

Malawi

Payment Systems Act

Chapter 74:01

Legislation as at 31 December 2017

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Malawi

Payment Systems Act

Chapter 74:01

Commenced on 30 June 2017

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[15 of 2016; G.N. 35/2017]

An Act to provide for the operation, regulation and supervision of payment, clearing and settlement systems in Malawi, and matters connected therewith and incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Payment Systems Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**bank**" has the meaning ascribed to that term in the Banking Act;

[Cap. 44:01]

"**business day**" means any day other than a Saturday, Sunday or public holiday;

"**card**" means any card including an Auto-Teller Machine card, point of sale card, debit card, credit card or stored value card, used by a consumer to effect an electronic funds transfer, electronic payments or withdrawals;

"**cheque**" has the meaning ascribed to that term in the Bills of Exchange Act;

[Cap. 48:02]

"**circular**" means a written notice on a new policy or change of policy that relates to clearing and settlement systems operators, participants and includes instruments associated with such systems;

"**clearing**" means the process of transmitting, reconciling and confirming transfer instructions regarding funds, securities or other financial instruments prior to settlement, including the netting of instructions and the establishment of final positions prior to settlement;

"**clearing system**" means a system that facilitates the presentment and exchange of transfer instructions regarding funds, securities or other financial instruments prior to settlement;

"**direction**" means a specific mandatory instruction or set of instructions to do or not to do certain acts or things addressed to specific payment, clearing and settlement systems and operators, participants and instruments associated with such systems;

"**directive**" means a general mandatory instruction or set of instructions that apply or relate to all or specific payments, clearing and settlement systems or operators, participants and instruments associated with such systems;

"**electronic funds transfer**" means the transfer of funds through an electronic mechanism;

"**finality**" means that a settlement or transfer is unconditional, enforceable and irrevocable;

"**financial collateral arrangement**" means an arrangement under which a participant provides acceptable collateral by way of securities in favour of, or to another participant, and where the full ownership of the collateral remains with the collateral provider when the security right is established whether or not the arrangement is covered by a master agreement, standard form contract, or any other general terms and conditions;

"**financial institution**" has the meaning ascribed to the term in the Financial Service Act;

[Cap. 44:05]

"**guidelines**" means a standard or set of standards that relate to payments, clearing and settlement systems and operators, participants and instruments associated with those systems;

"**mobile payment system**" means a system that enables the process of money transfer and exchange of money for goods and services between two parties using a mobile phone or an electronic mobile device;

"**netting**" means the offsetting of positions or obligations by participants leading to the determination of net payment obligations between two or more clearing system participants within a clearing system, or the determination of the net settlement obligations between two or more settlement system participants within a settlement system;

"**officer**" means a person who is—

- (a) an employee of the Reserve Bank;
- (b) a person engaged by the Reserve Bank to provide services to it; or
- (c) an examiner or investigator appointed under this Act;

"**oversight**" means monitoring, regulation and supervision of payments including mobile payments, clearing systems, settlement systems and payment instruments;

"**parent company**" has the meaning ascribed to that term in the Companies Act;

[Cap. 46:03]

"**payment instruction**" means an order or instruction, whether electronic or physical, requesting movement of funds, securities or other financial instruments or the right pertaining to those funds, securities or financial instruments to a system operator by a system participant;

"**payment instrument**" means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make a payment;

"**payment system**" means a system that enables funds transfer to be effected between a payer and a payee, utilizing payment instruments and procedures that relate to the payment system;

"**Registrar**" means the Registrar of Financial Institutions appointed under the Financial Services Act;

[Cap. 44:05]

"**remittance**" means an in-country or cross-border person-to-person payment or transfer of relatively low value as may be prescribed by the Reserve Bank from time to time;

"**remittance service provider**" means a person that provides remittance services;

"**Reserve Bank**" means the Reserve Bank of Malawi as established under the Reserve Bank of Malawi Act;

[Cap. 44:02]

"**settlement**" means an act of discharging obligations by transferring funds, securities or financial instruments between two or more parties in central bank money or through accounts with a settlement agent;

"settlement account" means an account held at the Reserve Bank or any other institution acting as a settlement agent, which is used to settle transactions between participants in a settlement system;

