
**DRAFT REGULATION
FOR THE PROVISION
OF ELECTRONIC RETAIL TRANSFERS**

Clause 1

1.0 Citation

This Regulation may be cited as the Retail Transfers Regulation, 2011

Clause 2

2.0 Authorisation

This Regulation is issued in terms of section 57(1) read with section 4A of the Central Bank of Kenya Act which requires the Central Bank (the Bank) to formulate and implement policies to promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems.

Clause 3

3.0 Policy statement

3.1 Purpose

The purpose of this Regulation is:

- (a) To define retail transfers and provide for the delivery of retail transfers by banks and financial institutions as well as persons who are not licensed as banks or financial institutions;
- (b) To facilitate the provision of electronic payment services without compromising the safety and efficiency of the national payment system;
- (c) To provide minimum standards for consumer protection and risk management to be adhered to by all providers of retail transfers.

3.2 Scope

This Regulation applies:

- (a) To all retail transfers utilising an electronic payment system and delivered entirely within Kenya;
- (b) With respect to its authorisation requirements, to all payment service providers not licensed as banks or financial institutions.

Clause 4

4.0 Definitions

In this Regulation, unless the context otherwise requires, the words and expressions used herein shall have the same meanings assigned to them in the Central Bank of Kenya Act (the Act), and,

“cash” means bank notes and coins;

“cash merchant” means a person who, for a fee, performs cash services for a

payment service provider and where such cash services do not affect the aggregate value of e-money held in the payment accounts of the relevant bank, financial institution or e-money issuer;

“cash services” means the exchange of cash for e-money and e-money for cash;
“client” means a user of the services of a payment service provider;

“complain” means any statement of dissatisfaction of service by a client;

“core capital” means shareholders equity in the form of issued and fully paid-up shares of common stock, plus all disclosed reserves, less goodwill or any other intangible assets;

“e-money” means e-money as defined in the E-money Regulation;

“e-money issuer” means an e-money issuer authorised to issue e-money in terms of the E-money Regulation

“e-money payment instrument” means a payment instrument utilising e-money as defined in the E-money Regulation for the purposes of making retail transfers;

“material shareholder” means a person who owns 5% or more of the shareholding of a company;

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

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

“payment account” means an account held with a bank or financial institution or an e-money account held with an e-money issuer under the E-money Regulation;

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

“payment service provider” means a person engaged in the sending, receiving, storing or processing of retail transfers;

“points of service” means all the physical and electronic locations where a payment service provider provides retail transfers including its head office and branches, the head office and all the outlets of its cash merchants, as well as any website that can

be accessed to initiate retail transfers, but excluding automatic teller machines; “real time” means that:

- (a) the retail transfer is completed, that is the payment account of the payer is debited and the payment account of the payee is credited, instantaneously, such that there is no settlement risk; and
- (b) the payee receives written notification, simultaneous with the completion of the retail transfer, of having received the funds into his payment account;

“retail transfer” means a payment instrument consisting of an instruction issued by a payer to a payment service provider to debit a payment account and to credit the payment account of the payee or to make the funds available, directly or through another payment service provider, to the payee where the payee does not hold a payment account, provided that the value being transferred does not exceed One Hundred Thousand Shillings;

and for the purposes of this Regulation, the term “payment service” shall refer to the provision of retail transfers or any component thereof by one or more payment service providers.

Clause 5

5.0 Authorization of payment service providers

5.1 A payment service provider, other than a bank or financial institution, shall, before commencing such business, apply to the Bank for authorisation by submitting an application in the form –set out in Schedule 1 to this Regulation. The application shall be accompanied by the following information:

- (a) The type of services to be offered as well as the programme of operations to offer these services;
- (b) The geographic locations where the services will be offered and the physical accessibility of these services to portions of the population not currently served by similar services;
- (c) The public interest that will be served by the provision of the payment service;
- (d) A business plan including an indicative budget for the first three financial years which demonstrates that the applicant is able to operate efficiently and safely;
- (e) Evidence that the payment service provider holds the initial capital set out in clause 6;
- (f) A description of the applicant’s governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;

- (g) A description of the internal control mechanisms which the applicant has established to comply with its AML obligations as set out in the Proceeds of Crime and Anti-Money Laundering Act and the relevant regulations and regulations;
- (h) A description of the applicant's structural organisation including, where applicable, a description of its intended use of cash merchants, branches and outsourcing arrangements, and its participation in a national or international payment system;
- (i) How the payment service provider shall settle the inter-bank payment obligations arising from its provision of retail transfers;
- (j) The identity of its owners, provided that in the case of public companies only material shareholdings must be declared;
- (k) The identity of directors and persons responsible for the management of the payment service provider and, where the activities for which authorisation is being sought will be conducted in a separate division, the persons responsible for the management of that division, as well as evidence that they are of good repute and possess the appropriate knowledge and experience to perform the proposed services;
- (l) The applicant's registration documents;
- (m) The address of the applicant's head office.
The Bank may, within 30 days of receiving the information set out in this clause, request additional information from the payment service provider. The payment service providers shall provide such additional information within 14 days of receiving the request from the Bank.

