

LEGAL NOTICE NO.

THE NATIONAL PAYMENT SYSTEM ACT 2011, No. 39 of 2011

THE NATIONAL PAYMENT SYSTEM REGULATIONS, 2013

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY	4
-----------------------------------	----------

Regulation

1. Citation	4
--------------------------	----------

2. Interpretation	4
--------------------------------	----------

PART II – ELECTRONIC RETAIL TRANSFERS REGULATION	7
---	----------

3. Purpose	7
-------------------------	----------

4. Scope	8
-----------------------	----------

5. Authorisation of an electronic retail payment service provider	8
--	----------

6. Application Process.....	12
------------------------------------	-----------

7. Renewal.....	13
------------------------	-----------

8. Revocation and Suspension.....	14
--	-----------

9. Capital requirements.....	16
-------------------------------------	-----------

10. Operations	17
-----------------------------	-----------

11. Agents.....	17
------------------------	-----------

12. Agents and Cash merchants.....	18
---	-----------

13. Interoperability	21
-----------------------------------	-----------

14. Outsourcing	22
------------------------------	-----------

15. Risk management.....	23
---------------------------------	-----------

16. Governance.....	23
----------------------------	-----------

17. Execution of payments.....	25
---------------------------------------	-----------

18.	Record keeping and Reporting	26
19.	Oversight and Audit	27
20.	Consumer Protection	29
21.	Sanctions and Penalties	34
22.	General Penalty	35
23.	Transitional provisions	35
	PART III – E-MONEY REGULATION	36
25.	Purpose	36
26.	Scope	36
27.	Authorisation of an e-money issuer	36
28.	Application Process.....	40
29.	Renewal.....	42
30.	Revocation and Suspension.....	43
31.	Capital requirements	45
32.	Registration of small e-money issuers	46
33.	Operations	47
34.	Agents.....	48
35.	Agents and Cash merchants.....	49
36.	Interoperability	51
37.	Outsourcing	53
38.	Risk management.....	53
39.	Governance.....	54
40.	Execution of payments.....	56
41.	Record keeping and Reporting	56
43.	Consumer Protection	59
44.	Sanctions and Penalties	64

45.	General Penalty	65
46.	Transitional provisions	65
PART IV: DESIGNATION OF A PAYMENT INSTRUMENT REGULATION		66
48.	Purpose	66
49.	Scope	66
50.	Application Process.....	66
51.	Notification by the Bank.....	67
52.	Changes and enhancements	67
53.	Revocation	68
PART V: DESIGNATION OF A PAYMENT SYSTEM REGULATION		70
55.	Purpose	70
56.	Scope	70
57.	Application Process.....	70
58.	Notification by the Bank.....	71
59.	Changes and enhancements	72
60.	Revocation	72
PART VI: ANTI-MONEY LAUNDERING		74
62.	Anti-money laundering Measures	74
FIRST SCHEDULE.....		75
SECOND SCHEDULE		93
THIRD SCHEDULE		99

PART I – PRELIMINARY

IN EXERCISE of the powers conferred by section 31 of the National Payment System Act, 2011, the Cabinet Secretary for The National Treasury makes the following Regulations for authorisation and oversight of Electronic Retail Transfers, E-money, Designation of Payment Systems, Designation of Payment Instruments and Anti-Money Laundering measures.

1. Citation

These Regulations may be cited as the National Payment System Regulations, 2013.

2. Interpretation

In these Regulations, 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 2011, and,

“Agent” means a person who, for a fee, provides limited payment services on behalf of a payment service provider;

“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;

“Bank” means the Central Bank of Kenya;

“business of an electronic retail provider” means the issuance of e-money against currency of Kenya received or any other currency authorised by the Central Bank of Kenya as well as the redemption of e-money for currency of Kenya or any other currency authorised by the Central Bank of Kenya and includes the transfer of the e-money and provision of closely related ancillary services in respect of the issuance and transfer;

“business of an e-money issuer” means the issuance of e-money against currency of Kenya received or any other currency authorised by the Central Bank of Kenya as well as the redemption of e-money for currency of Kenya or any other currency authorised by the Central Bank 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;

“Cash” means bank notes and coins;

“Cash merchant” means a person who, for a fee, provides cash services on behalf of a payment service provider;

“Cash services” means the exchange of cash for e-money and e-money for cash;

“Complaint” means any statement of dissatisfaction of a service provided by a payment service provider;

“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;

“Customer” means a user of the services of a payment service provider;

“Designated Payment Instrument” means a payment instrument designated in accordance with section 6 (1) of the National Payment System Act, 2011

“Designated Payment System” means a payment system designated in accordance with section 3 (1) of the National Payment System Act, 2011

“electronic retail transfer” means a payment 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 the maximum amount as prescribed by the Bank.

“electronic retail payment service provider” means a payment service provider providing electronic retail transfer services.

“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 or any other currency authorised by the Bank; and
- (c) Accepted as a means of payment by persons other than the issuer.

“E-money holder” means a person who has an e-money claim on an e-money issuer or electronic retail payment service provider for e-money issued;

“Gross Turnover” means the Total value of Transactions consisting of cash in/ cash out transactions at agent points. These are deposits by registered customers and withdrawals by registered and non-registered customers.

“Interoperate” means the commercial interconnectivity between providers of different payment systems or payment instruments including the capability of electronic systems to exchange messages and “interoperable” shall be construed accordingly.

“The Integrated Population Registration System (IPRS)” means a collection of registries from various Kenyan government agencies centrally located in the Department of Immigration Services.

“Mobile payment service provider” means a telecommunications service provider licensed under the Kenya Information and Communications Act, Chapter 411A and authorised by Central Bank of Kenya to offer payment services.

“Payee” means the person who is the recipient of funds which are the subject of an electronic retail transfer;

“Payer” means a person who holds a payment account from which an electronic retail transfer is initiated;

“Payment account” means an account which is credited or debited with an electronic retail transfer;

“Payment instruction” means an instruction to a settlement system participant to transfer funds or make a payment

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

“Payment service” means the provision of retail transfers service by a payment service provider.

“Payment service provider” means:

- (i) a person, company or organisation acting as provider in relation to sending, receiving, storing or processing of payments or the provision of other services in relation to payment services through any electronic system;

- (ii) a person, company or organisation which owns, possesses, operates, manages or controls a public switched network for the provision of payment services; or
- (iii) any other person, company or organisation that processes or stores data on behalf of such payment service providers or users of such payment services;

“payment service provider management body” means a body as established by Payment Service Providers to facilitate interoperability.;

“Payment system” means a system or arrangement that enables payments to be effected between a payer and a beneficiary, or facilitates the circulation of money, and includes any instruments and procedures that relate to the system;

“point of service” means the location from which a payment service provider provides electronic retail transfers including its head office and branches, and all the outlets of its cash merchants and agents, as well as any website that can be accessed to initiate electronic retail transfers;

“Real time settlement” means that:

- (a) The electronic 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 payer and payee receive notification, simultaneous with the completion of the electronic retail transfer, of having sent and received the funds respectively;

“small e-money issuer means a person registered to issue e-money under Regulation 32.0.

“significant shareholder” means a person, other than the government or a public entity who holds directly or indirectly 5% or more of the share capital of a Payment Service Provider and “significant shareholding” shall be construed accordingly

PART II – ELECTRONIC RETAIL TRANSFERS REGULATION

3. Purpose

The purpose of this Regulation is to provide for:

- (a) authorisation of electronic retail payment service providers;
- (b) electronic retail transfers;
- (c) the facilitation of the provision of electronic retail payment services without compromising the safety and efficiency of the national payment system;
- (d) standards for consumer protection and risk management to be adhered to by all providers of electronic retail transfers.
- (e) the appointment of agents and cash merchants by the electronic retail payment service provider and the registration of such agents.

4. Scope

This Regulation applies:

- (a) To all electronic retail transfers utilizing an electronic payment system; including mobile payment service providers.
- (b) With respect to its authorisation requirements, to all payment service providers.

5. Authorisation of an electronic retail payment service provider

5.1. An electronic retail payment service provider, other than an Institution as defined in the Act, shall, before commencing such business, apply to the Bank for authorisation by submitting an application in the form set out in the *First Schedule* to these Regulations. The application shall be accompanied by the following information:

- (a) Documents of registration including Certificate of Incorporation together with the Memorandum and Articles of Association.
- (b) For a mobile payment service provider,
 - (i) a certified copy of a current license from the Communication Commission of Kenya.

- (ii) a certified copy of the management agreement where a custodial Trust relationship exists with the mobile payment service provider.
- (c) The type of services to be offered as well as the programme of operations to offer these services;
- (d) The public interest that will be served by the provision of the payment service;
- (e) 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;
- (f) Evidence that the electronic retail payment service provider holds the initial capital set out in the *First Schedule*;
- (g) A description of:
 - (i) 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;
 - (ii) the internal control mechanisms which the applicant has established to comply with its anti-money laundering obligations as set out in the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009), the Prevention of Terrorism Act (Act No. 30 of 2012) and the relevant Regulations and guidelines;
 - (iii) the applicant's structural organisation including, where applicable, its intended use of agents, cash merchants, branches and outsourcing arrangements, and its participation in a national and or international payment system;
- (h) How the payment service provider shall settle the payment obligations arising from its provision of electronic retail transfers;
- (i) The identity of:
 - (i) its directors and persons responsible for the management of the electronic retail payment service provider;
 - (ii) the custodial trustees holding the cash which is represented in the applicant's payment service;

- (iii) 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;
- (iv) The “Fit and Proper form” for persons listed in i(I), (II) and (III) completed in accordance with the Second Schedule
- (j) The address of the applicant’s head office;
- (k) Terms and conditions that will apply to its customers, agents and cash merchants
- (l) Current tax compliance certificate from the Kenya Revenue Authority;
- (m) Latest report from the Credit Reference Bureau;
- (n) Where the applicant is a subsidiary of a foreign company, a letter of no objection from the home regulatory authority recommending them to establish a payment system in Kenya should be obtained;
- (o) For new products, the applicant shall submit to the Bank one or several names for consideration and approval, in order of preference. The acceptable name will be reserved with the Bank with the restriction that the applicant is not to conduct any business under the name until approval for authorisation is granted;
- (p) Any other documents or information as the Bank may require.

5.2. Criteria for determining suitability

- 5.2.1. The Bank shall vet and approve custodial trustees, directors or senior managers in control of an electronic retail payment service provider.
- 5.2.2. In the case of a trustee who is a corporate entity, vetting shall be carried out on the Directors and Senior Management of the corporate entity.
- 5.2.3. In order to determine for purposes of these Regulations the professional and moral suitability of custodial trustees, directors or senior managers in control of a payment service provider, the Bank shall have regard to the following qualities in so far as they are reasonably determinable, of the person concerned:

- (a) Possession of adequate, professional credentials or experience or both for the position for which is proposed;
- (b) Probity, diligence, competence and soundness of judgment;
- (c) Reputation, character, integrity and honesty;
- (d) History of offence(s) involving fraud, dishonesty and violence;
- (e) Whether he/she had engaged in deceitful, oppressive or improper business practices or any practices which would discredit him/her;
- (f) Whether he/she had engaged, associated or conducted himself/herself in a manner which may cast doubt on his fitness, competence and soundness of judgment;
- (g) Whether he/she had contravened any provision made by or under any written law appearing to the Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice; and
- (h) Whether he/she has been declared bankrupt;

5.2.4. The Bank may specify other criteria as and when necessary.

5.3. Company Name Approval

- (a) Any applicant desirous of making an application shall in the first instance apply to the Bank for name approval and shall forward three proposed names in order of preference for the Bank's consideration.
- (b) The Bank may invite the applicant for a preliminary meeting for purposes of knowing the business' intention and enlightening them on application requirements.
- (c) The applicant will reserve the acceptable name with the Registrar of companies.
- (d) Any name approved by the Bank shall not be used for any purpose unless and until the Bank has granted the applicant an authorisation.

5.4. Product Name Approval

- (a) Any applicant desirous of making an application for a new product shall in the first instance apply to the Bank for name approval of the proposed product subject to any intellectual property rights that may be in existence but unknown to the Bank.

- (b) Any name approved by the Bank shall not be used for any purpose unless and until the Bank has granted the applicant an authorisation.

6. Application Process

- (a) An applicant seeking to be authorised as an electronic retail payment service provider shall apply in writing to the Bank for authorisation using the form prescribed in the *First Schedule* and pay a non-refundable application fee as provided for in the same schedule.
- (b) The Bank may, within 30 days of receiving the application, request for additional information from the applicant if the information submitted is not complete or if the Bank deems it necessary.
- (c) The Bank shall amongst others take the following into consideration when assessing an application by an applicant:
 - (i) The ability of the applicant to provide electronic retail transfers services safely and efficiently;
 - (ii) If the applicant is engaged in other licensed commercial activities, the potential of that activity impairing or otherwise affecting the safety or the financial soundness of the electronic retail payment service provider or the ability of the Bank to monitor the electronic retail payment service provider's compliance with the obligations laid down in these Regulations;
 - (iii) The history, character and integrity of applicant's shareholders and proposed directors and senior officers.
 - (iv) That the custodial trustees, directors and senior officers are found to be "Fit and Proper" as per the requirements of these Regulations;
 - (v) The applicant holds the core capital required under the *First Schedule*;
- (d) Upon receipt of the complete application and all information required and where the Bank is satisfied that the applicant has met all the application requirements, the Bank shall advise the applicant to pay the prescribed authorisation fees as set out in the *First Schedule*.

