THE NATIONAL PAYMENT SYSTEM BILL, 2026

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THE NATIONAL PAYMENTS SYSTEM BILL, 2026

A Bill for

AN ACT of Parliament to provide for the regulation, oversight and supervision of the national payment system; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY PROVISIONS

Short title.

1. This Act may be cited as the National Payment System Act, 2026.

Interpretation.

2. In this Act unless the context otherwise requires—

"account information service" means an open finance online service for providing consolidated information on one or more payment accounts held by a payment service user with one or more other payment service providers;

"account information service provider" means a payment service provider that provides account information services;

(a) the execution of a payment transaction;

(b) the transfer of funds; or

(c) clearing or settlement;

"authorisation" means the authorisation granted under section 9;

"bank" has the meaning assigned to it in the Banking Act;

"beneficial owner" has the meaning assigned to it under the Companies Act;

"card scheme" means a card network system or payment network system that facilitates electronic payments using credit cards, debit cards and prepaid cards;

"card scheme operator" means a payment system operator that operates a card scheme;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

"Central Bank" means the Central Bank of Kenya established under Article 231 of the Constitution;

"clear" means the exchange of payment instructions;

"clearing" means the process of transmitting, reconciling and, in some cases, confirming transfer orders prior to settlement and establishment of financial positions for settlement;

"clearing system" means a multilateral system or arrangement that provides its participants with clearing services for payment instructions, securities transactions, derivatives transactions, and, in some cases, settlement services;

"designation" means the formal recognition or classification of a payment system or payment instrument by the Central Bank as systemically important, hence requiring enhanced regulatory oversight to ensure the safety, efficiency, and integrity of the national payment system, and to mitigate settlement, operational, or systemic risks and to safeguard consumer and public interests;

"electronic 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 approved by the Central Bank; and

(c) accepted as a means of payment by persons other than the issuer;

"electronic money issuer" means a payment service provider that issues electronic money under this Act;

"electronic wallet" means a digital system for storing, sending and receiving electronic money;

"electronic wallet provider" means a payment service provider that offers digital systems for storing, sending and receiving electronic money;

"finality" or "final" means irrevocable and unconditional;

"financial market infrastructure" means a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling or recording payments, securities, derivatives or other financial transactions;

"financial services" means the services provided in the insurance, pension, capital markets, co-operative societies, banking and payments sectors including such other services in the financial sector;

"financial services provider" means any person providing financial services;

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"insolvency proceedings" means any proceedings under the Insolvency Act;

"interoperability" means the technical or legal compatibility that enables a system or mechanism to be used in conjunction with other systems or mechanisms and allows participants in different systems to execute, clear and settle payments or financial transactions across systems without participating in multiple systems;

"merchant acquirer" means a payment service provider through which merchants can process their payment transactions, by allowing merchants to accept different payment instruments, thereby providing the means for facilitating payment from the consumer to the merchant;

"microfinance bank" has the meaning assigned to it in the Microfinance Act;

"money remittance" means the acceptance of monies for the purpose of transmitting them to persons resident in Kenya or another country;

"money remittance service provider" means a payment service provider licensed under this Act to engage in money remittance;

"national payment system" means the services and systems that are associated with—

(a) sending, receiving and processing of orders of payment or transfers of money in domestic or foreign currencies;

(b) issuance and management of payment instruments;

(c) payment, clearing and settlement systems;

(d) processing arrangements and procedures associated to payment, clearing and settlement systems; and

(e) payment service providers, payment system operators, participants, and any third party acting on behalf of them, as agents or by way of outsourcing agreements, whether entirely or partially operating inside Kenya;

"netting" means the offsetting of obligations between or among participants in the netting arrangement, thereby reducing the number and value of payments or deliveries needed to settle a set of transactions;

"net settlement" means the settlement of a number of obligations or transfers between or among counterparties on a net basis;

"open finance" means access, with the permission of a customer, by a third party to, and use of, the customer's data held by a payment service provider or payment system operator for the purposes of providing new and enhanced services to the customer and develop new business models;

"outsourcing" means the use of a third party (whether an affiliated person within a corporate group or a person that is external to the corporate group) to perform, on a continuing basis, activities that would otherwise be performed by the person;

"oversight" means a central bank function whereby the objectives of safety and efficiency are promoted by monitoring existing and planned payment, clearing, settlement and related arrangements, assessing them against these objectives and, where necessary, inducing change;

"participant" means a person that is bound by the rules and agreements of a payment system;

“payer” means a person making a payment instruction;

“payment gateway” means a technology infrastructure to route and facilitate processing of a payment transaction without any involvement in handling of funds;

“payment instrument” means any device or set of procedures by which a payment instruction is issued for purposes of making payments or transferring monetary value and includes cheques, bills of exchange, promissory notes, electronic money, credit transfers, direct debits, credit cards, debit cards and pre-paid cards or any other instrument through which a person may make payments;

“payment initiation service” means an open finance service that allows users to initiate online payments without directly interacting with their bank or financial services provider, enabling a payment initiation service provider to access and process payments on their behalf;

“payment initiation service provider” means a payment service provider which provides payment initiation services;

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

“payment message” means a message conveying payment instructions for the transfer of funds between a payer and payee;

“payment messaging system” means a system that is used for the transmission of payment messages by payment system operators to facilitate secure domestic and international money transfers;

“payment messaging system operator” means a payment service operator that provides payment messaging services through a payment messaging system;

“payment netting” means combining offsetting cash flow obligations between two non-defaulting parties on a given day in a given currency into a single net payable or receivable;

“payment service” means services enabling cash deposits and withdrawals, execution of payment transactions, storing funds, processing of payments, issuing or acquisition of payment instruments, cross-border payments, money remittances, issuance of electronic money and electronic money instruments, and any other services necessary for the transfer of money;

“payment service provider” means a person licensed or authorised under section 6 of this Act to offer or engage in one or more payment services under the First Schedule;

“payment switching and clearing system” means the provision of technological services to facilitate switching, routing and clearing of payment instructions;

“payment system” means a set of instruments, procedures, and rules for the transfer of funds between or among participants and includes the participants and the person operating the arrangement;

“payment system operator” means a person licensed under section 6 to operate or manage a payment system as set out in the First Schedule;

“person” includes any natural or legal entity, including a trust;

“sandbox” means a controlled regulatory environment that allows for the live testing of innovative products, solutions and services with the potential to deepen and develop the payment and settlement systems and their ancillary services to assess and manage risks;

"senior officer" means a person who manages or controls a payment service provider or payment system operator and includes the chief executive officer, chief operating officer, chief financial officer, chief technology officer or any other person determined by the Central Bank as a senior officer;

“settlement” means an act that discharges obligations in respect of funds or securities transfers between two or more parties in accordance with the terms of the underlying contract;

“settlement obligation” means an amount due to be settled as a result of the clearing of payments, securities or other financial instruments;

“settlement system” means an arrangement used to facilitate the settlement of transfers of funds or financial instruments;

“significant shareholder” means a person, including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a payment service provider, a payment system operator or a corporate entity seeking to become a payment service provider or a payment system operator;

“systemic risk” means the risk that the inability of one or more participants to perform as expected will cause other participants to be unable to meet their obligations when due;

"trust" means a legal relationship where a trustee or trustees holds and manages funds and assets on behalf of and for the benefit of a beneficiary or beneficiaries;

"trust account" includes funds held on account for the purpose of a trust;

"trustee" means an individual or a corporate trustee appointed pursuant to the declaration of trust through a trust deed, including any new trustee or corporate trustee appointed under the terms of a trust deed, subject to the approval of the Central Bank;

"unwinding" means a procedure in which some or all of the provisional transfers involving a participant that fails to settle in clearing and settlement systems, are deleted from the system during or at the end of the clearing cycle and the settlement obligations from the remaining transfers are then recalculated, to determine new obligations of the participants that are not in default; and

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"virtual asset service provider" has the meaning assigned to it under the Virtual Asset Service Providers Act, 2025.

Objects of the Act.

