

THE NATIONAL PAYMENTS SYSTEM ACT, 2023

(Act No. 5 of 2023)



I ASSENT

MSWATI III
KING OF THE KINGDOM OF
ESWATINI

....., 2023

**AN ACT
ENTITLED**

AN ACT to provide for the regulation and supervision of payment systems; the safety and efficiency of national payments system; the functions of the Central Bank in relation to payment systems; the prescription of rules governing the oversight and protection of payment systems; the financial collateral arrangements; the regulation of payment services providers; the implementation of regional integration of the national payment system of the Kingdom of Eswatini; the repeal the National Clearing and Settlement Systems Act No. 17 of 2011 and incidental matters.

ENACTED by the King and Parliament of the Kingdom of Eswatini.

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY PROVISIONS**

1. Short title and commencement
2. Interpretation

**PART II
ESTABLISHMENT OF NATIONAL PAYMENTS SYSTEM**

3. Establishment of National Payment System

**PART III
MANDATE, FUNCTIONS AND POWERS OF THE BANK**

4. Mandate and functions of the Bank
5. Operational functions of the Bank
6. Cooperation with other stakeholders
7. Cooperation between regulators

8. National Payments System Advisory Forum.

**PART IV
LICENSING OF PAYMENT SYSTEMS**

9. Payment systems

10. Application for licence

11. Eligibility for licensing payment system

12. Granting or rejecting a licence

13. Modification of licence

14. Revocation or suspension of licence

15. Effect of revocation or suspension of licence

16. Restrictions on operating payment system

**PART V
DESIGNATION OF PAYMENT SYSTEMS**

17. Annual fees

18. Designation of Systems

19. Designation of systems notice

20. Variation or revocation of designation

21. Obligations of designated system participants

**PART VI
LICENSING OF PAYMENT SERVICE PROVIDERS**

22. Restrictions on providing payment services

23. Application for a licence for providing payment services

24. Granting and amending licence for the provision of payment service

25. Provision of electronic money

**PART VII
SUPERVISION AND OVERSIGHT**

26. Access to Systems

27. Interoperability

28. Outsourcing of activities

- 29. Use of agents
- 30. Liability of payment system operator or payment service provider
- 31. Compliance with the anti-money laundering and counter financing of terrorism legislation
- 32. Retention of payment system records
- 33. Computer entries and imaging
- 34. Data protection
- 35. Pricing policies

**PART VIII
PAYMENT TRANSACTIONS AND INSTRUMENTS**

- 36. Transparency
- 37. Terms and conditions of payment transactions
- 38. Initiation and authorization of payment transactions

**PART IX
ON AND OFF SITE EXAMINATION**

- 39. Off-site Examination of Operations
- 40. Onsite Examinations
- 41. Rules and Procedures of systems to be open to inspection
- 42. Approval of amendments to Rules and Procedures of licenced systems
- 43. Control of undesirable conduct in regard to a recognised system
- 44. Corrective action by the Bank
- 45. Investigative powers by the Bank
- 46. Regulations, Directives and Guidelines

**PART X
IRREVOCABILITY OF PAYMENT INSTRUCTIONS AND FINALITY
OF SETTLEMENT**

- 47. Irrevocability of payment instructions
- 48. Clearing house rules
- 49. Netting arrangements

- 50. Settlement finality
- 51. Failure to settle arrangements

**PART XI
INSOLVENCY**

- 52. Interpretation
- 53. Prior notification of insolvency or winding-up proceedings to the Bank
- 54. Effect of a declaration of insolvency or winding up order
- 55. Payment instructions entered before and after institution of insolvency proceedings
- 56. Conflict of laws
- 57. Orders for winding up system participants
- 58. Voluntary winding up of system participants
- 59. Recognition of financial collateral arrangements
- 60. Utilization of collateral

**PART XII
INFRINGEMENTS, REMEDIAL MEASURES AND SANCTIONS**

- 61. Prohibition against non-licenced systems
- 62. Prohibition against settlement intermediation

**PART XIII
SETTLEMENT OF DISPUTES**

- 63. Settlement of disputes arising out of systems
- 64. Settlement of disputes between a customer and a payment service provider

**PART XIV
MISCELLANEOUS**

- 65. Exercise of functions by Bank
- 66. Preservation of secrecy
- 67. Use of confidential information for personal gain
- 68. Evidence
- 69. Unpaid items due to insufficient funds
- 70. Powers to make Regulations and review of Act

71. Transitional Arrangements

72. Repeal of the National Clearing and Settlement Systems Act No. 17 of 2011

**PART I
PRELIMINARY**

Short title and Commencement

1. (1) This Act may be cited as the National Payments System Act, 2022.

(2) This Act shall come into force on a date to be determined by the Minister by Notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires-

“account information service” means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;

“acquiring of payment transactions” means a payment service provided by a payment service provider contracting with a payee usually a merchant to accept and process payment transactions, which results in a transfer of funds to the payee;

“agent” means a person to whom some or all aspects of a payment service have been delegated by a payment service provider and being legally authorized to act on behalf of such payment service provider as its principal against third parties such as customers and users of payment instruments;

“Bank” means the Central Bank of the Kingdom of Eswatini as defined in the Central Bank of Eswatini Order, 1974 or its successor Act;

“central counter-party” means an entity that interposes between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and ensuring the performance of open contracts;

“central securities depository” means an entity that provides securities accounts, central safekeeping services, and asset services, which may include the administration of corporate actions and redemptions, and plays an important role in helping to ensure the integrity of securities issues that is, ensure that securities are not accidentally or fraudulently created or destroyed or their details changed;

“clearing” means the process of transmitting, reconciling, confirming funds and securities transfer instructions prior to settlement and includes the netting of instructions and the establishment of final positions for settlement;

“clearing house” means any multilateral system or arrangement that provides its participants with clearing services for payment instructions, securities transactions, derivatives transactions, and in some cases, settlement services;

“clearing system” means a set of rules and procedures that participants present and exchange information relating to the transfer of funds or securities to other participants through a centralized system or at a single location and includes a mechanism for the calculation of participants’ positions on a bilateral or multilateral basis with a view to facilitating the settlement of their obligations in a settlement system;

“close-out netting” means a netting arrangement under which, following the occurrence of certain events specified by the parties to the arrangement, all or any of the transactions referred to in the netting arrangement may be terminated, and where so terminated the termination value becomes due and payable;

“collateral” means an asset that is delivered by the collateral provider to secure an obligation to the collateral taker;

“collateral provider” means a person providing financial collateral under a title transfer arrangement or a security interest;

“collateral taker” means a person provided with financial collateral under a title transfer arrangement or a security interest;

“credit transfer” means the series of transfers, beginning with the payer’s payment order, made for the purpose of making payment to the payee including any payment order issued by the payer’s bank or payment service provider, or an intermediary intended to carry out the payer’s payment order;

“designated system” means a licenced system designated by the Bank to be systemically important;

“direct participant” means a participant in a system who is responsible for the settlement of its own payments, those of its consumers and those of indirect participants on whose behalf it is settling;

“electronic money” means a monetary value represented by a claim on the issuer, which is-

- (a) stored on an electronic instrument or device;
- (b) issued upon receipt of funds in an amount not less in value than the monetary value received;
- (c) accepted as a means of payment by persons other than the issuer; and
- (d) withdrawn in cash or any equivalent of cash;

