

CENTRAL BANK OF KENYA

E-MONEY REGULATION



13

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Clause 1

1.0 Citation

This Regulation may be cited as the E-money Regulation, 2013.

Clause 2

2.0 Authorization

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 and Section 31 of the National Payment System Act which authorizes the Minister may make regulations generally for the better carrying into effect the provisions of the National Payment System Act.

Clause 3

3.0 Policy statement

3.1 Purpose

The purpose of this Regulation is to provide for:

- (a) the authorization 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 Banking Act;
- (b) in respect of clauses 4, 7, 9, 10, 11, 12, 13 and 14, banks and financial institutions licensed under the Banking Act to the extent that they conduct the business of an e-money issuer in addition to 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 National Payment System 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.

“Payment account” means payment account as defined in Regulation for the provision of Electronic Retail Transfers.;

“client” means payment account as defined in Regulation for the provision of Electronic Retail Transfers.

“E-money issuer” means a person authorized 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 shareholder” means a person, other than the government or a public entity who holds directly or indirectly 15% or more of the share capital of a Payment Service Provider and “material shareholding” shall be construed accordingly;

“payment instrument” means any instrument that enables a person to make payment electronically, 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 Authorization 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 authorized 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 authorization in the prescribed form set out in the First Schedule. The Bank shall not authorize 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 reflects 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 authorized 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 authorizations as may be required under Kenyan law;
- (j) The person pays the licensing fee of

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 authorization 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 authorization 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 authorization 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 authorization, 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 authorized e-money issuer, revoke or suspend an authorization for such period as it may specify, if the authorized 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 authorization.

Before revoking or suspending an authorization under this clause, the Bank shall give an authorized e-money issuer not less than fourteen days' notice in writing and shall consider any representations made to it in writing by the authorized 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 of that e-money holder 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 utilizing 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 to the E-Money holder.
- 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. A report shall be made to the Bank by 16.00 pm East Africa time on the day following the discovery of any deficiency, outlining the

amount of the deficiency and describing how the deficiency arose and how it has been rectified.

- 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 utilize 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 utilization 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 utilizing 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 cash merchant under the Retail Transfer Regulation, subject to such authorization provisions as apply under those Regulations.
- 9.7 An e-money issuer utilizing 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 guidelines 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 utilize 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 authorization 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 authorized 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 organization.
- 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 authorized 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 Regulation shall be _____

OVERSIGHT DATA REQUIREMENT

PURSUANT of section 16 and section 20 of the National Payment System Act, 2011, kindly provide the following information to facilitate oversight of your payment service. (*Additional information is provided in the attachments*).

PART A: E-Money Issuer Details

- 1. Name of the E- Money issuer
- 2. Description of the payment service provided (please provide more details on a separate documentation)
.....
.....
- 4. Please provide the following information about your Payment instrument.
 - i. Physical address
 - ii. Postal address
 - iii. Telephone
 - iv. Registered head office:

PART B: Operational Details

- 1. How many outlets / Agents operate under your establishment (Provide detailed geographic distribution in the attached sheet)
- 2. What is the volume and value of your operations during last month?
Aggregate Value
- Aggregate Volume
- 3. Have you experienced incidents of fraud, theft or robbery?
 - a) No
 - b) Yes (Provide geographical distribution details in the sheet provided)?
- 4. Have you experienced material service interruptions and major security breaches?
 - a) No

b) Yes (Provide geographical distribution details in the sheet provided)

5. What security measures have you put in place to prevent service interruptions?

.....
.....

6. Have you received complaints and how have they been resolved?

a) No

b) Yes (Provide geographical distribution details in the sheet provided and resolving mechanisms can be provided in a separate sheet)

PART C: Declaration

I/We declare that the information provided is true to the best of our knowledge.

Name.....

Name

Designation

Designation

Date

Date