

LEGAL ALERT

REGULATING PAYMENT SYSTEMS IN UGANDA

Regulating Payment Systems In Uganda

There was no law that regulated payment systems owned and operated by persons who are not financial institutions i.e. payment through/over mobile money and other platforms of e-commerce such as, Payway, Quicket among others. The **National Payment Systems Act of 2019** serves to stand in this gap. The Act is yet to be commenced by the Minister (*Ministry of Finance, Planning and Economic Development*).

The purpose of this Act is to regulate payment systems; to provide for their safety and efficiency; to provide for functions of the Central Bank (*CB*) in relations to payment systems; to prescribe the rules governing the oversight and protection of payment systems; to provide for financial collateral arrangements to regulate payment service providers; to regulate issuance of electronic money, to provide for oversight of payment instruments and for other related matters.

This document does not include payment systems provided for in the Act which are already regulated by the Central Bank under its different legislations such as RTGS and Automated Clearing House System.

To whom does the law apply?

The Act applies to 3 categories of persons;

1. An operator of a payment system

A payment system means a system used to effect a transaction through the transfer of monetary value and includes the institutions, payment instruments, person, rules, procedures, standards and technologies that make such a transfer possible. **A payment system operator** means 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 cleaning house.

2. A payment service provider

A payment service provider is a person who is licensed to provide a payment service. **A payment service** means services enabling cash deposits or withdrawals; execution of payment transactions; issuance and acquisition of payment instrument or any other services incidental to the transfer of funds.

3. Issuer of a payment instrument.

A payment instrument means any device or set of procedures by which a payment instruction is issued for purposes of making payments or transferring money and includes Cheques, bills of exchange, direct debits, credit cards, and debit cards and any other instrument through which a person may make payments, with the exception of bank notes and coins. **An issuer of a payment instrument is a person who issues a payment instrument.**

Categories of payment systems

- a) Those operated by the Central Bank which include the Real Time Gross Settlement system, the automated clearing house, the Central Securities Depository for government debt securities, cross border payments.
- b) Payment systems operated by another government entity or in partnership with a government entity in public interest.
- c) Payment systems operated by private entities and these include switches, electronic money systems, aggregators or interrogators, and other payment system licenced under the Act.

Oversight of the payment system

The Act gives the Central Bank of Uganda several functions in respect of the payment system. Summarily, they are regulatory, supervisory, licensing and general oversight over the operations of the payment system in order to ensure their safety and efficiency.

What do I have to know?

- **A person shall not operate a payment system, issue a payment instrument and offer payment services without a licence issued by the CB.** This does not extend to payment instruments, services or a payment system operated by the CB.
- The penalty for contravention in the event of a conviction of an individual is a fine not exceeding 2,000 currency points (*one currency point is UGX 20,000*) or a term of imprisonment not exceeding four (4) years or both. In the event of a body corporate, a fine not exceeding 7,000 currency points.
- The effect of a conviction is ceasing to offer payment and disqualification from acquiring a licence.

Who can apply for licensing payment systems?

A payment system is eligible to apply to be licenced by the CB if that payment system has any of the following objectives;

- 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 (*computer, card or mobile handset*).
- d) Transfer of electronic money from one electronic device to another.
Electronic money means a monetary value represented by a claim on the issuer which is stored on an electronic device; issued upon receipt of funds in an amount not less in value than the monetary value received; accepted as a means of payment by undertakings other than the issuer and prepaid or redeemable in case.
- e) Provision of technological services to facilitate switching, routing, clearing or data management for on behalf of a payment system provider.
- f) Provision for electronic payment services to the unbanked or under banked population.
- g) Provision of financial communication networks.
- h) Ordering or transmitting payment instructions.
- i) Storing of information on a device for purpose of effecting payments.
- j) Fulfilling payment obligations at points of sale, merchant outlets or over the internet.

- k) Any other objects as may be prescribed by the Central Bank by regulation.

NOTE: A payment system is also eligible for licensing by the Central Bank if that system is interoperable with other systems in the country and internationally. **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 payments systems while continuing to operate only in their own payment systems.

The conditions of the licence granted may be modified by the CB on reasonable grounds to achieve the purpose of the Act or in the interest of the public, taking into account the justified interest of the payment service providers, payment system operators and the principles for fair competition and equality treatment.

How do I apply for a licence?