3. The object of this Act shall be to—

(a) promote market development in the national payment system;

(b) promote interoperability, competitiveness and openness in the national payment system;

(c) support innovation in payment systems;

(d) foster a safe, secure, effective and efficient national payment system;

(e) promote safe and stable financial market infrastructures; and

(f) promote fair, transparent and responsible market conduct, protect consumers and enhance confidence in the national payment system.

Application of the Act.

4. (1) This Act shall apply to any person who—

(a) acts as a provider in relation to sending, receiving, storing or processing of payments or the provision of another service related to payment services, through an electronic system;

(b) owns, possesses, operates, manages or controls a system or an electronic communications network that routes payment instructions between participants;

(c) engages in the issuance of electronic money against the currency of Kenya received or any other

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currency issued or authorised under the Central Bank of Kenya Act;

(d) engages in the redemption of electronic money for the currency of Kenya or any other currency issued or authorised under the Central Bank of Kenya Act;

(e) owns, possesses, operates, manages or controls a payment messaging system;

(f) owns, possesses, operates, manages or controls a payment initiation service;

(g) owns, possesses, operates, manages or controls an account information service;

(h) owns, possesses, operates, manages or controls a payment system;

(i) issues a payment instrument;

(j) owns, possesses, operates, manages or controls a card scheme;

(k) processes, stores or shares data on behalf of a payment service provider or a user of payment services;

(l) owns, possesses, operates or manages a system that facilitates cross-border payments or money remittance services;

(m) owns, possesses, operates, manages or controls a clearing or settlement system;

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(n) acts as a virtual asset service provider licensed to provide payment services under the Virtual Assets Service Provider Act, 2025; and

(o) engages in ancillary services that support the provision of a payment system or payment service.

(2) In this section—

"redemption" means the process of converting electronic money to cash, bank deposits or any other currency as authorised by the Central Bank.

PART II—LICENSING

Licensing of payment service providers.

5. (1) A person intending to carry on the business of a payment service provider in Kenya shall, before commencing such business, apply in writing to the Central Bank for a licence in the prescribed form.

(2) The Central Bank shall prescribe categories of licences that may be issued under subsection (1) as set out in the First Schedule.

(3) The Central Bank may grant a licence for one or more categories of licence and, upon written application

by the payment service provider, may revise the categories of licences granted to a person.

(4) A person who carries on the business of a payment service provider in Kenya without a licence granted under this Act commits an offence.

Licensing of payment system operators.

6. (1) A person intending to carry on business as a payment system operator in Kenya shall, before commencing such business, apply in writing to the Central Bank for a licence in the prescribed form.

(2) A payment system operated by, or jointly with, the Central Bank shall not require to be licensed under subsection (1).

(3) The Central Bank may grant a licence for one or more categories of licence and, upon written application by the payment system operator, may revise the categories of licences granted to a person.

(4) A person who carries on the business of a payment system operator in Kenya without a licence granted under this Act commits an offence.

Requirements for a licence.

7. (1) A person is eligible to apply for a licence to offer one or more payment services listed under this Act if the person is—

(a) a company limited by shares and registered under the Companies Act; or

(b) a foreign company limited by shares issued with a certificate of compliance under the Companies Act.

(2) An applicant under subsection (1) shall be required to satisfy the Central Bank as to—

(a) the financial condition of the applicant;

(b) the character of the applicant's management;

(c) the ability of the applicant to conduct the business;

(d) the history of the applicant;

(e) the suitability of the applicant's significant shareholders, directors, senior officers and trustees;

(f) the adequacy of the applicant's capital structure and viability;

(g) the source of the funds of the applicant;

(h) the adequacy of the applicant's data handling and data processing capacity;

(i) the integrity and resilience of the system intended to be operated by the applicant in carrying on business under the Act;

(j) how the public interest will be served by the granting of the licence;

(k) the consumer protection mechanisms established by the applicant when conducting business in Kenya; and

(l) the status of compliance by the applicant with relevant laws and the requirements of relevant regulatory agencies.

(3) The criteria for assessing the suitability of persons proposed to manage or control a payment service provider or payment system operator shall be as prescribed in the Second Schedule.

(4) The Cabinet Secretary may, on the recommendation of the Central Bank, by notice in the *Gazette*, amend the Second Schedule.

(5) The Central Bank shall process the application under sections 5(1) and 6(1) within the prescribed period after the submission of a complete application.

(6) The Central Bank, if not satisfied that the applicant meets the requirements under this Act, shall—

(a) refuse an application where an applicant fails to provide the required information; or

(b) decline an application for a grant of licence and, in writing, inform the applicant of the reasons for the decision within fourteen days of the decision.

(7) Where an application for a licence has been declined under subsection (6)(b), the applicant shall not resubmit another application for a period of twelve months from the date the application was declined.

(8) Where a payment service provider or payment system operator applies to vary the category of license, the Central Bank shall process the application within the prescribed period after submission of the complete application.

Grant of licence.

8. (1) Where the Central Bank has approved an application under section 5(1) or 6(1), it shall, upon payment of the prescribed fee, grant a licence in the prescribed form to the applicant.

(2) A licence granted under subsection (1) shall be valid from the date of issue until such time that it is revoked or suspended under section 12.

(3) A person granted a licence under subsection (1) shall pay annual fees in such amount and in such manner as the Central Bank may prescribe.

(4) The licence granted under subsection (1) shall not be transferred, assigned or encumbered in any way.

(5) The Central Bank shall, at least once in each year, publish in the *Gazette* and on its official website a list of persons issued with licenses under subsection (1).

Persons not required to apply for a licence.

9. (1) The following entities, if they intend to carry on the business of payment service provider or payment system operator, shall not be required to apply for a licence—

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(a) any government owned enterprise set out in the Second Schedule to the Government Owned Enterprises Act, 2025;

Cap. 488.

(b) a bank licenced under the Banking Act;

Cap. 493C.

(c) a microfinance bank licensed under the Microfinance Act; and

Cap. 108.

(d) a building society licensed under the Building Societies Act.

(2) Despite subsection (1), the entities specified in subsection (1) shall be required—

(a) to apply to the Central Bank for authorisation in the prescribed form;

(b) to comply with the provisions of this Act; and

(c) to meet the capital adequacy requirements specified in the Third Schedule.

(3) The Central Bank shall grant an authorisation to an entity specified in subsection (1) where the entity has satisfied the requirements of subsection (2)(b) and (c).

(4) Where the Central Bank declines to grant an authorisation under subsection (3), it shall notify the applicant in writing within fourteen days specifying the reasons for the refusal.

(5) An entity that has been denied an authorisation under subsection (3) may reapply for authorisation where it demonstrates that it has complied with the requirements of subsection (2)(b) and (c).

(6) The Central Bank may withdraw the authorisation granted pursuant to subsection (3) on any of the grounds specified in section 12.

(7) An entity that operates without an authorisation granted under this section commits an offence.

Minimum capital requirements.

10. (1) The Central Bank shall not grant a person with a licence to carry on the business of a payment service provider or payment system operator unless that person meets the minimum capital requirements specified in the Third Schedule.

(2) Each licence issued under this Act shall be subject to the condition that the licensee shall at all times maintain

the minimum core capital prescribed under this Act and regulations.

(3) The Cabinet Secretary may, on the recommendation of the Central Bank, by notice in the *Gazette*, amend the Third Schedule.

(4) In this section, "core capital" means—

(a) issued and fully paid-up ordinary share capital; and

(b) disclosed reserves, less goodwill and all other intangible assets.

(5) For the purposes of subsection (4)(a)—

(a) issued share capital shall be regarded as paid up only where—

(i) the consideration has been received in cash; or

(ii) the consideration has been received in other acceptable consideration approved by the Central Bank; and

(b) the following shall not constitute paid-up capital—

(i) unpaid, partly paid, or contingent capital commitments;

(ii) shareholder loans or advances;

(iii) capital raised through borrowed funds, whether directly or indirectly; or

(iv) revaluation reserves or internally generated intangible assets.

(6) Where a payment service provider or payment system operator intends, or has been licensed, to carry on business under more than one licence category, the payment service provider or payment system operator shall hold the amount of minimum capital applicable to the highest-capital category and fifty per cent of the prescribed minimum capital applicable to the additional license category.