5.2 The Bank shall, within 30 days of receiving the complete information requested under 5.1, authorise a person as a payment service provider if:

- (a) The person is a limited liability company registered in Kenya;
- (b) The person has adequately provided all the information required under clause 5.1;
- (c) The Bank's assessment is that the payment service provider can provide retail transfers safely and efficiently;
- (d) Where the person also engages in other commercial activities, the non-payment activities shall not impair or are not likely to impair either the financial soundness of the payment service provider or the ability of the Bank to monitor the payment

service provider's compliance with the obligations laid down in this Regulation;

- (e) The person keeps separate and distinct business divisions for its payment services from the other business divisions of that person;
- (f) The material owners and ownership structure are suitable;
- (g) The person holds the core capital required under clause 6;
- (h) The person has obtained an appropriate license under the Kenya Communications Act and remains in compliance with the said Act and license conditions;
- (i) The person has lodged a non-refundable application fee with the Bank of Ten Thousand Shillings or any such amount that may be determined by the Bank from time to time.

5.3 Where authorization has been granted under this clause, the Bank may impose conditions subject to which the authorization is granted and may add, vary, or substitute conditions attached thereto.

5.4 An authorisation issued under this clause shall, unless earlier revoked, be valid up to the 31st December of the year in which it is issued.

5.5 An authorisation made under this clause may on expiry be renewed for a further period of twelve months, provided that where an application for renewal is made the authorisation shall be deemed to continue in force until the application for renewal is determined. An application for renewal shall be made at least 2 months prior to the expiry of the authorisation, shall be in form- set out in Schedule 1 to this Regulation and shall be accompanied by a bankers cheque for an amount of Ten Thousand Shillings. Applications for renewals shall be considered in accordance with the provisions of sub-clause 5.2 and the Central Bank may require an applicant for renewal to submit any or all of the information set out in clause 5.1.

5.6 The Bank may, subject to clause 5.7, by notice in writing to an authorised payment service provider, revoke or suspend an authorisation under this clause for such period as it may specify, if the authorised payment service provider

- (a) Ceases to carry on business in Kenya or goes into liquidation or is wound up, or is otherwise dissolved; or
- (b) Fails to comply with the provisions of this Regulation or any conditions attached to an authorisation;

5.7 Before revoking or suspending an authorisation under this clause, the Bank shall give an authorised payment service provider not less than fourteen days notice in writing of the grounds for the proposed revocation or suspension and shall consider any representations made to it in writing by the authorised payment service provider within that period.

Clause 6

6.0 Capital requirements

6.1 A payment service provider, other than a licensed bank, financial institution and an authorised e-money issuer, shall, at the time of authorisation, hold a core capital of not less than Ten Million Shillings.

6.2 Notwithstanding the core capital requirement at the time of authorisation, payment service providers shall at all times hold core capital equal to the greater of:

(a) Ten Million Shillings, or

(b) An amount equal to 1% of one twelfth of the total amount of payment transactions executed by the payment service provider in the preceding financial year. For the purposes of this clause 6.2(b), a payment transaction consists of a single retail transfer.

Clause 7

7.0 Cash merchants

7.1 A payment service provider may utilise cash merchants to perform cash services, provided the payment service provider can execute the retail transfers that support the cash services in real time.

7.2 Payment service providers that intend to utilise cash merchants shall, at least 60 days prior to commencing the utilisation of cash merchants, advise the Bank in writing of their intention and provide the following information to the Bank:

(a) The procedure for recruiting cash merchants;

(b) The proposed geographic location of cash merchants;

(c) A copy of the proposed standard agreement with cash merchants, which shall provide, amongst others, that the cash merchant is under an obligation, when requested to do so by the Bank, to provide information and access to their premises, systems and records, to the Bank;

- (d) The policies and procedures approved by the payment service provider for the provision of cash services through cash merchants, including anti-money laundering controls to be implemented by cash merchants in terms of the Proceeds of Crime and Anti-Money Laundering Act;
- (e) A description of the technology to be used for delivering cash services;
- (f) A risk assessment report of the provision of cash services through cash merchants including the control measures that will be applied to mitigate the risks;
- (g) The security measures to be adopted for the premises of cash merchants; and
- (h) The cash merchant manual and any materials used for training cash merchants.

The Bank may require the payment service provider to submit additional information.

7.3 The Bank may, by notice in writing to a payment service provider intending to appoint cash merchants, instruct the payment service provider to desist from proceeding with the provision of services through cash merchants if the information provided to the Bank under 7.2 is incorrect or if the information indicates that the payment service provider will not comply with the provisions of this Regulation or any other legal provision if it proceeds with the provision of cash services through cash merchants. The Bank shall provide reasons for its decision and shall afford the payment service provider an opportunity to amend its documents.

7.4 Payment service providers may appoint, through written agreement, a person as cash merchant if that person:

- (a) Possesses such registrations, business licenses, or permits as may be required for the performance of its commercial activities;
- (b) Can lawfully provide the proposed cash services;
- (c) Holds a payment account with the bank, financial institution or e-money issuer utilised by the payment service provider and, if the payment service provider is not a licensed bank or financial institution, also holds an account with a licensed bank or financial institution;
- (d) Is financially sound and has provided the payment service provider with adequate financial records to prove its financial soundness proportional to the volumes and values which it will handle;
- (e) Has provided evidence to the payment service provider indicating that its management has the necessary experience and competence to perform the cash services.

