator; or
 - (c) a designated settlement system participant.
- (3) Any person who contravenes subsection (1) commits an offence.

12. Authorisation of sponsorship agreements: tiered indirect participation arrangements

- (1) No person may clear or settle under a tiered indirect participation arrangement in terms of a sponsorship agreement without the authorisation of the Bank.
- (2) In order to be authorised, the sponsorship agreement shall include –
 - (a) the identification of the potential material risks arising from the tiered participation arrangement and how the risks are to be managed;
 - (b) information on the payment system covered, the ability to capture the proportionate volumes cleared or settled on behalf of the sponsored entity, and the fees payable;
 - (c) the relevant training and mentorship programme on the operational rules of the National Payment System that will be imparted during the course of the sponsorship;
 - (d) a provision for the periodic review of the potential risks arising from such indirect participation; and
 - (e) any other conditions required by the Bank.

CONFIDENTIAL

File ref: 17/7/4/1//3

- (3) Any person who contravenes subsection (1) commits an offence.

13. Authorisation of payment service providers

- (1) No person may, without the authorisation of the Bank in the prescribed manner operate as a payment service provider for –

- (a) the transfer of remittances both domestically or internationally;
- (b) the transfer of electronic money;
- (c) third-party payment or agency services.

- (2) Any person contravenes subsection (1) commits an offence.

14. Prohibition against payment intermediation

- (1) No person may conduct or offer to conduct a payment system business as an intermediary unless that person is –

- (a) authorised in terms of section 9(1); or
- (b) authorised to clear or settle as a payment system operator.

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

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

- (3) Any person who contravenes subsection (1) commits an offence.

15. Third-party service providers

- (1) Only the following persons may be third-party service providers:

- (a) the Bank;
- (b) an authorised or licensed bank in terms of Financial Sector Regulation Act in terms of which it is eligible to clear and settle payments in its own name;

CONFIDENTIAL

File ref: 17/7/4/1/3

- (c) a non-bank authorised by the Bank as a clearing participant;
 - (d) sponsored bank or sponsored non-bank that has been authorised by the Bank to clear or settle payments under the name of a system participant.
- (2) A third-party service provider –
- (a) must accept money and payment in accordance with the directives and guidelines issued by the Bank;
 - (b) is liable for the acts or omissions of its directors, employees and agents;
- (3) The Bank may withdraw authorisation to operate as a third-party service provider.
- (4) Any person who operates as a third-party provider in contravention of subsection (1) or (2)(a) commits an offence.

CHAPTER IV

DESIGNATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS**16. Designation of payment, clearing and settlement systems**

- (1) If the Bank is of the opinion that a payment, clearing or settlement system is a systemically important system, it shall designate it as a designated payment, clearing or settlement system taking into account the following factors:
- (a) The safety, integrity, fairness, transparency, effectiveness and efficiency of the National Payment System;
 - (b) Financial stability;
 - (c) The public interest;
 - (d) Any other factor that the Bank may prescribe.
- (2) A designated clearing or designated settlement system may only participate in the National Payment System on such conditions as the Bank may impose.
- (3) A participant in, or operator of, a designated clearing or settlement system is deemed to be a designated payment system participant or operator.

17. Designation notice and revocation

- (1) The Bank shall designate a payment, clearing or settlement system as a designated payment, clearing or settlement system by –

CONFIDENTIAL

File ref: 17/7/4/1/3

- (a) notice in the *Government Gazette*; and
 - (b) giving written notice of the designation to the payment, clearing or settlement system operator.
- (2) The notice in the *Government Gazette* shall specify –
- (a) the person who is the operator of the payment, clearing or settlement system that is the subject of the designation; and
 - (b) the terms and conditions of the designation.

18. Variation or revocation of designation

- (1) The Bank may vary or revoke any designation, including any term or condition of the designation, made under section 16 by –
- (a) giving notice in the prescribed form and manner to the designated payment, clearing or settlement operator inviting the operator to make submissions; and
 - (b) after considering any such submissions, if any, publishing the variation or revocation in a notice in the *Government Gazette*.
- (2) In determining whether or not to vary or revoke a designation, the Bank may have regard to the matters mentioned in section 16(1).
- (3) Any variation or revocation made under subsection (1) –
- (a) only takes effect on the date of the publication of the notice in the *Government Gazette* contemplated in subsection (1)(b); and
 - (b) does not affect –
 - (i) the validity or enforceability of any rules of the payment, clearing or settlement system; or
 - (ii) any payment to or out of the account of a settlement system or netting or settlement that took place prior to the notice in the *Government Gazette*.