"settlement agent" means the Reserve Bank or any other bank or financial institution which holds accounts on behalf of clearing and system participants and effects settlements on their behalf;

"settlement instruction" means an instruction given to a settlement system by a system participant or by a payment clearing house system operator on behalf of a system participant to effect settlement of one or more payment obligations, or to discharge any other obligation of one system participant to another system participant;

"settlement obligation" means an indebtedness that is owed by one system participant to another as a result of one or more settlement instructions;

"settlement system" means a system used to facilitate the settlement of transfer instructions regarding funds, securities or other financial instruments;

"subsidiary" has the meaning ascribed to that term in the Companies Act;

[Cap. 46:03]

"system operator" means a person establishing or operating a payment, clearing, settlement system or services, or remittance services;

"system participant" means a person who has access to a payment, clearing or settlement system under a contractual arrangement with a system operator;

"systemic risk" means a risk of failure by one participant in a payment, clearing or settlement system to meet its obligation which results in other participants being unable to meet their obligations when due;

"truncation" means a procedure in which paper payment instruments within a bank, between banks or between a bank and its customers are replaced, in whole or in part, by electronic records for their further processing and transmission; and

"winding-up proceedings" means proceedings involving realization of assets and distribution of the proceeds among creditors, shareholders or members as appropriate, which involve an intervention by administrative or judicial authorities, including where the proceedings are terminated by a composition or other analogous measures, whether or not they are founded on insolvency or are voluntary or compulsory.

3. Objectives

The principal objective of this Act is to provide for the regulation and oversight of payment, clearing and settlement systems, payment instruments, remittance service providers, electronic money transfers, card issuers and travellers cheques agencies by—

- (a) promoting the soundness, integrity, safety and efficiency and reliability of the payment, clearing and settlement systems or payment instruments including security and operating standards, and infrastructure arrangements;
- (b) providing for minimum standards for protection of customers; and
- (c) determining respective rights and obligations of system operators, participants and their customers.

Part II – Powers and functions of the Reserve Bank

4. Powers, duties and functions of the Reserve Bank

Without limiting the generality of the powers conferred on it by the Reserve Bank of Malawi Act, the Reserve Bank shall have, powers, duties and functions, to—

- (a) promote the soundness, safety and efficiency, integrity and reliability of payment, clearing and settlement systems in Malawi;
 - (b) take all available measures to ensure that this Act is complied with by system operators and system participants;
 - (c) establish settlement systems;
 - (d) license and authorize payment, clearing and settlement systems operators;
 - (e) inspect system operators' and system participants' premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions relating to the systems and payment instruments referred to in [section 3](#) to ensure compliance with this Act;
 - (f) ensure that system operators comply with the Financial Crimes Act, and regulations made thereunder;
- [Cap. 7:07]*
- (g) exercise an oversight role over payment, clearing and settlement systems, and issuing of payment instruments in Malawi; and
 - (h) exercise and perform all other powers, duties, and functions as may be deemed necessary in the regulation of payment systems from time to time, or conferred on it by any other written law.

[Cap. 44:02]

5. Delegation of powers

The Reserve Bank may, in writing, delegate any power or assign any function conferred on it by this Act, to any person, subject to such conditions as the Reserve Bank may determine.

6. Reserve Bank not precluded from exercising and withdrawing delegated powers

Any delegation of power under [section 5](#)—

- (a) shall not prevent the Reserve Bank from exercising that power or performing that duty; and
- (b) may be withdrawn at any time by written notification from the Reserve Bank.

7. Cooperation with other regulatory authorities

In carrying out its functions, the Reserve Bank shall cooperate with other regulatory authorities within and outside Malawi by sharing information and doing such other acts to achieve the objectives of this Act.

8. Directives, guidelines, circulars and directions

The Reserve Bank may issue directives, guidelines, circulars and directions for the proper administration of this Act.

9. Breaches of directives, etc.

Any person who refuses or fails to comply with a directive, guideline, circular or direction issued under this Act, shall be liable to administrative or monetary penalties as may be prescribed by the Reserve Bank in directives.