- 7.5 Payment service providers may, subject to 7.4, appoint wholesale cash merchants to distribute e-money to cash merchants.
- 7.6 A payment service provider utilising cash merchants to perform cash services shall communicate the following information to the Bank in the prescribed form set out in the First Schedule and update the information on a monthly basis:
- (a) The name, physical address, GPS coordinates, postal address and telephone numbers of the cash merchants, as well as the physical address and telephone numbers of each of the outlets of the cash merchant at which it will provide cash services;
 - (b) The identity of the persons responsible for the management of the cash merchant; and the Bank shall insert this information in a public electronic register of cash merchants.
- 7.7 A payment service provider utilising cash merchants to perform cash services shall:
- (a) Provide adequate training and support to its cash merchants, including cash merchant manual containing the policies, rules and operational regulations needed to ensure the safe and efficient provision of services to clients;
 - (b) Maintain effective oversight over the activities of its cash merchants; and
 - (c) Maintain records of the number, volumes and values of transactions carried out by each cash merchant.
- 7.8 Cash merchants and wholesale cash merchants contracted to payment service providers shall comply with the Anti-Money Laundering and Combating the Financing of Terrorism controls imposed in terms of the Proceeds of Crime and Anti-Money Laundering Act.

Clause 8

8.0 Outsourcing

- 8.1 Where a payment service provider intends to outsource operational functions of its provision of payment services, it shall inform the Bank at least 30 days before such outsourcing agreement is implemented.
- 8.2 Outsourcing of material operational functions may not be undertaken in such a way as to impair the quality of the payments service provider's internal control and the ability of the Bank to monitor the payment service provider's compliance with the Act and this Regulation.
- 8.3 For the purpose of clause 8.2 an operational function shall be regarded as material if a

defect or failure in its performance would materially impair the continuing compliance of the payment service provider with the requirements of its authorisation under this Regulation, or its financial performance, or the soundness or the continuity of its payment services. When a payment service provider outsources a material operational function, it shall comply with the following conditions:

- (a) The outsourcing shall not result in the delegation by senior management of its responsibility;
- (b) The relationship and obligations of the payment service provider to its clients under this Regulation shall not be altered;
- (c) The Bank shall be able to exercise its oversight and supervisory powers under clause 14 in respect of the third parties to whom functions are outsourced;
- (d) The requirements with which the payment service provider must comply in order to be authorised and remain so, including any conditions imposed by the Bank, shall not be undermined;

Clause 9

9.0 Compliance requirements/risk management

- 9.1 Payment service providers shall utilise open systems capable of becoming interoperable with other payment systems in the country and internationally.
- 9.2 Payment system providers shall comply with the technical standards determined by the Bank from time to time.
- 9.3 Payment system providers shall comply with the risk management regulations which may be published by the Bank from time to time.

Clause 10

10.0 Ring fencing/safeguarding requirements

- 10.1 A payment service provider engaged in retail transfers as well as other commercial activities as envisaged in clause 5.2(d), shall safeguard the funds which have been received from payers or from other payment service providers for the execution of retail transfers, as follows:
 - (a) It shall not transfer the funds to its own account used for normal business operations nor commingle the funds with the funds of any person other than payers and payees on whose behalf the funds are held,
 - (b) where the funds are still held by the payment service provider and not yet delivered

to the payee or transferred to another payment service provider by the end of the business day on which the funds were received,

- (i) the funds shall be deposited in a separate account with a bank; and
- (ii) the payment service provider shall obtain insurance cover or some other comparable guarantee, payable in the event of bankruptcy to payees on whose behalf money is held by the payment service provider, from an insurance company or a bank, which does not belong to the same group as the payment service provider, for an amount equivalent to the aggregate daily balance held in the separate bank account referred to in clause 10.1(b)(i) during the preceding calendar month, provided that this sub-clause shall not apply to a bank or financial institution.

Clause 11

11.0 Execution of payments

11.1 A payer may not revoke a retail transfer instruction once it has been received by the payee's payment service provider.

11.2 The payment service provider(s) involved in a retail transfer shall transfer the full amount of the payment transaction and shall not deduct charges from the amount transferred, other than charges expressly agreed to by the client in advance, or which the client has received notice of in terms of clause 12.1(b).

11.3 Payment service providers shall ensure that the amount of the retail transfer is credited to the payee's payment account or the funds made available to the payee at the latest by the end of the third business day after the receipt of the instruction from the payer.

11.4 The payment service provider shall be liable to the payer for the correct execution of the payment transaction in accordance with the instruction of the payer. The payment service provider shall not be liable to the payer when the retail transfer requires transmission to a second payment service provider (the payee's payment service provider) and the payer's payment service provider can prove transmission of the retail transfer to the second payment service provider. Where a payment service provider is liable under this clause for the non-execution or defective execution of a retail transfer, he shall without undue delay restore the debited payment account to the state in which it would have been had the defective transaction not taken place, including a refund of the charges imposed.

11.5 The payment service provider shall be liable for payment transactions performed without the knowledge of the client, provided that such liability may be contractually excluded in circumstances where the payment service provider can prove an element of fault on the side of the client in the use of the service.