- (e) Where the Bank approves any electronic retail payment service provider, the Bank shall within 90 days issue an authorisation certificate to the applicant permitting it commence electronic retail transfer services.
 - (f) Where the Bank rejects an application for authorisation, the Bank shall communicate the reasons for its decision to the applicant within 30 days from the date of rejection. The Bank may impose conditions to be complied with by the applicant before its application can be resubmitted for application.
 - (g) An application which has been rejected by the Bank, may be resubmitted for consideration once the applicant complies with all the conditions imposed by the Bank.
 - (h) The Bank may approve an application which has previously been rejected, if the Bank is satisfied that the applicant has complied with all conditions imposed by the Bank.
 - (i) Any fee paid to the Bank is non-refundable.
- 6.1. An authorisation issued under this Regulation shall, unless earlier revoked, be valid up to the 31st December of the year in which it is issued and shall be renewable.

7. Renewal

- (a) An authorisation made under this Regulation may on expiry be renewed for a 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.
- (b) An application to the Bank for renewal of authorisation as an electronic retail payment service provider shall be in *Form 2 of the First Schedule* and shall be accompanied by any changes to the information submitted to the Bank under Regulation 5 of these Regulations together with annual renewal fees as set out in the First Schedule.
- (c) The annual renewal fees shall be paid within two months before 31st December of every year.

- (d) Any electronic retail payment service provider that fails to pay the annual renewal fees within the prescribed period shall pay double the annual renewal fees, if payment is made within ninety days after 31st December of every year.
- (e) If an electronic retail payment service provider fails to pay the prescribed fees within ninety days after the 31st of December of every year, its renewal application shall be declined.
- (f) Applications for renewals shall be considered in accordance with the provisions of sub-Regulation 5.2 and the Bank may require an applicant for renewal to submit any or all of the information set out in Regulation 5.1.

8. Revocation and Suspension

8.1. The Bank may, by notice in writing to an authorised payment service provider, suspend an authorisation under this Regulation for such period as it may specify or revoke an authorisation, if the authorised payment service provider:

- (a) does not commence business within twelve months from the date the authorisation was issued;
- (b) has ceased or suspended operations for a period of three months;
- (c) obtained the authorisation on the premise of wrong, false, misleading information or concealment of material information which, if known at the time of evaluation of the application for the authorisation, the electronic retail payment service provider would not have been authorised;
- (d) applies to the Bank for the revocation or suspension of the authorisation where good cause has been shown;
- (e) has ceased to meet the authorisation and operational requirements prescribed in these Regulations;
- (f) has failed to comply with any condition of the authorisation;
- (g) has violated the provisions of any applicable law or these Regulations or is insolvent or unable to effectively conduct its operations or through its activities the public trust has been compromised.
- (h) has failed to comply with any material obligation imposed on it by or under these Regulations;

- (i) has engaged in activities either restricted or not permitted under these Regulations;
- (j) is unable or has consistently failed to protect the confidentiality of data or information it collects;
- (k) has, without the consent of the Bank, amalgamated with another entity or sold or otherwise transferred its E-money issuance business to another entity;
- (l) has a winding-up order made against it or a resolution for voluntary winding passed against it;
- (m) fails to pay the annual renewal fee within ninety days after the anniversary date;
- (n) fails to pay a monetary penalty ordered by the Bank.
- (o) fails to comply with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and the relevant Regulations and Guidelines.
- (p) fails to manage its agents or cash merchants in a manner consistent with the Act and these Regulations.
- (q) fails to ensure that the trust account is managed in a manner consistent with the Trust Law and these Regulations;
- (r) fails to ensure that the trustees act in the interests of the beneficiaries;
- (s) fails to produce books, accounts, records, documents, correspondence, statements or other specified information without any reason after the fourteen (14) days' notice has been issued and has not given sufficient cause why the authorisation should not be revoked.

8.2. The Bank shall not revoke or suspend the authorisation unless the electronic retail payment service provider has been given an opportunity to make representations to the Bank on why the authorisation should not be revoked or suspended and the Bank shall take into account the representations made by the electronic retail payment service provider in its decision on the matter.

8.3. The Bank may, in lieu of revoking or suspending the authorisation, require the electronic retail payment service provider to take such measures to regularise the breach or violation within such time as the Bank may specify and may in addition impose such monetary penalty or other sanctions as it may deem fit.

- 8.4. The Bank shall, upon revoking or suspending an authorisation under sub-Regulation 8.1, immediately inform the electronic retail service provider of the revocation or suspension.
- 8.5. The Bank shall, upon revocation of the authorisation of an electronic retail payment service provider, take over control of the business of the electronic retail payment service provider to safeguard and facilitate distribution of the money in the Trust Fund.
- 8.6. An electronic retail payment service provider shall hand over the entire database, electronic records in a readable format and other relevant information to facilitate the processing of payments to the customers.
- 8.7. Where the authorisation is revoked, the holder of the authorisation shall, within seven days from the date of service of the notice of revocation, surrender the authorisation certificate to the Bank and shall forthwith cease to carry out electronic retail transfer business or any other activity authorised under these Regulations.
- 8.8. A person who fails to comply with sub-Regulation 8.7 shall be liable to a monetary penalty not exceeding one million shillings;
- 8.9. The Bank shall notify the public whenever an electronic retail payment service provider's authorisation certificate has been suspended or revoked and further dealings with the electronic retail payment service provider for purposes of these Regulations shall cease immediately;
- 8.10. Upon revocation or suspension of an electronic retail payment service provider, the Bank shall notify the Institution holding the Trust funds to cease forthwith further dealing with the funds until it receives directions from the Bank;
- 8.11. The Bank may appoint any person, including another electronic retail payment service provider to distribute the balances held in the Trust Fund of the revoked electronic retail payment service provider at the time of revocation;
- 8.12. Any shortfall in the Trust Fund shall be recoverable directly from each and every trustee.

9. Capital requirements

- 9.1. An electronic retail payment service provider, other than an Institution shall at the time of authorisation, hold a core capital of the amount prescribed in the First Schedule.

- 9.2. An electronic retail payment service provider shall at all times maintain minimum core capital specified in the First Schedule of these Regulations. The Bank may amend the First Schedule from time to time.

10. Operations

- 10.1. An electronic retail payment service provider shall at all times maintain a register that contains identification details of all customers and the funds outstanding in their e-money accounts.
- 10.2. Any substantial change or enhancement in the electronic retail payment service which an electronic retail payment service provider intends to introduce shall be subject to the approval of the Bank and the electronic retail payment service provider 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 electronic retail payment service and may include, amongst others, the following:
- (a) Additional functionality of the electronic retail payment service such as accessing new electronic channels;
 - (b) Changing the payment service providers and other major partners in the business.
 - (c) Any changes to the documentation provided during the application process.
- 10.3. A mobile payment service provider shall ensure that the customer's SIM card is registered and the identity of the customer is independently verified through the IPRS database or through such other means as the Bank may approve.

11. Agents

- 11.1. An electronic retail payment service provider may appoint an agent to undertake certain services on its behalf.

- 11.2. An electronic retail payment service provider and an agent may enter into an agreement for the provision of such services.
- 11.3. An agent can undertake any of the following activities on behalf of the electronic retail payment service provider:
- (a) send, receive, store or process payments or provide other services in relation to payment services through any electronic system;
 - (b) own, possess, operate, manage or control a public switched network for the provision of payment services; or
 - (c) process or store data on behalf of such electronic retail payment service providers or users of such payment services;
 - (d) provide cash services; or
 - (e) such other services as an electronic retail payment service provider may specify.
- 11.4. An electronic retail payment service provider is liable to its customers for the conduct of its agents, performed within the scope of the agency agreement. The agency agreement cannot exclude such liability.

12. Agents and Cash merchants

- 12.1. An electronic retail payment service provider may appoint agents and cash merchants to perform cash services, provided the electronic retail payment service provider can execute electronic retail transfers that support the cash services in real time.
- 12.2. No contract for the provision of retail cash services between an electronic retail payment service provider and an agent or cash merchant shall be exclusive.
- 12.3. An agent and cash merchant may provide services to multiple electronic retail payment service providers and/or institutions provided that the agent or cash merchant has separate contracts for the provision of such services with each institution and provided further that the agent or cash merchant has the capacity to manage the transactions for the different institutions.
- 12.4. In enlisting a new agent or cash merchant, electronic retail payment service providers shall, at least 60 days prior to commencing the utilisation of agents or cash merchants,

advise the Bank in writing of their intention and provide the following information to the Bank:

- (a) The procedure for recruiting agents or cash merchants;
- (b) A copy of the proposed standard agreement with agent or cash merchants, which shall provide, amongst others, that the agent or 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;
- (c) The policies and procedures approved by the electronic retail payment service provider for the provision of cash services through agents or cash merchants, including compliance with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and associated Regulations and guidelines;
- (d) A description of the technology to be used for delivering cash services;
- (e) A risk assessment report of the provision of cash services through agents or cash merchants including the control measures that will be applied to mitigate the risks;
- (f) The security measures to be adopted for the premises of agents or cash merchants; and
- (g) The agent or cash merchant manual and any materials used for training agents or cash merchants.
- (h) Such other information as the Bank may require the electronic retail payment service provider to submit.

12.5. Electronic retail payment service providers may appoint, through written agreement, a person as an agent or cash merchant if that person:

- (a) Possesses such registration, business license, or permit as may be required for the performance of its commercial activities;
- (b) Can lawfully provide the proposed services;

- (c) Holds a payment account with a bank, financial institution or electronic retail payment service provider and, if the electronic retail payment service provider is not an institution;
- (d) Is financially sound and has provided the electronic retail payment service provider with adequate documents;
- (e) Has provided evidence to the electronic retail payment service provider indicating that its management has the necessary experience and competence to perform the agency or cash services.

12.6. Electronic retail payment service providers may, subject to 12.4, appoint wholesale agents or cash merchants to distribute e-money to agents or cash merchants.

12.7. An electronic retail payment service provider utilizing agents or cash merchants to perform cash services shall maintain the following records and shall avail this information to the Bank upon request:

- (a) The name, physical address, postal address and telephone numbers of the agents or cash merchants, as well as the physical address and telephone numbers of each of the outlets of the agent or cash merchant at which it will provide cash services;
- (b) The identity of the persons responsible for the management of the agent or cash merchant; and the Bank may insert this information in a public electronic register of agents or cash merchants.
- (c) A register of agents and cash merchants whose services have been suspended or terminated and the reasons for suspension or termination.

12.8. An electronic retail payment service provider utilizing agents or cash merchants to perform cash services shall:

- (a) Provide adequate training and support to its agents or cash merchants, including an agent or cash merchant manual containing the policies, rules and operational guidelines needed to ensure the safe and efficient provision of services to customers;
- (b) Maintain effective oversight over the activities of its agents or cash merchants; and

- (c) Maintain records of the number, volumes and values of transactions carried out by each agent or cash merchant.

12.9. Electronic retail payment service providers and their Agents, Cash merchants and wholesale cash merchants shall comply with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and the associated Regulations and guidelines.

12.10. In the identification, selection and contracting of agents and cash merchants, an electronic retail payment service provider shall exercise due diligence and carry out suitability assessment of the agents or cash merchants.

13. Interoperability

13.1. Electronic retail payment service providers shall utilise open systems capable of becoming interoperable with other payment systems in the country and internationally.

13.2. Electronic retail payment service providers are encouraged to enter into interoperable arrangements.

13.3. For purposes of giving effect to 13.2, electronic retail payment service providers may amongst other arrangements be members of Payment Service Provider Management Bodies.

13.4. Payment Service Provider Management Body

13.4.1. In order to facilitate interoperability, a payment service provider may be a participant in a payment service provider management body.

13.4.2. A payment service provider management body shall be required to provide the following minimum information to the Bank:

- (a) Details of the ownership and Governance of the management body formed to operate the Payment System;
- (b) Membership rules that are adequate to the operations of the system;
- (c) Clear, fair and non-discriminatory access procedures;

- (d) Policies and procedures in place for evaluating the financial soundness of operators and participants to identify, monitor and control any risks associated with the working of the system to ensure finality of payment and settlement;
 - (e) Details of internal audit function including scope, reporting lines and the frequency of reporting;
 - (f) Evidence of adequate human resources to ensure adequate resources to the operation of the system, well trained staff, competent and knowledgeable in respect of the business requirements, operational and risk management.
- 13.4.3. A payment service provider management body shall manage and regulate, in relation to its members, all matters affecting payment instructions, and in connection with those objects, shall—
- (a) Act as a channel for communication by its members with the Government, the Bank, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and
 - (b) Deal with and promote any other matter of interest to its members and foster co-operation among them.
- 13.4.4. In addition to any other provisions, the rules of a payment service provider management body shall empower that body—
- (a) To admit members and to regulate, control and with the approval of the Bank terminate membership;
 - (b) To constitute, establish or dissolve any body, committee or forum consisting of its members and which has an impact on, interacts with, has access to or makes use of any payment, clearing or settlement systems or operations;

14. Outsourcing

- 14.1. Where an electronic retail payment service provider intends to outsource operational functions of its provision of payment services, it shall notify the Bank at least 30 days before such outsourcing agreement is implemented.
- 14.2. Outsourcing of material operational functions may not be undertaken in such a way as to impair the quality of the electronic retail payments service provider's internal control

and the ability of the Bank to monitor the electronic retail payment service provider's compliance with the Act and these Regulations.

14.3. For the purpose of Regulation 14.2, an operational function shall be regarded as material if a defect or failure in its performance would materially impair the continuing compliance of the electronic retail payment service provider with the requirements of its authorisation under these Regulations, or its financial performance, or the soundness or the continuity of its payment services. When an electronic retail 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 electronic retail payment service provider to its customers under these Regulations shall not be altered;
- (c) The outsourcing contract shall provide that the Bank shall be able to exercise its oversight and supervisory powers under Regulation 14 in respect of the third parties to who functions are outsourced;
- (d) The requirements with which the electronic retail payment service provider must comply in order to be authorised and remain so, including any conditions imposed by the Bank, shall not be undermined.