10. Directions for inadequate control of risks

Where the Reserve Bank is of the opinion that a system operator or system participant engages in, or is about to engage in, any act or omission that results in, or is likely to result in, a systemic risk, or is, or may be detrimental to, or contrary to public interest in the security and effectiveness of payment, clearing and settlement systems of Malawi, the Reserve Bank may issue a direction in writing requiring the system operator or system participant, within the period specified in the direction, to—

- (a) cease or refrain from engaging in the acts or omissions;
- (b) perform such acts with respect to their participation in the payment system as the Reserve Bank considers necessary to remedy the situation;
- (c) conform to requirements contained in the direction; or
- (d) provide the Reserve Bank with such information and documents relating to the matter as specified in the direction within such period as the Reserve Bank may specify.

11. Court order for compelling compliance with a direction

Notwithstanding that criminal proceedings have been or may be instituted against a person relating to non-compliance of a direction given under [section 10](#), the Reserve Bank may apply to the High Court for an order compelling such a person to comply with a direction issued under the section.

Part III – Regulation and oversight by the Reserve Bank

12. Restrictions on operating a payment system etc. or services

- (1) Except for the Reserve Bank acting in its capacity as a system operator, a person shall not establish or operate a payment, clearing and settlement system or service, remittance services including electronic money transfer services, mobile payment services or issue payment instruments without a licence or authorization issued by the Reserve Bank.
- (2) The Reserve Bank may, by a written order, prohibit a person from issuing or using any payment instrument, or from operating a payment, clearing or settlement system, if it is of the opinion that—
 - (a) the operation of the payment, clearing or settlement system, issuing or use of the payment instrument, is detrimental to the reliable, safe, efficient and smooth operation of the payment, clearing and settlement systems of Malawi, or monetary policy of Malawi;
 - (b) the prohibition is in the interest of the general public; or
 - (c) the payment instrument has been issued or the system is operated with intent to defraud the general public.
- (3) Subsection (2) shall not be construed as prohibiting the acceptance of money or payment instructions—
 - (a) by any person acting as a duly appointed agent of a person to whom a payment is due;
 - (b) by a company from its subsidiary or by a subsidiary from its parent company, or by one subsidiary from another subsidiary, of the same parent company; or

- (c) for purposes of effecting a money lending transaction by an agent.
- (4) Any person who contravenes subsection (1), commits an offence and shall on conviction, be liable to a fine of K50,000,000 and to imprisonment for seven years.

13. Application for licences or authorization

- (1) An application for licensing or authorization by a payment system operator shall include information on the following—
 - (a) system owners, system participants and a plan for the organization and operation of the payment system, including the distribution of responsibilities between the system operator and individual system participants;
 - (b) the criteria established for direct and indirect participation in the payment system;
 - (c) measures to safeguard technical operations in the event of a payment system failure, including a contingency plan that lays down the disaster recovery arrangements in the event of any operational disruption should the payment system fail to function;
 - (d) measures to mitigate risks in the payment system arising from illiquidity, insolvency or winding-up of a system operator and system participants;
 - (e) the agreements referred to in [section 14](#) (4); and
 - (f) such other requirements as the Reserve Bank may prescribe from time to time.
- (2) The Reserve Bank may prescribe more detailed procedures for application for licensing or authorization in directives or guidelines.

14. Licence and authorization requirements

- (1) A system operator shall have a registered office in Malawi.
- (2) For the purposes of this Act, a system operator may be the Reserve Bank, commercial banks, non-bank financial institutions, mobile payment system operators, remittance service providers, card issuers, or other persons as licensed or authorized by the Reserve Bank.
- (3) A system operator shall satisfy the necessary requirements that may be set out by the Reserve Bank from time to time in directives or guidelines.
- (4) A system operator shall enter into agreements with individual system participants which shall stipulate their respective responsibilities, rights and obligations.
- (5) The Reserve Bank may stipulate more detailed requirements regarding activities, legal form, fit and proper management, capital, risk management, security requirements and such other requirements deemed applicable to a system operator, in directives.
- (6) The Reserve Bank may in writing and stating reasons therein, grant exemptions to licensing and authorization requirements for a particular payment system or system operator if the Reserve Bank is satisfied that—
 - (a) the operation of the payment system is in the public interest;
 - (b) the operation of the payment system will not cause undue risk to the payment, clearing and settlement systems of Malawi or the monetary policy of Malawi; or
 - (c) there are other grounds for exemption as the Reserve Bank may determine:

Provided that the Reserve Bank shall publish a notice of such exemption in the *Gazette* and electronic and print media of nationwide circulation.