“electronic money provider” means a payment service provider who is licence to issue electronic money under section 24 of this Act;

“financial collateral” includes cash or financial instrument;

“financial collateral arrangement” means an arrangement of transfer of title or a security interest as financial collateral, whether or not the transfer title or security of interest is covered by an agreement or general terms and conditions, applicable to a financial collateral;

“gross settlement” means the settlement of funds or other obligations’ instructions that occur individually on an instruction by instruction basis;

“indirect participant” means a participant in a system that settles obligations in the system through a direct participant, which performs a settlement activity on its behalf;

“interoperability” means a set of procedures or arrangements that allow participants in different payment systems to conduct and settle payments or securities transactions across those payment systems;

“irrevocable order or transfer” means an order or a transfer which cannot be reversed by the transferor;

“licencee” means a person issued with a licence under this Act;

“Minister” means the minister responsible for finance;

“multilateral netting” means an arrangement among three or more parties to net their obligations which may arise from financial contracts, transfer instructions or both;

“national payments advisory forum” means the payments system advisory forum established in terms of section 8 of the Act;

“national payments system” means the payment system used in the process of effecting payments between payers and beneficiaries and includes any payment system, settlement system, clearing system and payment system arrangement recognised in section 3;

“netting” means the determination of the net payment obligations or the determination of the net termination value of settlement obligations between two or more system participants within a payment system;

“netting arrangement” means an arrangement to convert several claims or obligations into one net claim or one net obligation and includes bilateral netting, multilateral netting, netting by novation, close-out netting, payments netting or a combination of any of these netting arrangements;

“net termination value” means the net amount obtained after setting off or otherwise netting the obligations between the parties in accordance with settlement rules issued by the Bank or a netting arrangement entered into by the parties;

“outsourcing” means an arrangement of any form between a payment service provider or a payment system operator and a service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the payment service provider or operator;

“participant” means a duly licenced payment service provider that is defined in the rules of a payment system as eligible to exchange, clear and settle through the system with other participants either directly or indirectly;

“payment card” means a card or other device, including a code or any other means of access to an account, that may be used from time to time to obtain money or to make payment, and includes a debit, credit and stored-value card;

“payment gateway” means a payment service facilitating the authorization of card or direct payments processing for e-businesses, online retailers, or the like;

“payment initiation services” means all services facilitating the authorization and validation of an electronic fund transfer, a card payment or otherwise facilitating the execution of electronic transactions. The payment initiation services include, but are not limited to management of payment gateways and payment terminals;

“payment instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment or transfer money. Payment instrument may include, funds transfers initiated by any paper or paperless device; such as automated teller machines, points of sale, internet, telephone, mobiles, payment cards, including those involving storage of electronic money;

“payment order” means an instruction sent by a payer or payee directing the execution of payment transaction;

“payment services” means-

- (a) services enabling cash deposits and withdrawals;
- (b) execution of payment transactions;
- (c) issuance and acquisition of payment instruments and payment transactions; or
- (d) any other service incidental to the transfer of funds;

“payment services provider” means a person or financial institution that is licenced under section 22 of this Act to provide a payment service;

“payment system” means a system or arrangement for the processing, clearing and settlement of funds, but excludes-

- (a) an in-house system operated by a person solely for their own administrative purposes that does not transfer, clear or settle funds for third parties; and
- (b) such other systems or arrangements as may be prescribed by law;

“payment system operator” means a person or an entity, alone or with other entities which is in charge of the operation of a payment system and may include a participant to the system, a settlement agent, a central counterparty or a clearing house;

“payment transaction” means an act, initiated by a payer or on his behalf or by a payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee or remote payment transactions initiated through internet or a device that can be used for distance communication;

“Real-Time Gross Settlement” means a settlement that effects final settlement of funds, payment obligations and book entry of securities and instruments on a real-time transaction-by-transaction basis as these occur during operating hours in a processing day;

“remittance services” means a financial service that accepts cash, e-money instruments or other payment instruments in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, a message, transfer or through a clearing network to which the money transfer service belongs;

“settlement” means the act of discharging obligations by transferring funds, payment instruments or securities between two or more parties;

“settlement agent” means an entity providing accounts for the participants of a system to hold funds and to settle transactions between participants in the payment system;

“settlement finality” means the discharge of an obligation by a transfer of funds and transfer of securities that have become irrevocable and unconditional;

“settlement rules” means the established rules, that provide the basis upon which payment obligations are calculated, netted or settled and includes rules for the taking of action in the event that a participant is unable or unlikely to meet the participant obligations to a payment system, clearing house, central counter-party or other participants. The settlement rules cover settlement of obligations from securities;

“settlement system” means a system established and operated by the Bank or any other system for the discharge of payment obligations as well as of settlement of obligations in relation to securities;

“system” means a payment, clearing and settlement system recognised by the Bank;

“systemic risk” means the risk that relates to the inability of a participant to meet its obligations in a system as they become due or a disruption to the system that could, for whatever reason, cause other participants in the system to be unable to meet their obligations as they become due;

“Switch” means technology, both hardware and software, as well as rules that allow interoperability of payment platforms of financial services providers;

“transfer” means the sending of funds, securities or other financial instruments, or a right relating to those funds, securities of financial instruments from one party to another through-

- (a) the conveyance of funds or physical;
- (b) accounting entries on the books of a financial intermediary; or
- (c) the book- entry movement of funds or physical instruments through a recognized system or Central Bank system;

“transfer instruction” means an order or electronic message requesting the movement of funds, securities or other financial instruments or a right relating to those funds, securities or other financial instruments from one party to another;

PART II
THE ESTABLISHMENT OF THE NATIONAL PAYMENTS SYSTEM

Establishment of the national payments system

3. (1) There is established the national payments system to be regulated and supervised by the Bank.
- (2) The clearing and settlements system established under the repealed Act is recognised and forms part of the national payments system.

PART III
MANDATE AND FUNCTIONS OF THE BANK

Mandate and functions of the Bank

4. (1) The Bank shall regulate, supervise and oversee the operations of the national payment systems in order to ensure their soundness, safety, efficiency, and financial inclusion.
- (2) Without prejudice to the generality of subsection (1) the Bank shall-
- (a) regulate and supervise payment services providers and operators of payment systems or switch;
 - (b) consider applications for licences in accordance with this Act;
 - (c) monitor and oversee cross border payments;
 - (d) provide settlement services to payment systems and settlement of monetary value securities;
 - (e) co-ordinate payment systems activities with relevant stakeholders;
 - (f) issue directives, standards, guidelines, orders and circulars regulating the manner in which the objectives of this Act may be achieved;
 - (g) approve rules and arrangements relating to the operation of payment systems including-
 - (i) netting agreements;
 - (ii) risk sharing and risk control mechanisms;
 - (iii) finality of settlement and finality of payment; and
 - (iv) such other matters relating to systemic risk;
 - (h) ensure that financial services are extended beyond traditional branch-based channels to the domain of everyday transactions;
 - (i) perform any such other functions relating to payment systems or the issuance of payment instruments permitting the accomplishment of its functions;

- (j) act as a forum for the consideration of matters of policy and mutual interest concerning the national payments system; and
- (k) be responsible for the administration of this Act.