15. Risk management

15.1 Electronic retail payment service providers shall comply with:

- (a) any technical standards that may be issued by the Bank from time to time including international standards set by the Bank of International Settlements (BIS), the International Organisation for Standardisation (ISO) and the Financial Action Task Force (FATF).
- (b) any risk management guidelines which may be issued by the Bank from time to time .

16. Governance

16.1 An electronic retail payment service provider engaged in electronic retail transfers as well as other commercial activities as envisaged in Regulation 6(c)(ii), shall establish adequate governance arrangements, which are effective and transparent, to ensure the continued integrity of its service, which include, among others, the following:

- (a) A broad-based board of trustees that consists of people with calibre, credibility, integrity, and fulfill the fit and proper criteria as stipulated in the *Second Schedule*.
- (b) Clearly defined and documented organisational arrangements, such as ownership and management structure.
- (c) Segregation of duties and internal control arrangements to reduce the chances of mismanagement and fraud.
- (d) The electronic retail payment service provider conducts its payment services in a separate and distinct business unit from its other business units, including maintaining a separate management structure and keeping separate books of account for its payment services division;

16.2 The electronic retail payment service provider shall ensure the balances in the Trust Fund shall not at any time be less than what is owed to the customers

16.3 The electronic retail payment service provider 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, and

16.4 Where the funds are still in the process of being transferred to the payee, the electronic retail payment service provider shall employ appropriate risk mitigation strategies to ensure that funds held by a custodial trustee are sufficiently diversified and placed only in licensed commercial banks or Government of Kenya securities. The maximum proportion to be held in each institution will be agreed with the Bank from time to time

16.5 Income generated from placement of these trust funds will be used in accordance with the Law of Trust and in consultation with the Bank. Any such usage must be in the interest of the public and channeled through a public charitable vehicle accountable to the general public.

16.6 The trust deed should at a minimum contain the following:

- (a) Principal characteristics of the service provided pursuant to the Trust;
- (b) Details of how the fund shall be held and invested;
- (c) The duties, responsibilities and the extent of liability of Trustees;

- (d) Provisions on discontinuation and/or termination of the Trust and subsequent handling of the Trust Fund
- (e) Procedure on handling of dormant accounts and accounts of deceased persons;
- (f) Rights of system participants and beneficiaries;
- (g) Applicable law and mode of resolution of disputes;
- (h) Where the trustee is a company, duties of the management company and key particulars of the management arrangement;
- (i) Use of income generated from the trust funds which should be in accordance with Trust Law and for the benefit of the public.

16.7 Any proposed changes to the Trust deed shall be submitted to the Bank for approval.

16.8 An electronic retail payment service provider shall establish adequate operational arrangements for its electronic retail transfer services, which include the following:

- (a) Rules and procedures setting out the rights and liabilities of the electronic retail payment service provider and the user, and the risks the user may incur.
- (b) Measures to ensure prudent management of the funds collected from users, including measures to ensure that such funds are available at all times for repayment to users.
- (c) Measures to ensure safety, security and operational reliability of the service including contingency arrangements; and
- (d) Maintain separate records and accounts for its e-money activities from other business activities.

17. Execution of payments

17.1 A payer may not revoke an electronic retail transfer instruction once it has been received by the payee's electronic retail payment service provider unless the electronic retail payment service provider has sufficient grounds to reverse the transaction in line with the error resolution mechanisms that the payment service provider has in place.

- 17.2 The electronic retail payment service provider(s) involved in an electronic 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 customer in advance, or which the customer has received notice of in terms of Regulation 20.1(a).
- 17.3 Electronic retail payment service providers shall ensure that the amount of the electronic 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 second business day after the receipt of the instruction from the payer.
- 17.4 The electronic retail 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.
- 17.5 The electronic retail payment service provider shall not be liable to the payer when the electronic retail transfer requires transmission to a second electronic retail payment service provider (the payee's electronic retail payment service provider) and the payer's electronic retail payment service provider can prove correct or proper transmission of the electronic retail transfer to the second electronic retail payment service provider.
- 17.6 Where an electronic retail payment service provider is liable under this Regulation for the non-execution or defective execution of an electronic retail transfer, it 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.
- 17.7 The electronic retail payment service provider shall be liable for payment transactions performed without the knowledge of the customer, provided that such liability may be contractually excluded in circumstances where the electronic retail payment service provider can prove an element of fault on the side of the customer in the use of the service or can demonstrate prima facie that the payment instruction was carried out by the legitimate customer.

18. Record keeping and Reporting

18.1 An electronic retail payment service provider shall:

- (a) utilise systems able to provide an accurate and fully accessible audit trail of all transactions from the origin of the electronic retail transfer to its finality.
- (b) keep records of every electronic retail transfer processed by it for a period of at least seven years.

18.2 Every electronic retail payment service provider shall, within 10 days of the end of every calendar month, submit to the Bank in the forms set out in the *Third Schedule*, information regarding:

- (a) The volumes, values and geographic distribution of each electronic 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;

18.3 Every electronic retail payment service provider shall, within three months before 31st December of every year, submit to the Bank:

- (a) Audited financial statements covering its activities in Kenya together with a copy of the auditor's report.
- (b) Separate audited financial statements for the payment service provider and the Trust accounts.
- (c) A system security audit report by a reputable Independent audit firm on its payment services.
- (d) Any other information required by the Bank with respect to its payment services.

19. Oversight and Audit

19.1 The Bank shall exercise oversight and supervisory powers over an electronic retail payment service provider, its agents or cash merchants.

19.2 Every electronic retail payment service provider shall utilise systems capable of screening transactions for the purposes of complying with Proceeds of Crime and Anti-Money Laundering Act, 2009 and the Proceeds of Crime and Anti Money Laundering Guideline, 2013 and the associated Regulations and guidelines.

19.3 The Bank shall establish a register of all authorised electronic retail payment service providers and their head office which is accessible to the public.

19.4 The Bank may:

- (a) conduct on-site inspections at the premises of payment service providers and their agents.
- (b) inspect the books of accounts and other documents of an electronic retail payment service provider, its agents and the Trust Fund at any time in order to ensure compliance with the Laws of Kenya, authorisation terms and conditions, operating instructions and guidelines, and may institute an audit of an electronic retail payment service provider and call for an investigation of the electronic retail payment service provider.
- (c) require an officer of the electronic retail payment service provider to produce to the Bank officer making an examination, and within a reasonable time, such books of accounts and any other documents in the electronic retail payment service provider's custody or power, and furnish such statements or information relating to the affairs of the electronic retail payment service provider as may be required by the examining officer.
- (d) by notice in writing, require an electronic retail payment service provider to provide information to it, in such manner and form as may be specified by the Bank for purposes of assessing compliance with these Regulations.
- (e) at any time, enter any premises where an electronic retail payment service provider is carrying on business, or any premises where it is reasonably suspected that any business is being carried on in contravention of these Regulations.
- (f) require an electronic retail payment service provider to put in place remedial measures as the Bank may consider necessary after an inspection or investigation under these Regulations.

19.5 An electronic retail payment service provider which fails to produce books, accounts, records, documents, correspondence, statements or other specified information without any reason shall be issued with a fourteen (14) days' notice to show cause why the authorisation to carry on electronic retail transfers under these Regulations should not be revoked.

19.6 Audit

19.6.1. Every electronic retail payment service provider shall, at its own expense, appoint an external auditor who shall be a member of good standing of the Institute of Certified Public Accountants of Kenya to carry out an audit of the transactions in its business.

19.6.2. The Bank may require an auditor appointed under sub-Regulation 19.6.1 above:

- (a) To submit to the Bank such information as it may require in relation to the audit carried out by the auditor;
- (b) To extend the scope of an audit of the business and affairs of the business and to submit a report to the Bank ;
- (c) To carry out any examination or establish any procedure in any particular case;
- (d) To submit a report to the Bank on any matter referred to in paragraph (a) or (b); and
- (e) The electronic retail service provider shall be responsible for the remuneration of the auditor for the audit services.

20. Consumer Protection

20.1. Disclosure

20.1.1. An electronic retail payment service provider shall provide:

- (a) 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) clear terms to its customers, agents and cash merchants.
- (c) Notification to customers, 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.

20.1.2. An electronic retail payment service provider shall provide its customers at the point of service with:

- (a) The name of the electronic retail payment service provider ; and
- (b) A telephone number or such other contact medium that provides access to its customer care system.

20.1.3. After the amount to be transferred through an electronic retail transfer is debited to the payer's payment account, the payer's electronic retail payment service provider shall without undue delay provide the payer with the following information:

- (a) A reference enabling the payer to identify each payment transaction;
- (b) The details of the payee and its payment account details (if any);
- (c) The amount of the e-money;
- (d) The date of debit.

20.1.4. After the amount transferred through an electronic retail transfer is credited to the payee's payment account or paid to the payee, the payee's electronic retail payment service provider (if any) shall without undue delay provide the payee with the following information:

- (a) The reference enabling the payee to identify the payment transaction;
- (b) The name of the payer and any information transferred with the payment transaction;
- (c) The amount of the electronic retail transfer;
- (d) The date of credit, where applicable.

20.1.5. All electronic retail transactions shall be executed in real time.

Provided that where an electronic retail transaction cannot be completed in real time, the electronic retail payment service provider shall notify the payer of the delay of the execution and shall notify the customer of the period within which the transaction shall be completed or cancelled.

20.1.6. An electronic retail payment service provider may not charge the customer for fulfillment of its disclosure and information obligations under these Regulations.

20.1.7. An electronic retail payment service provider shall put in place a provision to issue a statement to a customer upon request.

20.1.8. The Bank may from time to time publish any information it considers useful to customers, which information may include, but not be limited to tariffs, quality of service and statistical information.

20.1.9. Payment service provider shall ensure that its advertisements

- (a) do not mislead consumers
- (b) are easily understood; and
- (c) are comprehensive enough to properly inform consumers of the main features and conditions of the product.

20.2. Customer care service

20.2.1. An electronic retail payment service provider shall:

- (a) within a period of six months after commencing the provision of payment services, establish a customer care system within which its customers can make inquiries and complaints concerning its services.
- (b) prior to the establishment of a customer care system in terms of this Regulation, provide adequate means for customers to file complaints and shall address such complaints within a reasonable period from receipt of the complaint.
- (c) put in place a clear mechanism to address consumer complaints due to loss of funds through fraudulent means.
- (d) provide easily understood information about their complaint handling processes at all points of service.

20.2.2. All complaints shall be lodged within a period of fifteen (15) days from the date of occurrence.

20.2.3. Electronic retail payment service providers shall acknowledge all complaints filed with them.

20.2.4. At the time of making a complaint a customer shall be advised of the expected actions and timing for investigating and resolving the complaint and in the event that the electronic retail payment service provider regards the complaint as frivolous or vexatious, the customer shall be informed accordingly and if dissatisfied the customer shall have further recourse in accordance with these Regulations and the Consumer Protection Act, 2012.

20.2.5. All complaints shall be resolved within sixty (60) days of being lodged.

20.2.6. Electronic retail payment service providers shall put in place processes to provide customers 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 customers.

20.2.7. Customers shall be advised of the outcome of the investigation of their complaint, and any resulting decision by the electronic retail payment service provider.

20.2.8. Where a customer is not satisfied with a decision reached pursuant to a complaint, the electronic retail payment service provider shall give the customer the option of pursuing an identified escalation process by which the decision may be reviewed by a suitably qualified person in the electronic retail payment service provider's organisation.

20.2.9. Electronic retail 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 customers can be easily represented by their authorised representatives in order to make a complaint.

20.2.10. In cases where customers specifically request assistance in lodging complaints, electronic retail payment service providers shall be obliged to provide reasonable assistance.

20.2.11. Complaint handling processes shall be provided free of charge except:

- (a) Where the investigation of the complaint requires the retrieval of records more than three months old, and
- (b) Where the retrieval results in an incremental expense or significant inconvenience to the electronic retail payment service provider.

20.3. Customer service agreements

20.3.1. Electronic retail payment service providers shall enter into a written customer service agreement with every customer to which it renders services and shall submit to the Bank a copy of the standard customer service agreement applicable to each service offered to the public which should at a minimum include:

- (a) Detailed description of the services offered
- (b) Registration requirements for account opening
- (c) Procedures for maintaining a customer account
- (d) The electronic retail service provider's privacy policy
- (e) Customer account use and access responsibility
- (f) Conditions and procedures for loading, transferring, receiving and withdrawing funds.
- (g) Intellectual Property rights
- (h) Suspension, termination and freezing of accounts
- (i) Dispute Resolution and Governing Law
- (j) Warranties, and Liability
- (k) Indemnity
- (l) Exclusions/limitations of the service
- (m) Disclosure & Data Retention
- (n) Force Majeure;
- (o) Details on how deceased accounts are handled

20.4. Confidentiality/Privacy

20.4.1. An electronic retail payment service provider shall keep the information in respect of services provided to any customer confidential in accordance with the Act.

20.4.2. An electronic retail payment service provider shall disclose customer information in respect of services provided by them only

- (a) To the customer concerned;
- (b) To the Bank;
- (c) When authorised in writing by the customer concerned; or
- (d) As required by law.

20.5. The provisions of Regulation 20, shall apply to agents and cash merchants with such modification as their business may necessitate.

20.6. Any electronic retail payment service provider, agent or cash merchant who fails to comply with the requirements of this provision shall be liable to a monetary penalty of not more than Kenya Shillings One Million.