15. Revocation or suspension of authorization or a licence

- (1) The Reserve Bank may, by notice in writing to a system operator, withdraw authorization or revoke or suspend a licence if the Reserve Bank has reasonable grounds to believe that the system operator has contravened any provision of this Act or is managing its payment system in a manner that poses risks to the payment system, other payment system operators, systems participants or to the general public:

Provided that, before withdrawing the authorization or revoking or suspending the licence, the Reserve Bank shall grant the system operator an opportunity to be heard.

- (2) In the case of revocation of a licence, the Reserve Bank shall make its decision public by publishing a notice in the *Gazette* and electronic and print media of nationwide circulation.
- (3) The Reserve Bank may impose other administrative sanctions as it deems fit, in addition to, or prior to, the revocation or suspension of a licence or withdrawal of authorization as the case may be.

16. Responsibilities of system operators

- (1) A system operator shall implement and operate a payment system in a manner that promotes secure, efficient, effective and coordinated execution of payment services.
- (2) A system operator and system participants shall be required to provide information which the Reserve Bank may require for regulatory, oversight and investigative purposes.
- (3) A system operator shall submit its system rules to the Reserve Bank for vetting and approval.
- (4) An issuer of payment instruments shall ensure that all payment instruments issued contain minimum security features as prescribed by the Reserve Bank or comply with prevailing international standards and best practices.

17. Actions requiring prior approval of the Reserve Bank

A system operator shall seek prior approval of the Reserve Bank before making any changes to its ownership, management personnel and structure, system operations and any other changes or actions as may be determined by the Reserve Bank.

18. Investigative powers of the Reserve Bank

- (1) The Reserve Bank shall have powers to investigate a matter where it has reasonable grounds to believe that—
 - (a) an offence under this Act has been, or may have been committed;
 - (b) a system operator or system participant is not complying with, or has not complied with, this Act or any other relevant law; or
 - (c) a system operator or system participant has been involved in financial crime.
- (2) Notwithstanding anything to the contrary provided by any written law for the time being in force, all information relating to the commission of an offence under this Act shall be recorded in writing by an officer, employee or any appointee of the Reserve Bank or police officer investigating the matter.
- (3) Investigation of offences committed under this Act may be carried out by an officer, employee or any appointee of the Reserve Bank.
- (4) Any person who causes or attempts to cause obstruction to an investigation into any matter conducted by an officer, commits an offence and, shall on conviction, be liable to pay a fine of K20,000,000 and to imprisonment for four years.

19. Requirements for participation in, and operation of a settlement system

- (1) The Reserve Bank shall set minimum requirements for participants in settlement systems that the Reserve Bank establishes, operates or controls.
- (2) The Reserve Bank shall stipulate specific requirements in the form of directives, directions, guidelines or circulars regarding the activities and security requirements applicable to settlement agents other than the Reserve Bank.

Part IV – Protection of settlement systems

20. Discharge of settlement obligations

A settlement system operator shall discharge obligations between settlement participants by means of entries passed through accounts of settlement participants held with the settlement system operator.

21. Finality and irrevocability of settlements

- (1) A settlement that has been effected in accordance with [section 20](#), shall be final, unconditional and irrevocable.
- (2) Notwithstanding the provisions of any other written law, no settlement which has been finally and irrevocably effected in terms of this section or any payment instruction entered into a settlement system before commencement of any winding-up proceedings, shall be reversed, netted or set aside.
- (3) Any entry or a payment out of the settlement account of a participant held at the Reserve Bank, or a settlement agent to settle a payment obligation in a settlement system shall not be the subject of any provision that operates as a stay of that activity.
- (4) For the avoidance of doubt, the finality provisions of this Act derogate from the general insolvency rules contained in any other written law.