19. Obligations of designated system participants

- (1) An operator or participant of a designated clearing or settlement system shall notify the Bank as soon as practicable after the occurrence of any of the following events:
- (a) an intention to make a material change to the nature of the operational rules, clearing, settlement procedures or activities of the designated payment system;

CONFIDENTIAL

File ref: 17/7/4/1/3

- (b) an event or irregularity that impedes or prevents access to, or impairs the usual operations of the designated payment system or its clearing or settlement operations, as the case may be; and
 - (c) the operator or clearing system or settlement system participant, as the case may be, becoming, or likely to become, insolvent or unable to meet its financial, statutory, contractual or other obligations including being placed under business rescue or any equivalent process in the country of a cross border foreign participant.
- (2) The operator or participant shall provide the Bank with any information it may require including confidential information which the Bank may not disclose to anyone other than to a regulatory authority with jurisdiction over the designated clearing or settlement system and only in so far as the information concerns the authority's regulatory scope.
- (3) Any person who refuses or fails to provide the information contemplated in subsections (1) and (2) commits an offence.

CHAPTER V

PAYMENT, CLEARING AND SETTLEMENT

20. Enforceability of payment instructions

- (1) The Bank shall in its operational rules of the National Payment System determine when a payment instruction enters the payment system.
- (2) A payment instruction, once having entered the payment system, is valid and enforceable.

21. Payment system participants' collateral

- (1) The Bank shall prescribe the manner of holding adequate assets as collateral for securing or obtaining funds by payment system participants to facilitate settlement of their payment obligations in the settlement system.
- (2) The collateral referred to in subsection (1) shall be –
- (a) used to fulfil a participant's obligation as a result of any cause of failure to settle its obligations including insolvency; and
 - (b) protected against insolvency.

CONFIDENTIAL

File ref: 17/7/4/1//3

22. Clearing house rules

- (1) Clearing house members and its operator shall agree on rules to govern the house clearing arrangements.
- (2) The rules must be submitted to the Bank for its approval in the prescribed form and manner.
- (3) A payment clearing house may not engage in clearing without agreed rules that have been approved by the Bank.

23. Netting arrangements

A netting arrangement in a payment system in accordance with the Bank's operational rules is valid and enforceable.

24. Settlement participants' requirements and collateral

- (1) To participate in a settlement system, the settlement system participants shall –
 - (a) maintain such accounts as may be prescribed by the Bank from which payment obligations shall be settled; and
 - (b) lodge a collateral comprising such assets as may be prescribed by the Bank.
- (2) The collateral contemplated in subsection (1)(b) shall be ceded or pledged to the Bank and used to secure loans and to provide sufficient liquidity to ensure smooth functioning of the settlement system.

25. Settlement finality and irrevocability

- (1) A settlement that has been effected under this Act is final and irrevocable and may not be reversed or set aside.
- (2) Settlement obligations shall be discharged with Bank money or through the passing of entries across the books of the Bank.
- (3) If Bank money is not used, the National Payment System and its participants may use bank money to settle the obligations subject to control of the credit and liquidity risk.

CONFIDENTIAL

File ref: 17/7/4/1//3

26. Failure-to-settle arrangements

- (1) A settlement system operator shall issue failure-to-settle arrangements that include rules that provide –
 - (a) for adequate assets as collateral; and
 - (b) how the effect of settlement failure is to be mitigated in the event of failure to settle payment obligations by one or more of the participants in the National Payment System.
- (2) The failure-to-settle arrangements shall be part of the settlement procedures of the clearing house rules contemplated in section 22.

27. Interoperability of payment systems

The Bank must ensure that all payment systems conform to the National Payment System in order to ensure interoperability in which a payment instrument belonging to one payment, clearing and settlement system can be used in other payment, clearing and settlement systems.

**CHAPTER VI
INSOLVENCY****28. Interpretation**

For the purposes of this Chapter –

- (a) “commencement of proceedings” means the filing of an application to –
 - (i) wind up a payment system participant; or
 - (ii) declare such a participant insolvent;
- (b) “declaration of insolvency” means a declaration by Prudential Authority that a payment system participant is declared insolvent;
- (c) “payment system participant” means a clearing system participant, a settlement system participant or a designated payment, clearing or settlement system participant.
- (d) “system operator” means an entity that provides electronic means to give effect to payment instructions in order that two or more persons may make a payment or receive a payment.