21. Sanctions and Penalties

21.1. In addition to the remedial actions provided under the National Payment System Act, the Bank may impose the following sanctions:

- (a) Prohibition from offering electronic retail transfer services;
- (b) Termination of employment services of an officer or employee of the electronic retail payment service provider.
- (c) Removal of a trustee;
- (d) Prohibition from investing the Trust Fund;
- (e) Prohibition from establishing new branches, appointing new agents or cash merchants or introduction of new products;
- (f) Prohibition from engaging in new activities or from expanding existing activities;

- (g) Limit the range of activities and the locations in which such activities can be conducted.
- (h) Prohibition or suspension from any other activity that the Bank perceives to be contributing to violation of these Regulations

21.2. Before imposing a penalty on any electronic retail payment service provider under these Regulations, the Bank shall give not less than seven days' notice in writing requiring the electronic retail payment service provider to show cause as to why the penalty prescribed should not be imposed.

21.3. Where a monetary penalty is prescribed under these Regulations, such penalty shall-

- (a) be paid to the Bank;
- (b) be paid within ten days unless otherwise stated;
- (c) where an electronic retail payment service provider fails to pay the penalty, the Bank may take such other action or make such decision as is permitted under the Act or these Regulations.

22. General Penalty

22.1. The Bank may impose monetary fines to be paid by electronic retail payment service providers, trustees, agents or cash merchants who fail or refuse to comply with these Regulations, which fines shall not exceed one million shillings and may prescribe additional fines not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

23. Transitional provisions

23.1. Payment service providers who commenced their delivery of electronic retail transfers before the effective date, shall be allowed a period of 6 months from the effective date to comply with these Regulations.

PART III – E-MONEY REGULATION

25.0 Purpose

The purpose of this Regulation is:

- (a) To provide for authorisation of an e-money issuer;
- (b) To provide for e-money issuance;
- (c) To facilitate the provision of e-money issuance without compromising the safety and efficiency of the national payment system;
- (d) To provide standards for consumer protection and risk management to be adhered to by all providers of e-money issuers.
- (e) For the appointment of agents and cash merchants by e-money issuers and the registration of such agents.

26.0 Scope

This Regulation applies to:

- (a) All issuers of e-money who are not Institutions as defined in the Act;
- (b) In respect of Regulations 32, 34, 35, 37, 41, 42 and 43, Institutions as defined in the Act to the extent that they conduct the business of an e-money issuer.

27.0 Authorisation of an e-money issuer

27.1 An e-money issuer, other than an Institution as defined in the Act, shall before commencing such business, apply to the Bank for authorisation by submitting an application in the form set out in the *First Schedule* to these Regulations. The application shall be accompanied by the following information:

- (a) Documents of registration including Certificate of Incorporation together with the Memorandum and Articles of Association.
- (b) For a mobile payment service provider,

- (i) a certified copy of a current license from the Communication Commission of Kenya.
 - (ii) a certified copy of the management agreement where a custodial Trust relationship exists with the mobile payment service provider.
- (c) The type of services to be offered as well as the programme of operations to offer these services;
- (d) The public interest that will be served by the provision of the e-money issuance;
- (e) 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;
- (f) Evidence that the e-money issuer holds the initial capital set out in the *First Schedule*;
- (g) A description of:
 - (a) 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;
 - (b) the internal control mechanisms which the applicant has established to comply with its anti-money laundering obligations as set out in the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009), the Prevention of Terrorism Act (Act No. 30 of 2012) and the associated Regulations and guidelines;
 - (c) the applicant's structural organisation including, where applicable, its intended use of agents, cash merchants, branches and outsourcing arrangements, and its participation in a national and or international payment system; How the e-money issuer shall settle the payment obligations arising from its provision of e-money issuance services;
- (h) The identity of:
 - (i) its owners;

- (ii) directors and persons responsible for the management of the e-money issuer;
 - (iii) custodial trustees holding the cash which is represented in the applicant's e-money issuance services;
 - (iv) 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;
 - (v) The "Fit and Proper form" for persons listed in (h)(ii), (iii) and (iv) completed in accordance with the Second Schedule provided that the persons in h(i) will be required to complete the Fit and Proper form only if they are significant shareholders;
- (i) The address of the applicant's head office;
 - (j) Terms and conditions that will apply to its customers, agents and cash merchants;
 - (k) Tax compliance certificate;
 - (l) Report from the Credit Reference Bureau;
 - (m) Where the applicant is a subsidiary of a foreign company, a letter of no objection from the home regulatory authority recommending them to establish an e-money issuance business in Kenya should be obtained;
 - (k) Any other documents or information as the Bank may require.

27.2 Criteria for determining suitability

- 27.2.1 The Bank shall vet and approve significant shareholders, custodial trustees, directors and senior managers in control of E-Money issuance.
- 27.2.2 In the case of a significant shareholder or trustee who is a corporate entity, vetting shall be carried out on the Directors and Senior Management of the corporate entity.
- 27.2.3 In order to determine for purposes of these Regulations the professional and moral suitability of significant shareholders, custodial trustees, directors and senior managers in control of e-money issuance, the Bank shall have regard to

the following qualities so far as they are reasonably determinable, of the person concerned –

- (a) Possession of adequate, professional credentials or experience or both for the position for which is proposed;
- (b) Probity, diligence, competence and soundness of judgment;
- (c) Reputation, character, integrity and honesty;
- (d) History of offence(s) involving fraud, dishonesty and violence;
- (e) Whether he/she had engaged in deceitful, oppressive or improper business practices or any practices which would discredit him/her;
- (f) Whether he/she had engaged, associated or conducted himself/herself in a manner which may cast doubt on his fitness, competence and soundness of judgment;
- (g) Whether he/she had contravened any provision made by or under any written law appearing to the Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice; and
- (h) Whether he/she has been declared bankrupt.

27.3 The Bank may specify other criteria as and when necessary.

27.4 The Bank shall amongst others take the following into consideration when assessing an application by an e-money issuer:

- (a) The ability of the applicant to provide e-money issuance safely and efficiently;
- (b) If the applicant is engaged in other licensed commercial activities, the potential of that activity impairing or otherwise affecting the safety or the financial soundness of the e-money issuer or the ability of the Bank to monitor the e-money issuer's compliance with the obligations laid down in these Regulations;

(c) The significant shareholders, custodial trustees, directors and senior managers are found to be “Fit and Proper” as per the requirements of these Regulations;

(d) The e-money issuer holds the core capital required under the *First Schedule*;

27.5 Company Name Approval

(a) Any applicant desirous of making an application shall in the first instance apply to the Bank for name approval and shall forward three proposed names in order of preference for the Bank’s consideration.

(b) The Bank may invite the applicant for a preliminary meeting for purposes of knowing the business’ intention and enlightening them on application requirements.

(c) The applicant will reserve the acceptable name with the Registrar of companies.

(d) Any name approved by the Bank shall not be used for any purpose unless and until the Bank has granted the applicant an authorisation.

27.6 Product Name Approval

(a) Any applicant desirous of making an application for a new product shall in the first instance apply to the Bank for name approval of the proposed product subject to any intellectual property rights that may be in existence but unknown to the Bank.

(b) Any name approved by the Bank shall not be used for any purpose unless and until the Bank has granted the applicant an authorisation.

28.0 Application Process

(a) An applicant seeking to be authorised as an E-Money Issuer shall apply in writing to the Bank for authorisation using the form prescribed in the *First Schedule* and pay a non-refundable application fee as provided for in the same schedule.

- (b) The Bank may, within 30 days of receiving the application, request for additional information from the applicant if the information submitted is not complete or if the Bank deems it necessary.
- (c) The Bank shall amongst others take the following into consideration when assessing an application by an applicant:
 - (i) The ability of the applicant to provide e-money issuance safely and efficiently;
 - (ii) If the applicant is engaged in other licensed commercial activities, the potential of that activity impairing or otherwise affecting the safety or the financial soundness of the e-money issuer or the ability of the Bank to monitor the e-money issuer's compliance with the obligations laid down in these Regulations;
 - (iii) The history, character and integrity of applicant's shareholders, proposed directors and senior officers.
 - (iv) That the significant shareholders, custodial trustees, directors and senior officers are found to be "Fit and Proper" as per the requirements of these Regulations;
 - (v) The applicant holds the core capital required under the *First Schedule*;
- (d) Upon receipt of the complete application and all information required and where the Bank is satisfied that the applicant has met all the application requirements, the Bank shall advise the applicant to pay the prescribed authorisation fees as set out in the *First Schedule*.
- (e) Where the Bank approves any e-money issuer, the Bank shall within 90 days issue an authorisation certificate to the applicant permitting it commence e-money issuance.
- (f) Where the Bank rejects an application for authorisation, the Bank shall communicate the reasons for its decision to the applicant within 30 days from the date of rejection.
- (g) The Bank may impose conditions to be complied with by the applicant before its application can be resubmitted for application.

- (h) An application which has been rejected by the Bank may be resubmitted for consideration once the applicant complies with all the conditions imposed by the Bank.
- (i) The Bank may approve an application which has previously been rejected, if the Bank is satisfied that the applicant has complied with all conditions imposed by the Bank.
- (j) Any fee paid to the Bank is non-refundable.
- (k) For new products, the applicant shall submit to the Bank one or several names for consideration and approval, in order of preference. The acceptable name will be reserved with the Bank with the restriction that the applicant is not to conduct any business under the name until approval for authorisation is granted;

29.0 Renewal

- (a) An authorisation made under this Regulation may on expiry be renewed for a 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.
- (b) An application to the Bank for renewal of authorisation as an E-Money issuer shall be in *Form 2 of the First Schedule* and shall be accompanied by any changes to the information submitted to the Bank under sub-Regulation 27.1 of these Regulations together with annual renewal fees as set out in the First Schedule.
- (c) The annual renewal fees shall be paid within two months before 31st December of every year.
- (d) An E-Money Issuer that fails to pay the annual renewal fees within the prescribed period shall pay double the annual renewal fees, if payment is made within ninety days after 31st December of every year.
- (e) If an E-Money Issuer fails to pay the prescribed fees within ninety days after 31st December of every year, its renewal application shall be declined.
- (f) Applications for renewals shall be considered in accordance with the provisions of sub-Regulation 28(c) and the Bank may require an applicant for renewal to submit any or all of the information set out in Regulation 28.

- (g) Where an E-Money Issuer fails to fulfill any of the conditions set by the Bank for the purpose of renewal of its authorisation within ninety (90) days from the date of expiry of authorisation, the authorisation shall not be renewed and shall be revoked.

30.0 Revocation and Suspension

30.1 The Bank may, by notice in writing to an authorised E-Money Issuer, suspend an authorisation under this Regulation for such period as it may specify or revoke an authorisation, if the authorised E-Money Issuer:

- (a) does not commence business within twelve months from the date the authorisation was issued;
- (b) has ceased or suspended operations for a period of three months;
- (c) obtained the authorisation on the premise of wrong, false, misleading information or concealment of material information which, if known at the time of evaluation of the application for the authorisation, the E-money issuer would not have been authorised;
- (d) applies to the Bank for the revocation or suspension of the authorisation where good cause has been shown;
- (e) has ceased to meet the authorisation and operational requirements prescribed in these Regulations;
- (f) has failed to comply with any condition of the authorisation;
- (g) has violated the provisions of any applicable law or these Regulations or is insolvent or unable to effectively conduct its operations or through its activities the public trust has been compromised.
- (h) has failed to comply with any material obligation imposed on it by or under these Regulations;
- (i) has engaged in activities either restricted or not permitted under these Regulations;
- (j) is unable or has consistently failed to protect the confidentiality of data or information it collects;
- (k) has, without the consent of the Bank, amalgamated with another entity or sold or otherwise transferred its E-money issuance business to another entity;

- (l) has a winding-up order made against it or a resolution for voluntary winding passed against it;
- (m) fails to pay the annual renewal fee within ninety days after the anniversary date;
- (n) fails to pay a monetary penalty ordered by the Bank.
- (o) fails to comply with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and the associated Regulations and Guidelines.
- (p) fails to manage its agents or cash merchants in a manner consistent with the Act and these Regulations.
- (q) fails to ensure that the trust account is managed in a manner consistent with the Trust Law and these Regulations;
- (r) fails to ensure that the trustees act in the interests of the beneficiaries;
- (s) fails to produce books, accounts, records, documents, correspondence, statements or other specified information without any reason after the fourteen (14) days' notice has been issued and has not given sufficient cause why the authorisation should not be revoked.

- 30.2 The Bank shall not revoke or suspend the authorisation unless the E-Money Issuer has been given an opportunity to make representations to the Bank on why the authorisation should not be revoked or suspended and the Bank shall take into account the representations made by the E-Money Issuer in its decision on the matter.
- 30.3 The Bank may, in lieu of revoking or suspending the authorisation, require the E-Money Issuer to take such measures to regularise the breach or violation within such time as the Bank may specify and may in addition impose such monetary penalty or other sanctions as it may deem fit.
- 30.4 The Bank shall, upon revoking or suspending an authorisation under sub-Regulation 30.1, immediately inform the E-Money Issuer of the revocation or suspension.
- 30.5 The Bank shall, upon revocation of the authorisation of an E-money issuer, take over control of the business of the E-money issuer to safeguard and facilitate distribution of the money in the Trust Fund.