Clause 12

12.0 Consumer Protection

12.1 Disclosure

- (a) A payment service provider shall provide a clear and understandable description of the services which it offers and the rates, terms, conditions and charges for such services and shall publish such information and display it prominently at all points of service.
- (b) A payment service provider shall notify clients, as well as the Bank, in writing of any material changes in the rates, terms, conditions and charges at which it offers its services and shall do so at least 7 days before the changes take effect.
- (c) The Bank may from time to time publish any information it considers useful to clients, which information may include, but not be limited to tariffs, quality of service and statistical information.
- (d) A payment service provider shall provide its clients at the point of service with:-
 - (i) the name of the payment service provider ; and
 - (ii) a telephone number that provides access to its customer care system.
- (e) After the amount to be transferred through a retail transfer is debited to the payer's payment account, the payer's payment service provider shall without undue delay provide the payer with the following information:
 - (i) A reference enabling the payer to identify each payment transaction;
 - (ii) The name of the payee and its payment account details;
 - (iii) The amount of the retail transfer;
 - (iv) The amount of any charges for the transaction and, where applicable, a breakdown thereof;
 - (v) The date of debit.
- (f) After the amount transferred through a retail transfer is credited to the payee's payment account or paid to the payee, the payee's payment service provider shall without undue delay provide the payee with the following information:
 - (i) The reference enabling the payee to identify the payment transaction;
 - (ii) The name of the payer and any information transferred with the payment transaction;
 - (iii) The amount of the retail transfer;
 - (iv) The amount of any charges for the transaction and, where applicable, a breakdown thereof;
 - (v) The date of credit, where applicable.
- (g) Where a retail transfer will not be completed in real time, the payment service provider will provide the payer with the maximum execution time for the transfer to reach the

payment account of the payee.

- (h) A payment service provider may not charge the client for fulfilment of its disclosure and information obligations under this Regulation.

12.2 Customer care service

- (a) A payment service provider shall, within a period of six months after commencing the provision of payment services, establish a customer care system within which its clients can make inquiries and complaints concerning its services. A payment service provider shall, prior to the establishment of a customer care system in terms of this clause, provide adequate means for clients to file complaints and shall address such complaints within a reasonable period of 60 days from receipt of the complaint.
- (b) Payment service providers shall provide easily understood information about their complaint handling processes at all points of service.
- (c) All complaints shall be lodged within a period of 30 days from the date of occurrence.
- (d) Payment service providers shall acknowledge all complaints filed with them.
- (e) At the time of making a complaint a client shall be advised of the expected actions and timing for investigating and resolving the complaint and in the event that the payment service provider regards the complaint as frivolous or vexatious, the client shall be informed accordingly and if dissatisfied the client shall have further recourse in accordance with these this Regulation.
- (f) All complaints shall be resolved within sixty days of being lodged.
- (g) Payment service providers shall put in place processes to provide clients with sufficient information and the means to inquire on the progress of complaints and such processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by clients.
- (h) Clients shall be advised of the outcome of the investigation of their complaint, and any resulting decision by the payment service provider.
- (i) Where a client is not satisfied with a decision reached pursuant to a complaint, the payment service provider shall give the client the option of pursuing an identified escalation process by which the decision may be examined by a suitably qualified person in the payment service provider's organisation.
- (j) Complaint handling processes shall be provided free of charge but a payment service provider may impose a reasonable charge for complaint handling processes

where investigation of the complaint requires the retrieval of records more than three months old, and where the retrieval results in an incremental expense or significant inconvenience to the payment service provider

- (k) Payment service providers shall make adequate provision to ensure that people with disabilities are able to access their complaint handling processes, including ensuring that such clients can be easily represented by their authorised representatives in order to make a complaint. In cases where such clients specifically request assistance in lodging complaints, payment service providers shall be obliged to provide reasonable assistance.

12.3 Client service agreements

Payment service providers shall enter into a written client service agreement with every client to which it renders services and shall submit to the Central Bank a copy of the standard client service agreement applicable to each service offered to the public.

12.4 Confidentiality/Privacy

- (a) Payment service providers shall keep the information in respect of services provided to any client confidential.
- (b) A payment service provider shall disclose client information in respect of services provided by them only
 - (i) To the client concerned;
 - (ii) To the Central Bank;
 - (iii) When authorised in writing by the client concerned;
 - (iv) When in the public interest; or
 - (v) As required by law.

Clause 13

13.0 Record keeping

13.1 Payment service providers shall utilise systems able to provide an accurate and fully accessible audit trail of all transactions from the origin of the retail transfer to its finality.

13.2 A payment service provider shall keep records of every retail transfer processed by it for a period of seven years.

Clause 14

14.0 Reporting requirements and Central Bank oversight

14.1 The Bank shall, in respect of payment service providers, exercise the oversight and supervisory powers and functions conferred on it by the Act.

- 14.2 Every payment service provider shall, within 10 days of the end of every calendar month, submit to the Bank in the forms set out in Schedules —, information regarding:
- (a) The volumes, values and geographic distribution of each retail transfer payment instrument offered by it;
 - (b) Incidents of fraud, theft or robbery;
 - (c) Material service interruptions and major security breaches;
 - (d) Complaints reported, including remedial measures taken, those resolved and those outstanding;
- 14.3 Every payment service provider shall, within three months of the end of its financial year, submit to the Bank an audited balanced sheet, showing its assets and liabilities in Kenya, and an audited profit and loss account covering its activities in Kenya together with a copy of the auditor's report.
- 14.4 The Bank shall establish a public register of all authorised payment service providers and their points of service.

Clause 15

15.0 Transitional provisions

Payment service providers who commenced their delivery of retail transfers before the effective date, shall be allowed a period of 12 months from the effective date to comply with this Regulation. The Bank may, in respect of such a payment service provider, dispense with any requirement of this Regulation with which that payment service provider complied with prior to the effective date.