- The application for a licence must be made to the Central Bank in **accordance with the Regulations that will be enacted by it** and shall be accompanied by the prescribed fees
- The annual fee shall be payable on or before 31st January every year failure of which amounts to a civil debt of 100 currency points for each day of default payable to the Central Bank.
- Both the unpaid annual licence fee and any civil penalty for the continued non-payment constitute a debt due to the Central Bank.
- It is an offence to knowingly or recklessly furnish false or misleading information or document in a material particular in connection with the application for the licence. On conviction, the offence is punishable by a fine of 250 currency points or a term of imprisonment not exceeding 5 years or both.

What is the criterion for grant of a licence?

Grant of the licence is the discretion of the Central Bank where it is satisfied that the application meets the requirements and, on such conditions, and in classification it deems fit. These are yet to be provided for. This licence is valid until revoked by the Central Bank.

A licensee cannot conduct activities which are not specified in the licence.

Revocation of a licence

A licence may be revoked by the Central Bank for;

- a) Failure to comply with the relevant law in force.
- b) Failure to adhere to a directive or guidelines issued by the Central Bank.

Notice of this revocation must be published. **An aggrieved party may appeal to the High Court against such decision within 30 days from the date of receipt of the decision to revoke or suspend the licence.**

However, a corrective action can be taken by the Central Bank instead of revoking or suspending a licence where the grounds are not grave enough to warrant a revocation or suspension. In this case, the Central Bank may make directives after special investigation to cease or refrain from the specified acts; perform acts that are necessary to comply with the directive; provide such information and documents specified in the directive.

Failure to comply with the directive is penalized as a civil debt to the Central Bank of 100 currency points for each day which the contravention continues and if it continues for more than 30 days, the licensee shall have to show cause as to why the licence should not be revoked.

Note: Revocation or suspension of the licence does not affect rights, obligations transaction, arrangement relating to operating a payment system entered into prior.

Duties of the licensee/participant/service provider/operator of a payment system

- Develop payment system rules regarding access criteria, conditions for suspension or exclusion of participants, moment from which the transfer orders become irrevocable, risk management and business continuity and others. These rules and any amendments must be approved by the Central Bank.
- Keep a copy of the rules and also supply them to participants electronically or publish them on the website within 14 days from the date of approval by the Central Bank.
- Submit returns relating to the operations of the payment system or electronic payment services. These returns will open for public view in accordance the Access to Information Act, 2005.
- Supply the Central Bank with such information of data operation; failure of which attracts a civil penalty of 50 currency points to the Central Bank for each day of default.
- **Protect the privacy of a participant and customer information (together the Central Bank) and only disclose under compulsion by court or consent of the participant or customer.** Under the law a **participant means a member of a payment system as defined in the rules of that payment system.**
- Open and maintain settlement accounts in the Central Bank.
- Maintain a record of all payment transactions and information obtained or generated in the operation of a payment system for the last 30 years (*destruction of such records is subject to approval from the Central Bank*).
- Comply with the requirements of consumer protection prescribed by the Central Bank.

- Give true information in advertisement breach of which attracts a fine of 350 currency points or a term of imprisonment not exceeding 2 years or both on conviction.
- Ensure that services are available to the users throughout the prescribed operational period.
- Establish and maintain its primary data centre in relation to payment system services in Uganda. This provision is not likely to contravene the Data Protection and Privacy Act, 2019; regarding the storage of data outside Uganda; as it is a general legislation and the National Payment Systems Act is specific to payment systems. It may however, be impracticable.

Electronic money and electronic transfer

An Electronic Money Issuer (EMI) means a payment service provider who is licensed to issue electronic money.

The law provides for the transfer of electronic money, the conditions, minimum requirements, duties of an Electronic Money Issuer, prohibited activities duties of a trustee in a subsidiary entity to carry out payment system operations, trust accounts, special accounts; account types and transaction limits; and protection of the balances thereon.

- A payment service provider licenced to issue electronic money can only issue after an equivalent amount of cash is deposited in a trust or special account opened for this purpose; to keep customers' deposits and hold deposits received from a customer who purchases electronic money and to facilitate issuance of electronic money respectively. This can be a financial institution or a microfinance deposit taking institution.
- The application to open and maintain a trust or special account must be granted by the Central Bank.