(7) The Central Bank may, through guidelines, prescribe requirements for the maintenance of capital.

(8) Any person who fails to comply with the provisions of this section shall be liable to an administrative enforcement action under this Act.

Vetting of directors, significant shareholders, senior officers and trustees.

11. (1) A person shall not hold office as a director, significant shareholder, senior officer or trustee of a payment service provider or payment system operator unless that person has been certified by the Central Bank as a fit and proper person.

(2) The Central Bank shall apply the criteria set out in the Second Schedule to determine whether a person is a fit and proper person under subsection (1).

(3) Where the Central Bank determines that a person who already is a director or a senior officer of a payment service provider or payment system operator including a person appointed as trustee by a payment service provider, is not a fit and proper person, it shall notify, in writing, the payment service provider or payment system operator and upon the notification, the person shall cease to hold office.

(4) Where the Central Bank determines that a significant shareholder is not a fit and proper person, the shareholder shall—

(a) cease to exercise all voting rights immediately upon the payment service provider or payment system operator being notified by the Central Bank in writing that the shareholder is not a fit and proper person; and

(b) reduce the holding of shares to less than ten per cent of the share capital of the payment service provider or payment system operator within such period as the Central Bank may determine.

(5) The Central Bank may vet any shareholder who is not a significant shareholder if—

(a) the Central Bank believes or reasonably suspects that the shareholder has reduced the shareholder's direct or indirect shareholding in the payment service provider or payment system operator to less than ten per cent in order to avoid being certified under subsection (l); or

(b) the shareholder exercises or has the capacity to exercise direct or indirect control of the payment service provider or payment system operator through the shareholder's associates.

(6) The Central Bank shall vet any shareholder who is not a significant shareholder in accordance with the criteria set out in the Second Schedule.

(7) A person who is a director, significant shareholder, senior officer or trustee of a payment service provider or payment system operator shall cease to hold office and shall not thereafter be eligible to hold office as a director, significant shareholder, senior officer or trustee in any payment service provider or payment system operator if that person—

(a) is adjudged bankrupt by a court of competent jurisdiction;

(b) is convicted of an offence involving dishonesty or fraud;

(c) is disqualified from holding office under the provisions of this section; or

(d) is removed from office under the provisions of section 21(3)(b).

(8) For the purposes of subsection (5)(b) "control" means—

(a) the ability to influence the management of—

(i) a payment service provider or payment system operator;

(ii) a corporate shareholder of a payment service provider or payment system operator; or

(iii) a person applying to be licensed as a payment service provider or payment system operator; or

(b) the ability to influence the decisions of—

(i) the shareholders of a payment service provider or payment system operator; or

(ii) the shareholders of a person applying to be licensed as a payment service provider or payment system operator;

(c) the ability to exercise, either directly or indirectly, at least ten per cent of the voting rights in the payment service provider or payment system operator.

Suspension and revocation of licences.

12. (1) The Central Bank may suspend or revoke a licence granted under this Act if the payment service provider or payment system operator—

(a) fails to commence business within twelve months from the date it is issued with the licence;

(b) fails to meet any conditions imposed on the licence;

(c) fails to pay any annual fees payable under this Act;

(d) fails to maintain the minimum capital requirements required under this Act;

(e) fails to meet the infrastructure requirements or any other requirements specified by the Central Bank;

(f) conducts its affairs in a manner that poses a risk to the national payment system;

(g) conducts business in a manner that poses a risk to the interests of the public;

(h) ceases to carry on the business for which the licence was granted;

(i) undertakes prohibited activities;

(j) without the approval of the Central Bank, amalgamates with another person;

(k) without the approval of the Central Bank, transfers, assigns or encumbers its licence to another person;

(l) fails to manage its agents in a manner consistent with this Act;

(m) fails to ensure that trust accounts are managed in a manner consistent with this Act or any other relevant written law;

(n) goes into liquidation or an order is issued for its winding up;

(o) fails to take corrective action when required to do so by the Central Bank; or

(p) fails to comply with any provision of this Act.

(2) The Central Bank shall, before suspending or revoking a licence granted under this Act, give an opportunity to the payment service provider or payment system operator to make representations on why the licence should not be suspended or revoked.

(3) The suspension of a licence shall be for a period not exceeding six months for reasons to be specified in writing by the Central Bank and which may be extended for a further period not exceeding six months.

(4) The Central Bank shall, upon fulfilment by the payment service provider or payment system operator of any condition imposed, lift the suspension of the licence.

(5) If the payment service provider or payment system operator fails to fulfil any conditions imposed by the Central Bank under subsection (4), the Central Bank may, at the expiry of the period during which the licence was suspended, revoke the license.

Central Bank to take control of assets on suspension or revocation of licence.

13. The Central Bank shall, upon suspending or revoking a licence, inform the payment service provider or payment system operator in writing and take control of the assets of the payment service provider or payment system operator for purposes of safeguarding of monies belonging to customers, oversee and administer the settlement of monies belonging to customers before the appointment of a statutory manager under section 15:

Provided that the Central Bank shall only manage and operate the payment service provider or payment system operator for a period not exceeding ninety days.

Notice of suspension or revocation of licence.

14. Where the Central Bank has suspended or revoked a licence of a payment service provider or payment system operator, the Central Bank shall publish a notice to that effect in the *Gazette* and a newspaper with a nationwide circulation.

Appointment of statutory manager upon suspension or revocation.

15. Pursuant to Part V, on or before the expiry of the period specified in section 13, the Central Bank shall appoint a statutory manager to manage the affairs of the payment service provider or payment system operator whose licence has been suspended or revoked.

PART III—DESIGNATION OF PAYMENT SYSTEMS OR PAYMENT INSTRUMENTS

Designation, establishment, ownership and operation of payment systems, payment instruments and market infrastructure.

16. (1) The Central Bank may, by notice in the *Gazette*, designate a payment system or a payment instrument for the purposes of this Act if in its assessment—

(a) the payment system or payment instrument poses systemic risk;

(b) the designation is necessary to protect the interests of the public; or

(c) such designation is in the interest of the integrity of the payment system.

(2) The designation made under subsection (1) shall impose such conditions on an operator of the payment system or issuer of the payment instrument to mitigate the risk.

(3) The Central Bank may, by notice in the *Gazette*, withdraw the designation or vary the conditions attached to the designation.

(4) A person who fails to comply with any condition imposed by the Central Bank under subsection (2) commits an offence.

(5) The Central Bank may establish, own or operate a financial market infrastructure relating to its statutory mandate.

PART IV—SUPERVISION AND OVERSIGHT

Delegation of powers.

17. (1) In the exercise of its powers or performance of its functions under this Act, the Central Bank may, in writing and on such conditions as it deems necessary—

(a) delegate to any of its officers the exercise of any of its powers under this Act; or

(b) authorise any such officer to perform any of its functions under this Act.

(2) Any delegation of a power or the performance of a function under subsection (1)—

(a) shall not prevent the Central Bank from exercising that power or performing that function; and

(b) may be withdrawn at any time by notice in writing by the Central Bank.

Directives by the Central Bank.

18. (1) The Central Bank may issue to any person who is subject to this Act a directive requiring the person to take any action specified in the directive if—

(a) the Central Bank establishes that the person is engaging in or is about to engage in an act, omission or course of conduct, with respect to the national payment system, that results or is likely to result in instability or systemic risk; or

(b) the person—

(i) has contravened or is likely to contravene this Act; or

(ii) is involved in or is likely to be involved in the commission of an offence under this Act; or

(2) A payment service provider or a payment system operator who fails, refuses or neglects to comply with a directive issued under subsection (1) shall, in addition to any other penalty under this Act, be liable to an administrative enforcement action under this Act.

Compliance with Cap. 59A.
Cap. 59A.

19. (1) Any person that is subject to this Act shall comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act relating to anti-money laundering, combating the financing of terrorism and countering proliferation financing.

(2) For the purposes of subsection (1), the Central Bank may—

(a) certify whether proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a payment service provider or payment system operator are fit and proper persons for the purposes of this Act;

(b) conduct onsite inspection of payment service providers and payment system operators;

(c) conduct offsite surveillance of payment service providers and payment system operators;

(d) in any case where a payment service provider or payment system operator is part of a group, undertake consolidated supervision of the payment service provider or payment system operator and the group;

(e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act;

(f) impose on payment service providers or payment system operators monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by the payment service providers or payment system operators;

(g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism or countering proliferation financing purposes; or

(h) co-operate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes.