Clause 16

16.0 Effective Date

The effective date of the Regulations shall be 3rd February 2011.

DRAFT E-MONEY Regulation

PART B: E-money Regulation

Clause 1

1.0 Citation

This Regulation may be cited as the E-money Regulation, 2011.

Clause 2

2.0 Authorisation

This Regulation is issued in terms of section 57(1) read with section 4A of the Central Bank of Kenya Act which requires the Bank to formulate and implement policies to promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems.

Clause 3

3.0 Policy statement

3.1 Purpose

The purpose of this Regulation is to provide for:

- (a) the authorisation of e-money issuers and the conduct of the business of e-money issuing;
- (b) the appointment of agents by e-money issuers and the registration of such agents; and
- (c) appropriate measures to protect the interests of the clients of e-money issuers.

3.2 Scope

This Regulation applies to:

- (a) all issuers of e-money who are not licensed as banks or financial institutions under the Central Bank of Kenya Act;
- (b) in respect of clauses 4, 7, 9, 10, 11, 12, 13 and 14, to banks and financial institutions to the extent that they conduct the business of an e-money issuer other than banking business or financial business as defined under the Banking Act.

Clause 4

4.0 Definitions

In this regulation, unless the context otherwise requires, the words and expressions used herein shall have the same meanings assigned to them in the Central Bank of Kenya Act (the Act), and,

“agent” means a person appointed by an e-money issuer to perform agency services on its behalf,;

“agency services” means the registration of new e-money account holders on behalf of an e-money issuer and shall include services incidental to the performance

of these services;

“aggregate monthly load limit” means the total amount of e-money transferred into an e-money account held by an e-money holder over the period of a calendar month;

“business of an e-money issuer” means the business of issuing e-money and includes the issuance of e-money against currency of Kenya received as well as the redemption of e-money for currency of Kenya and includes the provision of closely related ancillary services in respect of the issuing of e-money as well as the operational services of the e-money issuer;

“core capital” means shareholders equity in the form of issued and fully paid-up shares of common stock, plus all disclosed reserves, less goodwill or any other intangible assets;

“E-money” means monetary value as represented by a claim on its issuer, that is

- (a) Electronically, including magnetically, stored;
- (b) Issued against receipt of currency of Kenya; and
- (c) Accepted as a means of payment by persons other than the issuer.

“e-money account” means the account held by an e-money holder with an e-money issuer for the conducting of e-money transactions;

“e-money account holder” means a person holding an e-money account;

“E-money issuer” means a person authorised to issue e-money under this regulation and, for the purposes of clauses 4, 7, 9, 10, 11, 12, 13 and 14, includes a bank and a financial institution;

“E-money holder” means a person who has a claim on an e-money issuer for e-money issued by the e-money issuer;

“material owner” means a person who controls 25% or more of the voting rights in a body corporate or partnership;

“payment instrument” means any electronic instrument that enables a person to make payment, and for the purposes of this definition currency (which is defined in the Central Bank of Kenya Act as the means to make payment) shall include e-money;

“Retail Transfers Regulation” means the Regulation for the Provision of Electronic Retail Transfers issued by the Bank;

“**small e-money issuers**” means a person registered to issue e-money under clause 6.

Clause 5

5.0 Authorisation of e-money issuers

5.1 No person other than a bank or financial institution shall conduct the business of an e-money issuer unless that person is authorised to do so under this regulation.

5.2 Persons who intend to conduct business as e-money issuers as well as persons directed to do so by the Bank, shall make an application to the Bank for authorisation in the prescribed form set out in the First Schedule. The Bank shall not authorise a person as an e-money issuer unless the person complies with the following requirements:

- (a) The person is established and incorporated as a limited liability company under the Companies Act in Kenya;
- (b) The material owners and ownership structure are suitable;
- (c) The board of directors adequately reflect the balance of interests represented by the e-money issuer, in particular that the company will hold funds in trust on behalf of e-money holders;
- (d) The person has minimum unencumbered core capital of Sixty Million Shillings or such other amount as may be required by the Bank;
- (e) The person engages only in the business of an e-money issuer. A person engaged in activities not related to e-money but wishing to be authorised as an e-money issuer, must do so through a separate entity duly incorporated exclusively for this purpose;
- (f) The person is financially sound;
- (g) The persons proposed to manage or control the e-money issuer are fit and proper and have the necessary experience and technical qualifications to perform their functions;
- (h) The following minimum systems and controls are in place:
 - (i) Sound and prudent management, administrative and accounting procedures and adequate internal control systems;
 - (ii) Appropriate and tested technology systems;

- (iii) Appropriate security policies and measures intended to safeguard the integrity, authenticity and confidentiality of data and operating processes;
- (iv) An adequate business continuity and disaster recovery plan; and
- (v) An effective audit function to provide periodic review of the security control environment and critical systems.
- (i) The person has been issued with such licenses and authorisations as may be required under Kenyan law;
- (j) The person pays the licensing fee of Fifty Thousand Shillings.

An application under this clause shall set out the nature and functionality of the proposed e-money payment instrument that will be made available to e-money holders and shall contain sufficient information to enable the Bank to evaluate the requirements set out above.