CONFIDENTIAL

File ref: 17/7/4/1/3

29. Prior notification of insolvency or winding-up proceedings to the Bank

- (1) A Financial Sector Regulation Act may not grant a declaration of insolvency or an order winding up a payment system participant if –
 - (a) the Bank has not been given twenty-one days written notification of the commencement of proceedings; and
 - (b) a copy of the application is not served on the Bank.
- (2) The Bank shall, upon receipt of the copy of the application referred to in subsection (1)(b), immediately notify all relevant domestic and foreign system operators of the proceedings.

30. Effect of a declaration of insolvency or winding up order

- (1) Notwithstanding any law to the contrary, if a payment system participant is declared insolvent or wound up, that participant's estate is bound by –
 - (a) the rules and agreements relating to clearing, netting and settlement to which that participant is a party or is bound;
 - (b) any payment or settlement that is final and irrevocable in terms of section 25(1).
- (2) Notwithstanding any law to the contrary, no settlement that has been finally and irrevocably effected in terms of this Act before the declaration of insolvency may be reversed, netted or set aside.

31. Payment instructions entered before and after institution of insolvency proceedings

- (1) The operational rules of a National Payment System determined in terms of section 7(1)(e) shall specify the moment at which a payment instruction shall be considered to have been entered into the System.
- (2) Payment instructions and netting are legally enforceable and binding on third parties if the payment instruction was entered into the National Payment System before a declaration of insolvency.

32. Conflict of laws

Notwithstanding any law to the contrary, a court may not recognise or give effect to an order of court of another country or any act done in pursuance of such an order if the order or the act would be prohibited under this Act.

CONFIDENTIAL

File ref: 17/7/4/1/3

33. Orders for winding up system participants

- (1) If a payment system participant is declared insolvent or wound-up, the court must record the minute, the hour and the day that the winding up order is made.
- (2) The applicant that instituted the winding up proceedings must no later than the start of the next business day lodge the order on the Bank.
- (3) If the applicant is a bank, it must no later than the start of the next business day –
 - (a) serve the order on the payment system participant concerned;
 - (b) in the prescribed manner notify –
 - (i) other payment system participants affected by the order; and
 - (ii) domestic and foreign system operators affected by the order.

34. Voluntary winding up of system participants

- (1) Notwithstanding any law to the contrary, a payment system participant may only be voluntarily wound up –
 - (a) with the approval of the Bank; and
 - (b) by an order of [*name of the court responsible for winding up corporate entities*].
- (2) A payment system participant that is voluntarily wound-up shall inform all other system participants of the resolution to wind up no later than the start of the next business day.
- (3) The Bank shall notify domestic and foreign system operators affected by the winding up of the resolution to wind up no later than the start of the next business day of the resolution.
- (4) Notwithstanding any law to the contrary, a winding up resolution does not affect any settlement that has become final and irrevocable in terms of the National Payment System prior to an order of court contemplated in subsection (1)(b).

CONFIDENTIAL

File ref: 17/7/4/1/3

CHAPTER VII

ELECTRONIC COMMUNICATIONS AND INFORMATION MANAGEMENT

35. Interpretation

For the purposes of this Chapter, 'participant' means any participant or operator in a payment, clearing and settlement system and includes a payment service provider and a third-party service provider.

36. Electronic records management

- (1) Every participant shall retain electronic records regarding their payment system operations for at least five years unless a longer period is prescribed in terms of any legislation regarding archives or electronic communications.
- (2) Payment clearing house service level agreements and operational manuals shall include binding contractual arrangements for electronic record keeping and archiving of the records of payment system operations.

37. Electronic transactions

- (1) Notwithstanding any law to the contrary, electronic and optical evidence of payment instructions or authorisation for payments in terms of electronic instruments constitutes prima facie proof of those instructions or authorisation in a court of law.
- (2) Any person who gains access to another person's financial data, record or transaction with the aid of any device, electronic device or any scheme or method that facilitates retrieval of personal information and data without consent of that person or legal authority to do so, commits an offence.

38. Provision of information to the Bank

- (1) The Bank may, by notice in the form or manner prescribed, require any participant to provide to the Bank, within the period specified in the notice, all such information in its possession relating to their participation in National Payment System.