(3) Where a payment service provider or a payment system operator, or a senior officer, employee or agent of the payment service provider or payment system operator, violates the provisions of the Proceeds of Crime and Anti-Money Laundering Act in relation to any activity licensed under this Act, the payment service provider, payment system operator or senior officer, employee or agent shall be liable, in addition to any other penalty that may be imposed under any other written law—

(a) in case of a legal person, to a penalty not exceeding twenty million shillings; and

(b) in the case of a natural person, to a penalty not exceeding one million shillings.

Power to inspect.

20. (1) The Central Bank shall appoint from among its officers and staff persons to be authorised officers for the purposes of this Act and in that regard, shall issue each authorised officer with a written authorisation.

(2) A person authorised by the Central Bank under subsection (1) shall have power to—

(a) with or without notice, enter and inspect the premises of a payment service provider or a payment system operator and its agents for the purposes of ensuring compliance with this Act;

(b) conduct offsite surveillance of payment service providers and payment system operators; and

(c) in any case where a payment service provider or payment system operator is part of a group, undertake consolidated supervision of the payment service provider or payment system operator and the group.

(3) During an inspection under subsection (2), the authorised officer may—

(a) inspect and retain any book, account, other documents, equipment, apparatus, machinery or any other item or record of the payment service provider or payment system operator for purposes of such examination or inspection; and

(b) interview any staff of the payment service provider or payment system operator.

(4) An authorised officer who seeks to exercise any power or perform any function under this section in relation to any person shall produce his or her written authorisation issued under subsection (1) for examination or inspection when requested by the person.

(5) A person in charge or in control of the premises entered by an authorised officer under subsection (2)(a) shall provide such reasonable facilities and assistance as the authorised officer may require during the inspection, including—

(a) providing access to any computer on the premises and rendering assistance to the authorised officer to search any data contained in such computer; and

(b) on request by the authorised officer, provide any data contained in any computer on the premises to the authorised officer:

Provided that the exercise of powers under this subsection shall be limited to data required for the purposes of ascertaining compliance with this Act.

(6) An authorised officer executing the powers conferred under subsections (3) and (5) may be accompanied by a police officer.

(7) A person may not, without lawful or reasonable excuse—

(a) refuse to permit an authorized officer to enter the premises or to conduct an examination or inspection in accordance with this section;

(b) fail or refuse to produce any book, record, statement or other document which the authorised officer requires to be produced to him or her for examination or inspection;

(c) fail or refuse to explain any entry in a book, record, statement or other document which the authorised officer requires him or her to explain;

(d) fail or refuse to answer any question which the authorised officer lawfully directs at such person in exercising, performing or executing the authorised officer's powers, duties or functions under this section;

(e) fail or refuse to provide the authorised officer with reasonable facilities and assistance required by the authorised officer;

(f) knowingly furnish false or misleading information to the authorised officer;

(g) remove or tamper with any book, record, statement or other document seized by the authorised officer; or

(h) hinder, obstruct or interfere with an authorised officer in exercising, performing or executing his or her powers, duties or functions under this section.

(8) A person who contravenes or fails to comply with subsection (7) commits an offence.

Intervention in management of payment service providers and payment system operators.

21. (1) The Central Bank may intervene in the management of a payment service provider or a payment system operator where—

(a) the payment service provider or payment system operator fails to meet its obligations to customers;

(b) the payment service provider or payment system operator fails to meet its financial obligations to other payment service providers, payment system operators, clearing and settlement system or the Central Bank;

(c) the payment service provider or payment system operator fails to comply with a directive issued by the Central Bank under section 18; or

(d) the payment service provider or payment system operator fails to comply with the provisions of this Act.

(2) The Central Bank may, where necessary, intervene in the management of a payment service provider or payment system operator during a crisis to safeguard financial stability, protect customers, and preserve public confidence in the financial system.

(3) In any case to which subsection (1) or (2) applies, the Central Bank may—

(a) appoint a statutory manager in accordance with section 23;

(b) direct the removal any officer or employee of a payment service provider or payment system operator who, in the opinion of the Central Bank, has caused or contributed to any contravention of this Act or to any deterioration in the stability of the payment service provider or payment system operator;

(c) appoint a competent and suitably qualified person to the board of directors to hold office as a director and who shall not be removed from office without the approval of the Central Bank;

(d) by notice in writing, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the payment service provider or payment system operator in favour of any officer or employee or any other person;

(e) restrict the payment service provider or payment system operator from engaging in new payment business; or

(f) prohibit the payment service provider or payment system operator from engaging any new agents or direct the payment service provider or payment system operator to terminate any agency arrangement.

(4) This section shall not apply to persons authorised under section 10(1).

PART V—STATUTORY MANAGEMENT

Application of Part.

22. This Part shall not apply to persons authorised under section 9(1).

Appointment of statutory manager.

23. (1) A statutory manager appointed under section 15 by the Central Bank, shall be appointed for a term not exceeding twelve months.

(2) The term of the statutory manager may be extended for a further term not exceeding twelve months with the approval of the High Court.

Functions of statutory manager.

24. The functions of a statutory manager include—

(a) taking control of the assets of the payment service provider or payment system operator for purposes of safeguarding monies belonging to customers;

(b) overseeing and administering the settlement of monies belonging to customers; and

(c) performing any other function specified in the instrument of appointment.

Powers of statutory manager.

25. (1) The statutory manager appointed under section 15 shall not be required to, notwithstanding any written law, contract or anything in the constituent documents of the payment service provider or payment system operator, notify or obtain the approval of shareholders or creditors of the payment service provider or payment system operator in a general meeting or otherwise when undertaking a transaction under this Part.

(2) For the purposes of discharging his or her responsibilities, the statutory manager may suspend payments by the payment service provider or payment system operator to customers and other creditors and the suspension shall—

(a) apply equally and without discrimination to all classes of creditors;

(b) suspend the running of time for the purposes of any law of limitation in respect of any claim by any customer or creditor of the payment service provider or payment system operator; and

(c) be lifted upon the termination of the statutory manager's appointment, whereupon the rights and obligations of the payment service provider or payment system operator, its customers and creditors shall, save to the extent provided in paragraph (b), be the same as if there had been no suspension of payments under this subsection.

(3) A statutory manager who has assumed control of a payment service provider or payment system operator shall have the power—

(a) to enter the premises of the payment service provider or payment system operator and take possession and control of the assets and require any person in the premises to account for and deliver up to the statutory manager the possession and control of the assets for purposes of safeguarding monies belonging to customers;

(b) to sell or otherwise dispose of the assets and business undertaking of the payment service provider or payment system operator by private treaty or public auction or in such other manner and on such terms and conditions as the statutory manager deems appropriate;

(c) to sell or otherwise dispose of any asset that is subject to an agreement creating a security interest to any person who agrees to assume the obligation secured by the security interest;

(d) oversee and administer the settlement of monies belonging to customers;

(e) to sue for, defend, compromise and settle, in the name of the payment service provider or payment system operator, any claim made by or against it;

(f) in the name of the payment service provider or payment system operator, to do all acts and execute all receipts and other documents;

(g) to recover out of the assets of the payment service provider or payment system operator all the costs, charges and expenses, including remuneration, properly incurred by the statutory manager in the exercise of powers, in priority to all other claims; and

(h) to do all such other things as may be necessary or incidental to the exercise of the rights, powers, privileges and immunities of the statutory manager.

(5) A statutory manager who has assumed control of a payment service provider or payment system operator shall not, by reason of the exercise of any powers under this section, be held to have assumed or incurred any obligation or liability of the payment service provider or payment system operator for the statutory manager's own account.

(6) On the appointment of a statutory manager, all the powers of the directors, significant shareholders, senior officers or trustees of a payment service provider or payment system operator cease, except as sanctioned by the statutory manager.