- 5.3 Authorization under this clause may be made subject to specific conditions imposed by the Bank. Where authorization has been granted under this clause, the Bank may add, vary, or substitute conditions attached thereto.
- 5.4 An authorisation issued under this clause shall, unless earlier revoked, be valid up to the 31st December of the year in which it is issued.
- 5.5 An authorisation made under this clause may on expiry be renewed for a further period of twelve months, provided that where an application for renewal is made the authorisation shall be deemed to continue in force until the application for renewal is determined. An application for renewal shall be made at least 2 months prior to the expiry of the authorisation, or such shorter period as it may be valid in the year that it is first granted, and shall be considered in accordance with the provisions of clause 5.2.
- 5.6 The Bank may by notice in writing to an authorised e-money issuer, revoke or suspend an authorisation for such period as it may specify, if the authorised e-money issuer –
 - (a) Ceases to carry on business in Kenya or goes into liquidation or is wound up, or is otherwise dissolved; or
 - (b) Fails to comply with the provisions of this Regulation or any condition attached to an authorisation.

Before revoking or suspending an authorisation under this clause, the Bank shall give an authorised e-money issuer not less than fourteen days notice in writing and shall consider any representations made to it in writing by the authorised e-money issuer within that period.

Clause 6

6.0 Registration of small e-money issuers

6.1 A person who issues e-money on a limited scale may apply to the Bank for registration as a small e-money issuer.

6.2 A small e-money issuer need not comply with clauses 5, 7 (except 7.2 and 7.5), 9, 10, 11, 12, and 13 of this Regulation.

6.3 Persons who intend to conduct business as small e-money issuers as well as persons directed to do so by the Bank, shall apply to the Bank for registration by submitting an application in the form set out in Schedule 1 to this Regulation accompanied by the information set out in the form.

6.4 The Bank shall not register a person as a small e-money issuer unless the person complies with the following requirements:

- (a) The person is a company incorporated in Kenya;
- (b) The person does not issue e-money accounts with an individual transaction limit that exceeds Ten Thousand Shillings;
- (c) The person:
 - (i) does not and will not have total liabilities with respect to issuing e-money that exceeds One Hundred Million Shillings;
 - (ii) issues e-money which is accepted as a means of payment by not more than one hundred persons where:
 - those persons accept such e-money only at locations within the same premises or limited local area; or
 - those persons have a close financial or business relationship with the e-money issuer such as a common marketing or distribution scheme; or
 - (iii) issues e-money which is accepted as a means of payment only by:
 - subsidiaries of the e-money issuer which perform operational or other ancillary functions related to e-money issued or distributed by that e-money issuer; or
 - other members of the same group as the e-money issuer (other than subsidiaries of that e-money issuer).

6.5 A person applying for registration as a small e-money issuer is not subject to any application or subsequent fee. The Bank shall issue a certificate of registration in

the form set out in Schedule hereto to a person who complies with the registration requirements set out in this clause. Registration as a small e-money issuer under this clause will remain in place until suspended or revoked in terms of clause 6.7 below.

- 6.6 A small e-money issuer shall, within 10 working days of the end of every calendar month, submit to the Bank in the form set out in Schedule 1, information regarding:
- (a) The total amount of e-money issued by it outstanding as at the end of each month;
 - (b) The number of e-money accounts held by it;
 - (c) The volumes and values of its e-money transactions.
- 6.7 The Bank may by notice in writing to a registered small e-money issuer, revoke or suspend its registration for such period as it may specify, if the registered small e-money issuer –
- (a) Ceases to carry on business in Kenya or goes into liquidation or is wound up, or is otherwise dissolved; or
 - (b) Fails to comply with the provisions of this clause.

Before revoking or suspending a registration under this clause, the Bank shall give a registered small e-money issuer not less than fourteen days notice in writing and shall consider any representations made to it in writing by the registered small e-money issuer within that period.

Clause 7

7.0 Compliance requirements applicable to e-money issuers

E-money issuers shall comply with the following requirements:

- 7.1 Every e-money account issued shall be subject to an individual transaction limit that shall not exceed Seventy Five Thousand Shillings and an aggregate monthly load limit of One Million Shillings, provided that the Bank may approve higher limits for specific categories of e-money accounts . Should an e-money issuer issue more than one e-money account to an e-money holder, the total amount loaded into all the e-money accounts shall not exceed the aggregate monthly load limit.
- 7.2 E-money issuers shall put in place systems to maintain accurate and complete records of e-money accounts opened, the identity of e-money holders, transactions undertaken by e-money holders and the individual and aggregate balances held by e-money holders.
- 7.3 E-money issuers shall ensure that they and their agents comply with the applicable provisions of the Proceeds of Crime and Anti-Money Laundering Act and the regulations issued in terms of the said Act.

- 7.4 E-money issuers shall enter into a written agreement with every e-money account holder for whom they open an e-money account. The agreement shall, amongst others, clearly identify the e-money issuer who is responsible to the e-money account holder and if the payment system utilising the e-money account is operated by a person other than the e-money issuer, the name of the payment service provider.
- 7.5 E-money shall be redeemed at par value. E-money shall not earn interest or any other financial return.
- 7.6 E-money issuers, other than banks and financial institutions, shall not engage in any lending or investment activity other than that required under clause 8.
- 7.7 E-money issuers may not borrow money from third parties, including persons who have a shareholding in the e-money issuer, or otherwise incur obligations other than those related to the business of an e-money issuer.
- 7.8 Any substantial change or enhancement in the e-money payment instrument which an e-money issuer intends to introduce shall be subject to the approval of the Bank and the e-money issuer shall notify the Bank in writing 30 days prior to the proposed implementation of the change or enhancement. A substantial change or enhancement is one that will expand the scope or change the nature of the e-money payment instrument and may include, amongst others, the following:
- (a) Additional functionality of the e-money payment instrument such as accessing new electronic channels;
 - (b) Changing the payment service providers and other major partners in the business.