- 30.6 An E-Money Issuer shall hand over the entire database, electronic records in a readable format and other relevant information to facilitate the processing of payments to the customers.
- 30.7 Where the authorisation is revoked, the holder of the authorisation shall, within seven days from the date of service of the notice of revocation, surrender the authorisation certificate to the Bank and shall forthwith cease to carry out E-Money Issuer business or any other activity authorised under these Regulations.
- 30.8 A person who fails to comply with sub-Regulation 30.7 shall be liable to a monetary penalty not exceeding one million shillings;
- 30.9 The Bank shall notify the public whenever an E-Money Issuer's authorisation certificate has been suspended or revoked and further dealings as an E-Money Issuer for purposes of these Regulations shall cease immediately;
- 30.10 Upon revocation or suspension of an E-Money Issuer, the Bank shall notify the institution holding the Trust funds to cease forthwith further dealing with the funds until further directions by the Bank;
- 30.11 The Bank may appoint any person, including another E-Money Issuer to distribute the balances held in the Trust Fund of the revoked E-Money Issuer at the time of revocation;
- 30.12 Any shortfall in the Trust Fund shall be recoverable directly from each and every trustee.

31.0 Capital requirements

- 31.1 An E-Money Issuer, other than an Institution shall at the time of authorisation, hold a core capital of the amount prescribed in the *First Schedule*.
- 31.2 An E-Money Issuer shall at all times maintain minimum core capital specified in the *First Schedule* of these Regulations. The Bank may amend the *First Schedule* from time to time.

32.0 Registration of small e-money issuers

- 32.1 A person who issues e-money on a limited scale may apply to the Bank for registration as a small e-money issuer.
- 32.2 A small e-money issuer need not comply with Regulations 27, 33 (except 33.1 and 33.4), 34, 35, 37, 41, 42, and 43 of these Regulations.
- 32.3 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 the *First Schedule* to these Regulations accompanied by the information set out in the form.
- 32.4 The Bank shall not register a person as a small e-money issuer unless the person complies with the following requirements:
- (a) is a company incorporated in Kenya;
 - (b) does not issue e-money accounts with an individual transaction limit that exceeds Twenty Thousand Shillings. This limit may be amended by CBK from time to time;
 - (c) does not and will not have total liabilities with respect to issuing e-money that exceeds One Hundred Million Shillings;
 - (d) issues e-money which is accepted as a means of payment only by:
 - (i) 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
 - (ii) other members of the same group as the e-money issuer (other than subsidiaries of that e-money issuer).
- 32.5 A person applying for registration as a small e-money issuer is subject to an application fee as prescribed in the *First Schedule*. The Bank shall issue a certificate of registration to a person who complies with the registration requirements set out in this Regulation. Registration as a small e-money issuer under this Regulation will remain in place until suspended or revoked in terms of Regulation 32.7 below.

32.6 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 the *Third Schedule*, 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.
- (d) Incidents of fraud

32.7 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 these Regulations.

32.8 Before revoking or suspending a registration under this Regulation, 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.

33. Operations

33.1. An E-money issuer shall at all times maintain a register that contains identification details of all its customers and the funds outstanding in their e-money accounts.

33.2. An E-money issuer shall ensure that the customer's Identification number is registered and the identity of the customer is independently verified through any such means as the Bank may approve.

33.3. E-money issued shall be subject to an individual transaction limit that shall not exceed Seventy 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 issued. These limits may be amended by the Bank from time to time.

- 33.4. E-money shall be redeemed at par value. E-money shall not earn interest or any other financial return from the E-Money holder or customer.
- 33.5. E-money issuers, other than an Institution shall not engage in any lending or investment activity other than that required under Regulation 39.
- 33.6. 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.
 - (c) Any changes to the documentation provided during the application process.

34. Agents

- 34.1. An E-money issuer may appoint an agent to undertake certain services on its behalf.
- 34.2. An E-money issuer and an agent may enter into an agreement for the provision of such services.
- 34.3. An agent can undertake any of the following activities on behalf of the E-money issuer :
- (a) process or store data on behalf of such E-money issuers or users of such payment services;
 - (b) provide cash services; or
 - (c) such other services as an E-money issuer may specify.

- 34.4. An E-money issuer is liable to its customers for the conduct of its agents, performed within the scope of the agency agreement. The agency agreement cannot exclude such liability.

35. Agents and Cash merchants

- 35.1. An E-money issuer may appoint agents and cash merchants to perform cash services, provided the E-money issuer can execute electronic retail transfers that support the e-money issuance in real time.
- 35.2. No contract for the provision of retail cash services between an e-money issuer and an agent or cash merchant shall be exclusive.
- 35.3. An agent and cash merchant may provide services to multiple E-money issuers and/or payment service providers provided that the agent or cash merchant has separate contracts for the provision of such services with each payment service provider and provided further that the agent or cash merchant has the capacity to manage the transactions for the different payment service providers.
- 35.4. In enlisting a new agent or cash merchant, E-money issuers shall, at least 60 days prior to commencing the utilisation of agents or cash merchants, advise the Bank in writing of their intention and provide the following information to the Bank:
- (a) The procedure for recruiting agents or cash merchants;
 - (b) A copy of the proposed standard agreement with agent or cash merchants, which shall provide, amongst others, that the agent or 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;
 - (c) The policies and procedures approved by the E-money issuer for the provision of cash services through agents or cash merchants, including compliance with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and the associated Regulations and guidelines;
 - (d) A description of the technology to be used for delivering cash services;

- (e) A risk assessment report of the provision of cash services through agents or cash merchants including the control measures that will be applied to mitigate the risks;
- (f) The security measures to be adopted for the premises of agents or cash merchants; and
- (g) The agent or cash merchant manual and any materials used for training agents or cash merchants.
- (h) Rights and liabilities of both parties.
- (i) Permitted and prohibited activities.
- (j) Such other information as the Bank may require the E-money issuer to submit.

35.5. An E-money issuer may appoint, through written agreement, a person as an agent or cash merchant if that person:

- (a) Possess such registration, business license, or permit as may be required for the performance of its commercial activities;
- (b) Can lawfully provide the proposed services;
- (c) Holds a payment account with a bank, financial institution or E-money issuer and, if the E-money issuer is not an institution;
- (d) Is financially sound and has provided the E-money issuer with adequate documents;
- (e) Has provided evidence to the E-money issuer indicating that its management has the necessary experience and competence to perform the agency or cash services.

35.6. E-money issuers may, subject to sub-Regulation 35.4, appoint wholesale agents or cash merchants to distribute e-money to agents or cash merchants.

35.7. An E-money issuer utilising agents or cash merchants to perform cash services shall maintain the following records and shall avail this information to the Bank upon request:

- (a) The name, physical address, postal address and telephone numbers of the agents or cash merchants, as well as the physical address and telephone numbers of each of the outlets of the agent or cash merchant at which it will provide cash services;
- (b) The identity of the persons responsible for the management of the agent or cash merchant; and the Bank may insert this information in a public electronic register of agents or cash merchants.
- (c) A register of agents and cash merchants whose services have been suspended or terminated and the reasons for suspension or termination.

35.8. An E-money issuer utilizing agents or cash merchants to perform cash services shall:

- (a) Provide adequate training and support to its agents or cash merchants, including an agent or cash merchant manual containing the policies, rules and operational guidelines needed to ensure the safe and efficient provision of services to customers;
- (b) Maintain effective oversight over the activities of its agents or cash merchants; and
- (c) Maintain records of the number, volumes and values of transactions carried out by each agent or cash merchant.

35.9. E-money issuers and their agents and cash merchants shall comply with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and the associated Regulations and guidelines.

35.10. In the identification, selection and contracting of agents and cash merchants, an E-money issuer shall exercise due diligence and carry out suitability assessment of the agents or cash merchants.

36. Interoperability

36.1. E-money issuers shall utilise open systems capable of becoming interoperable with other payment systems in the country and internationally.

36.2. E-money issuers are encouraged to enter into interoperable arrangements.

36.3. For purposes for giving effect to sub-Regulation 36.2, E-money issuers may amongst other arrangements be members of Payment Service Provider Management Bodies.

36.4. Payment Service Provider Management Body

36.4.1. In order to facilitate interoperability, an E-money issuer may be a participant in a payment service provider management body.

36.4.2. A payment service provider management body shall be required to provide the following minimum information to the Bank:

- (a) Details of the ownership and Governance of the management body formed to operate the Payment System;
- (b) Membership rules that are adequate to the operations of the system
- (c) Clear, fair and non-discriminatory access procedures;
- (d) Policies and procedures in place for evaluating the financial soundness of operators and participants to identify, monitor and control any risks associated with the working of the system to ensure finality of payment and settlement;
- (e) Details of internal audit function including scope, reporting lines and the frequency of reporting;
- (f) Evidence of adequate human resources to ensure adequate resources to the operation of the system, well trained staff, competent and knowledgeable in respect of the business requirements, operational and risk management.

36.4.3. A payment service provider management body shall manage and regulate, in relation to its members, all matters affecting payment instructions, and in connection with those objects, may:

- (a) Act as a channel for communication by its members with the Government, the Bank, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and
- (b) Deal with and promote any other matter of interest to its members and foster co-operation among them.

36.4.4. In addition to any other provisions, the rules of a payment service provider management body shall empower that body:

- (a) To admit members and to regulate, control and with the approval of the Bank terminate membership;

- (b) To constitute, establish or dissolve any body, committee or forum consisting of its members and which has an impact on, interacts with, has access to or makes use of any payment, clearing or settlement systems or operations;

37. Outsourcing

- 37.1. Where an E-money issuer intends to outsource operational functions of its provision of payment services, it shall notify the Bank at least 30 days before such outsourcing agreement is implemented.
- 37.2. 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 the Act and these Regulations.
- 37.3. For the purpose of sub-Regulation 37.2, 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 these Regulations, or its financial performance, or the soundness or the continuity of its payment services. 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 customers under these Regulations shall not be altered;
 - (c) The outsourcing contract shall provide that the Bank shall be able to exercise its oversight and supervisory powers under Regulation 37 in respect of the third parties to who 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.

38. Risk management

- 38.1. E-money issuers shall comply with any technical standards that may be issued by the Bank from time to time including international standards set by the Bank of International Settlements (BIS), the International Organisation for Standardisation (ISO) and the Financial Action Task Force (FATF).

- 38.2. E-money issuers shall comply with any risk management guidelines which may be issued by the Bank from time to time.

39. Governance

- 39.1. An E-money issuer engaged in electronic retail transfers as well as other commercial activities as envisaged in Regulation 29 (c)(iii) shall establish adequate governance arrangements, which are effective and transparent, to ensure the continued integrity of its service, which include, among others, the following:
- (a) A broad-based board of Governors and Trustees that consists of people with calibre, credibility, integrity, and fulfill the fit and proper criteria as stipulated in the *Second Schedule*.
 - (b) Clearly defined and documented organisational arrangements, such as ownership and management structure.
 - (c) Segregation of duties and internal control arrangements to reduce the chances of mismanagement and fraud.
 - (d) The E-money issuer conducts its payment services in a separate and distinct business unit from its other business units, including maintaining a separate management structure and keeping separate books of account for its payment services division;
- 39.2. The E-money issuer shall ensure the balances in the Trust Fund shall not at any time be less than what is owed to the customers
- 39.3. The E-money issuer 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.
- 39.4. Where the funds are still in the process of being transferred to the payee, the E-money issuer shall employ appropriate risk mitigation strategies to ensure that funds held by a custodial trustee are sufficiently diversified and placed only in licensed commercial banks or Government of Kenya securities. The maximum proportion to be held in each institution will be agreed with the Bank from time to time

39.5. Income generated from placement of these trust funds will be used in accordance with the Law of Trust and in consultation with the Bank. Any such usage must be in the interest of the public and channeled through a public charitable vehicle accountable to the general public.

39.6. The trust deed should at a minimum contain the following:

- (a) Principal characteristics of the service provided pursuant to the Trust;
- (b) Details of how the fund shall be held and invested;
- (c) The duties, responsibilities and the extent of liability of Trustees;
- (d) Provisions on discontinuation and/or termination of the Trust and subsequent handling of the Trust Fund;
- (e) Procedure on handling of dormant accounts and accounts of deceased persons;
- (f) Rights of system participants and beneficiaries;
- (g) Applicable law and mode of resolution of disputes;
- (h) Where the trustee is a company, duties of the management company and key particulars of the management arrangement;
- (i) Use of income generated from the trust funds which should be in accordance with Trust Law and for the benefit of the public.

39.7. Any proposed changes to the Trust deed shall be submitted to the Bank for approval.

39.8. An E-money issuer shall establish adequate operational arrangements for its e-money issuance scheme, which include the following:

- (a) Rules and procedures setting out the rights and liabilities of the E-money issuer and the user, and the risks the user may incur.
- (b) Measures to ensure prudent management of the funds collected from users, including measures to ensure that such funds are available at all times for repayment to users.

- (c) Measures to ensure safety, security and operational reliability of the service including contingency arrangements; and
- (d) Maintain separate records and accounts for its e-money activities from other business activities.

40. Execution of payments

- 40.1. A payer may not revoke an E-money transfer instruction once it has been received by the payee's E-money issuer unless the E-money issuer has sufficient grounds to reverse the transaction in line with the error resolution mechanisms that the E-money issuer has in place.
- 40.2. The E-money issuer (s) involved in e-money issuance 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 customer in advance, or which the customer has received notice of in terms of sub-Regulation 43.1.1(a).
- 40.3. E-money issuers shall ensure that the amount of the e-money is credited in real time to the payee's payment account after the receipt of the instruction from the payer.
- 40.4. The E-money issuer shall be liable to the payer for the correct execution of the payment transaction in accordance with the instruction of the payer
- 40.5. The E-money issuer shall not be liable to the payer when the electronic retail transfer requires transmission to a second E-money issuer (the payee's E-money issuer) and the payer's E-money issuer can prove correct or proper transmission of the electronic retail transfer to the second E-money issuer.
- 40.6. Where an E-money issuer is liable under this Regulation for the non-execution or defective execution of e-money issuance, it 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.
- 40.7. The E-money issuer shall be liable for payment transactions performed without the knowledge of the customer, provided that such liability may be contractually excluded in circumstances where the E-money issuer can prove an element of fault on the side of the customer in the use of the service or can demonstrate prima facie that the payment instruction was carried out by the legitimate customer.