(7) No injunction may be brought, or any other action or civil proceeding, may be commenced or continued against the payment service provider or payment service operator under statutory management without the leave of the Court.

PART VI—INFORMATION AND REPORTING

Collection of information by Central Bank.

26. (1) The Central Bank may collect such data and other information as may be necessary to enable it to maintain supervision and oversight of the affairs of payment service providers and payment system operators.

(2) For the purposes of subsection (1), the Central Bank may require payment service providers or payment system operators to submit statistical and other returns on a periodic basis in addition to any other returns required under this Act.

(3) Where a payment service provider or payment system operator is required to furnish information, it shall furnish the information within the period specified in the direction or within such longer period as the Central Bank may allow.

(4) A payment service provider or payment system operator that fails or refuses to comply with the provisions of this section, or provides false or misleading information, shall be liable to administrative enforcement action under this Act.

(5) In addition to any administrative enforcement action under subsection (4), the Central Bank may impose

restrictions on the operations of the payment service provider or payment system operator.

PART VII—MARKET CONDUCT AND OPERATIONS

Market conduct.

27. (1) Without prejudice to any other provision of this Act, each payment service provider or payment system operator, in carrying on business, whether directly or indirectly, shall—

(a) provide clear, accurate, timely and accessible information on its products and services, including the applicable terms and conditions, fees, charges, risks and limitations;

(b) design, promote and provide products and services having regard to the needs and circumstances of its intended users;

(c) take measures to safeguard customer funds;

(d) establish accessible and efficient mechanisms for handling and resolving complaints;

(e) protect customer data and information from loss, unauthorised use or unauthorised disclosure.

(2) A payment service provider or payment system operator that contravenes subsection (1) shall be liable to administrative enforcement action under this Act.

Interoperability.

28. (1) Each payment service provider or payment system operator shall use systems that are interoperable with the systems used by other payment service providers and payment system operators, and their agents.

(2) A payment service provider or payment system operator may, with the prior approval of the Central Bank, enter into interoperability arrangements with other payment service providers or payment system operators, and their agents.

(3) The Central Bank may, by notice to the payment service provider or payment system operator, require a payment service provider or payment system operator to enter into an interoperability arrangement with other payment service providers or payment system operators, and their agents.

(4) A payment service provider or payment system operator that fails to comply with provisions of subsections (1), (2) or (3) shall be liable to administrative enforcement action under this Act.

Open finance.

29. (1) Each payment service provider or payment system operator shall use systems that are capable of securely sharing customer data with third parties for open finance purposes.

(2) The Central Bank may require a payment service provider or payment system operator to implement a mechanism to securely share customer data with third parties after obtaining the customer's consent.

(3) The Central Bank shall make regulations to give effect to this section.

Outsourcing.

30. (1) Where a payment service provider or payment system operator intends to outsource any of its operation functions to a third party, it shall seek the prior written approval of the Central Bank.

(2) A payment service provider or payment system operator shall not outsource any of its operation functions in such a way as to impair—

(a) the quality of internal control of the payments service provider or payment system operator; and

(b) the ability of the Central Bank to monitor compliance of the payment service provider or payment system operator with this Act.

(3) In this section, "operational function" means a function where any defect or failure in its performance would impair—

(a) the continuing compliance of the payment service provider with the requirements of its licence or authorisation under this Act;

(b) its financial performance; or

(c) the soundness or the continuity of its payment services.

Agents.

31. (1) A payment service provider or payment system operator may appoint agents to provide services on behalf of the payment service provider or payment system operator.

(2) A payment service provider or payment system operator shall be liable for the acts and omissions of its agents when providing services on behalf of the payment service provider or payment system operator.

(3) The Central Bank shall—

(a) specify the services that may be provided by an agent on behalf of payment service provider or payment system operator; and

(b) prescribe, in regulations, the manner of the appointment of agents.

Prohibited activities.

32. (1) A payment service provider or payment system operator shall not—

(a) allow its system or service to be used for the promotion of or undertaking of unlawful activities; or

(b) engage in any other activity other than an activity for which it is licensed to undertake.

(2) A payment service provider or payment system operator that contravenes the provisions of subsection (1) is liable to an administrative enforcement action by the Central Bank.

Material disclosure.

33. (1) A payment service provider or payment system operator shall notify the Central Bank about any material event that significantly affects its business and operations immediately after the material event occurs.

(2) A payment service provider or a payment system operator that fails or refuses to comply with subsection (1), or gives false information relating to the material event, shall be liable to administrative enforcement action by the Central Bank.

(3) In this section, "material event" includes—

(a) loss, unauthorized access to or misappropriation of customer funds, or reconciliation variances exceeding thresholds prescribed by the Bank;

(b) a prolonged or systemic service outage affecting payment processing or settlement;

(c) failure or material degradation of a critical third-party service provider;

(d) any litigation or dispute resolution being undertaken by the payment service provider or payment service operator

(e) insolvency, a material liquidity shortfall or credible threat to solvency;

(f) an enforcement action, criminal investigation or sanction that affects the entity;

(g) a material data breach or cyber-security incident; and

(h) any intended change in ownership and actual change or control that is material to the licence.

Accounts.

34. (1) The financial year of each payment service provider and payment system operator shall be the period of twelve months ending on the 31st December in each year.

(2) The Central Bank may, at any time, issue directions to a payment service provider or payment system operator requiring it to maintain such books, records or information as the Central Bank may consider to be necessary.

(3) Each payment service provider and payment system operator shall, not later than three months after the end of each financial year, submit to the Central Bank the audited financial statements in respect of its activities in Kenya for the year in which the statements relate.

(4) The financial statements submitted under subsection (3) shall be audited by an auditor approved by the Central Bank.

System audits by the Central Bank.

35. (1) The Central Bank may, at any time, issue directions to a payment service provider or payment system operator requiring it to carry out system audits and provide the records and information as the Central Bank may consider to be necessary.

(2) Each payment service provider and payment system operator shall, not later than three months after the end of each financial year, submit to the Central Bank the system audit reports in respect of its activities in Kenya for the year in which the reports relate.

(3) The system audit reports submitted under subsection (2) shall be prepared by an auditor approved by the Central Bank.

(4) In this section—

"financial year" means the period of twelve months ending on the 31st December in each year; and

"system audit" means a formal, independent evaluation of a payment service provider's or payment system operator's operational and management systems to ensure they comply with the requirements of this Act, the directions of the Central Bank, to safeguard assets, maintain data integrity and operate efficiently and identifies risks, weaknesses, and non-compliance, and makes recommendations for improvement.

PART VIII—TRUST ARRANGEMENTS

Funds to be held in a trust account.

36. (1) Each issuer of electronic money and provider of electronic wallets shall ensure that all monies received from customers are held in a trust account.

Cap. 488.
Cap. 493C.

(2) The monies held in a trust account shall be held in a bank licensed under the Banking Act or a microfinance bank licensed under the Microfinance Act.

(3) The limits of monies held in a trust account in a bank or microfinance bank by an issuer of electronic money and provider of electronic wallets shall be as specified in the Fourth Schedule.

(4) The monies held in a trust account by an issuer of electronic money and provider of electronic wallets may be invested by the trustees of the issuer of electronic money or provider of electronic wallets only in Kenya

Government securities or held in interest bearing trust accounts in a bank or microfinance bank.

(5) An issuer of electronic money and provider of electronic wallets shall ensure that the balances in the trust account shall not at any time be less than what is owed to the customers.

(6) An issuer of electronic money and provider of electronic wallets shall, in the prescribed manner, submit in electronic form to the bank holding the trust account, the customer information indicating—

(a) the number of beneficiaries;

(b) the aggregate amount attributable to the beneficiaries; and

(c) any other information as the Central Bank may prescribe.

(7) Each payment service provider shall operate trust accounts in accordance with this section and such requirements may be prescribed in regulations.

Commingling of funds.

37. (1) A payment service provider shall not transfer the funds in a trust account pursuant to section 36 to the payment service provider's own account used for normal business operations or to such other account other than a trust account.

(2) The balance held in a trust account maintained pursuant to section 36 shall not be utilised for any purpose other than—

(a) for discharging the liabilities arising from the usage of the payment service by customers;

(b) for repaying to the customers; or

(c) for such other purpose as may be specified by the Central Bank by notice in the *Gazette*.

