



MALAWI GOVERNMENT

PAYMENT SYSTEMS ACT
(No. 15 OF 2016)

MALAWI GOVERNMENT

(Published 2nd September, 2016)

ACT

No. 15 of 2016

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

1st September, 2016

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An Act to provide for the operation, regulation and supervision of payment, clearing and settlement systems in Malawi, and matters connected therewith and incidental thereto.

Enacted by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Payment Systems Act, 2016 and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*. Short title and commencement

2. In this Act, unless the context otherwise requires— Interpretation

“bank” has the meaning ascribed to that term in the Banking Act; Cap.4401

“business day” means any day other than a Saturday, Sunday or public holiday;

“card” means any card including an Auto-Teller Machine card, point of sale card, debit card, credit card or stored value card, used by a consumer to effect an electronic funds transfer, electronic payments or withdrawals;

“cheque” has the meaning ascribed to that term in the Bills of Exchange Act; Cap.48:02

“circular” means a written notice on a new policy or change of policy that relates to clearing and settlement systems operators, participants and includes instruments associated with such systems;

“clearing” means the process of transmitting, reconciling and confirming transfer instructions regarding funds, securities or other financial instruments prior to settlement, including the netting of instructions and the establishment of final positions prior to settlement;

“clearing system” means a system that facilitates the presentment and exchange of transfer instructions regarding funds, securities or other financial instruments prior to settlement;

“direction” means a specific mandatory instruction or set of instructions to do or not to do certain acts or things addressed to specific payment, clearing and settlement systems and operators, participants and instruments associated with such systems;

“directive” means a general mandatory instruction or set of instructions that apply or relate to all or specific payments, clearing and settlement systems or operators, participants and instruments associated with such systems;

“electronic funds transfer” means the transfer of funds through an electronic mechanism;

“finality” means that a settlement or transfer is unconditional, enforceable and irrevocable;

“financial collateral arrangement” means an arrangement under which a participant provides acceptable collateral by way of securities in favour of, or to another participant, and where the full ownership of the collateral remains with the collateral provider when the security right is established whether or not the arrangement is covered by a master agreement, standard form contract, or any other general terms and conditions;

“financial institution” has the meaning ascribed to the term in the Financial Service Act;

Cap. 44:05

“guidelines” means a standard or set of standards that relate to payments, clearing and settlement systems and operators, participants and instruments associated with those systems;

“parent company” has the meaning ascribed to that term in the Companies Act, 2013;

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“mobile payment system” means a system that enables the process of money transfer and exchange of money for goods and services between two parties using a mobile phone or an electronic mobile device;

“netting” means the offsetting of positions or obligations by participants leading to the determination of net payment obligations between two or more clearing system participants within a clearing system, or the determination of the net settlement obligations between two or more settlement system participants within a settlement system;

“officer” means a person who is—

- (a) an employee of the Reserve Bank;
- (b) a person engaged by the Reserve Bank to provide services to it; or
- (c) an examiner or investigator appointed under this Act;

“oversight” means monitoring, regulation and supervision of payments including mobile payments, clearing systems, settlement systems and payment instruments;

“payment instruction” means an order or instruction, whether electronic or physical, requesting movement of funds, securities or other financial instruments or the right pertaining to those funds, securities or financial instruments to a system operator by a system participant;

“payment instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make a payment;

“payment system” means a system that enables funds transfer to be effected between a payer and a payee, utilising payment instruments and procedures that relate to the payment system;

“Registrar” means the Registrar of Financial Institutions appointed under the Financial Services Act; Cap. 44:05

“remittance” means an in-country or cross-border person-to-person payment or transfer of relatively low value as may be prescribed by the Reserve Bank from time to time;

“remittance service provider” means a person that provides remittance services;

“Reserve Bank” means the Reserve Bank of Malawi as established under the Reserve Bank of Malawi Act; Cap 44:02

“settlement” means an act of discharging obligations by transferring funds, securities or financial instruments between two or more parties in central bank money or through accounts with a settlement agent;

“settlement account” means an account held at the Reserve Bank or any other institution acting as a settlement agent, which is used to settle transactions between participants in a settlement system;

“settlement agent” means the Reserve Bank or any other bank or financial institution which holds accounts on behalf of clearing and system participants and effects settlements on their behalf;

“settlement instruction” means an instruction given to a settlement system by a system participant or by a payment clearing house system operator on behalf of a system participant to effect settlement of one or more payment obligations, or to discharge any other obligation of one system participant to another system participant;

“settlement obligation” means an indebtedness that is owed by one system participant to another as a result of one or more settlement instructions;

“settlement system” means a system used to facilitate the settlement of transfer instructions regarding funds, securities or other financial instruments;

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“subsidiary” has the meaning ascribed to that term in the Companies Act, 2013;