(3) For the avoidance of doubt, the functions of the Bank in relation to the securities settlement shall be limited to-

- (a) issuance, redemption and settlement of debentures, stocks, treasury bills and bonds or proposed to be issued by Government; and
- (b) transfer monetary value for debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate.

Operational functions of the Bank

5. (1) The Bank may provide facilities for payment systems to payment systems operators and their participants.

(2) The Bank shall-

- (a) establish, own, operate and participate in the ownership or operation of payment systems or payment switches;
- (b) act as a central counterparty to participants;
- (c) hold cash accounts for operators and participants, which may be used for the clearing and settlement of transfers into a system;
- (d) hold securities on accounts for operators and participants, which may be used for the working of systems;
- (e) extend intraday credit as determined by the Bank to entities that are participating in payment systems; or
- (f) act as a Central Securities Depository for Government debt securities.

Cooperation with other stakeholders

6. (1) The Bank may, in the performance of its functions under this Act consult with such stakeholders deemed appropriate.

(2) The Bank may co-operate with public stakeholders or entities in the Kingdom of Eswatini -

- (a) engaged in the regulation, and supervision of financial institutions;
- (b) directly or indirectly involved in payment services;
- (c) regulating, monitoring and supervision of financial markets; or
- (d) having a role in the organization or the efficient execution of payments.

(3) The Bank may cooperate with other monetary authorities and international organizations dealing with regulation, supervision and oversight of payments system.

Cooperation between regulators

7. (1) The Bank shall co-operate with Government agencies whose functions are relevant to payment systems.

(2) For avoidance of doubt the Bank shall co-operate with the Financial Services Regulatory Authority on-

- (a) the integration of payments and securities settlement systems;
- (b) the establishment of cross-border and securities settlement systems; and
- (c) the settlement of any other financial market instruments or assets.

National Payments System Advisory Forum

8. (1) The Bank shall establish a National Payments System Advisory Forum which shall consist of representatives of sectors listed in sub-section (2).

(2) The Advisory Forum shall be comprised of the following members or representatives of the following sectors –

- (a) Principal Secretary or lawfully appointed representative in the Ministry responsible for finance;
- (b) participants in the national payment systems infrastructure;
- (c) payment service providers;
- (d) owners of payment systems;
- (e) remittance service providers;
- (f) internet service providers;
- (g) payment infrastructure support service providers;
- (h) the non- banking financial services regulator; and
- (i) the communications regulator.

(3) The Forum shall regulate its own procedure.

(4) The Forum shall meet bi –annually or whenever the need arises.

(5) The Governor or a lawfully appointed representative shall be the chairperson of the Advisory Forum.

(6) There shall be a secretariat of the Advisory Forum whose functions shall be performed by the officers in the department of the Bank responsible for the national payments systems.

- (7) The objective of the Advisory Forum is to advise the Bank on the following-
- (a) the regulation, supervision and oversight of the national payment systems;
 - (b) the operational and technical standards for payment systems; and
 - (c) any other matters affecting payment services, clearing and settlement of payments as indicated by the Bank.

**PART IV
LICENSING OF PAYMENT SYSTEMS**

Payment Systems

9. The payment systems in Eswatini are categorised as-
- (a) payment systems operated by the Bank which include-
 - (i) the Real Time Gross Settlement System;
 - (ii) the Clearing House;
 - (iii) the Central Securities Depository for Government debt securities;
 - (iv) cross border payment systems; or
 - (v) any other payment systems or payment switches established by the Bank.
 - (b) payment systems operated by another government entity or in partnership with a government entity in public interest;
 - (c) payments systems operated by private entities including-
 - (i) switches;
 - (ii) electronic money systems;
 - (iii) aggregators or integrators; or payment gateways and;
 - (d) any other payment system approved or licenced by the Bank under this Act.

Application for licence

10. (1) A person who intends to provide payment services, establish or operate a payment system, or issue payment instruments in the Kingdom of Eswatini shall apply to the Bank for a licence.

(2) An application referred to in subsection (1) to be licenced shall be made in accordance with regulations to be made by the Bank and shall be accompanied by the prescribed fees.

(3) A person who knowingly or recklessly furnishes a document or information which is false or misleading in a material particular, in connection with an application for licence, commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand Emalangeni (E250,000.00) or imprisonment not exceeding two (2) years, or both.

Eligibility for licensing payment system

11. (1) A payment system is eligible to be licenced by the Bank if that payment system has any of the following objects-

- (a) clearing of payment instructions between financial and non-bank;
- (b) settling of obligations arising from the clearing payment instructions;
- (c) transfer of funds from one account to another using an electronic device;
- (d) transfer of electronic money from one electronic device to another;
- (e) provision of technological services to facilitate switching, routing, clearing or data management for or on behalf of a payment system provider;
- (f) provision of electronic payment services to the unbanked and under banked population;
- (g) provision of financial communications networks;
- (h) ordering or transmitting payment instructions;
- (i) storing of information on a device for purposes of effecting payments;
- (j) fulfilling payment obligations at points of sale, merchant outlets or over internet; or
- (k) any other objects as may be prescribed by the Bank by regulations.

(2) Subject to subsection (1) a payment system shall be eligible to be licenced by the Bank where that payment system is interoperable with other payment systems in the kingdom of Eswatini and internationally.

Grant or rejection of licence

12. (1) The Bank shall, upon receipt of an application under section 10 of this Act consider the application and may, where satisfied that the applicant meets the requirements, grant a licence to an applicant.

(2) The Bank may grant a licence subject to such conditions as the Bank may consider necessary and may, from time to time, add, vary or substitute the conditions as it deems appropriate.

(3) The Bank may, by regulations, prescribe different classes of a licence in respect of each category of a licence under this Act.

(4) A licensee shall not conduct activities that are not specified in the licensee's licence.

(5) The Bank shall determine an application for a licence within ninety (90) days from the date of receipt of the application.

(6) The applicant shall, when submitting the application-

(a) pay to the Bank an investigation fee as prescribed by the Bank by notice in the gazette; and

(b) deposit with the Bank an annual licence fee for the first year provided that such deposit shall be refunded to the applicant if the licence is refused.

(7) The Bank shall publish in the gazette, a list of all licences under this Act, at least once every year.

(8) A licence shall be granted in writing for a period of one year, subject to renewal and shall not be transferable.

(9) Where the Bank declines to grant a licence, the Bank shall within thirty (30) days, notify the applicant, of the Bank's decision and specify the reasons for the refusal in writing.

(10) Where the applicant is aggrieved by the decision of the Bank under subsection (9), the applicant may appeal to the High Court within thirty (30) days from the date of the decision of the refusal to grant a licence to the applicant.

(11) A licence granted under this Act shall be valid until revoked under this Act.

Modification of licence

13. (1) The Bank may, upon reasonable ground modify the conditions of any licence if the Bank considers it necessary to achieve the object of this Act, or is in the public interest, taking in to account the justified interests of Payment service providers, Payment System Operators and the principles of fair competition and equality of treatment.

(2) Before modifying any condition under sub section (1), the Bank shall give the payment service provider or operator notice of not less than ninety (90) days, stating the reasons for the intended modification and giving the payment service provider or payment system operator an opportunity to make any representation.

(3) The Bank shall give a payment service provider or payment system operator reasonable time within which to comply with the modifications of the licence.