- The trustees to the accounts mentioned above should be a body corporate (a company) approved by the Central Bank.
- Interest earned on the trust or special account must be credited on another account within that financial institution and shall be distributed by the Central Bank for the benefit of the consumers.
- The money on the trust or special account cannot be subjected to attachment, assignment or transfer in settlement of a debt or claim.
- The EMI must submit in electronic form, to the financial institution in which the trust account is held certain information regarding its customers such as the names of those whose money is in the trust fund, the electronic money balances and also comply with any regulations that the Central Bank may impose.
- A payment service provider which is not solely established to issue electronic money or not a financial institution or a microfinance, deposit taking institution but intends to issue electronic money **must** establish a subsidiary legal entity for that purpose. This entity also has to apply to the Central Bank for a licence for the same.

Duties of the trustee

- a) Manage the trust account and interest account on behalf of the customer.
- b) Establish safeguard measures to protect the funds deposited on the trust account.
- c) Monitor the trust account to ensure that the funds therein are equal to the electronic money issued.
- d) Ensure that the interest earned on the trust account is distributed for the benefit of the customers.
- e) Perform any other function that the electronic money issuer may prescribe.

Duties of an electronic money issuer

- Maintain 100% of the electronic money held in the trust or special accounts in liquid assets such as treasury bills or bond or any other as may be prescribed by the Central Bank (*the Central Bank may but a lien over these assets*)
- Mitigate concentration risk on a holding account by placing the funds in different financial institutions.
- Should not commingle the funds on the trust or special account with another funds.
- Ensure that the interest accrued on the trust or special account is distributed to benefit the consumers.
- Publish audited financial statements.
- Monitor the creation of electronic money.
- Install a system comprising inbuilt mechanisms for an audit trail as may be prescribed by the Central Bank.
- Shall not count or issue airtime as electronic money.
- Use airtime as a permissible transaction (*see immediately below*).
- Not to terminate or transfer its licence; terminate the business of issuing electronic money; change name; controlling interest or ownership without the written approval of the Central Bank.

What electronic money can be used for?

- a) Domestic payments
- b) Domestic money transfers
- c) Merchant or utility payments.
- d) Bulk transactions including payment of salaries, benefits and pension.
- e) Cash-in and cash-out transactions.

- f) Cross border payments or transfers.
- g) Savings products, credit products and insurance products.

Note: Insolvency proceedings include bankruptcy, arrangement, receivership, administration and liquidation as per the Insolvency Act.

When may an account be deemed dormant/deactivated/closed?

An account may be considered dormant after nine (9) consecutive months of inactivity or transaction. It is the duty of the EMI to issue notice to the customer regarding the same (at least 1 month before the expiry of the nine (9) months that the account will be suspended if there is no transaction) and a notification that the account has been blocked for inactivity (give notice within 5 working days after blocking with instructions on how to reactivate) or deactivated (6 months from the time the account is or remains blocked) of the account.

After closure of the account, the trustee must transfer the balance of the electronic money account and identifying information to the Central Bank which shall refund any unclaimed balances to the account holder or where the account holder has passed on, to the legal representative upon request within 7 years.

Protection of the payment system

This is done through validating a payment instruction, its nature (final and irrevocable) and how it can be vitiated; maintenance of settlement accounts with the Central Bank; protecting the balances on these accounts from attachment, assignment or transfer in satisfaction of any debt or claim.

Insolvency proceedings against licensee or participant

Proceedings are commenced once the petition is received by the licensee or participant. Insolvency proceedings cannot act retrospective to rights and obligations in the payment system that arose before the commencement of the proceedings. The same applies to the validity of certain transactions against a third party such as cash or security transfer orders, netting of cash or security transfer orders and settlement of outstanding transfer orders.

General matters

- Upon commencement of the Act, affected persons must within 12 months apply for a licence. Contravention of this requirement is punishable by a fine of 500 currency points or a term of imprisonment not exceeding 5 years or both.
- The Central Bank may prescribe minimum capital requirements for a licensee maintained unimpaired by losses or other adjustments.
- The Act establishes the Central Bank Regulatory Framework (Regulatory Sandbox) for the purpose of governing the manner in which a person may obtain limited access to the payment systems ecosystem to test innovative financial products or services without obtaining a license within a set criteria and minimum requirements and in a particular manner. This serves as a grace period that promotes innovativeness.
- An EMI cannot terminate or transfer a licence (or business or change the controlling interest) to another entity without the written approval of the Central Bank. Contravention of this provision, on conviction attracts a fine not exceeding 350 currency points or imprisonment not exceeding two years or both.
- A person who wishes to cease business shall communicate to the Central Bank and publish such notice in a newspaper of wide circulation for at least 30 days before the date of cessation.
- One currency point is equivalent to UGX 20,000 (Uganda Shillings Twenty Thousand).

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