“system operator” means a person establishing or operating a payment, clearing, settlement system or services, or remittance services;

“system participant” means a person who has access to a payment, clearing or settlement system under a contractual arrangement with a system operator;

“systemic risk” means a risk of failure by one participant in a payment, clearing or settlement system to meet its obligation which results in other participants being unable to meet their obligations when due;

“truncation” means a procedure in which paper payment instruments within a bank, between banks or between a bank and its customers are replaced, in whole or in part, by electronic records for their further processing and transmission; and

“winding-up proceedings” means proceedings involving realisation of assets and distribution of the proceeds among creditors, shareholders or members as appropriate, which involve an intervention by administrative or judicial authorities, including where the proceedings are terminated by a composition or other analogous measures, whether or not they are founded on insolvency or are voluntary or compulsory.

Objectives

3. The principal objective of this Act is to provide for the regulation and oversight of payment, clearing and settlement systems, payment instruments, remittance service providers, electronic money transfers, card issuers and travellers cheques agencies by—

(a) promoting the soundness, integrity, safety and efficiency and reliability of the payment, clearing and settlement systems or payment instruments including security and operating standards, and infrastructure arrangements;

(b) providing for minimum standards for protection of customers; and

(c) determining respective rights and obligations of system operators, participants and their customers.

PART II—POWERS AND FUNCTIONS OF THE RESERVE BANK

4. Without limiting the generality of the powers conferred on it by the Reserve Bank of Malawi Act, the Reserve Bank shall have, powers, duties and functions, to—

Powers,
duties and
functions of
the Reserve
Bank
Cap.44:02

(a) promote the soundness, safety and efficiency, integrity and reliability of payment, clearing and settlement systems in Malawi;

(b) take all available measures to ensure that this Act is complied with by system operators and system participants;

(c) establish settlement systems;

(d) licence and authorize payment, clearing and settlement systems operators;

(e) inspect system operators' and system participants' premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions relating to the systems and payment instruments referred to in section 3 to ensure compliance with this Act;

(f) ensure that system operators comply with the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act, and regulations made thereunder;

Cap. 8:07

(g) exercise an oversight role over payment, clearing and settlement systems, and issuing of payment instruments in Malawi; and

(h) exercise and perform all other powers, duties, and functions as may be deemed necessary in the regulation of payment systems from time to time, or conferred on it by any other written law.

5. The Reserve Bank may, in writing, delegate any power or assign any function conferred on it by this Act, to any person, subject to such conditions as the Reserve Bank may determine.

Delegation of
powers

6. Any delegation of power under section 5—

(a) shall not prevent the Reserve Bank from exercising that power or performing that duty; and

(b) may be withdrawn at any time by written notification from the Reserve Bank.

Reserve Bank
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- Cooperation with other regulatory authorities
7. In carrying out its functions, the Reserve Bank shall cooperate with other regulatory authorities within and outside Malawi by sharing information and doing such other acts to achieve the objectives of this Act.
- Directives, guidelines, circulars and directions
8. The Reserve Bank may issue directives, guidelines, circulars and directions for the proper administration of this Act.
- Breaches of directives, etc
9. Any person who refuses or fails to comply with a directive, guideline, circular or direction issued under this Act, shall be liable to administrative or monetary penalties as may be prescribed by the Reserve Bank in directives.
- Directions for inadequate control of risks
10. Where the Reserve Bank is of the opinion that a system operator or system participant engages in, or is about to engage in, any act or omission that results in, or is likely to result in, a systemic risk, or is, or may be detrimental to, or contrary to public interest in the security and effectiveness of payment, clearing and settlement systems of Malawi, the Reserve Bank may issue a direction in writing requiring the system operator or system participant, within the period specified in the direction, to—
- (a) cease or refrain from engaging in the acts or omissions;
 - (b) perform such acts with respect to their participation in the payment system as the Reserve Bank considers necessary to remedy the situation;
 - (c) conform to requirements contained in the direction; or
 - (d) provide the Reserve Bank with such information and documents relating to the matter as specified in the direction within such period as the Reserve Bank may specify.
- Court order for compelling compliance with a direction
11. Notwithstanding that criminal proceedings have been or may be instituted against a person relating to non-compliance of a direction given under section 10, the Reserve Bank may apply to the High Court for an order compelling such a person to comply with a direction issued under the section.

PART III—REGULATION AND OVERSIGHT BY THE RESERVE BANK

- Restrictions on operating a payment system etc. or services
- 12.—(1) Except for the Reserve Bank acting in its capacity as a system operator, a person shall not establish or operate a payment, clearing and settlement system or service, remittance services including electronic money transfer services, mobile payment services or issue payment instruments without a licence or authorization issued by the Reserve Bank.