Revocation or suspension of licence

14. (1) A licensee shall not terminate its operations in Eswatini without a written consent from the Bank.

(2) The Bank may, by notice in writing, revoke or suspend a licence if the Bank is satisfied that the licensee-

- (a) has obtained the licence on the basis of fraudulent or false documentation presented that is essential to its operations;
- (b) has failed to commence operations within twelve (12) months from the date of issuance of the licence;
- (c) has failed to comply with any obligation imposed on it by or under this Act;
- (d) the operation of the system is detrimental to the reliable, safe, efficient and smooth operation of the national payments system of Eswatini;
- (e) has insufficient assets to cover its liabilities;
- (f) has ceased to carry on operations in Eswatini without written consent by the Bank;
- (g) has failed to fulfill or comply with the terms and conditions stipulated in its licence;
- (h) a merger, consolidation or sale of substantially all of the assets of the operator has occurred without prior approval of the Bank;
- (i) the activities of the system differ substantially from those presented in the application for a licence;
- (j) in the case of an operator that is a subsidiary of a foreign operator, it appears to the Bank that the foreign supervisory authority has withdrawn its authorization to conduct the relevant payment services;
- (k) the Bank has approved a request by the operator to voluntarily terminate its operations;
- (l) has repeatedly violated the duty of timely and accurate reporting to the Bank with the intention of concealing the actual situation in the payment system operator, and provided inaccurate information on any requirement the Bank may prescribe;
- (m) prevents supervision of its operations in any way whatsoever, including the failure to submit information requested by the Bank;
- (n) fails to implement supervisory measures ordered by the Bank in its decision;
- (o) fails to meet technical, organizational, staffing or other requirements for the relevant services;
- (p) has failed to pay the prescribed fee; or
- (q) has failed to comply with any other conditions that the Bank may prescribe.

(3) A licensee aggrieved by the revocation or suspension of its licence may appeal to the High Court within thirty (30) days from the date of receipt of the decision to revoke or suspend the licence.

(4) Where the Bank revokes licence, the Bank shall direct the licensee to furnish the Bank with information on the customers.

(5) The Bank may reduce the period of thirty (30) days if the Bank deems that financial stability or payment system users' interests are at risk.

(6) An appeal to the High Court by the licensee for the review of a decision of the Bank to revoke the licence shall not suspend the effect of the revocation of the licence.

(7) The decision to revoke a licence by the Bank shall be irrevocable if the requirements of this Act have not been fulfilled by the licensee.

(8) The High Court may grant a monetary compensation as a relief for an application for a review of a decision of the Bank revoking a licence of a payment system operator.

(9) The Bank shall publish a notice of the revocation or suspension in the gazette and in a newspaper of general circulation in the country and shall in addition cause a sufficiently large enough notice to be posted in a conspicuous place in each place of business of the licensee.

(10) The Bank shall give the licensee at least thirty (30) days notice in writing specifying the reason for the intended revocation of the licence.

(11) The Bank shall before revoking a licence consider any representations made in writing by the licensee opposing the revocation.

(12) The Bank shall revoke the licence if within thirty (30) days after issuing the notice, the operator does not oppose the revocation or the Bank is satisfied by the representation made.

Effect of revocation or suspension of licence

15. (1) A licensee whose licence is revoked or suspended under section 14, shall be considered not to be licenced from the date that the Bank revoked or suspended the licence.

(2) A revocation or suspension of a licence shall not operate so as to-

(a) avoid or affect any agreement, transaction or arrangement relating to operating a payment system entered into by a licensee where the agreement, transaction or arrangement was entered into before the revocation or suspension; or

(b) affect any right, obligation or liability arising under that agreement, transaction or arrangement relating to operating a payment system.

Restrictions on operating a payment system

16. (1) A person shall not provide a payment service or operate a payment system or issue a payment instrument without a licence issued by the Bank in accordance with this Act.

(2) Subsection (1) shall not apply to-

(a) a payment instrument issued by the Bank;

(b) a payment service offered by the Bank; or

(c) a payment system operated by the Bank.

(3) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to, as -

(a) an individual, to a fine not exceeding one million Emalangeni (E1,000,000.00) or a term of imprisonment not exceeding five (5) years or both.

(b) a body corporate, to a fine not exceeding two million Emalangeni (E 2, 000,000.00).

(4) A person convicted of an offence under subsection (3), shall immediately cease to offer payment services and shall be disqualified from acquiring a licence under this Act.

Annual Fees

17. (1) A licensee shall pay an annual fee prescribed by the Bank on the date determined by the Bank every year.

(2) Where a licensee fails to pay a prescribed annual fee before or on the date specified by the bank in subsection (1)-

(a) the licensee shall pay to the Bank a civil penalty of one hundred Emalangeni (E100.00) for each day on which the contravention continues; and

(b) the unpaid licence fee and any penalty payable under paragraph (a), shall be a debt to the Bank by the licensee.

PART V DESIGNATION OF SYSTEMS

Designation of Systems

18. (1) Where the Bank is of the opinion that a duly licenced payment, clearing or settlement system is a systemically important system, the Bank shall designate such as a designated system considering the following factors-

(a) the safety, integrity, fairness, transparency, effectiveness and efficiency of the national payments system;

(b) financial stability;

(c) the public interest; and

(d) any other factor that the Bank may prescribe.

(2) Before designating a system as systemically important in terms of subsection (1) the Bank shall invite the payment system operator which the Bank considers to be systemically important to make representations on the designation of the payment system within thirty (30) days.

(3) The Bank shall after considering the submissions of the payment system operator make a determination on the designation of the system as a systemically important system.

(4) The designation of a system as systemically important under sub-section (3) shall not imply or entitle the payment system operator to any form of guarantee or credit or other support from any public entity.

(5) A designated system shall only operate on such additional conditions as the Bank may determine, in accordance with this Act and the relevant standards as set from time to time by international standard-setting bodies.

Designation of a system notice

19. (1) The Bank shall by written notice designate a payment, clearing or settlement system as a designated payment, clearing or settlement system.

(2) The written notice shall specify –

- (a) the person who is the payment system operator of the payment, clearing or settlement system that is the subject of the designation; and
- (b) the terms and conditions of the designation.

Variation or revocation of designation

20. (1) The Bank may, by written notice, vary or revoke any designation of a system, including any term or condition of the designation of the system, and may invite the payment system operator to make submissions.

(2) Any variation or revocation made under subsection (1) shall not affect -

- (a) the validity or enforceability of any rules of the payment, clearing or settlement system; or
- (b) any payment to or out of the account of a settlement system or netting or settlement that took place prior to the issuance of the notice of variation or revocation of the designation of the system.

Obligations of designated system participants

21. (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;
- (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 and shall be liable to a sanction as may be determined by the Bank.

PART VI LICENSING OF PAYMENT SERVICE PROVIDERS

Restrictions on providing payment services

22. (1) A person shall not provide payment services unless that person is duly licenced by the Bank in accordance with the provisions of this Act.

(2) The powers of the Bank to grant a licence to provide payment services shall include, the power to suspend or revoke such licence under specific circumstances in terms of this Act.

Application for licence for providing payment services

23. (1) In order to obtain a licence for providing payment services from the Bank, an applicant is required to maintain capital adequacy at levels specified by the Bank.