(3) A payment service provider shall not commingle the funds in the trust account maintained pursuant to section 36 with the funds belonging to any other person other than customers on whose behalf the funds are held.

Protection of trust account balances.

38. The monies held in a trust account maintained pursuant to section 36 shall not be attached, assigned or transferred for the purposes of satisfying any debt or claim.

Monies in trust account in insolvency.

39. The monies held in a trust account maintained pursuant to section 36 shall not be utilised for the settlement of the liabilities in insolvency of the payment service provider.

Income from trust account.

40. (1) Income generated from a trust account maintained pursuant to section 36 may, subject to the approval of the Central Bank, be used for public charitable purposes or such other purpose as may be prescribed under this Act.

(2) In this section, "public charitable purposes" means activities carried out for purpose of the relief of poverty, the advancement of education, religion or human rights and fundamental freedoms, or the protection of the environment or any other purpose beneficial to the general public.

PART IX—CLEARING AND SETTLEMENT

System rules.

41. (1) Each payment system operator shall, with the approval of the Central Bank, develop system rules prescribing the rights and obligations of participants.

(2) Each participant in a payment system shall be bound by the rules of the system.

(3) A system operator shall not amend the system rules developed under subsection (1) without the written approval of the Central Bank.

Finality and irrevocability of payments.

42. (1) Notwithstanding any written law, and subject to subsection (2), a payment instruction or settlement instruction shall be final and irrevocable upon settlement as determined by the rules of the payment system.

(2) Without prejudice to subsection (1), payment instructions settled by a payment system participant due to fraud, error or mistake may be recovered in a manner as may be prescribed under this Act.

Enforcement of netting arrangements.

43. (1) A netting provision shall be valid, enforceable and binding on a third party, including a liquidator, and without prior notice or order of a court of competent jurisdiction, in accordance with the terms of the netting provision, notwithstanding—

(a) the commencement of insolvency proceedings in respect of the payment service provider or the payment system operator; and

(b) any assignment, encumbrance, attachment or other disposition, whether arising from a court order or not, in respect of the rights which are subject to the netting provision.

(2) Where a settlement system participant is placed in liquidation, enters administration or is placed under statutory management, any provision contained in an agreement or rules to which this section applies shall be binding on the liquidator, administrator or statutory manager in respect of a payment or settlement obligation—

(a) that was determined through netting before the liquidation order or administration order, or the appointment of the statutory manager, was made, but is to be discharged on or after the date on which the order or appointment was made; or

(b) the discharge of which was overdue on that date.

(3) An administrator appointed under the Insolvency Act in respect of a Central Bank settlement system participant shall immediately give written notice to the Central Bank to withdraw a participant from the Central Bank settlement system, and the participant shall cease to be entitled to participate in that system, other than for purposes of—

(a) discharging a payment or settlement obligation in accordance with the settlement system rules;

(b) any clearing, netting or settlement agreement to which the participant was a party; or

(c) any netting rules applicable to the participant in relation to those agreements.

(4) Where the High Court makes a liquidation order in respect of an application for the liquidation of a settlement system participant, the person that applied for the order shall, as soon as practicable after the order is made, lodge with the Central Bank a copy of the application and the order.

(5) When a copy of a liquidation order relating to a settlement system participant has been lodged with the Central Bank in accordance with subsection (4), the participant shall cease to be entitled to clear payments or participate in a settlement system, other than for purposes of discharging a payment or settlement obligation in accordance with—

(a) the rules of the settlement system;

(b) a clearing, netting or settlement agreement to which the participant is a party; or

(c) any netting rules applicable to the participant in relation to such an agreement.

(6) When a settlement system participant is placed in liquidation or enters administration, or a statutory manager is appointed in respect of the participant, the liquidator, administrator or statutory manager shall be bound by any payment or settlement that is final and irrevocable as provided by section 42.

(7) For the purpose of this section, "netting" includes payment netting and net close-out arrangements.

Protection against unwinding of net settlement instructions.

44. Netting agreements, settlement system rules, or clearing, netting and settlement agreements to which a payment service provider or payment system operator is a party shall include measures to ensure non-unwinding of net settlement instructions.

Collateral.

45. (1) The rules of a settlement system shall require participants of the settlement system to provide collateral to secure the settlement of obligations within the system.

(2) The payment system operator shall realise the collateral without the need for a court order in accordance with the system rules.

Protection of collateral.

46. Notwithstanding any other written law, collateral issued by a participant to secure the settlement of obligations shall not be subject to attachment for any debt or in any proceedings or considered as an asset of the participant in insolvency until and unless all obligations of the participant associated with such collateral have been settled.

PART X—TRANSPARENCY AND TRACEABILITY OF PAYMENTS

Interpretation of Part.

47. In this Part—

"beneficiary" means the person designated to receive a payment transaction that is subject to this Act;

"beneficiary payment service provider" means a payment service provider that processes a payment on behalf of a beneficiary;

"cross-border payment" means a payment transaction that is subject to this Act into Kenya or out of Kenya;

"intermediary payment service provider" means a payment service provider that processes a payment between a beneficiary and an originator; and

"originator" means a person that initiates a payment transaction that is subject to this Act.

Transparency and traceability.

48. (1) Each payment service provider shall ensure that a payment processed through a payment system contains complete and accurate information necessary to identify the originator and beneficiary and to enable the payment to be traced.

(2) A payment service provider initiating a payment shall ensure that the payment is accompanied by the following information—

(a) the name of the originator;

(b) the account number or unique transaction reference number of the originator;

(c) the name of the beneficiary; and

(d) the account number or unique transaction reference number of the beneficiary.

(3) Where the originator or beneficiary does not use an account in respect of a payment, the payment service provider shall assign the payment a unique transaction

reference number or other identifier that permits the transaction to be traced.

(4) A payment service provider shall ensure that the information referred to in subsections (2) and (3) remains with the payment throughout the payment chain.

(5) A payment service provider shall not execute a payment where the information required under this section is incomplete or unavailable, except in circumstances prescribed by the Central Bank.

Cross-border payments.

49. (1) A payment service provider initiating a cross-border payment shall obtain and transmit the information required under section 47(2) and (3).

(2) The Cabinet Secretary shall prescribe the threshold for cross-border payments in respect of which the payment service provider shall be required to provide the following information in respect of the transaction and such information shall be required to accompany the payment—

(a) the name of the originator;

(b) the account number or unique transaction reference number;

(c) the address, national identification number, customer identification number or date and place of birth of the originator, as applicable; and

(d) such other information as may be prescribed.

(3) A payment service provider receiving a cross-border payment shall ensure that the payment contains sufficient information on the beneficiary, including—

(a) the name of the beneficiary; and

(b) the account number of the beneficiary or unique transaction reference number assigned to the beneficiary.

(4) The Cabinet Secretary may prescribe different thresholds and information to accompany different categories of cross-border payments, having regard to the nature, value and risk of the payments.

Obligations of intermediary payment service providers.

50. (1) Each intermediary payment service provider shall ensure that the information accompanying a payment under sections 47 and 48 is retained with the payment or value transfer.

(2) An intermediary payment service provider shall take reasonable measures to identify any payment that lacks the information required under sections 47 and 48.

(3) Each intermediary payment service provider shall establish risk-based procedures for determining whether to reject or suspend a payment or value transfer that lacks the information required under sections 47 and 48.

(4) Where technical limitations prevent the information required under sections 47 and 48 from accompanying a payment, the intermediary payment service provider shall retain the information received from the preceding payment service provider and make it available to the beneficiary payment service provider or competent authority, where required under this Act or any other relevant written law.

Obligations of beneficiary payment service providers.

51. (1) A beneficiary payment service provider shall take reasonable measures to identify payments that lack the required originator or beneficiary information.

(2) Where a payment lacks the information required under sections 47 and 48, or information is incomplete, the beneficiary payment service provider shall apply risk-based procedures to determine whether to execute, reject or suspend the payment, or seek additional information in respect of the payment before taking any other action.

(3) Each beneficiary payment service provider shall maintain appropriate systems and controls to mitigate the risk of misdirected payments and payment fraud.