22. Winding-up of a system participant on application by a person other than the Reserve Bank

- (1) An application to court for an order to wind-up a system participant under the Companies Act shall not be made except with prior notification of twenty-one days to the Reserve Bank.
- (2) Where a system participant is wound up on application by a person other than the Reserve Bank, a copy of—
 - (a) the application for winding-up when it is made; and
 - (b) the subsequent winding-up order which shall record the minute, hour and day that such order is made,

shall be lodged by the applicant, with the Reserve Bank on the same business day, and in any case, not later than the start of the next business day, and served on any other settlement agent that requires notification and the Reserve Bank shall immediately notify all relevant domestic and foreign system operators of the winding-up proceedings.

- (3) The relevant settlement system operator shall enforce the winding-up order immediately upon being notified by the Reserve Bank of the order lodged with the Reserve Bank under subsection (1).

[Cap. 46:03]

23. Winding-up of a system participant by the Registrar

- (1) Where a system participant is wound up on application by the Registrar under the Banking Act, or the Financial Services Act, the winding-up order shall state the minute, the hour and the date on which the order is made and the Reserve Bank shall, on the same business day and in any case, not later than the start of the next business day—
 - (a) serve the order on the system participant concerned;
 - (b) notify other system participants or agents required to be notified; and
 - (c) notify all relevant domestic or foreign system operators.
- (2) The relevant settlement system operator shall enforce the winding-up order immediately upon being notified by the Reserve Bank of the order lodged with the Reserve Bank under subsection (1).

[Cap. 44:01; Cap. 44:05]

24. Voluntary winding-up of a system participant

- (1) Subject to the provisions of the Banking Act, the Financial Services Act, or the Companies Act, where a system participant is voluntarily wound up, that system participant shall inform all other system participants of the winding-up resolution within twenty-four hours of the winding-up resolution taking effect:

Provided that the resolution, demand or other step to wind-up a system participant or system operator shall have no effect unless approved by the Reserve Bank.

- (2) The Reserve Bank shall notify relevant domestic and foreign system operators and system participants about the voluntary winding-up of a system participant on the same business day and in any case, not later than the start of the next business day of the winding-up resolution taking effect.

[Cap. 44:01; Cap. 44:05; Cap. 46:03]

25. Irrevocability and finality of settlements prior to lodging of winding-up order

Notwithstanding the provisions of the Banking Act, the Financial Services Act, the Companies Act, the Insolvency Act and any other written law of Malawi, where a system participant is wound up, the relevant winding-up order or resolution shall not affect any settlement that has become final and irrevocable under this part prior to—

- (a) the lodging of the copy of such order with the Reserve Bank under [section 22](#);
- (b) the Reserve Bank informing the settlement system operator of the winding-up order under [section 22](#); or
- (c) the winding-up resolution taking effect as provided under [section 23](#).

[Cap. 44:01; Cap. 44:05; Cap. 46:03; Cap. 11:01]

26. Cessation of participation in clearing and payment systems

Any clearing or system participant in respect of whom a winding-up order has been effected in terms of sections [22](#), [23](#) or [24](#), shall cease to participate in any clearing or settlement system.

27. Passing of settlement transactions subsequent to winding-up proceedings

- (1) A settlement system operator shall have authority to credit and debit the settlement accounts of a system participant subsequent to a winding-up order for purposes of—
 - (a) discharging outstanding payments or settlement obligations;
 - (b) making use of a credit line; or
 - (c) realizing collateral provided, in order to enable settlement in accordance with the rules and practices of the clearing, netting and settlement agreements to which that system participant was a party.
- (2) With the exception of prudentially regulated financial institutions as defined in the Financial Services Act, the Insolvency Act shall apply to winding-up proceedings of system participants.

[Cap. 44:05; Cap. 11:01]

28. Restrictions against attachments, garnishee proceedings or seizures

A settlement account of any system participant shall not be liable to attachments, garnishee proceedings or seizures.