(2) The capital level to be maintained by a payment service provider shall be determined by the type of service, average value of payments, aggregate value and other factors as the Bank deems necessary.

(3) The Bank may substitute the requirement of licensing with that of registration when the relevant service does not involve specific risks for the market.

(4) An institution providing payment services under the Financial Institutions Act No.6 of 2005 or its successor shall not be required to obtain a new licence to provide payment services.

(5) The institution providing payment services referred to in subsection (3) shall be required to comply with operational, reporting and disclosure requirements as may be set by the Bank, and shall be subject to oversight requirements for licenced entities under this Act.

(6) The institution providing payment services shall be required to obtain an authorization for the issuance and management of a new payment instrument, and obtain a licence under Part III of this Act for the operation of systems.

Grant and amendment of licence for the provision of payment services

24. (1) A licence for the provision of payment services may be obtained by application to the Bank in accordance in compliance with the terms and conditions prescribed in measures issued by the Bank in this respect.

(2) The Bank may from time to time prescribe application fees through Notice from time to time.

(3) A licence or any right acquired from the grant of a licence, whether wholly or partly, shall not be transferable except as may be prescribed by the Bank, and any transfer in contravention of the provisions of this Act shall be void.

(4) A licence given under this Act may be renewed in such manner and subject to payment of such fees or other payments as may be prescribed by the Bank.

(5) The Bank may, for the purposes of this Act, amend any condition of a licence issued under this Act by alteration, substitution, addition, omission or other modification of the licence.

(6) Where the Bank, directs any amendment in the conditions of a licence, a notice may be served on the licensee informing the licensee of the reasons for the proposed amendment.

(7) The Bank shall provide the licensee with fifteen (15) days within which to submit to the Bank comments on the proposed amendment.

(8) The bank shall upon receipt of comments, if any, take the comments into consideration before confirming or modifying the proposed amendment.

(9) The Bank may, upon application of an amendment of a licence by a licensee, amend any condition of a licence if it considers the proposed amendment to be fit and proper.

Provision of Electronic Money

25. (1) A person shall not provide electronic money unless that person is duly licenced by the Bank.

(2) In addition to general requirements provided for in this Act for obtaining a licence as a payment service provider or applicant shall prove that, the following requirements have been met-

- (a) the provision of electronic money shall not include the provision of credit;
- (b) electronic money is issued in exchange for the equivalent of Emalangeni or highly liquid assets acceptable by the Bank;
- (c) electronic money providers shall provide statistics on e-money loaded and redeemed values in their periodic financial statements.
- (d) the electronic money provider shall provide sufficient and reliable information to the Bank to monitor and control the quantity and velocity of electronic money supply in the economy;
- (e) clearing and settlement mechanisms shall facilitate rapid provision of final settlement after a payment instruction has been initiated in the banking system, according to time limits that the Bank may establish from time to time;
- (f) issuers shall be obliged to redeem electronic money value in Bank money, at par, upon request;
- (g) the management of the underlying float and redemption of electronic money value by the issuer to the holder shall be clearly defined; and
- (h) the payment service provider shall be required to open one or more trust accounts with a deposit taking institution licenced by the Bank, where it shall deposit the funds received by the customers and the funds of customers shall be always segregated and traceable according to the rules established by the Bank.

**PART VII
OVERSIGHT AND SUPERVISION**

Access to Systems

26. (1) The Bank shall ensure that the rules on access to payment systems are objective, non-discriminatory and proportionate.

(2) The rules to access to payment systems shall not inhibit access more than is necessary to safeguard against specific risks such as settlement, operational and business risks, to protect the financial and operational stability of the national payment system.

Interoperability

27. The interoperability of payment systems shall be ensured according to guidelines prescribed by the Bank from time to time, under which, irrespective of the payment instrument, the provider or the system used for clearing or settlement, the final customer can execute transfers towards any other customer in the Kingdom of Eswatini.

Outsourcing of activities

28. (1) Where an operator or a payment service provider intends to outsource operational functions, the operator or payment service provider shall seek and obtain the consent of the Bank.

(2) The outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of the operator or provider's internal control and the ability of the Bank to monitor their compliance with all obligations laid down in this Act.

(3) For the purposes of sub-section (2), an operational function shall be regarded as important where a defect or failure in its performance would materially impair the continuing compliance of an operator or service provider with the requirements of its licence, or its financial performance, or the soundness or the continuity of its services.

(4) The Bank shall ensure that when an operator or provider of a payment system outsources important operational functions, it complies with the following conditions-

- (a) the outsourcing shall not absolve senior management of its responsibilities;
- (b) the relationship and obligations of the issuer towards the users of any relevant payment instrument shall not be altered;
- (c) the conditions with which the operator or the payment service provider is to comply in order to be licenced and remain so in accordance with this Act shall not be undermined; and
- (d) none of the other conditions subject to which the licence was granted shall be removed or modified.

Use of agents

29. (1) When a person intends to provide payment services to customers through an agent, that person shall receive an authorization from the Bank, based on the following-

- (a) the general business model used, indicating scope of functions of the agent or categories thereof, and risk mitigation schemes by the payment service provider, by submission of the general contractual terms applying to the agent, also indicating duties of the agent towards the client;
- (b) a description of the internal control mechanisms that will be used by agent in order to comply with the obligations in relation to money laundering and financing of terrorism; and
- (c) the management structures of the agent to be used in the provision of the services and evidence that directors and persons responsible for management are fit and proper persons.

(2) When the Bank receives information in accordance with sub-section (1), the Bank shall consider the scheme and request for amendments if not satisfied with the prospected model.

(3) An agent shall not be allowed to carry out any activities under the agency agreements prior to authorization by the Bank.

(4) A person who has obtained authorization from the bank to provide payment services through an agent shall ensure that the agent informs customers of such bank authorization and that the person is acting on behalf of a principal.

Liability of payment system operator or payment service provider

30. (1) When a payment system operator or payment service provider relies on third parties for the performance of operational functions, either under agency or outsourcing, the payment system operator or payment service provider shall take reasonable steps to ensure that the requirements of this Act are complied with.

(2) A payment system operator and payment service provider shall be liable for the acts of their employees, or any agent, branch or entity to which activities are outsourced.

Compliance with Anti Money Laundering and Counter Financing of Terrorism legislation

31. (1) A licenced payment service provider or payment system operator shall meet the requirements and comply with anti-money laundering and counter-financing of terrorism legislation, as well as regulations and guidelines prescribed by the Bank.

(2) A licenced payment service provider or payment system operator shall guarantee to the Bank that any third party acting on their behalf or agents shall comply with relevant requirements of this Act and anti-money laundering and counter financing of terrorism legislation.

Retention of payment system records

32. (1) Despite anything to the contrary in any law relating to the retention of records, the Bank, system participants and service providers shall maintain records of all payment transactions and information obtained or generated in the operation, administration or management of the payment system for at least five (5) years as from the date of a record.

(2) The records kept under subsection (1) shall be in the format it was originally generated, sent or received or in a format which can be demonstrated to accurately represent the information originally generated, sent or received.

(3) Subject to sub section (1), a person who intends to destroy payment transaction records shall apply to the Central bank for approval.