Availability and retention of information.

52. (1) Each payment service provider shall maintain records of the information under sections 47 and 48 for the period prescribed under this Act or any other relevant written law.

(2) Each payment service provider shall ensure that the information referred to in subsection (1) is retrievable and can be made available without delay to—

(a) the Central Bank;

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(b) the Financial Reporting Centre established under section 21 of the Proceeds of Crime and Anti-Money Laundering Act;

(c) a law enforcement agency; or

(d) any other competent authority authorised under a relevant written law.

(3) Each payment service provider shall maintain systems and controls capable of tracing a payment through the payment chain.

Rules and standards on payment transparency.

53. The Cabinet Secretary may make rules or standards prescribing—

(a) the information required to accompany different categories of payments;

(b) thresholds for payments;

(c) the format and manner in which payment information shall be transmitted;

(d) requirements applicable to intermediary and beneficiary payment service providers;

(e) procedures for dealing with incomplete information;

(f) measures for preventing and addressing misdirected payments and payment fraud;

(g) record retention and retrieval requirements;

(h) technical and messaging standards for payment information; and

(i) any other matter necessary for giving effect to this Part.

PART XI—CO-OPERATION AND COLLABORATION

Co-operation with other agencies.

54. (1) The Central Bank may enter into arrangements with any agencies for the purposes of effective implementation of this Act.

(2) Pursuant to any arrangements made under subsection (1), the Central Bank may share information with such agencies and receive information from such agencies.

Sharing of information.

55. The Central Bank may disclose any information to any monetary authority or financial regulatory authority, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority, fiscal or tax agency or fraud investigations agency:

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a written reciprocal arrangement between the Government or the Central Bank and the government of another jurisdiction or that other monetary authority or financial regulatory authority, fiscal or tax agency.

Agreement with foreign entities.

56. The Central Bank may enter into agreements with any foreign entity, body or organisation, private or public, for the purpose of promoting connectivity, enforceability of contracts, regulatory compliance and facilitation of international collaboration and co-operation.

PART XII—CHANGES IN OWNERSHIP

Approval of mergers and acquisitions.

57. (1) Subject to the provisions of the Competition Act, no merger or acquisition of a payment service provider or payment system operator shall be done without the prior written approval of the Central Bank.

(2) The procedure for approval shall be provided for in regulations made by the Cabinet Secretary.

Significant change of ownership.

58. (1) A significant change of ownership of a licensed payment service provider or a licensed payment system operator shall be subject to the prior written approval of the Central Bank.

(2) The new significant shareholders shall undergo the same vetting as the existing shareholders.

(3) For the purposes of this section, a significant change of ownership shall be deemed to happen where an incoming shareholder is intended to hold, whether directly or indirectly, at least ten per cent of the shareholding in a payment service provider or payment system operator.

PART XIII—INSOLVENCY

Application of Part.

59. This Part shall not apply to entities operating by virtue of section 9 of this Act.

Voluntary liquidation.

60. (1) Subject to the Insolvency Act, a payment service provider or a payment system operator may, with the written approval of the Central Bank, voluntarily liquidate itself.

(2) An application for the Central Bank's approval for the purposes of subsection (1) shall be in writing.

(3) The Central Bank may, upon receipt of an application under subsection (2), approve the application if satisfied as to the solvency of the payment service provider or payment system operator.

(4) Where the Central Bank approves an application for liquidation by a payment service provider or payment system operator, the payment service provider or payment system operator shall, on the date the application is approved, cease all its operations except such activities as are incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

Cap. 53.

(5) A payment service provider holding customer funds shall discharge its liability to its customers as soon as practicable after the commencement of the liquidation and shall then rank all other creditors in accordance with the Insolvency Act.

Liquidation by the court.

61. If an application for the liquidation of a payment service provider or payment system operator is presented by a person other than the Central Bank, the person applying for liquidation shall serve a copy of the application to the Central Bank, and the Central Bank shall be entitled to be a party to the liquidation proceedings.

Application for the liquidation of payment service provider or payment system operator by the Central Bank.
Cap. 53.

62. (1) The Central Bank may apply to the court for the liquidation of a payment service provider or payment system operator in accordance with Part VI of the Insolvency Act in any of the following circumstances—

(a) where the licence of the payment service provider or payment system operator has been revoked under section 12;

(b) where the payment service provider or payment system operator is unable to pay its debts within the meaning of section 384 of the Insolvency Act; and

(c) on the ground that it is just and equitable that the payment service provider or payment system operator be liquidated.

(2) Subsection (1) shall not apply to a payment service provider or payment system operator that is already being liquidated by the court.

Effect of commencement of insolvency proceedings.

63. (1) Insolvency proceedings commenced against a payment service provider or payment system operator or participant shall not have retrospective effect on the rights and obligations of a payment service provider or payment system operator or participant arising from, or in connection with the participation of that payment service provider or payment system operator or participant in the payment system before the commencement of the insolvency proceedings.

(2) For the purpose of this Act, insolvency proceedings against a payment service provider or payment system operator or participant shall be deemed to commence when the payment service provider, payment system operator or participant is informed of the insolvency proceedings.

(3) Notwithstanding the provisions of any other written law, if a liquidation order is made against a payment service provider or payment system operator, or a statutory manager or liquidator is appointed to run the affairs of a payment service provider or payment system operator—

(a) any provision contained in a written netting agreement, the settlement system rules, or the clearing, netting and settlement agreements to which that payment service provider or payment system operator is a party, shall be binding upon the statutory manager, or liquidator, as the case may be, in respect of any payment or settlement obligation—

(i) which has been determined through netting prior to the issue of the liquidation order, or the appointment of the statutory manager, or liquidator, as the case may be; and

(ii) which is to be discharged on or after the date of the liquidation order, or the appointment of the statutory manager, or liquidator, as the case may be, or the discharge of which was overdue on the date of the liquidation order or appointment of statutory manager, as the case may be; and

(b) the statutory manager, or liquidator, shall be bound by any payment or settlement that is final in accordance with section 42.

Rights of assignment.

64. (1) The liquidator may assign the assets or liabilities of a payment service provider or of a customer under this Act, the Insolvency Act, or under any other written law to third parties for the benefit of customers and creditors of the payment service provider under liquidation.

Cap. 53.

(2) The right of assignment conferred by this section shall override all other rights and interests of parties under contracts of employment, leases, charges, mortgages or any other agreements the payment service provider may have entered into before going into liquidation.

(3) The right of assignment conferred by this section shall not extend to the rights of customers' monies held in a trust account under Part VIII.

(4) Every public officer having the power or duty to accept and register or amend any entry in any register relating to an assignment of an asset or liability pursuant to subsection (1) shall, upon request made by the liquidator, customer or other person, do all such things as are by law necessary to complete the registration of the assignment.

PART XIV—MISCELLANEOUS PROVISIONS

Retention of records.

65. Each payment service provider and payment system operator shall retain all records obtained during the course of operations and administration of a payment service or payment system for a period of seven years from the date each particular record was obtained.

Unlawful use of information.

66. An employee or officer of a payment service provider or a payment system operator who, for personal gain, makes use of any information which the employee acquired in the performance of the employee's functions under this Act, and which relates to the affairs of a particular institution, commits an offence.

Unlawful use of a payment system.

67. Any person who, by the unlawful use of a payment system attempts to obtain or obtains a financial benefit, commits an offence and shall, on conviction, be liable to a fine not exceeding two times the financial benefit sought to be obtained, or obtained, or to imprisonment for a term not exceeding seven years, or to both.

False advertisement, etc.

68. Any person who issues an advertisement, brochure or circular, or in any way makes representations inviting any person to participate in a payment system or in the issuance and usage of a payment instrument, which—

(a) falsely represent that they are recognised to operate a payment system, provide a payment service or issue a payment instrument under the provisions of this Act; or

(b) is issued contrary to the provisions of this Act,

commits an offence.

Review and appeal.

69. (1) A person aggrieved by any decision of the Central Bank under this Act may apply for a review of the decision to the Central Bank as provided in regulations made by the Cabinet Secretary within thirty days after receipt of the decision.