Clause 8

8.0 Liquid assets requirement

- 8.1 E-money issuers shall maintain liquid assets equal to the amount of outstanding e-money issued. The liquid assets shall remain unencumbered and may take the form of
- (a) balances held at banks, approved by the Bank, after deducting there from any balance owed to those banks, provided that such balances shall be held separately from balances relating to any other operations of the e-money issuer; or
 - (b) any other liquid asset prescribed by the Bank.
- 8.2 E-money issuers shall on a daily basis, by no later than 16.00 p.m. East Africa time each day, reconcile the liquid assets held by them for the redemption of e-money with the amount of e-money outstanding. Any deficiencies in the amount of liquid assets held shall be rectified by 12.00 p.m. the next day.

- 8.3 The Bank may, in the interest of protecting e-money holders, require an e-money issuer to keep its liquid assets in more than one bank.
- 8.4 The interest earned by e-money issuers on liquid assets under this clause may be applied at the discretion of the e-money issuer.
- 8.5 Records pertaining to the above liquid assets as well as reconciliations shall be made available to the Bank for inspection at any time and the confidentiality of bank deposits shall be waived.

Clause 9

9.0 Agency

- 9.1 An e-money issuer may utilise agents to perform agency services on its behalf.
- 9.2 E-money issuers that intend to appoint agents shall, at least 60 days prior to commencing the conducting of the business of an e-money issuer through agents, advise the Bank in writing of their intention and provide the following information to the Bank:
- (a) The procedure for recruiting agents;
 - (b) The proposed geographic location of agents;
 - (c) A copy of the proposed standard agency agreement or agreements;
 - (d) The policies and procedures approved by the e-money issuer for the provision of services through agents, including anti-money laundering controls to be implemented by agents in terms of the Proceeds of Crime and Anti-Money Laundering Act;
 - (e) A description of the technology to be used for delivering agency services;
 - (f) A risk assessment report of the provision of services through agents including the control measures that will be applied to mitigate the risks;
 - (g) The security measures to be adopted for agent premises; and
 - (h) The agent manual and any materials used for training agents.

The Bank may require the e-money issuer to submit additional information.

- 9.3 The Bank may, by notice in writing to an e-money issuer intending to appoint agents, instruct the e-money issuer to desist from proceeding with the provision of services through agents if the information provided to the Bank under 9.2 is incorrect or if the information indicates that the e-money issuer will not comply with the provisions of this Regulation or any other legal provision if it proceeds with the utilisation of agents to perform agency services. The Bank shall provide reasons for its decision and shall afford the e-money issuer an opportunity to amend its documents.
- 9.4 E-money issuers may appoint, through written agency agreement, a person as agent if that person:

- (a) Possesses such registrations, business licenses, or permits as may be required for the performance of its commercial activities;
 - (b) Can lawfully provide the proposed agency services;
 - (c) Is financially sound and has provided the e-money issuer with adequate financial records to prove its financial soundness;
 - (d) Has provided evidence to the e-money issuer indicating that its management has the necessary experience and competence to perform the agency services.
- 9.5 An e-money issuer utilising an agent(s) to perform agency services shall communicate the following information to the Bank in the prescribed form set out in the First Schedule and update the information on a monthly basis:
- (a) The name, material owners, physical address, GPS coordinates, postal address and telephone numbers of the agent as well as the physical address and telephone numbers of each of the outlets of the agent at which it will provide services as agent for the e-money issuer;
 - (b) The identity of the persons responsible for the management of the agent; and the Bank shall insert this information in a public electronic register of agents.
- 9.6 An agent appointed under this Regulation may also conduct business as an agent under the Agent Banking Regulation and as a cash merchant under the Retail Transfer Regulation, subject to such authorization provisions as apply under those regulations.
- 9.7 An e-money issuer utilising agents to perform agency services shall:
- (a) Maintain systems, policies and procedures, including risk management policies, to exercise effective internal control over the provision of services by its agents;
 - (b) Provide adequate training and support to its agents, including an agent manual containing the policies, rules and operational regulations needed to ensure the safe and efficient provision of services to clients; and
 - (c) Maintain effective oversight over the activities of its agents.
- 9.8 Agents contracted to e-money issuers shall comply with the Anti-Money Laundering and Combating the Financing of Terrorism controls applicable to e-money issuers.
- 9.9 Accountability for conduct of agents
E-money issuers are liable to their e-money account holders for the conduct of their agents, performed within the scope of the agency agreement. The agency agreement cannot exclude such liability.

Clause 10

10.0 Record-keeping

- 10.1 E-money issuers shall utilise systems able to provide an accurate and fully accessible audit trail of all e-money transactions.
- 10.2 An e-money issuer shall keep records of every e-money transaction processed by them for a period of seven years.