Computer entries and imaging

33. (1) Entries in ledgers, day-books, cash books and other accounts of a system operator or payment service provider including the Bank, whether captured manually by handwriting or computerized, shall be prima facie evidence of the matters, transactions and accounts therein recorded, on proof being given by sworn affidavit of one of the directors, managers, or officers of such operator or provider, or by evidence, that such manual or computerized ledgers, day books, cash books or other account books are or have been the ordinary books of such operator or provider, and that the said entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such operator or provider.

(2) Photographic images such as film, microfiche, or computer images of original documents or other payment instruments, securities, certificates of deposits, account ledgers, Treasury Bills, Government Securities, shall be admissible as prima facie evidence of the matters or transactions of the original instrument, on proof being given on sworn affidavit.

Data protection

34. (1) The processing of personal data by payment systems and payment service providers shall be permitted when necessary to safeguard the prevention, investigation and detection of payment fraud.

(2) The provision of information to individuals and the processing of such personal data and any other processing of personal data for the purposes of this Act shall be carried in accordance with the rules established by the Bank or other relevant legislation.

(3) A payment service provider shall only access, process and retain personal data necessary for the provision of their payment services, with the explicit consent of the payment service user.

Pricing policies

35. The Bank shall monitor the pricing policies for payment systems and services and may intervene to influence the policies in case of a public interest motivated by significant inefficiencies, market failures, or distortions to competition.

PART VIII PAYMENT TRANSACTIONS AND INSTRUMENTS

Transparency

36. (1) The Bank shall regulate the execution of payment transactions, including transparency requirements.

(2) A payment service provider who imposes a fee on a customer for executing payment transactions, shall provide a notice in accordance with sub-sections (3) and (4) to the customer of the fact that-

- (a) a fee is imposed; and
- (b) the amount of any such fee.

(3) The notice required under sub-section (2) with respect to charging of a fee shall appear as may be determined by the Bank.

(4) A fee may not be imposed in connection with any transaction initiated by a customer for which a notice is required under sub-section (2), unless the customer receives such notice in accordance with sub-sections (2) and (3) and the customer elects to continue in the manner necessary to effect the transaction after receiving such notice.

Terms and Conditions of payment transaction

37. (1) The terms and conditions of a payment transaction shall be disclosed in a manner clear understandable by the customer, at the time the customer contracts for the service in accordance with the instructions of the Bank.

(2) The payment transaction disclosures shall include the following-

- (a) the customer's liability for unauthorized transactions and notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of an instrument, access code or other means of access;
- (b) the telephone number of the person to be notified in the event the customer believes that an unauthorized transaction has been or may be effected;
- (c) the kind and nature of transaction which the customer may initiate, including any limitations on the frequency or amount of such transactions;
- (d) any charges for transactions or for the right to make such transactions;
- (e) the customer's right to stop payment of a preauthorized transaction and the procedure to initiate such a stop payment order;
- (f) the customer's right to receive information on payment transactions;
- (g) the payment service provider's liability to the customer;
- (h) the circumstances under which the payment service provider will in the ordinary course of business disclose information concerning the customer's account to third parties; and
- (i) a notice to the customer that a fee may be imposed if the customer initiates a transfer from an Automated Teller Machine or other electronic terminal that is not operated by the issuer of the instrument or other means of access.

(3) A payment service provider shall notify a customer in writing or such other means as may be prescribed by the Bank from time to time, at least twenty-one (21) days prior to the effective date of any material change in any term or condition of the customer's account required to be disclosed, unless such change is necessary to maintain or restore the security of a system or a customer's account.

Initiation and Authorization of payment transactions

38. (1) The Bank shall establish the initiation and authorization of a payment transaction and any other relevant aspects of execution of transfers and access to bank accounts by a payment service provider or payment initiation service provider.

(2) A payment transaction shall be considered to be authorized only if the payer has given consent to execute the payment transaction.

(3) A payment transaction may be authorized by the payer prior to or, if agreed between the payer and the payment service provider, after the execution of the payment transaction.

(4) The consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and the payment service provider.

(5) The consent to execute a payment transaction may be given via the payee or the payment initiation service provider.

(6) In the absence of consent from the payer, a payment transaction shall be considered to be unauthorized.

**PART IX
ON AND OFF-SITE EXAMINATION**

Off-site Examination of Operations

39. (1) The Bank shall perform off-site examination of operations by collecting and analyzing reports, documentation and information by continuously monitoring the operations of a payment service providers, operators and other third-parties according to the provisions of this Act and the regulations under this Act.

(2) The Bank shall perform the evaluation of the condition of the institution, its risk profile and internal controls during the off-site examination of the operations of a payment service provider, operator or a third party.

On-site Examinations.

40. (1) The Bank shall conduct regular on-site examinations of payment service providers, operators and third-parties according to the provisions of this Act and the regulations under this Act.

(2) The Bank shall perform the evaluation of the condition of the institution, its risk profile and internal controls during the on-site examination of the operations of a payment service provider, operator or a third party.

(3) For the purpose of determining the condition of the entity and its compliance with this Act, the Bank may cause an examination to be made of any of the entity's affiliates in Eswatini to the same extent that an examination may be made of the entity.

Rules and procedures of systems to be open for inspection

41. The rules and procedures of every licenced system and any rules governing the system, together with any amendments to that constitution and those rules, shall be kept at the-

- (a) offices of the operator; and
- (b) place of business in Eswatini of every licenced system, which shall be open for inspection by members of the public at all times during normal office hours.

Approval of amendments to rules and procedures of licenced systems

42. Any amendment to the rules and procedures of a licenced system or to the rules governing the system shall not have effect until they have been approved by the Bank.

Control of undesirable conduct in regard to a recognised system

43. (1) Where the Bank has reasonable grounds to believe that an operator or a participant in a recognised system is engaging in or is about to engage in any act, omission or conduct which-

- (a) results or is likely to result in systemic or other relevant risk;
- (b) prejudices or will prejudice the integrity, effectiveness or security of the system; or
- (c) is in breach or may lead to a breach of a condition of licence or other requirements applied by the Bank, the Bank may issue a written directive requiring the operator or participant, as the case may be, to-
 - (i) cease engaging in the act, omission or conduct concerned;
 - (ii) do such things as the Bank may specify to remedy the situation; or
 - (iii) provide the Bank with such information relating to the matter as may be specified in the directive.

(2) A person who contravenes or fails to comply with the directive in terms of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000.00) or imprisonment of not more than five (5) years or both.

(3) Where a person contravenes or fails to comply with a directive in terms of subsection (1), whether or not criminal proceedings have been or may be instituted against that person for an offence in terms of subsection (2), the Bank may apply to the High Court for an order directing the person to comply with the directive issued by the Bank.

(4) In an application under subsection (3), the High Court may make such orders as in its opinion will ensure proper compliance with the directive issued.

