

CENTRAL BANK OF KENYA

**ANTI - MONEY LAUNDERING
REGULATION FOR THE PROVISION
OF MOBILE PAYMENT SERVICES**

2013

THE NATIONAL PAYMENT SYSTEM ACT

No. 39 of 2011

THE NATIONAL PAYMENT SYSTEM (ANTI-MONEY LAUNDERING REGULATION FOR THE PROVISION OF MOBILE PAYMENT SERVICES) REGULATIONS, 2013

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IN EXERCISE of the powers conferred by section 3 (1) of the National Payment System Act, the Minister for Finance makes the following Regulations:-

1 PART I - PRELIMINARY

1.1 Citation and Commencement

These Regulations may be cited as the Anti- Money Laundering Regulation for the provision of Mobile Payment Services, 2013.

1.1 Interpretation

In this Regulation, unless the context otherwise requires, the words and expressions used herein shall have the same meanings assigned to them in National Payment System Act, 2011.

“Agent” means a person appointed by a mobile payment service provider to perform agency services on its behalf for a fee.

“Centre” means the Financial Reporting Centre established under section 21 of the Proceeds of Crime and Anti Money Laundering Act, 2009.

“criminal property” is as provided for in the Proceeds of Crime and Anti Money Laundering Act, 2009.

“Mobile payment service provider” means a telecommunications service provider licensed under the Kenya Communications Amendment Act, 2009 and authorized by Central Bank of Kenya to offer payment services.

“Money laundering” means an offence as provided for in the Proceeds of Crime and Anti Money Laundering Act, 2009.

“monitoring officer” refers to an AML inspection officer from either the Bank or the Financial Reporting Centre, tasked with investigating said Mobile payment service provider’s AML compliance standards;

“Nominated officer” refers to an AML compliance officer appointed by the Mobile payment service providers; who should be a serving member of staff;

“offence” in this regulation, means an offence against the provisions of the Law of the Republic of Kenya;

“payee” means the person who is the intended recipient of funds which is the subject of a mobile payment transfer;

“payer” means a person who holds a mobile payment account and who allows a mobile payment transfer from that payment account;

“Payment Service Provider” means any person as provided for in the National Payment System Act, 2011.

“payment account” means an account held with a payment service provider.

“payment instrument” means any electronic instrument that enables a person to make payment, and for the purposes of this definition currency shall include mobile payment;

“person” means any natural or legal person;

“points of service” means all the physical agencies and other electronic locations where a payment service provider provides mobile payment transfers;

“proceeds of crime” means any property or economic advantage derived or realized, directly, or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled as well as income, capital or other economic gains derived or realized from such property from the time of the offence was committed;

2 PART II - PURPOSE AND SCOPE

2.1 Policy statement

2.1.1 Purpose

The purpose of this Regulation is:

- (a) To define the Anti-Money Laundering regulations for the delivery of mobile payment services
- (b) To implement and enforce sound anti-money laundering legislation for the Mobile payment service providers
- (c) To ensure all Mobile Payment Service Providers are subject to effective systems for monitoring and ensuring compliance with AML/CFT measures;

2.1.2 Scope

This Regulation applies:

- (a) To all mobile payment transfers delivered within Kenya;
- (b) With respect to its authorization requirements, to all mobile payment service providers as licensed under Clause 5 of the Regulations for the provision of Electronic Retail Transfers.

3 PART III – OFFENCES AND RELATED PENALTIES

3.1 Money Laundering and related offences

3.1.1 A Mobile Payment Service Provider or its agent commits an offence if it:

- (a) Knowingly transmits transfers, receives or attempts to transmit, transfer or receive a monetary instrument or anything of value to another person, with intent to commit an offence;
- (b) Enters into or becomes concerned in an arrangement which it knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

3.1.2 But a Mobile Payment Service Provider or agent does not commit an offence if:

- (a) The persons involved did not know or suspect that they were dealing with the proceeds of crime;
- (b) Authorized disclosure is made and (if the disclosure is made before he does the act mentioned in subsection (4.1)) he has the appropriate consent;
- (c) It intended to make such a disclosure but had a reasonable excuse for not doing so;
- (d) The act is done in carrying out a function relating to the enforcement of any provision of the Act or of any other enactment relating to criminal conducts or benefit from criminal conduct.