Clause 11

11.0 Outsourcing

- 11.1 Where an e-money issuer intends to outsource operational functions, it shall inform the Bank at least 30 days before such outsourcing agreement is implemented.
- 11.2 Outsourcing of material operational functions may not be undertaken in such a way as to impair the quality of the e-money issuer's internal control and the ability of the Bank to monitor the e-money issuer's compliance with this Regulation.
- 11.3 For the purpose of sub-clause 2 an operational function shall be regarded as material if a defect or failure in its performance would materially impair the continuing compliance of the e-money issuer with the requirements of its authorisation under this Regulation, or its financial performance, or the soundness or the continuity of its undertaking the business of an e-money issuer. When an e-money issuer outsources a material operational function, it shall comply with the following conditions:
- (a) The outsourcing shall not result in the delegation by senior management of its responsibility;
 - (b) The relationship and obligations of the e-money issuer to its e-money account holders and agents under this Regulation shall not be altered;
 - (c) The Bank shall be able to exercise its oversight and supervisory powers under clause 13 in respect of the third parties to whom functions are outsourced;
 - (d) The requirements with which the e-money issuer must comply in order to be authorised and remain so, including any conditions imposed by the Bank, shall not be undermined.

Clause 12

12.0 Consumer protection

Disclosure

- 12.1 In addition to the information specified in clause 7.4 above, e-money issuers shall disclose the following information in writing to new e-money account holders upon opening their e-money accounts:
- (a) That e-money may be redeemed at any time at par value;
 - (b) The fees, if any, and other conditions applicable to the redemption of e-money;

- (c) The fees, if any, applicable to balance enquiries;
- (d) That e-money cannot earn interest or other monetary incentives or rewards and that it is not a savings account or other investment instrument;
- (e) That e-money is not a deposit within the meaning of the Banking Act, the Microfinance Act or the SACCO Societies Act and is not subject to any deposit protection; and
- (f) Available customer care procedures for complaints together with the address, customer care contact number and other contact details for the e-money issuer.

12.2 E-money issuers shall upon request from an e-money holder provide the e-money holder in writing with the balance remaining in its e-money account as well as a statement of transactions for the previous 30 days.

Consumer redress

12.3 E-money issuers shall, within six months after commencing business as an e-money issuer, establish a customer care system to address the complaints of e-money account holders. E-money issuers shall, prior to the establishment of a customer care system in terms of this clause 12, provide adequate means for e-money account holders to file complaints and shall address such complaints within a period of 60 days from receipt of the complaint.

12.4 E-money issuers shall provide easily understood information about the customer care system, including the customer care contact number, at its head office, branches as well as the premises of agents.

12.5 Complaints may be lodged orally or in writing, but in each case must be lodged within a period of 30 days from the date of occurrence.

12.6 E-money issuers shall acknowledge all complaints filed with them.

12.7 At the time of making a complaint the complainant shall be advised of the expected actions and timing for investigating and resolving the complaint, provided that all complaints shall be resolved within sixty days of being lodged.

12.8 E-money issuers shall put in place processes to provide complainants with sufficient information and the means to inquire on the progress of complaints and such processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by complainants.

12.9 Complainants shall be advised of the outcome of the investigation of their complaint, and any resulting decision by the e-money issuer.

12.10 Where a complainant is not satisfied with a decision reached pursuant to a complaint, the e-money issuer shall give the complainant the option of pursuing an identified escalation process by which the decision may be examined by a suitably qualified person in the e-money issuer's organisation.

12.11 Complaint handling processes shall be provided free of charge but an e-money issuer may impose a reasonable charge for complaint handling processes where investigation of the complaint requires the retrieval of records more than three months old, and where the retrieval results in an incremental expense or significant inconvenience to the e-money issuer. Any such charges shall be identified and agreed to by the complainant.

12.12 E-money issuers shall make adequate provision to ensure that people with disabilities are able to access their complaint handling processes, including ensuring that such complainants can be easily represented by their authorised representatives in order to make a complaint. In cases where such complainants specifically request assistance in lodging complaints, e-money issuers shall be obliged to provide reasonable assistance.

Clause 13

13.0 Oversight and reporting

13.1 The Bank shall in respect of e-money issuers and their agents exercise the oversight and supervisory powers and functions conferred on it by the Act.

13.2 Every e-money issuer shall, within 10 working days of the end of every calendar month, submit to the Bank in the form set out in the First Schedule, information regarding:

- (a) The number of e-money accounts issued by it;
- (b) The volumes and values of its e-money transactions;
- (c) The total of outstanding e-money balances held by it;
- (d) Its liquid assets;
- (e) Incidents of fraud, theft or robbery, including at its agents;
- (f) Number of complaints received analyzed by category;
- (g) Material service interruptions and major security breaches;
- (h) The information required under clause 9.5 above.

as well as such other information as may be required by the Bank from time to time.

13.3 Every e-money issuer shall, within three months of the end of its financial year, submit to the Bank an audited balanced sheet, showing its assets and liabilities in Kenya, and an audited profit and loss account covering its activities in Kenya together with a copy of the auditor's report.

Clause 14

14.0 Transition provisions

Persons who commenced issuing e-money before the effective date, shall be allowed a period of 12 months to comply with this Regulation. The Bank may, in respect of such e-money issuers, dispense with any requirement of this Regulation with which the e-money issuers had complied prior to the effective date.

Clause 15

15.0 Effective date

The effective date of the Regulations shall be 3rd February 2011.