



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

BANK OF NAMIBIA

No. 103

2013

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

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 (Act No. 18 of 2003), as amended, I hereby issue this **Determination on the Criteria for Authorisation of Participants in the Clearing and Settlement Systems (PSD-6)**, which Determination shall become effective on 31 August 2013.

S. IPUMBU
GOVERNOR
BANK OF NAMIBIA

Windhoek, 6 February 2013

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PART I: PRELIMINARY

1. **Short Title** - Criteria for Authorisation of Participants in the Clearing and Settlement Systems.
2. **Authorization** - Authority for the Bank to issue this Determination is provided in section 14 of the Act.
3. **Application** - This Determination shall apply to all persons in terms of section 2 (2) (b) of the Act authorised access and participation in the clearing and settlement systems.
4. **Definitions** - In this determination, unless the context indicates otherwise, the words and expressions used herein shall have the same meaning assigned to them in the Payment System Management Act and cognate expressions shall have corresponding meanings.

- 4.1 **“Act”** means the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended.
- 4.2 **“Designated NBF”** means a NBF that has been designated as contemplated in section 8 of this Determination.
- 4.3 **“Direct Participant (DP)”** means a participant in the clearing or settlement system that clears or settles payment obligations on its own behalf.
- 4.4 **“Indirect Participant (IP)”** means a participant in the clearing or settlement system whose clearing or settlement obligations are done through a DP. The IP has a settlement account with the DP.
- 4.4 **“Intraday Liquidity”** means funds which can be accessed, from the Bank, during the business day usually to enable a participant to make payments in real time and must be reimbursed with the business day prior to final cut-off.
- 4.4 **“Participant”** means the Bank or a Designated NBF or a banking institution duly approved by the Bank, who have agreed to be bound by the terms and conditions of the settlement and clearing system rules.
- 4.5 **“Payment service”** means a service enabling cash to be placed on a payment account and all of the operations required for operating a payment account. A service enabling cash withdrawals from a payment account and all of the operations required for operating a payment account. The execution of the following types of payment transaction: direct debits, including once-off direct debits; payment transactions executed through a payment card or a similar device; credit transfers, including standing orders. The execution of the following types of payment transactions where the funds are covered by a credit line for the payment service user, direct debits, including once-off direct debits; payment transactions executed through a payment card or a similar device; credit transfers, including standing orders, issuing payment instruments or acquiring payment transactions and money remittance.
- 4.6 **“Payment Institution”** means a person (either bank or non-bank) which provides payment services such as facilitating deposits and withdrawals from accounts, executing direct debits and standing orders, money remittance and certain services provided through mobile phones or other digital and IT devices.
- 4.7 **“Non-Bank Financial Institutions (NBF)”** refers broadly to institutions other than licensed or registered banks that offer payment services.
- 4.8 **“Settlement Account”** means settlement accounts in the RealTime Gross Settlement System (RTGS) at the Bank.

PART II: STATEMENT OF POLICY

5. **Purpose:** The Bank is issuing this determination to provide for the criteria for authorisation of participants in the clearing and settlement systems.
6. **Scope:** This determination governs persons engaged in the provision of payment services.
7. **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 persons providing payment services.

PART III: IMPLEMENTATION**8. Designation of Non-Bank Financial Institutions (NBFI) Participants**

- 8.1 The Bank may designate a NBFI for the purposes of participating in clearing and settlement systems.
- 8.2 Upon designation of the NBFI, the Bank may recommend to the Minister for approval, the opening of a settlement account at the Bank subject to the provisions in section 33 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997), as amended.
- 8.3 A NBFI wishing to apply for designation should follow the procedures outlined in section 12.1 of this Determination.
- 8.4 In designating NBFIs, the Bank will take the following factors into consideration:
- 8.4.1 The actual or prospective participant must provide payment services, and demonstrates its business need to clear and settle obligations with other participants;
- 8.4.2 Such designation is in the public interest and is in the interest of promoting a NBFI that occupy a special position in a specific sector, particularly in promoting financial inclusion; and
- 8.4.3 Any matters the Bank considers relevant.

9. Eligibility for Authorisation

- 9.1 The following categories of institutions are eligible to access and participate in the clearing and settlement systems:
- 9.1.1 Registered banking institutions in terms of the Banking Institutions Act, 1998, as amended; and
- 9.1.2 Designated NBFIs.

10. Criteria for Access and Participation in the Clearing Systems

- 10.1 Direct Participation
- a) Be a Licensed or Registered Banking Institution or a Designated NBFI.
- b) Be either a Direct or Indirect Participant in the settlement systems
- c) Participate in one or more of the Payment Clearing Houses (PCH).
- d) Must have specialized skills and processing capabilities in clearing systems operations.
- e) Must have sufficient financial and capital resources to ensure the safe, efficient and ongoing participation in each of the payment streams and initiatives within the industry specific to the streams in which the DP participates.
- f) Be able to comply with all clearing systems technical, security and operational standards as determined by the payment system management body.
- g) Fulfil the participation requirements on an on-going basis.