3.2 Requirements for Mobile Payment Services

A Mobile Payment Service Provider or its agent shall meet the following requirements to reduce the risk of mobile payment products being used for money laundering or terrorist financing:

- (a) Set transaction or payment account limits. The higher the value and frequency of transactions, and the higher the payment account limit, the greater the risk, particularly where customers are permitted to hold multiple payment accounts; the limits above which investigations should be carried out are:
 - i. *Any account exceeding a daily turnover of KShs 100,000.*
 - ii. *Any personal account transacting more than KShs 300,000 per week*
- (b) Take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as a birth certificate, passport, national identity card, a drivers license or other official means of identification as may be set forth in other regulation.

(c) Mobile payment accounts shall be opened using valid identification documents only. The ability of consumers to hold multiple payment accounts (for example, open multiple accounts) without verification of identity increases the risk. The Mobile Payment Service Provider should link the different accounts held by a single account holder and keep records of the same.

3.3 Money Laundering Systems and Control

3.3.1 The detail of a Mobile Payment Services provider's systems and controls depend on the risk exposed to, and the following measures will be put in place:

- (a) Mobile Payment Services providers are responsible for managing operational risks through laid down procedures and controls. The procedures and controls will enforce monitoring and reporting of suspected money laundering activities, verification of customer identity, documentation of customer records and establishment of internal reporting procedures.
- (b) Mobile Payment Services providers are obligated to put in place strong operational procedures and controls to handle and resolve customer complaints. This includes and is not restricted to, recording of sufficient transaction details to create an audit trail and storage of records for a minimum period of seven years from the date of transaction.
- (c) Mobile Payment Services providers must have clear accountability for actions of agents through agent agreements. Adequate contract documents are signed between payment service providers and agents and clearly spell out roles and obligations of service providers and their agents in prevention of money laundering and terrorism funding. Mobile Payment Services providers should verify, on a regular basis, compliance with policies, procedures, and controls as stipulated in the agreements, in order to ensure that the requirement to maintain such procedures has been discharged by their agents.
- (d) If a Mobile Payment Service Provider or its agent becomes aware of suspicious activities or transactions which indicate possible money laundering or terrorism financing, the Mobile Payment Service Provider shall ensure that it is reported to the Financial Reporting Centre (FRC) immediately and in any event within seven days of the date of the transaction or occurrence of the activity that is considered suspicious. Reporting should be as provided for in 'The Proceeds of Crime and Anti-Money Laundering Act, 2009'.

3.3.2 Mobile Payment Service Provider or its agent commits an offence if it fails to put in place the following systems to prevent operations related to money laundering or terrorist financing:

- (a) Failure to put in place effective anti-money laundering procedures and controls that address the risks posed by money laundering and terrorism financing.
- (b) Failure to keep records of clients' identity, records and details of any transaction performed through the payment instrument as required under these regulations.

- (c) Failure to retain the records for a period of seven years from the date of each particular record.
- (d) Failure to meet its obligations as a reporting institution as provided for in The Proceeds of Crime and Anti-Money Laundering Act, 2009.

3.4 Provision of information to the Central Bank

- (e) A Mobile Payment Service Provider shall submit a monthly report to the Central Bank of Kenya in in such form and at such times as the Central Bank may require.
- (f) A Person shall, upon being required to do so, provide the Central Bank with such information relating to a mobile payment system, in such form and at such times as the Central Bank may require.
- (g) Of which the disclosure is necessary to protect the integrity effectiveness of security of the payment system or if required by law to do so.

3.5 Failure to disclose

3.5.1 A Mobile payment service provider or its agent commits an offence if each of the following three conditions is satisfied.

- I. If it:
 - (a) Knows or suspects, or
 - (b) Has reasonable grounds for knowing or suspecting that another customer is engaged in money laundering;
- II. If the information or other matter:
 - (a) On which its knowledge or suspicion is based, or
 - (b) Which gives reasonable grounds for such knowledge or suspicion came to the Mobile payment service provider in the course of a business in the regulated sector.
- III. If it does not make the required disclosure as soon as is practicable after the information or other matter comes to the Mobile payment service provider.

3.5.2 The required disclosure is a disclosure of the information or other matter:

- (a) To a nominated officer or a person authorized for the purposes of this Part by the Director of the Financial Reporting Centre;
- (b) In the form and manner (if any) prescribed for the purposes of this subsection;

3.5.3 A mobile payment service provider does not commit an offence under this section if:

- (a) It is a professional legal adviser and the information or other matter came to the payment provider in privileged circumstances;

3.5.4 Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the Mobile Payment Service Provider:

(a) By (or by a representative of) a client of the Mobile Payment Service Provider in connection with the legal adviser of the client;

(b) By (or by a representative of) a person seeking legal advice from the adviser, or

(c) By a person in connection with legal proceedings or contemplated legal proceedings.