(2) A person aggrieved by the decision of the Central Bank on review under subsection (1) may appeal to the High Court within thirty days from the date of the decision of the Central Bank.

Administrative enforcement action.

70. (1) The Central Bank may take administrative enforcement action against a payment service provider or payment system operator, or a director, officer or employee thereof, or any other person, who contravenes the provisions of this Act.

(2) The Central Bank may take any of the following administrative enforcement actions under subsection (1)—

(a) issue a written warning to the payment service provider or payment system operator for the cessation of the non-compliance and require that specific action for rectification be undertaken;

(b) issue a written direction to the payment service provider or payment system operator to take remedial action or make specific arrangements to remedy the non-compliance within such period as may be specified;

(c) issue a written direction to the payment service provider or payment system operator imposing a prohibition, restriction or limitation, including—

(i) issuing enforcement notices requiring non-compliance to be rectified within a specified period of time;

(ii) restriction from entering into any new business contracts;

(iii) suspending the participation of any person in the affairs of the payment service provider or payment system operator;

(iv) requiring that any director, senior officer or person having functions in relation to the payment service provider or payment system operator, be removed and replaced by a suitable person acceptable to the Central Bank;

(v) requiring such action as the Central Bank may consider necessary to protect customers;

(d) suspend, vary or revoke—

(i) a license issued under this Act; or

(ii) an approved payment service under this Act;

(e) withdraw an authorisation issued under this Act; or

(f) initiate such investigations as may be necessary to ensure compliance with this Act.

(3) When determining the appropriate administrative enforcement action to take, the Central Bank shall consider the following—

(a) the nature, extent and impact of the contravention;

(b) the conduct of the individual, the payment service provider or the payment system operator after the violation and throughout any investigation or examination by the Central Bank;

(c) any previous disciplinary record and compliance history of the individual, the payment service provider or the payment system operator; and

(d) any action taken by the Central Bank or by other domestic or international regulatory bodies in similar cases.

(4) A payment service provider, payment system operator, officer or other person which receives a direction from the Central Bank under this section shall comply with the direction within such period as may be specified in the direction and, if so required, shall produce evidence that it has complied.

(5) The Central Bank shall, before taking any administrative enforcement action under subsection (1)—

(a) serve upon the payment service provider, payment system operator, officer or other person, a notice of such intent specifying the reasons therefore; and

(b) require the payment service provider, payment system operator, officer or other persons, within such period as may be specified in the notice, to show cause why the administrative enforcement action should not be taken.

(6) A person who fails to comply with any direction given by the Central Bank under this section commits an offence and shall, in addition to the enforcement action under subsection (3), be liable to such additional administrative penalty as may be prescribed under section

64 for each day or part thereof during which the failure to comply continues.

Administrative penalty.

71. (1) The Central Bank may impose any of the following administrative penalties for contravening the provisions of this Act—

(a) in the case of an officer of a payment service provider or payment system operator, a fine not exceeding three million shillings and in the event of a repeat offender, an administrative fine not exceeding five million shillings; or

(b) in the case of a payment service provider or payment system operator, an administrative fine not exceeding twenty million shillings.

(2) The Central Bank may impose additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

Penalty.

72. (1) A person who commits an offence under the provisions of this Act for which no penalty is prescribed shall be liable, upon conviction—

(a) in the case of an individual, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years, or to both;

(b) in the case of second or subsequent offence, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both;

(c) in the case of a body corporate, to a fine not exceeding twenty million shillings and in case of a repeat offence, to a fine not exceeding thirty million shillings.

(2) In addition to any penalty referred to in subsection (1), the Court may—

(a) order the forfeiture of any equipment or any article used or connected in any way with the commission of the offence; or

(b) order or prohibit the doing of any act to stop a continuing offence.

Relief from liability.

73. No action shall lie against the Central Bank or any of its officers or other persons appointed or authorised to perform any function under this Act, in respect of anything done or omitted to be done by them in good faith in the exercise or performance of any power, authority, or function conferred or imposed on them under this Act.

Establishment of a regulatory sandbox framework.

74. (1) The Central Bank may, by regulations, establish a regulatory sandbox framework for purposes of governing the manner in which a person may obtain limited access to the national payment system to test innovative payment system and settlement services without necessarily obtaining a license under this Act.

(2) The regulatory sandbox framework shall prescribe the criteria and minimum requirements for operating a sandbox and the manner in which to conduct the sandbox.

Publication of information.

75. Subject to any other relevant written law, the Central Bank may publish any information furnished to it under this Act.

Regulations.

76. (1) The Cabinet Secretary may, on the recommendation of the Central Bank, make regulations to give effect to the provisions of this Act.

(2) Without prejudice to subsection (1), the regulations may provide for any of the following matters—

(a) the licensing of payment service providers and payment system operators;

(b) maintenance of capital;

(c) suspension and revocation of licences;

(d) designation;

(e) the issuing of electronic money;

(f) the supervision and oversight of payment service providers and payment system operators;

(g) trust arrangements;

(h) complaints handling procedures;

(i) the approval of mergers and acquisitions;

(j) significant change of ownership;

(k) sharing of data;

(l) agency and outsourcing arrangements;

(m) material disclosure;

(n) interoperability;

(o) cybersecurity;

(p) open finance; and

(q) market conduct.

Consequential amendments.

77. The laws specified in the Fifth Schedule are amended in the manner specified thereat.

Repeal. Cap. 491A.

78. The National Payment System Act is repealed.

Transitional provisions.

79. (1) Upon the commencement of this Act, any person providing payment services shall, within one year of the commencement, comply with the provisions of this Act.

(2) The Central Bank shall issue guidance to give effect to this section.

FIRST SCHEDULE *(ss. 2, 5(2))*

Categories of licences

1. Payment Service Provider

(a) Payment Initiation Service Provider

(b) Account Information Service Provider

(c) Merchant Acquirer

(d) Electronic Wallet Provider

(e) Money Remittance Service Provider

(f) Electronic Money Issuer

2. Payments System Operator

(a) Payment Gateway

(b) Payment Messaging System Operator

(c) Card Scheme Operator

(d) Payment Switching and Clearing System Operator

SECOND SCHEDULE (*ss. 7(3), (4), 11(2), (6)*)

Criteria for assessing the suitability of persons proposed to manage or control a payment service provider or a payment system operator

Trustees, significant shareholders, directors, senior officers and management in control of a payment service provider or payment system operator will be assessed against the following criteria—

(a) possession of adequate professional credentials or experience, or both, for the position for which it is proposed;

(b) probity, diligence, competence and soundness of judgment;

(c) reputation, character, integrity and honesty;

(d) history of any offence involving fraud, dishonesty or violence;

(e) whether that person has engaged in deceitful, oppressive or improper business practices or any practices which would discredit that person;

(f) whether that person has engaged, associated or conducted himself in a manner which may cast doubt on the fitness, competence and soundness of judgment of that person;

(g) whether that person has contravened any provision made by or under any law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice; and

(h) whether that person has been declared bankrupt.

THIRD SCHEDULE (*s. 9(2)(c), 10(1), (3)*)

Minimum capital requirements for payment service providers and payment system operators

License Type	License Category	Minimum Capital (Ksh. million)
Payment Service Provider	Payment Initiation Service Provider	5
	Account Information Service Provider	5
	Money Remittance Service Provider	30
	Merchant Acquirer	50
	Electronic Wallet Provider	50
	Electronic Money Issuer	250
Payment System Operator	Payment Gateway	10
	Payment Messaging System Operator	20
	Card Scheme Operator	50
	Payment Switching and Clearing System Operator	50

FOURTH SCHEDULE [*s. 36(3)*]

Limits for monies in trust accounts

An issuer of electronic money or provider of electronic wallets shall not hold more than 500 million shillings or more than twenty-five per cent of monies in a trust account, whichever is higher, in a single bank.

FIFTH SCHEDULE (*s. 70*)

Consequential amendments

Statute	*Provision*	*Amendment*
The Insolvency Act (Cap. 53)	s. 529	In subsection (1), add the following new paragraph immediately after paragraph (b)— (c) a person operating as a payment service provider or a payment system operator under the National Payment System Act.