41. Record keeping and Reporting

41.1. An E-money issuer shall:

- (a) utilise systems able to provide an accurate and fully accessible audit trail of all transactions from the origin of the electronic retail transfer to its finality.
- (b) keep records of every e-money transaction processed by it for a period of at least seven years.

41.2. Every E-money issuer shall, within 10 days of the end of every calendar month, submit to the Bank in the forms set out in the *Third Schedule*, information regarding:

- (a) The volumes, values and geographic distribution of each electronic 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;

41.3. Every E-money issuer shall, within three months of the end of 31st December of every year, submit to the Bank:

- (a) Audited financial statements covering its activities in Kenya together with a copy of the auditor's report.
- (b) Separate audited financial statements for the payment service provider and the Trust accounts.
- (c) A system security audit report by a reputable Independent audit firm on its payment services.
- (d) Any other information required by the Bank with respect to its payment services.

42. Oversight and Audit

- 42.1. The Bank shall exercise oversight and supervisory powers over an E-money issuer, its agents or cash merchants.
- 42.2. Every E-money issuer shall utilise systems capable of screening transactions for the purposes of complying with the Proceeds of Crime and Anti-Money Laundering Act, 2009 and the associated Regulations and guidelines.
- 42.3. The Bank shall establish a register of all authorised E-money issuers and their head office which is accessible to the public.
- 42.4. The Bank may:
- (a) conduct on-site inspections at the premises of a payment service providers and their agents.
 - (b) inspect the books of accounts and other documents of an E-money issuer and the Trust Fund at any time in order to ensure compliance with the Laws of Kenya, authorisation terms and conditions, operating instructions and guidelines, and may institute an audit of an E-money issuer and call for an investigation of the E-money issuer.
 - (c) require an officer of the E-money issuer to produce to the Bank officer making an examination, and within a reasonable time, such books of accounts and any other documents in the, E-money issuer custody or power, and furnish such statements or information relating to the affairs of the E-money issuer as may be required by the examining officer.
 - (d) by notice in writing, require an E-money issuer to provide information to it, in such manner and form as may be specified by the Bank for purposes of assessing compliance with these Regulations.
 - (e) at any time, enter any premises where an E-money issuer is carrying on business, or any premises where it is reasonably suspected that any business is being carried on in contravention of these Regulations.

- (f) require an E-money issuer to put in place remedial measures as the Bank may consider necessary after an inspection or investigation under these Regulations.

42.5. An E-money issuer which fails to produce books, accounts, records, documents, correspondence, statements or other specified information without any reason shall be issued with a fourteen (14) days' notice to show cause why an authorisation to carry on e-money issuance under these Regulations should not be revoked.

42.6. Audit

42.6.1. Every E-money issuer shall, at its own expense, appoint an external auditor who shall be a member of good standing of the Institute of Certified Public Accountants of Kenya to carry out an audit of the transactions in its business.

42.6.2. The Bank may require an auditor appointed under sub-Regulation 42.6.1. above to:

- (a) submit to the Bank such information as it may require in relation to the audit carried out by the auditor;
- (b) extend the scope of an audit of the business and affairs of the business and to submit a report to the Bank ;
- (c) carry out any examination or establish any procedure in any particular case;
- (d) submit a report to the Bank on any matter referred to in paragraph (a) or (b); and
- (e) The E-money issuer shall be responsible for the remuneration of the auditor for the audit services.

43. Consumer Protection

43.1. Disclosure

43.1.1. An E-money issuer shall provide:

- (a) 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) clear terms to its customers, agents and cash merchants.
- (c) Notification to customers, 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.

43.1.2. An E-money issuer shall provide its customers at the point of service with:

- (a) The name of the E-money issuer ; and
- (b) A telephone number or such other contact medium that provides access to its customer care system.

43.1.3. After the amount to be transferred through an e-money transfer is debited to the payer's payment account, the payer's E-money issuer shall without undue delay provide the payer with the following information:

- (a) A reference enabling the payer to identify each payment transaction;
- (b) The details of the payee and its payment account details (if any);
- (c) The amount of the e-money;
- (d) The date of debit.

43.1.4. After the amount transferred through an e-money transfer is credited to the payee's payment account or paid to the payee, the payee's E-money issuer (if any) shall without undue delay provide the payee with the following information:

- (a) The reference enabling the payee to identify the payment transaction;
- (b) The name of the payer and any information transferred with the payment transaction;

(c) The amount of the e-money issued;

(d) The date of credit, where applicable.

43.1.5. All e-money transactions shall be executed in real time.

Provided that where an e-money transaction cannot be completed in real time, the e-money issuer shall notify the payer of the delay of the execution and shall notify the customer of the period within which the transaction shall be completed or cancelled.

43.1.6. An E-money issuer may not charge the customer for fulfillment of its disclosure and information obligations under these Regulations.

43.1.7. An E-money issuer shall put in place a provision to issue a statement to a customer upon request.

43.1.8. The Bank may from time to time publish any information it considers useful to customers, which information may include, but not be limited to tariffs, quality of service and statistical information.

43.1.9. An E-money issuer shall ensure that its advertisements

(a) do not mislead consumers

(b) are easily understood; and

(c) are comprehensive enough to properly inform consumers of the main features and conditions of the product.

43.2. Customer care

43.2.1. An E-money issuer shall:

(a) within a period of six months after commencing the provision of payment services, establish a customer care system within which its customers can make inquiries and complaints concerning its services.

(b) prior to the establishment of a customer care system in terms of this Regulation, provide adequate means for customers to file complaints and shall address such complaints within a reasonable period from receipt of the complaint.

(c) put in place a clear mechanism to address consumer complaints due to loss of funds through fraudulent means.

- (d) provide easily understood information about their complaint handling processes at all points of service.

43.2.2. All complaints shall be lodged within a period of fifteen (15) days from the date of occurrence.

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

43.2.4. At the time of making a complaint a customer shall be advised of the expected actions and timing for investigating and resolving the complaint and in the event that the E-money issuer regards the complaint as frivolous or vexatious, the customer shall be informed accordingly and if dissatisfied the customer shall have further recourse in accordance with these Regulations and the Consumer Protection Act, 2012.

43.2.5. All complaints shall be resolved within sixty (60) days of being lodged.

43.2.6. E-money issuers shall put in place processes to provide customers 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 customers.

43.2.7. Customers shall be advised of the outcome of the investigation of their complaint, and any resulting decision by the E-money issuer.

43.2.8. Where a customer is not satisfied with a decision reached pursuant to a complaint, the E-money issuer shall give the customer 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.

43.2.9. 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 customers can be easily represented by their authorised representatives in order to make a complaint.

43.2.10. In cases where customers specifically request assistance in lodging complaints, E-money issuers shall be obliged to provide reasonable assistance.

43.2.11. Complaint handling processes shall be provided free of charge except:

- (a) Where the investigation of the complaint requires the retrieval of records more than three months old, and

- (b) Where the retrieval results in an incremental expense or significant inconvenience to the E-money issuer.

43.3. Customer service agreements

42.3.1. E-money issuers shall enter into a written customer service agreement with every customer to which it renders services and shall submit to the Bank a copy of the standard customer service agreement applicable to each service offered to the public which should at a minimum include:

- (a) Detailed description of the services offered
- (b) Registration requirements for account opening
- (c) Procedures for maintaining a customer account
- (d) The E-Money Issuer's privacy policy
- (e) Customer account use and access responsibility
- (f) Conditions and procedures for loading, transferring, receiving e-money and withdrawing funds.
- (g) Intellectual Property rights
- (h) Suspension, termination and freezing of accounts
- (i) Dispute Resolution and Governing Law
- (j) Warranties and Liability
- (k) Indemnity
- (l) Exclusions/limitations of the service
- (m) Disclosure and Data Retention
- (n) Force Majeure
- (o) Details on how deceased accounts are handled

43.4. Confidentiality/Privacy

43.4.1. An E-money issuer shall keep the information in respect of services provided to any customer confidential in accordance with the Act.

43.4.2. An E-money issuer shall disclose customer information in respect of services provided by them only:

- (a) To the customer concerned;
- (b) To the Bank;
- (c) When authorised in writing by the customer concerned; or
- (d) As required by law.

43.5. The provisions of Regulation 43.0, shall apply to agents and cash merchants with such modification as their business may necessitate.

43.6. Any E-money issuer, agent or cash merchant who fails to comply with the requirements of this provision shall be liable to a monetary penalty of not more than Kenya Shillings One Million.

44. Sanctions and Penalties

44.1. In addition to the remedial actions provided under the Act, the Bank may impose the following sanctions:

- (a) Prohibition from offering e-money issuance services;
- (b) Termination of employment services of an officer or employee of the E-money issuer.
- (c) Removal of a trustee;
- (d) Prohibition from investing the Trust Fund;
- (e) Prohibition from establishing new branches, appointing new agents or cash merchants or introduction of new products;
- (f) Prohibition from engaging in new activities or from expanding existing activities;

- (g) Limit the range of activities and the locations in which such activities can be conducted.
- (h) Prohibition or suspension from any other activity that the Bank perceives to be contributing to violation of these Regulations

44.2. Before imposing a penalty on any E-money issuer under these Regulations, the Bank shall give not less than seven days' notice in writing requiring the E-money issuer to show cause as to why the penalty prescribed should not be imposed.

44.3. Where a monetary penalty is prescribed under these Regulations, such penalty shall-

- (a) be paid to the Bank;
- (b) be paid within ten days unless otherwise stated;
- (c) where an E-money issuer fails to pay the penalty, the Bank may take such other action or make such decision as is permitted under the Act or these Regulations.

45. General Penalty

45.1. The Bank may impose monetary fines to be paid by E-money issuers, trustees, agents or cash merchants who fail or refuse to comply with these Regulations, which fines shall not exceed one million shillings and may prescribe additional fines not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

46. Transitional provisions

46.1. E-money issuers who have commenced e-money issuance before the effective date, shall be allowed a period of 6 months from the effective date to comply with these Regulations.

PART IV: DESIGNATION OF A PAYMENT INSTRUMENT REGULATION

47. Purpose

The purpose of this Regulation is to provide for the designation of a payment instrument.

48. Scope

This Regulation applies to all issuers of Payment Instruments that qualify to be designated in accordance with Section 6 (1) of the Act.

49. Application Process

49.1. The Bank shall determine whether a payment instrument qualifies to be designated in accordance with section 6(1) of the Act.

49.2. The Bank will require the issuer of this instrument to apply for the designation.

49.3. An applicant who qualifies for designation shall apply in writing to the Bank using the form prescribed in the *First Schedule* and pay a non-refundable fee as provided for in the same schedule.

49.4. The application will be accompanied by the following information:

- (a) Three year projected financial statements (statement of financial position, statement of comprehensive income; and cash flow statement) after start of operations for new operators.
- (b) The organisation structure of the applicant if the applicant is a corporate body and declarations signed by every officer as specified in the application form to establish adequate governance arrangements which are effective, accountable and transparent to ensure the continued integrity of such designated payment instrument.
- (c) Documents detailing the following operational arrangements:
 - (i) Rules and procedures setting out the rights and liabilities of the issuer and the user of the designated payment instrument and the risks the user may incur;
 - (ii) The name and a detailed description of the designated payment instrument, including payment flow and settlement arrangements;

- (iii) Measures to ensure prudent management of funds collected from a user of the designated payment instrument, including measures to ensure that such funds are available for repayment to a user; and
 - (iv) Measures to ensure safety, security and operational reliability of the designated payment instrument including contingency arrangements.
 - (v) Fees and charges imposed by the issuer; and
 - (vi) Outsourcing arrangements, if any
- (d) Where the applicant is already in operation, the value and volumes of transaction in the six months to the date of application.
- (e) A confirmation of the payment fee as subscribed in the *First Schedule*.

50. Notification by the Bank

50.1 The Bank shall publish a Gazette notice designating the payment instrument in accordance with section 6 (1) of the Act.

50.2 The issuer of a payment instrument shall ensure its compliance with the Act and any conditions given in the Designation Gazette in the advice in sub-Regulation 50.1.1 above.

50.3 The Bank shall give a written notice of designation to the issuer of the payment instrument in accordance with section 6 (4) of the Act

51. Changes and enhancements

51.1. Any substantial change or enhancement in the designated payment instrument which an issuer intends to introduce shall be subject to the approval of the Bank and the 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 expands the scope or changes the nature of the designated payment instrument and may include, amongst others, the following:

- (a) Additional functionality of the designated payment instrument such as accessing new electronic channels;
- (b) Changing the payment service providers and other major partners in the business.
- (c) Any changes to the documentation outlined in sub-Regulation 50.4 above

52. Revocation

52.1 The Bank may, by notice in writing to a designated payment instrument issuer, suspend a designation under this Regulation for such period as it may specify or revoke the designation, if the issuer:

- (a) has ceased operations for a period of three months;
- (b) applies to the Bank for the revocation of the designation where good cause has been shown;
- (c) has ceased to meet the designation and operational requirements prescribed in these Regulations;
- (d) has failed to comply with any condition of the designation;
- (e) has violated the provisions of any applicable law or these Regulations or is insolvent or unable to effectively conduct its operations or through its activities the public trust has been compromised.
- (f) has failed to comply with any material obligation imposed on it by or under this Regulation;
- (g) has engaged in activities either restricted or not permitted under these Regulations;
- (h) is unable or has consistently failed to protect the confidentiality of data or information it collects;
- (i) has, without the consent of the Bank, amalgamated with another entity or sold or otherwise transferred its designated payment instrument business to another entity;
- (j) has a winding-up order made against it or a resolution for voluntary winding passed against it;
- (k) fails to pay the annual renewal fee within ninety days after the anniversary date;
- (l) fails to pay monetary penalty ordered by the Bank.
- (m) fails to comply with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and associated Regulations and guidelines.
- (n) fails to manage its agents or cash merchants in a manner consistent with the Act and these Regulations.