CONFIDENTIAL

File ref: 17/7/4/1/3

- (2) Without prejudice to the generality of subsection (1), the Bank may in a notice issued under that subsection, require any participant 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 form of consideration for, the services offered by that participant;
 - (b) information relating to the participation or other involvement of that participant in the payment, clearing and settlement system; and
 - (c) such other information as the Bank may require for the purposes of this Act.
- (3) Any person to whom a notice is issued under subsection (1) shall not be obliged to disclose any information which that person is prohibited by any other legislation from disclosing.

39. Publication and archiving of information

- (1) The Bank may, from time to time, prepare and publish –
 - (a) consolidated statements aggregating any information provided under this Act; or
 - (b) for statistical purposes, statements that relate to, or are derived from, any information provided under this Act in respect of a National Payment System or a stored value facility.
- (2) The Bank shall prescribe –
 - (a) what information relating to payment, clearing and settlement systems must be preserved; and
 - (b) how it must be collected, archived and made available.

40. Prohibition of use of information for personal gain

Any officer or employee of the Bank that uses information acquired during the performance of that employee's functions under this Act for personal gain is guilty of an offence.

CONFIDENTIAL

File ref: 17/7/4/1/3

41. Confidentiality of information

- (1) Subject to any law concerning confidentiality, the Bank shall not disclose any confidential information submitted to the Bank under this Chapter and shall take the necessary steps to ensure that its directors, officer and staff do not disclose such information.
- (2) The prohibition under subsection (1) does not apply to information that is –
 - (a) in the public domain;
 - (b) in the public interest to protect the integrity, effectiveness or security of the national payment system;
 - (c) made in the performance of a function under any law or the rules of any payment, clearing or settlement system.
- (3) A person who discloses information in contravention of subsection (1) commits an offence.

**CHAPTER VIII
GENERAL PROVISIONS****42. Corrective action by the Bank**

- (1) If the Bank has reason to believe that there is a systemic risk, the Bank shall take prompt corrective action –
 - (a) notifying in the prescribed manner an operator or a payment, clearing or settlement system participant to take such action as the Bank considers necessary to maintain or restore the safety, efficiency and effectiveness of the payment system;
 - (b) taking any other action, the Bank considers necessary in the circumstances.

43. Indemnification of Bank officials

Any act, omission, matter or thing done in good faith by an officer, employee or other person employed by the Bank in the exercise or performance or purported exercise or performance of any power or function under this Act does not give rise to any action, claim or liability, against that officer, employee or person.

CONFIDENTIAL

File ref: 17/7/4/1/3

44. Investigative powers of the Bank

The Bank may in writing authorise any of its officers, employees or agents to conduct investigations, inspections, searches and seizures, as if they were *[the name of the police, inspectorate or law enforcement officers that have these powers under criminal legislation]* acting in terms of *[the relevant provisions of legislation that gives those officers the powers]*.

45. Alternative dispute resolution mechanisms

- (1) If any person is aggrieved by a decision of the Bank made under this Act, the aggrieved person may lodge a dispute in the following manner:
 - (a) The aggrieved party shall furnish the Bank with full particulars of its grievance in the prescribed form.
 - (b) The parties shall attempt to negotiate a settlement directly with each other.
 - (c) If the parties are unable to reach a settlement directly within seven business days of receipt of the grievance by the Bank, either party may refer the grievance to an independent mediator appointed by *[an independent and credible body such as an ombudsman, dispute resolution body, law society]* in the prescribed manner.
 - (d) If the mediator is unable to effect a settlement of the grievance within 10 days of referral of the grievance to the mediator, either party may refer the grievance to arbitration by –
 - (i) an arbitrator appointed by both parties, or
 - (ii) an arbitrator or arbitrators appointed at the request of either party by *[an independent and credible body such as an ombudsman, dispute resolution body, law society]* in the prescribed manner.
- (2) An arbitrator contemplated in subsection (1)(d) shall, as far as possible, be a person appointed on account of their knowledge of the law and the National Payment System operational and legal framework.
- (3) The *[the law governing arbitration in the country]* applies to an arbitration contemplated in this section with the necessary changes required by context.
- (4) The decision of the arbitrator is final and binding on both parties.
- (5) Nothing in this section prevents an aggrieved person from seeking urgent relief in the *[the name of the Court with jurisdiction]* pending a determination of the grievance by arbitration under this section.