Corrective action by the Bank

44. (1) Where the Bank has reasonable cause to believe that a payment service provider has violated any provision of this Act or regulations issued under this Act or is engaged in unsafe or unsound practices in conducting the business of the payment, clearing or settlement service, or such actions or violations are about to occur, the Bank may decide to take any one or more of the following measures-

- (a) issue a written warning;
- (b) require the payment service provider to cease offering or providing a specified payment product or service;
- (c) require the payment service provider to modify a specific product or payment service or the terms in which it is provided;
- (d) prohibit the payment service provider from offering a particular payment product or service;
- (e) restrict the ability of the payment service provider to continue to collect fees or charges in connection with a particular payment product or service;
- (f) require the payment service provider to reimburse any customer for losses caused by such violations;
- (g) issue an order to cease and desist that requires the payment service provider or the responsible person to cease and desist from the actions and violations specified in the order and that may further require affirmative action to correct the conditions resulting from any such actions or violations;
- (h) suspend certain payment service provider activities for a specified period of time;
- (i) prohibit the payment service provider from serving or engaging in provision of payment service for a stated period;
- (j) impose a monetary penalty not exceeding ten million Emalangeni (E10,000,000) or ten (10) percent of the annual turnover of the regulated payment service provider in the last financial year, whichever is the greater, or in the case of an ongoing prescribed contravention, an amount of not more than twenty-five thousand Emalangeni (E25,000) for each day during which the prescribed contravention continues, provided that fines shall be of similar amount for the same type of infraction;
- (k) issue a directive to pay to the Bank all or a specified part of the costs incurred by the Bank in holding the inquiry and in investigating the matter to which the inquiry relates; or
- (l) take any other action, the Bank considers necessary in the circumstances.

(2) Any course of action taken in terms of subsection (1) shall be notified in writing to the payment service provider or the responsible person, as the case may be, and shall take effect upon receipt and if no complaint is made within seven (7) days, consent to such action shall be presumed.

(3) Where the recipient of a notice files a complaint and requests a hearing, the Bank shall provide an opportunity for the recipient to be heard and present arguments within seven (7) days from the date of receipt of notice.

(4) A complaint filed under sub-section (3) shall have no suspensive effect.

(5) Where after the hearing, the Bank does not find that the complaint is justified, the complainant may take the decision upon review with the High Court within thirty (30) days of that decision.

Investigative powers of the Bank

45. The Bank may authorise any of its officers, employees or agents to conduct investigations and inspections of the operations of a payment service provider, operator or third party.

Regulations, directives and guidelines

46. (1) The Bank may make regulations prescribing-

- (a) rules in respect of dispute resolution contemplated in sections 63 and 64;
- (b) 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;
- (c) the procedure for the imposition of administrative penalties in terms of section 43;
- (d) penalties and sanctions in respect of the administrative penalties contemplated in section 43;
- (e) rules as may be necessary or expedient for carrying out the purposes and provisions of this Act; and
- (f) anything that may be required or authorised to be prescribed by this Act.

(2) The Bank may issue by-laws, circulars, guidelines, and directives prescribing-

- (a) criteria and the manner of, licensing of payment, clearing and settlement systems, and payment service providers contemplated in Part III;
- (b) rules on the provision of payment services and payment service providers;
- (c) the manner in which payment, clearing and settlement systems are designated including any variation or revocation of designation under Part III;
- (d) standards in respect of which designated payment, clearing and settlement systems shall conform;
- (e) rules on the participation of foreign persons in payment, clearing and settlement systems;
- (f) manner, adequacy and nature of the collateral contemplated in sections 59 and 60;

- (g) criteria for the approval of clearing house rules contemplated in section 48;
- (h) rules on electronic money schemes;
- (i) rules on electronic transactions and electronic records management;
- (j) rules on the provision of information to the Bank, including oversight audits of designated payment, clearing and settlement systems;
- (k) rules on the retention of records in terms of section 32;
- (l) rules relating to the administration of this Act;
- (m) rules on the operation of payment, clearing and settlement systems;
- (n) rules on the operation of electronic money schemes;
- (o) rules on the corrective action to be taken in terms of section 44; and
- (p) any other matter that may be authorised or prescribed under the Act, including but not limited to prudential, market conduct and consumer protection requirements not expressly mentioned in this Act.

**PART X
IRREVOCABILITY OF PAYMENT INSTRUCTIONS AND
FINALITY OF SETTLEMENT**

Irrevocability of payment instructions

47. (1) A payment instruction or settlement shall be valid and enforceable by and against a payment system operator or participant, and shall be final and irrevocable from the time the payment instruction or settlement is determined under the rules of that payment to be final.

(2) Notwithstanding subsection (1) or any other law to the contrary, the payment service providers may apply to court for a review to any decision made.

(3) Notwithstanding subsection (1) and (2), a payment system operator or payment service provider shall with the approval of the Bank, prescribe the manner of recovering an equivalent amount of transfer arising from a payment instruction or settlement made in the case of fraud, mistake, error or similar vitiating factors.

Clearing house rules

48. A payment clearing house may not clear payment instructions without the clearing house rules submitted to and approved by the Bank.

Netting arrangements

49. An obligation under netting arrangements in a payment system shall be valid and enforceable against any third party.

Settlement finality

50. (1) A settlement that has been effected under this Act is final and may not be reversed or set aside.

(2) A settlement obligation shall be discharged with the Bank money or through the passing of entries across the books of the Bank.

(3) Where the Bank money is not used, and upon authorization by the Bank, a payment system and its participants may use commercial bank money to settle the obligations subject to control of the credit and liquidity risk.

Failure-to-settle arrangements

51. (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 48.

**PART XI
INSOLVENCY**

Interpretation

52. In this Part-

- (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; and
- (b) “declaration of insolvency” means a declaration by the High Court that a payment system participant is declared insolvent;

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

53. (1) The High Court may not grant a declaration of insolvency or an order winding up a payment system participant where –

- (a) the Bank has not been given twenty-one (21) days written notification of the commencement of proceedings; and
- (b) a copy of the application is not served on 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.

Effect of a declaration of insolvency or winding up order

54. (1) Notwithstanding any law to the contrary, where 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; and

(b) any payment or settlement that is final and irrevocable in terms of section 40.

(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.

Payment instructions entered before and after institution of insolvency proceedings

55. (1) The operational rules of a system 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 is entered into the system before a declaration of insolvency.

Conflict of laws

56. (1) 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.

(2) Notwithstanding the provisions of the Securities Act, 2010 or its successor on the regulation and supervision of the central securities depository, the Bank shall be responsible for the regulation and supervision of the central securities depository for Government debt securities in accordance with this Act.

Orders for winding up system participants

57. (1) Where a payment system participant is declared insolvent or wound-up, the court shall record the minute, the hour and the day that the winding up order is made.

(2) The applicant that instituted the winding up proceedings shall no later than the start of the next business day lodge the order on the Bank.

(3) Where the applicant is a bank, the applicant shall 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.

Voluntary winding up of system participants

58. (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 the High Court

(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).

Recognition of financial collateral arrangements

59. (1) Any clearing or settlement system may, in its rules and procedures, have collateral arrangements of which value may be realised for the satisfaction of the rights and settlement obligations within the system.

(2) The financial collateral to be provided may include cash, Government bonds or any other assets as determined by the Bank from time to time.

(3) A system participant shall not provide as collateral security in relation to its operations within a system, assets which are subject to a pledge, mortgage or any other encumbrance in favour of a third party, without obtaining the prior release or waiver from the third party.

Utilization of collateral

60. Notwithstanding the provisions of any other laws, any asset of a clearing or settlement system participant which the clearing or settlement system participant, prior to the issue of its winding-up order, has provided-

- (a) to the Bank as security for a loan or otherwise as security in respect of its settlement obligations, may be utilized by the Bank to the extent required for the discharge of such settlement obligations; or
- (b) in terms of a written agreement with any clearing or settlement system, as security in respect of its payment obligations, may be utilized by the clearing or settlement system operator to the extent required for the discharge of such payment obligations.