- 52.2 The Bank shall not revoke or suspend the designation unless the designated payment instrument Issuer has been given an opportunity to make representations to the Bank on why the designation should not be revoked or suspended and the Bank shall take into account the representations made by the Issuer in its decision on the matter.
- 52.3 The Bank may, in lieu of revoking or suspending the designation, require the Issuer to take such measures to regularise the breach or violation within such time as the Bank may specify and may in addition impose such monetary penalty or other sanctions as it may deem fit.
- 52.4 The Bank shall, upon revoking or suspending a designation under 53.1 immediately inform the Issuer of the revocation or suspension.
- 52.5 Where a designation has been revoked, the Bank shall as soon as possible, publish a notice of the revocation on the Kenya Gazette and give a written notice to the issuer of the payment instrument who thereafter shall surrender to the Bank the designation certificate that was issued to it.

PART V: DESIGNATION OF A PAYMENT SYSTEM REGULATION

53. Purpose

- 53.1. The purpose of this Regulation is to provide for the designation of a payment system.

54. Scope

- 54.1. This Regulation applies to all operators of a payment system that qualifies to be designated in accordance with Section 3(1) of the Act.

55. Application Process

- 55.1. The Bank shall determine whether a payment system qualifies to be designated in accordance with section 3(1) of the Act.
- 55.2. The Bank will require the operator of this system to apply for the designation.
- 55.3. Where the payment system operator is the Central Bank, the Bank will designate the payment system in accordance to Section 3(1) of the Act.
- 55.4. An applicant who qualifies for designation shall apply in writing to the Bank using the form prescribed in the *First Schedule* and pay a non-refundable fee as provided for in the same schedule.
- 55.5. The application will be accompanied by the following information:
- (a) Three year projected financial statements (statement of financial position, statement of comprehensive income; and cash flow statement) after start of operations for new operators.
 - (b) The organisation structure of the payment system management body and declarations signed by every officer as specified in the application form to establish adequate governance arrangements which are effective, accountable and transparent to ensure the continued integrity of such designated payment system.
 - (c) Documents detailing the following operational arrangements:
 - (i) Rules and procedures of the payment system management body setting out the rights and liabilities of the operator and the

participants of the designated payment system and the risks the user may incur;

- (ii) The name and a detailed description of the designated payment system, including payment flow and settlement arrangements;
 - (iii) Measures to ensure prudent management of funds collected from a user of the designated payment system, including measures to ensure that such funds are available for repayment to a user; and
 - (iv) Measures to ensure safety, security and operational reliability of the designated payment system including contingency arrangements.
 - (v) Fees and charges imposed by the operator; and
 - (vi) Outsourcing arrangements, if any
- (d) Where the applicant is already in operation, the value and volumes of transaction in the six months to the date of application.
- (e) A confirmation of the payment fee as prescribed in the *First Schedule*.

56. Notification by the Bank

56.1. The Bank shall publish a Gazette notice designating the payment system in accordance with section 3 (1) of the Act.

56.2. The designated payment system operator shall ensure its compliance with the Act and any conditions given in the Designation Gazette in the advice in sub-Regulation 56.1 above.

56.3. The Bank shall give a written notice of designation to the designated payment system operator in accordance with section 3 (3) of the Act

56.4. The Bank shall, upon designation of a payment system, recognize the management body of such payment system in accordance with Section 7(1) of the Act.

57. Changes and enhancements

57.1. Any substantial change or enhancement in the designated payment system which an operator intends to introduce shall be subject to the approval of the Bank and the operator 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 expands the scope or changes the nature of the designated payment system and may include, amongst others, the following:

- (a) Additional functionality of the designated payment system such as accessing new electronic channels;
- (b) Changing the payment service providers and other major partners in the business.
- (c) Any changes to the documentation outlined in Regulation 55.5 above

58. Revocation

58.1. The Bank may, by notice in writing to a designated payment system operator, revoke the designation, if the operator:

- (a) acts in a manner that can cause systemic risk or expose the payment system to systemic risk
- (b) has ceased operations for a period of three months;
- (c) applies to the Bank for the revocation of the designation where good cause has been shown;
- (d) has ceased to meet the designation and operational requirements prescribed in this Regulation;
- (e) has failed to comply with any condition of the designation;
- (f) has violated the provisions of any applicable law or this Regulation or is insolvent or unable to effectively conduct its operations or through its activities the public trust has been compromised.
- (g) has failed to comply with any material obligation imposed on it by or under this Regulation;

- (h) has engaged in activities either restricted or not permitted under this Regulation;
- (i) is unable or has consistently failed to protect the confidentiality of data or information it collects;
- (j) has, without the consent of the Bank, amalgamated with another entity or sold or otherwise transferred its designated payment system business to another entity;
- (k) has a winding-up order made against it or a resolution for voluntary winding passed against it;
- (l) fails to pay monetary penalty ordered by the Bank.
- (m) fails to comply with the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009) and the Prevention of Terrorism Act (Act No. 30 of 2012) and associated Regulations and guidelines.

58.2 The Bank shall not revoke the designation unless the designated payment system operator has been given an opportunity to make representations to the Bank on why the designation should not be revoked and the Bank shall take into account the representations made by the operator in its decision on the matter.

58.3 The Bank may, in lieu of revoking the designation, require the operator to take such measures to regularise the breach or violation within such time as the Bank may specify and may in addition impose such monetary penalty or other sanctions as it may deem fit.

58.4 The Bank shall, upon revoking a designation under sub-Regulation (1), immediately inform the operator of the revocation.

58.5 Where a designation has been revoked, the Bank shall as soon as possible, publish a notice of the revocation on the Kenya Gazette and give a written notice to the operator of the payment system who thereafter shall surrender to the Bank the designation certificate that was issued to it.

PART VI: ANTI-MONEY LAUNDERING

59. Anti-money laundering Measures

- 59.1. An electronic retail transfer service provider, an e-money issuer or a mobile payment service provider shall be required to comply with the Proceeds of Crime and Anti-Money Laundering Act and the relevant Regulations.
- 59.2. Subject to sub-Regulation 59.1, an electronic retail transfer service provider, an e-money issuer or a mobile payment service provider shall submit to the Bank on a monthly basis, a summary of the reports submitted to the Financial Reporting Centre.

FIRST SCHEDULE

FEE AND CAPITAL REQUIREMENTS

Table A: The table below shows fees payable for the various authorisation: (The schedule will be reviewed continuously at the discretion of the Bank)

Authorisation	Application Fee (KShs)	Authorisation Fee (KShs)	Core Capital
<i>when fees are payable</i>	<i>when submitting application</i>	<i>after approval and before issuance of license</i>	
Electronic retail transfers	5,000/=	100,000/=	5,000,000/=
Designated Payment Instrument	n/a	10,000,000/=	50,000,000/=
E money Issuers	5,000/=	50,000/=	20,000,000/=
Small E Money Issuers	5,000/=	20,000	1,000,000/=

Payments to be made via Bankers Cheque or through the Kenya Electronic Payments and Settlement System (KEPSS) in favour of Central Bank of Kenya

Threshold (per annum)	Annual Renewal Fees (Kes)
Gross turnover < 1 billion	20,000
Gross Turnover 1 billion - 10 billion	100,000
Gross Turnover 11 billion - 50 billion	500,000
Gross Turnover 51 billion - 100 billion	1,000,000
Gross Turnover 101 billion - 500 billion	5,000,000
Gross Turnover 501 billion to 1000 billion	10,000,000
Gross Turnover \geq 1000 billion	15,000,000

FORM 1: APPLICATION FOR AUTHORISATION

PURSUANT to section 6 and section 20 of the National Payment System Act, 2011, kindly provide the following information to facilitate authorisation under the NPS Regulations 2013.

1. MANDATORY REQUIREMENTS FOR AN APPLICANT

A: This application should be completed in English

B: The application should be addressed to the Governor (see address below) with a covering letter summarising the profile of the applicant and the authorisation applied for,

C: The application should be accompanied by a sworn affidavit submitting the documents listed therein in line with the template attached as Annex 1 herein and a detailed Business plan in line with Annex 2.

2. AUTHORISATION APPLIED FOR

Use this form for application for any of the following categories:

(a) Provision of Electronic retail transfers
(b) Small Money Issuer
(c) E Money Issuer
(d) Designation of Payment Instrument
(e) Designation of Payment System

3. NAME OF APPLICANT

(In bold capital letters in the order the names appear on Registration Certificate etc)

Application for (*specify category of applicant*)_____

4. APPLICANT'S CONTACTS

4.1. Physical Address_____

Town_____ Street/Road_____

LR No_____ Floor_____ Room_____

Name of Building _____

4.2. Postal Address:

P. O. Box _____ Postal Code_____

Post Office Town _____

4.3. Phone and Fax Contact:

Tel. No. _____ Fax. No._____

Mobile_____ Other Tel. Nos._____

4.4. Email Address:_____

5. OTHER INFORMATION ABOUT THE APPLICANT

5.1. State whether any of the partners/ directors/ shareholders is undischarged bankrupt.

(If so indicate give details)

- 5.2. State whether any of the partners/ directors/ shareholders have a beneficial interest in any other business licensed to provide payment services
- 5.3. Has any previous application by you been rejected or cancelled under the Act?
(If so give details)

6. REFEREES

The following details should be completed by two different referees who have known the entity/person in a professional capacity.

1st Referee _____

I certify that the information given in this form is true and correct to the best of my knowledge

Full Name: _____

(Block letters as the names appear on the ID/Passport)

Postal Address:

P.O. Box: _____ Postal Code: _____

Post Office Town: _____

Phone and Fax Contact:

Tel. No. _____ Fax No. _____

Mobile No. _____ Alternative Tel. No. _____

Email Address: _____

Occupation: _____ Signature: _____

2nd Referee _____

I certify that the information given in this form is true and correct to the best of my knowledge

Full Name: _____

(Block letters as the names appear on the ID/Passport)

Postal Address:

P.O. Box: _____ Postal Code: _____

Post Office Town: _____

Phone and Fax Contact:

Tel. No. _____ Fax No. _____

Mobile No. _____ Alternative Tel.. _____

Email Address: _____

Occupation: _____ Signature: _____

7. DECLARATION

I/We hereby certify the information we have provided in this application is true and correct to the best of my/ our knowledge. I/We also understand that it is an offence under the Penal Code to give false information in support of any application.

Name.....

Designation.....

Signature.....

Date.....

8. COMPLETED APPLICATION FORMS SHOULD BE RETURNED TO: -

Central Bank of Kenya

Haile Selassie Avenue

P. O. Box 60000- 00200

NAIROBI

Tel: 254-20-2860000

Fax: 254-20- 4242430

FOR OFFICIAL USE ONLY

The applicant MEETS/ DOES NOT MEET the Bank's requirements and is hereby
RECOMMENDED/NOT RECOMMENDED for:

..... The reasons for
not recommending the applicant are as follows:-

Name.....

Designation.....Signature.....

Application.....Date.....

ANNEX 1: TEMPLATE OF THE AFFIDAVIT TO BE SUBMITTED

REPUBLIC OF KENYA

IN THE MATTER OF OATHS AND STATUTORY DECLARATIONS ACT
CHAPTER, LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR AUTHORISATION FROM
THE CENTRAL BANK OF KENYA

AFFIDAVIT

I, _____ of Post Office Box

Number _____

(Town) _____ (Postcode) _____

do hereby make oath and state as follows:

1. THAT I am an adult of sound mind and _____ (position/ status in the applicant entity) of _____ (name of the applicant) and hence competent to swear this Affidavit.
2. THAT I am a citizen of the _____ and holder of
National Identity Card No. (or Passport No.) _____
3. THAT _____ (name of the applicant) has resolved to
make an application to the Bank for a _____ ((name of the authorisation in
accordance with the Bank's Guidelines) authorisation.

4. THAT I have submitted the following copies of our documents in support of the said application:

4.1. Registration and ownership status:

4.1.1. For an applicant registered under the Companies Act (Cap 486):

4.1.1.1. Copy of Certificate of Incorporation

4.1.1.2. An original letter from the Registrar of Companies listing Names of Shareholders, their addresses, their nationalities, shares held by each, names of directors and whether directors are nominees or not or whether non shareholder directors- Original Form CR/12

4.1.1.3. Attached original CR/12 for other companies which are shareholder of the Applicant until all shares are attributed to individuals.

4.1.2. a copy of Business Name/ Registration Certificate , or

4.1.4. if the company is listed in a stock exchange in Kenya, copy of Certificate from Capital Markets Authority (CMA).

4.1.5. For any foreign company which is a shareholder of the Applicant attach copies certified by a Notary Public of:

4.1.5.1. Certificate of Incorporation of the foreign company/ies and

4.1.5.2. Share Certificate of the foreign company/ies providing details as in 4.1.1.2 above

4.1.6. Copies of Kenyan National Identity Cards (ID) or Kenyan/Foreign passports for all Significant Shareholders, Custodial Trustees, Directors and Senior Managers of the Applicant:

4.1.6.1. Both sides of the ID should be copied onto the same side of an A4 size paper, and

4.1.6.2. Passport copies should include pages showing the nationality, date of issue and expiry, name and photograph of holder. Please note that all foreign passport copies should be notarized.