CONFIDENTIAL

File ref: 17/7/4/1/3

46. Regulations and directives

(1) The Minister or any competent authority may make regulations prescribing –

- (a) the recognition of the delegated supervisory body contemplated in section 8;
- (b) authorisation and powers of Bank officers, employees or agents to conduct investigations, inspections, searches and seizures in terms of section 44;
- (c) rules in respect of dispute resolution contemplated in section 45;
- (d) the manner and form in which directives and guidelines are to be issued in terms of subsection (2) section 47 respectively;
- (e) consumer protection measures in respect of payment services, such as display of fees, minimum information to be provided to consumers, complaints mechanisms and remedial measures;
- (f) the procedure for the imposition of administrative penalties in terms of section 49;
- (g) the maximum administrative penalties contemplated in terms of section 49;
- (h) penalties and sanctions in respect of the administrative penalties contemplated in section 50;
- (i) rules as may be necessary or expedient for carrying out the purposes and provisions of this Act; and
- (j) anything that may be required or authorised to be prescribed by this Act.

(2) The Bank may issue directives prescribing –

- (a) the operational rules of the National Payment System;
- (b) criteria in accordance with Schedule 1 for, and the manner of, authorisation of –
 - (i) payment, clearing and settlement systems contemplated in Chapter III;
 - (ii) payment, clearing and settlement participants in Chapter III including criteria for the authorisation of sponsorship agreements contemplated in section 12;
 - (iii) payment service providers contemplated in section 13;
- (c) rules on the provision of payment services and payment service providers
- (d) the manner in which payment, clearing and settlement systems are designated in terms of sections 16 and 17 including any variation or revocation of designation under section 18;
- (e) standards in respect of which designated payment, clearing and settlement systems shall conform;
- (f) rules on the participation of foreign persons in payment, clearing and settlement systems;

CONFIDENTIAL

File ref: 17/7/4/1//3

- (g) manner, adequacy and nature of the collaterals contemplated in section 21;
 - (h) criteria for the approval of clearing house rules contemplated in section 22;
 - (i) rules on electronic money schemes;
 - (j) rules on electronic transactions and electronic records management;
 - (k) rules on the provision of information to the Bank in terms of section 38, including oversight audits of designated payment, clearing and settlement systems;
 - (l) rules on the publication and archiving of information in terms of section 39;
 - (m) relating to the administration of this Act;
 - (n) rules on the operation of payment, clearing and settlement systems;
 - (o) rules on the operation of electronic money schemes;
 - (p) rules on the corrective action to be take in terms of section 42; and
 - (q) any other matter that may be authorised or prescribed under the Act.
- (3) The operational rules referred to in subsection (2)(a) of a National Payment System shall specify the moment at which a payment instruction shall be considered to have been entered into the System.
- (4) A delegated supervisory body contemplated in section 8 may recommend criteria referred to in subsection (1)(c) and any other regulation, directive or guideline that the Bank may prescribe.

47. Guidelines

- (1) The Bank may issue guidelines on –
 - (a) any matter relating to the administration of the National Payment System;
 - (b) any matter prescribed in terms of section 46.
- (2) A person to whom a guideline applies is bound to the extent that any deviation from the guideline must be justified.

48. Offences and penalties

- (1) Any person who breaches any provision of this Act, for which no specific offence has been created shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding [.....] or to imprisonment for a term not exceeding two years or both.
- (2) Any operator or clearing or settlement system participant of a designated clearing or settlement system who fails to comply with a directive relating to the administration of this Act shall be guilty of an offence and shall be liable on

CONFIDENTIAL

File ref: 17/7/4/1//3

conviction to a fine not exceeding [*stipulate equivalent amount in country*] or five years' imprisonment.

- (3) A person convicted of an offence in respect of –
- (a) section 9(3), 10(2), 11(3), 12(3), 13(2), 14(3) or 15(4) or a failure or refusal to comply with a directive issued in terms of section 46(2) is liable to a fine not exceeding an amount of [*country equivalent*] or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment;
 - (b) section 38(3), 40 or 41(3) is liable to a fine not exceeding [*country equivalent*] or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.
- (4) Any person who fails to provide information to the Bank on request or notice to furnish such information shall be guilty of an offence and shall be liable on conviction to a fine not exceeding [*country equivalent*] or to imprisonment for a term not exceeding two years or to both and, in the case of a continuing offence, to a further fine not exceeding [*country equivalent*] for every day or part thereof during which the offence continues after conviction.