3.5.5 But subsection (3.5.4) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

3.5.6 In deciding whether a person committed an offence under this section the court must consider whether he/she followed any relevant guidance at the time concerned:

(a) Issued by a supervisory authority or any other appropriate body,

(b) Approved by the Financial Reporting Centre, and

(c) Published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

3.6 Tipping off

3.6.1 A Mobile Payment Service Provider or its agent commits an offence if:

(a) It knows or suspects that a disclosure falling within Clause 3 has been made, and

(b) It makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

(c) Falsifies, conceals or destroys documents relevant to the investigation or causes that to happen

3.6.2 But a Mobile payment service provider or its agent does not commit an offence under subsection (3.6.1) if:

(a) It did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (3.6.1);

(b) The disclosure is made in carrying out a function it has relating to the enforcement of any provision of this Regulation or of any other enactment relating to criminal conduct or benefit from criminal conduct;

(c) It is a professional legal adviser and the disclosure falls within subsection (3.6.3).

3.6.3 A disclosure falls within this subsection if it is a disclosure:

(a) To (or a representative of) a client of the Mobile payment service provider in connection with the giving by the adviser of legal advice to the client, or

(b) To any person in connection with legal proceedings or contemplated legal proceedings.

3.6.4 But a disclosure does not fall within subsection (3.6.3) if it is made with the intention of furthering a criminal purpose.

3.7 Penalties and Remedial Measures

A Mobile payment service provider (or its agent for the purposes of Anti Money Laundering) if found guilty of an offence under part 3, the Central Bank of Kenya may pursue any or all remedial actions provided under Section 16 Subsections 1, 2, 3, 4, 5, and 6 of the Proceeds of Crime and Anti Money Laundering Act, 2009.

4 PART IV - DISCLOSURES

4.1 Authorized disclosures

4.1.1 For the purposes of this Part a disclosure is authorized if:

- (a) It is a disclosure to a nominated officer or a monitoring officer by the alleged offender that property is criminal property;
- (b) It is made in the form and manner (if any) prescribed for the purposes of this subsection by order under Clause 8, and
- (c) The first or second condition set out below is satisfied.
 - i. The first condition is that the disclosure is made before the alleged offender does the prohibited act.
 - ii. The second condition is that:
 - (a) The disclosure is made after the alleged offender does the prohibited act,
 - (b) There is a good reason for the Mobile payment service provider's failure to make the disclosure before the Mobile payment service providers did the act, and
 - (c) The disclosure is made on the Mobile payment service provider's own initiative and as soon as it is practicable for the Mobile payment service providers to make it.

4.1.2 An authorized disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

4.1.3 A disclosure to a nominated officer is a disclosure which:

- (a) Is made to a person nominated by the Mobile payment service provider's regulator to receive authorized disclosures, and
- (b) Is made in the course of the alleged offender's registration to the Mobile payment service providers and in accordance with the procedure established by the Mobile payment service providers for the purpose.

4.2 Form and manner of disclosures

4.2.1 The Bank may prescribe the form and manner in which a disclosure must be made.

4.2.2 The form may include a request to the discloser to provide additional information specified in the form.

4.2.3 The additional information must be information which is necessary to enable the person to whom the disclosure is made to decide whether to start a money laundering investigation.

4.2.4 A disclosure made in pursuance of a request under subsection (5.1.1) is not to be taken to breach any restriction on the disclosure of information (however imposed).

4.2.5 The discloser is the person making a disclosure mentioned in subsection (5.1.0).

4.2.6 Money laundering investigation must be construed in accordance with the Proceeds of Crime and Anti Money Laundering Act, 2009

4.2.7 Subsection (4.2.2) does not apply to a disclosure made to a nominated officer.

4.3 Transition provisions

Mobile Payment Service Providers who are in operation before the effective date, shall be allowed a period of 12 months to comply with this Regulation.

The Bank may, in respect of such payment service providers, dispense with any requirement of this Regulation with which the Mobile Payment Service Providers had complied prior to the effective date.

4.4 Effective Date

The effective date of the Regulations shall be _____.