4.2. Compliance with Kenya Revenue Authority rules:

4.2.1. Copy of Personal Identification Number (PIN) card, and

4.2.2. Copy of Valid Tax Compliance Certificate.

4.3. A business plan in line with the guideline at Annex 2 below.

5. THAT I swear that the documents listed in 4 above are authentic copies of the original documents issued by the relevant authorities to the applicant.

6. THAT this Affidavit is sworn in support of _____(Applicant's name) application for authorisation.

7. THAT what is deponed to herein above is true and within my own knowledge.

SWORN at _____ by the said)

(Deponent)

This _____ day of _____ in the year _____)

)

BEFORE ME)

)

)

COMMISSIONER FOR OATHS)

Drawn by:

_____ (law firm)

_____ (physical address)

P. O. Box _____ (postal code) _____

_____ (town)

ANNEX 2: BUSINESS PLAN GUIDELINE

Please provide separately a Business Plan ensuring that the following details are included in the sequence provided below. Any additional information is encouraged.

1. Executive Summary:

Briefly describe your organisation and the business concept.

2. Technical Information

Provide the proposed system configuration with block diagrams, proposed technology interface with other licensees, network and terminal equipments and/or customer premise equipment (CPE) and the standards they conform to etc.

3. Market Information

3.1. Indicate envisioned rollout plan for the first three years:

Year /Number of Customers /Value/Volume/

Year 1

Year 2

Year 3

3.2. Provide a description of each proposed service and how the service is to be accessed by the public.

3.3. Demonstrate knowledge of the market segment by discussing the competition issues- what products and companies are likely to compete on the provision of the same or similar products/services.

4. Billing Information

4.1. Describe the billing system you intend to deploy (and where applicable details of the software/hardware),

4.2. Describe how customers will be billed indicating whether billing shall be per transaction or according to value of transaction

4.3 Provide information on the proposed tariff for each service

5. Financial Information

Provide at least three-year financial projections including Income Statements, Balance sheet and Cash Flow statement projections as per International Accounting Standards (IAS)

Note that the income statements should be derived from the product of rollout plan (part 3.1 above) and billing information (part 4 above)

6. Quality of Service Assurance

Describe how you will ensure provision of quality services and how quality services will be maintained.

7. Funds Management

Give details on the mechanisms you have put in place to protect users' funds in the eventuality of system failure, revocation/suspension of your authorisation and/or insolvency of your entity.

8. APPLICATION ACCEPTANCE SECTION - FOR OFFICIAL USE ONLY

No.	Application Requirements	Receiving Officer	Checking Officer
1	Is a covering letter on applicant letterhead included?		
2	Is the application duly completed?		
3	Is the application signed, giving applicant's name and designation?		
4	Is the authorisation applied for within the NPS Act?		
5	Is the business plan for the applied authorisation enclosed?		

Are the following documents listed on an affidavit sworn by one of the Directors?

No.	Application Requirements	Receiving Officer	Checking Officer
6	Copy of Certificate of Incorporation enclosed?		
7	Is/are original CR/12(s) provided indicating names of shareholders, their addresses, their nationalities, shares held by each, names of directors and whether directors are nominees or not or whether non shareholder directors?		
8	Copy of Certificate from CMA for listed companies		
9	Notarized Copy of Certificate of Incorporation for a foreign applicant or shareholder of an applicant		
10	Notarized Copy of Share Certificate or equivalent of a foreign		

	applicant or a shareholder of an applicant		
11	Copy of Personal Identification Number (PIN) card		
12	Copy of Valid Tax Compliance Certificate		
13	Copies of ID/passport for directors and shareholders		
14	Memorandum and Articles of Association of the Company;		

The Receiving and Checking Officers **MUST** tick **ALL** the boxes above before accepting and lodging an application.

Receiving Officer's Comments:

Receiving Officer's Name:

Signature: Date:

Checking Officer's Comments:

Checking Officer's Name:

Signature: Date:

FORM 2: APPLICATION FOR RENEWAL OF AUTHORISATION

1. AUTHORISATION APPLIED FOR

Please tick the categories of authorisation for renewal. More information on licensing under the National Payment System Act, 2011 is available on the CBK website www.centralbank.go.ke

Provision of Electronic retail transfers	
Small Money Issuer	
E Money Issuer	
Designation of Payment Instrument	

2. NAME OF APPLICANT

(In bold capital letters in the order the names appear on Registration Certificate etc)

Application for (*specify category of applicant*) _____

3. APPLICANT'S CONTACTS

3.1. Physical Address _____

Town _____ Street/Road _____

LR No _____ Floor _____ Room _____

Name of Building _____

3.2. Postal Address:

P. O. Box _____ Postal Code _____

Post Office Town _____

3.3. Phone and Fax Contact:

Tel. No. _____ Fax. No. _____

Mobile _____ Other Tel. Nos. _____

3.4. Email Address: _____

4. DECLARATION

I/We hereby certify the information we have provided in this application is true and correct to the best of my/ our knowledge. I/We also understand that it is an offence under the Penal Code to give false information in support of any application.

Name.....

Designation.....

Signature.....

Date.....

5. COMPLETED RENEWAL FORMS SHOULD BE RETURNED TO: -

Central Bank of Kenya
Haile Selassie Avenue

P. O. Box 60000

NAIROBI - 00200

Tel: 254-20-2860000

Fax: 254-20- 4242430

FOR OFFICIAL USE ONLY

The applicant MEETS/ DOES NOT MEET the Bank's requirements and is hereby
RECOMMENDED/NOT RECOMMENDED for:

..... The reasons for
not recommending the applicant are as follows:-

Name.....

Designation.....Signature.....

Application.....Date.....

ANNEX 1: SUPPORTING DOCUMENTS TO BE SUBMITTED

1. For a mobile payment service provider, a certified copy of a valid license from the Communication Commission of Kenya.
2. Evidence that the payment service provider holds the initial capital set out in Table A.
3. Details of changes in:
 - (a) 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;
 - (b) the internal control mechanisms which the applicant has established to comply with its anti-money laundering obligations as set out in the Proceeds of Crime and Anti-Money Laundering Act (Act No. 9 of 2009), the Prevention of Terrorism Act (Act No. 30 of 2012) and the relevant Regulations and guidelines;
 - (c) the applicant's structural organisation including, where applicable, its intended use of agents, cash merchants, branches and outsourcing arrangements, and its participation in a national and or international payment system;
4. Details of changes in the identity of:
 - (a) its owners;
 - (b) its directors and persons responsible for the management of the electronic retail payment service provider;
 - (c) the custodial trustees holding the cash which is represented in the applicant's payment service;
5. List of volumes and value of transactions for the last 12 months.
 1. THAT I swear that the documents listed above are authentic copies of the original documents issued by the relevant authorities to the applicant.

2. THAT what is deponed to herein above is true and within my own knowledge.

SWORN at _____ by the said _____)

(Deponent)

This _____ day of _____ in the year _____)

)

BEFORE ME)

)

)

COMMISSIONER FOR OATHS)

Drawn by:

_____ (law firm)

_____ (physical
address)

P. O. Box _____ (postal code) _____

_____ (town)

6. Funds Management

Give details on any changes in the mechanisms you have put in place to protect users' funds in the eventuality of system failure, revocation/suspension of your authorisation and/or insolvency of your entity.

APPLICATION ACCEPTANCE SECTION - FOR OFFICIAL USE ONLY

No.	Application Requirements	Receiving Officer	Checking Officer
1	Is a covering letter on applicant letterhead included?		
2	Is the application duly completed?		
3	Is the application signed, giving applicant's name and designation?		

4	Is the authorisation applied for within the NPS Act?		
---	--	--	--

The Receiving and Checking Officers **MUST** tick **ALL** the boxes above before accepting and lodging an application.

Receiving Officer's Comments:

Receiving Officer's Name:

Signature: Date:

Checking Officer's Comments:

Checking Officer's Name:

Signature: Date:

SECOND SCHEDULE

CRITERIA FOR DETERMINING PROFESSIONAL AND REPUTATIONAL SUITABILITY OF SIGNIFICANT SHAREHOLDERS, CUSTODIAL TRUSTEES, DIRECTORS AND SENIOR MANAGERS IN CONTROL OF ELECTRONIC RETAIL PAYMENT SERVICE PROVIDERS AND ELECTRONIC RETAIL PAYMENT SERVICE PROVIDERS

NOTE:

- (a) Read the declaration on Section 6 below before completing this form.
- (b) In case the space provided is inadequate, use additional paper.

1. THE INSTITUTION

- a) Name.....
- b) Type.....

2. PERSONAL INFORMATION

- a) Surname.....

Other Names.....

- b) Previous Names (if any) by which you have been known:

- c) Year and Place of birth:

- d) Nationality and how acquired:

- e) Personal Identification Number.....

- f) Identification Card number and date of issue.....

- g) Postal Address:

- h) Previous Postal Addresses (if any).....

- i) Physical Address.....

- j) Educational Qualifications.....

- k) Professional Qualifications and years obtained.....

.....

l) Name(s) of your bankers during the last 5 years.....

.....

3. EMPLOYMENT/ BUSINESS RECORD

<i>Period</i>	<i>Name of Employer/Business and address</i>	<i>Positions held and dates</i>	<i>Responsibilities</i>	<i>Reasons for leaving (where applicable)</i>

4. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES IN KENYA AND ABROAD

4.1. SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

<i>Company's Name</i>	<i>Date of incorporation</i>	<i>Amount of shareholding</i>	<i>% of shareholding</i>	<i>Past shareholding</i>		<i>Remarks</i>
				A	B	

A: Refers to date of sell, transfer, closure or surrender of shares

B: Refers to reasons for sell, transfer, closure or surrender

4.2. DIRECTORSHIP

<i>Company's Name</i>	<i>Date of incorporation</i>	<i>Executive or Non Executive</i>	<i>Position held in case of Executive</i>	<i>Past Directorship</i>	<i>Remarks</i>

				C	D

C: Refers to date of retirement / cessation

D: Refers to reasons for retirement / cessation

4.3. PROFESSIONAL ASSOCIATIONS

<i>Name of body</i>	<i>Membership No.</i>	<i>Position Held (if any)</i>	<i>Past Directorship</i>		<i>Remarks</i>
			E	F	

E: Refers to date of retirement / termination of membership

F: Refers to reasons for retirement or termination of membership

4.4. BORROWINGS

<i>Name of borrower*</i>	<i>Name of lending institution</i>	<i>Type of facility</i>	<i>Date of offer</i>	<i>Terms of offer</i>	<i>Security offered</i>	<i>Value of security</i>	<i>Current Outstan ding balance</i>	<i>Remar ks</i>

* Borrower to indicate individual/personal as well as the private Company shareholdings in excess of 5%.

5. QUESTIONNAIRE

- 5.1. Have you or any entity with which you are associated as director, shareholder or manager, ever held or applied for a license or equivalent authorisation to carry on any business activity in any country? If so, give particulars. If any such application was rejected or withdrawn after it was made or any authorisation revoked, give particulars.....
.....
- 5.2. Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction
.....
.....
- 5.3. Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by any regulatory authority or any professional body in any country? If so, give particulars
.....
.....
- 5.4. Have you, or has any entity with which you are, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body? If so, give particulars
.....
.....
- 5.5. Have you, in any country, ever been dismissed from any office or employment, been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation? If so, give particulars.
.....
.....
- 5.6. Have you been diagnosed with any mental disability?
.....
.....
- 5.7. Have you failed to satisfy debt adjudged due and payable by you on order of court, in any country, or have you made any compromise arrangement with your creditors within the last 10 years? If so, give particulars
.....
.....
- 5.8. Have you ever been declared bankrupt by a court in any country or has a Bankruptcy petition ever been served on you? If so, give particulars
.....
.....

- 5.9. Have you ever been held liable by a court, in any country, for any fraud or other misconduct? If so, give particulars.....
- 5.10. Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it? If so, give particulars.....
- 5.11. Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in any country? If so, give particulars.....
- 5.12. Indicate the names, postal and e-mail addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and financial integrity and honesty. The referees must not be related to you, and should have known you for at least five years.

	Name of Referee	Postal Address	E-mail address	Tel no.s	Position (where applicable)	Relationship with applicant.
1						
2						
3						

- 5.13. Is there any additional information which you consider relevant for the consideration of your suitability or otherwise to own share capital of an institution? The omission of material facts may represent the provision of misleading information.....

6. DECLARATION

I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading in connection with an application for a banking license or approval to own significant shares in an institution. I am also aware that provision of false information in this regard may result in rejection of this application by the Central Bank.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the supervisory authority should be aware.

I also certify that the capital to be invested in the proposed bank is not from proceeds of crime. I undertake to inform the supervisory authority of any changes material to the applications which arise while the application is under consideration.

NAME:

DATED AT:.....THIS.....DAY OF..... 20.....

WITNESSED BEFORE ME:

SIGNED (**Applicant**)

COMMISSIONER FOR OATHS/MAGISTRATE

Name

Signature:

Address:

.....
NB: This form should be accompanied by the following documents:

- i. Detailed Curriculum Vitae
- ii. Any other document as may be required by the Bank.

THIRD SCHEDULE

OVERSIGHT DATA REQUIREMENT (to be submitted monthly)

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: Payment Service Provider Details

1. Name of the Payment Service Provider.....
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

Dated the _____ 2013

HENRY ROTTICH
*Cabinet Secretary for the National
Treasury*