49. Administrative penalties for contraventions and non-compliance

- (1) Subject to subsection (2), the Bank may impose administrative penalties for any of the contraventions of the Act, its regulations or non-compliance with a directive or guideline [*with limitations of minimum and maximum amounts set for country specific context in alignment with civil law/civil code prescribed penalties*].
- (2) The Bank may not impose an administrative penalty in respect of any contravention or non-compliance if it has instituted criminal proceedings for an offence under section 48.

50. Administrative penalties for delay

- (1) The Bank may impose administrative penalties on any person for any delay in complying with any directive or notice under this Act [*with limitations of*

CONFIDENTIAL

File ref: 17/7/4/1/3

minimum and maximum amounts set for country specific context in alignment with civil law/civil code prescribed penalties].

- (2) Before making a decision to impose any administrative penalty on a person, the Bank shall serve on the person a written notice calling on the person to show cause as to why the penalty should not be imposed on the person.
- (3) If a satisfactory explanation is not received within 14 days from the date of receipt of the written notice referred to in subsection (2), the Bank may impose an administrative penalty in an amount not exceeding [*state amount*] for each day of non-compliance, which amount may not exceed [*state amount*].

51. Repeal or amendment of laws and transitional provisions

- (1) Each of the laws listed in Schedule 2 is hereby repealed or amended to the extent specified.
- (2) Despite the repeal or amendments contemplated in subsection (1), the transitional provisions in Schedule 3 must be read and applied as if substantive provisions of this Act.

CONFIDENTIAL

File ref: 17/7/4/1//3

SCHEDULE 1**CRITERIA FOR AUTHORISATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEM OPERATORS**

The Bank shall apply the following criteria when authorising a payment, clearing and settlement system operator:

1. Legal personality

It is a company registered in terms of the company laws of South Africa

2. Governance arrangements

It has governance arrangements that are clear and transparent, promote the safety and efficiency of the payment, clearing or settlement operator, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

3. Financial criteria

- (a) It is financially sound, stable and viable to ensure that the payment, clearing and settlement systems/services can be provided for at least twelve months or as directed by the Bank;
- (b) It maintains accounting records on a continual basis and prepare financial statements that conform with generally accepted accounting practice;
- (c) Its accounting records and annual financial statements are audited.

4. Pricing criteria

- (a) It ensures fair and transparent pricing;
- (b) It provides that cross-subsidisation is monitored in order to ensure that no undisclosed cross-subsidisation of a service provided by it takes place; and
- (c) It ensures that a payment, clearing or settlement service is available to all participants on identical price structures.

5. Service criteria

- (a) It ensures that a payment, clearing or settlement service will have priority at all times;
- (b) It ensures that agreed service levels are consistently met; and

CONFIDENTIAL

File ref: 17/7/4/1//3

- (c) It ensures that service agreements are entered into with each participant using its payment, clearing or settlement service.

6. Managerial and human resources criteria

It has management and human resources with appropriate experience necessary for the operation of payment, clearing or settlement systems, with specific reference to high-volume, time-critical transaction processing, to enable it to provide the clearing service.

7. Operational and technical criteria

- (a) It has the operational and technical capabilities to provide the payment, clearing or settlement service/system for current and planned volumes and complete the clearing and settlement functions on a daily or more frequent basis;
- (b) It can maintain its operational processes and technology to ensure business continuity and achievement of agreed service levels;
- (c) It has the technology to enable it to interface with other systems according to standards and requirements set by the Bank;
- (d) It has appropriate technology and platforms that meet industry interface standards (including security standards) with planned obsolescence, upgrading and replacement programmes in place; and
- (e) It has reasonable, documented disaster recovery plans that are to be tested regularly at least once a year.

8. Risk requirements

- (a) It has implemented arrangements to efficiently and effectively manage the material risks associated with the operation of a payment, clearing or settlement system;
- (b) It can promptly and diligently adhere to all reasonable risk management and risk containment measures;
- (c) It can promptly and diligently adhere to and implement risk reduction measures such as becoming compliant with these criteria as soon as reasonably possible after discovering it is non-compliant;
- (d) It can participate at reasonable intervals in periodic, appropriate testing of its systems to identify; and limit potential, unacceptable operational risks.

CONFIDENTIAL

File ref: 17/7/4/1/3

SCHEDULE 2

LAWS TO BE REPEALED

[Add Laws to be repealed]

SCHEDULE 3

TRANSITIONAL PROVISIONS

[Add transitional provisions]