10.2 Indirect Participation

- a) Be a Licensed or Registered Banking Institution or a Designated NBFI.
- b) Be registered by and under the responsibility of the Direct Participant, acting on its behalf.
- c) Be either a Direct or Indirect Participant in the settlement system.
- d) Participate in one or more of the Payment Clearing Houses (PCHs).
- e) Have a contractual arrangement with a Direct Participant incorporating a variety of risk-mitigating mechanisms.
- f) Fulfil the participation requirements on an on-going basis.

11. Criteria for Access and Participation in the Settlement System

11.1 Direct Participation

- a) Be a Licensed or Registered Banking Institution or a Designated NBFI.
- b) Participate in one or more of the Payment Clearing Houses (PCHs).
- c) Hold a settlement account at the Bank subject to the provisions in section 33 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997), as amended
- d) Must have signed the following bilateral agreements:
 - i. Master Repurchase Agreement (MRA) for intraday liquidity facilities and any other credit service that may be provided by the Bank; and
 - ii. An agreement showing connectivity to SWIFT.
- e) Must have specialized skills and processing capabilities in settlement systems operations.
- f) Fulfil the participation requirements on an on-going basis.
- g) Must have sufficient financial and capital resources to ensure the safe, efficient and ongoing participation in the settlement system
- h) Be able to comply with all settlement system technical, security and operational standards as determined by the payment system management body.
- i) Be able to meet the financial criteria determined by the Bank from time to time.

11.2 Indirect Participation

- a) Be a Designated NBFI.
- b) Be registered by and under the responsibility of the Direct Participant, acting on its behalf.
- c) Have a contractual arrangement approved by the Bank with a Direct Participant incorporating a variety of risk-mitigating mechanisms ensuring that the Direct Participant protects the other participants from risks that might be introduced by such contractual arrangement.
- d) Fulfil the participation requirements on an on-going basis.

PART IV: OTHER REGULATORY REQUIREMENTS

12. Application Procedures

12.1 Designation

NBFIs desirous of access and participation in the clearing and settlement systems shall submit an application to the Bank for designation comprising of the following:

- 12.1.1 An application by the applicant accompanied by a non-refundable application fee;
- 12.1.2 Memorandum and Articles of Association;
- 12.1.3 The applicant's financial statements and its policies and strategies relating to the future development of its provision of payment services;
- 12.1.4 The details of the proposed directors, officers and shareholders of the applicant. Each director or officer is required to submit a copy of his/her Curriculum Vitae (CV), personal financial statement and completed Payment and Settlement System Forms (PSSF) to be obtained from the Bank;
- 12.1.5 The structure and shareholding of the group of companies of which the applicant forms a part or intends to form a part;
- 12.1.6 The integrity of the applicant and its competence to provide, or experience in providing payment services;
- 12.1.7 Detailed proposed business/strategic plan including a forecast budget calculation for the first three financial years related to the business operations;
- 12.1.8 Identity of Auditors; and
- 12.1.9 Address of applicant's Head Office.

If an application for designation is declined, the Bank will provide the applicant with notice in writing stating reasons for refusal.

12.2 Authorisation

Persons desirous of access and participation in the clearing and settlement systems shall submit an application to the Bank for authorisation fulfilling the criteria set out in sections 9, 10 and 11. An application for authorisation shall include all documents, data, or other information as prescribed by the Bank.

13. Fees payable in respect of designation and authorisation

The fees payable to the Bank are:

- 13.1 for an application for designation, a non-refundable application fee at the time of application of N\$10 000 is payable and an annual renewal fee of N\$5 000;
- 13.2 for an application for authorisation to participate in the clearing and settlement systems, no fee is payable. However, user fees are payable and shall be prescribed by the respective providers of the clearing and settlement services.

14. Suspension of Authorisation

- 14.1 The Bank shall suspend an authorisation to access and participation under any of the following circumstances:
 - 14.1.1 The person is carrying on business in a manner which is detrimental to the stability of the NPS, or is incapable of providing services as per agreed service level standards.

14.1.2 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.

14.1.3 The Bank shall ensure that all due diligence processes are followed before suspension of a clearing and/or a settlement participant is instituted.

15. Cancellation of Authorisation

15.1 The Bank may cancel an authorisation under the following circumstances:

15.1.1 The person fails to comply with this determination and remedial measures required by the Bank following an inspection;

15.1.2 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:

15.1.3 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;

15.1.4 The person ceases to operate or becomes insolvent; and/or

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

15.1.6 The Bank shall ensure that all due diligence processes are followed before cancellation of an authorisation to access and participation in the clearing and settlement systems is instituted.

16. Remedial Measures

16.1 Failure to comply with this determination, the Bank may pursue any remedial measure/s as provided under the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended, or any relevant legislation in the interest of ensuring a safe and efficient National Payment System.

16.2 This determination is not exhaustive and may be supplemented and/or amended from time to time.

17. Effective date

17.1 The effective date of this Determination shall be 31 August 2013.

18. Enquiries

All enquiries related to this determination shall be forwarded to:

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