PART XII
INFRINGEMENTS, REMEDIAL MEASURES AND SANCTIONS

Prohibition against non-licenced systems

61. A person or entity operating or participating in a non-licenced system commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand Emalangi (E500,000) or imprisonment not exceeding a period of five (5) years or both.

Prohibition against settlement intermediation

62. (1) A person or entity providing payment services without being duly licenced commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand Emalangi (E500,000) or imprisonment for a period not exceeding five years or both.

(2) The Bank may by notice in the Gazette exempt any person or class of persons from the provisions of subsection (1), if the Bank is satisfied that such an exemption will be in the public interest and will not cause undue risk to any licenced payment system and transfers undertaken on a securities exchange, central securities depository or securities settlement system in consultation with the Financial Services Regulatory Authority.

PART XIII
SETTLEMENT OF DISPUTES

Settlement of disputes arising out of systems

63. (1) Where a participant in a licenced system or a Bank's system is aggrieved by-

- (a) any decision taken by the Bank acting as the operator of the system, or
- (b) a decision, act or omission by the operator of a system or by another participant in the system, the matter shall be settled in accordance with this section.

(2) The aggrieved party shall provide the Bank, the operator or the other participant, as the case maybe, with a written statement setting out full particulars of its grievance, and the parties shall thereupon attempt to settle the matter by consensus within seven (7) business days.

(3) Where the parties are unable to settle the matter as contemplated in subsection (2) they may attempt to settle it within a further period of ten (10) business days by a process of mediation whereby;

- (a) the parties agree on a mediator;
- (b) the mediator familiarizes himself with the parties' respective contentions;
- (c) the mediator and all parties discuss the matter at one or more meetings attended by them all, and attempt to settle the matter by consensus; and
- (d) the parties share the mediator's costs equally.

(4) If the parties are unable to settle the matter by consensus in terms of subsection (2) or by mediation in terms of subsection (3), the matter shall be referred to a single arbitrator who is well vested in contemporary payment systems, and the Arbitration Act, 1904 shall apply in respect of the matter as if the parties had entered into an arbitration agreement contemplated by that Act -

Provided that the arbitrator shall reach his decision in the matter within one month after his appointment, unless the parties agree to an extension of that period.

(5) A decision of an arbitrator in terms of subsection (3) shall be final and binding on the parties.

Settlement of disputes between a customer and a payment service provider

64. (1) A payment service provider shall ensure that the provider -

- (a) adopts general policies on prompt response to inquiries, complaints, refund demands and disputes;
- (b) has a channel for communication of customer complaints, such as dedicated customer care telephone lines;
- (c) provides a complaints redress mechanism, ensuring proper communication of this mechanism to its customers.

(2) Where the customer deems that the payment service provider does not comply with the provisions of this Act, the customer may submit a complaint to the payment service provider.

(3) The payment service provider shall send a reply to the complaint referred to in subsection (1) to the customer no later than seven (7) business days after the day of receiving the complaint.

(4) The payment service provider shall establish an effective complaint procedure for-

- (a) the lodgment of complaint by customers; and
- (b) the investigation and resolution of complaints by customers of matters covered by this Act.

(5) The complaint procedure shall contain information relating to the right of a customer to refer the complaint to the Bank, or any other body authorized by the Bank's Ombudsman, if not satisfied with the outcome of the complaint.

(6) The complaint procedure shall be followed by the customer before the dispute is referred to be resolved in an alternative dispute resolution procedure or before a court.

(7) A payment service provider shall keep record of all customer complaints and how such complaints are redressed.

**PART XIV
MISCELLANEOUS**

Exercise of functions by Bank

65. (1) Any function of the Bank under this Act may be exercised on behalf of the Bank-

(a) by the Governor; or

(b) by officer of the Bank subject to the direction of the Governor;

(2) The Governor or any official specified in terms of subsection 1(b) shall exercise the functions referred to in that subsection in accordance with any general directions of policy that the Board of Directors of the Bank may give the Governor or the officials.

Preservation of secrecy

66. (1) Subject to subsections (2) and (3), an officer or employee of the Bank shall not disclose any information which acquired in the performance of the officer or employees' functions under this Act or the constitution or rules of any licenced system and which relates to the affairs of a particular payment service provider or operator.

(2) The Bank may disclose any information whose disclosure, in the Bank's opinion, is reasonably necessary to protect the integrity, effectiveness or security of a licenced system.

(3) Subsection (1) shall not apply to-

(a) any disclosure made by the person concerned in the performance of his functions under this Act or under the constitution or rules of any licenced system, or when required to do so by a court or in terms of any other enactment; or

(b) the disclosure of information that is generally known to members of the public or a substantial section of the public.

(4) Any person who contravenes subsection 1 commits an offence and is liable, on conviction, to a fine not exceeding five thousand Emalangeni (E5000.00) or imprisonment for a period not exceeding two (2) years or both.

Use of confidential information for personal gain

67. (1) Subject to subsection (2), an officer or employee of the Bank who, for personal gain, makes use of any information acquired in the performance of functions under this Act or the constitution or rules of any licenced system and which relates to the affairs of a particular Payment system operator, commits an offence and is liable, on conviction, to-

(a) a fine not exceeding one hundred thousand Emalangeni (E100,000.00) or double the amount of the gain, whichever is the greater; or

(b) imprisonment for a period not exceeding five (5) years or to both such fine and imprisonment.

(2) It shall be a defence to a charge under subsection (1) for the person charged to show that the information used was generally known to members of the public or to a substantial section of the public.

Evidence

68. A document purporting to be signed by or on behalf of the Bank stating-

- (a) that any system is or is not a licenced system; or
- (b) that entity is or is not an operator or a participant in any licenced system or Bank system,

shall be admissible in any proceedings in any court on its production by any person, and shall be prima facie proof of the facts stated therein.

Unpaid items due to insufficient funds

69. (1) Any person who knowingly draws or issues a payment instrument against which there are not sufficient funds in his account at a payment system operator on which the payment instrument is drawn commits an offence and shall be liable on conviction to a fine not exceeding five thousand Emalangeni (E5000.00) or six (6) months imprisonment or to both such fine and imprisonment.

(2) A payment instrument that is returned unpaid with the words "insufficient funds" or other words to that effect shall be prima facie evidence that the drawer had no funds in the account against which the payment instrument was drawn and the burden of proof shall lie with the drawer or issuer of the payment instrument.

Regulations and review of the Act

70. (1) The Bank shall establish a committee-

- (a) to review this Act from time to time; and
- (b) to make recommendations to the Minister with regard to amendments and regulations to this Act, which in the opinion of the committee, have become advisable.

(2) The Minister shall, in consultation with the Bank, make regulations for the better carrying out into effect of this Act.

Transitional Arrangements

71. Any regulations, notices, instructions and orders made under the repealed law shall remain in force until repealed under this Act where they are inconsistent with any provisions of this Act, the regulations, notices, instructions and orders shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act.

Repeal of the National Clearing and Settlement Systems Act, 2011

72. The National Clearing and Settlement Systems Act, No. 17 of 2011 is repealed.