Part V – Netting and financial collateral arrangements

29. Obligations under netting agreements, arrangements and rules

- (1) A clearing or settlement system shall have netting agreements which shall stipulate the rights and obligations of participants and the system operator.
- (2) Where a clearing or system participant is wound up or placed under receivership or statutory management, any arrangement or provision contained in a written netting agreement to which such a system participant is a party, or any netting rules and practices applicable to such a system participant, shall be binding on the liquidator, receiver or statutory manager appointed as the case may be, in respect of any payment or settlement obligation—
 - (a) which has been determined through netting prior to the issue of a winding-up order, receivership order or appointment of the statutory manager as the case may be;
 - (b) which is to be discharged on or after the date of the winding-up order, receivership order or appointment of the statutory manager as the case may be; or
 - (c) the discharge of which was overdue on the date of the winding-up order, receivership order or the appointment of the statutory manager as the case may be.

30. Recognition of financial collateral arrangements

- (1) A clearing or settlement system may, in its rules and procedures, have financial collateral arrangements whose value may be realized for the satisfaction of outstanding rights and settlement obligations within the system.
- (2) The financial collateral to be provided shall be either in cash, Malawi Government Treasury Bills, Reserve Bank of Malawi Treasury Bills or any other assets as determined by the Reserve Bank from time to time.
- (3) A system participant shall not provide as collateral security in relation to its operations within a payment system, assets which are subject to a security interest or any other encumbrance in favour of a third party, without obtaining the prior release or waiver from the third party.

- (4) The Reserve Bank may issue directives or guidelines pertaining to financial collateral arrangements in a particular payment system.

31. Utilization of collateral

Notwithstanding the provisions of any other written law, any asset of a clearing or system participant which the clearing or settlement system participant, prior to the issue of a winding-up order, provided to—

- (a) the Reserve Bank as security for a loan, or otherwise as security in respect of its settlement obligations; or
- (b) a clearing or settlement system in form of a written agreement as security in respect of its payment obligations,

may be utilized by the Reserve Bank or the relevant clearing or settlement system operator to the extent required for the discharge of such settlement obligations or payment obligations as the case may be.

Part VI – Truncation, imaging and electronic entries

32. Truncation and imaging

- (1) Notwithstanding any provisions to the contrary in the Bills of Exchange Act, a bank may request payment of a cheque or other payment instrument from another bank on which it is drawn by notifying the other bank of the essential features of the cheque or payment instrument essential features electronically, instead of presenting the cheque or other payment instrument physically.
- (2) Where a bank notifies another bank electronically of the essential features of a cheque or other payment instrument, the paying and collecting bank shall be subject to the same duties in relation to the collection and payment of the cheque or other payment instrument as if the cheque or other payment instrument had been presented for payment physically.

[Cap. 48:02]

33. Admissibility of photographic images of payment instruments and electronic entries

- (1) Photographic images of original cheques or other payment instruments shall be admissible in any court as *prima facie* evidence of the matters, and or transactions of the original instrument, through proof provided by an affidavit that attests to their existence.
- (2) The electronic entries in books of accounts of any system operator or system participant shall be *prima facie* evidence in court of matters, transactions and accounts therein recorded—
 - (a) through proof provided by affidavits of at least two executive officers of the clearing or system participant; or
 - (b) by evidence showing that—
 - (i) such entries are, or have been the ordinary books of accounts of the payment system participant;
 - (ii) the said entries have been made in the usual and ordinary course of business; and
 - (iii) such books of accounts are in, or come immediately from, custody or control of the clearing or system participant.

34. Right of a bank to request original payment instrument or image thereof

- (1) Subject to [section 32](#), where a paying bank has reason to believe that a cheque or payment instrument is fraudulent, it may request the collecting bank to provide to the paying bank, the original payment instrument or a legible image thereof.

- (2) The paying bank shall, within two business days of the receipt of the original payment instrument, or a legible image thereof, determine and advise the collecting bank of its acceptance or non-acceptance of the cheque or other payment instrument.
- (3) A request made under subsection (1) for the presentment of a cheque, other payment instrument, or a legible image thereof, shall not constitute dishonour of that payment instrument.

Part VII – Dispute resolution

35. Dispute resolution

- (1) Any dispute arising in payment systems shall be settled in accordance with this section.
- (2) Any person who is aggrieved by the operation of a payment system shall submit a written statement setting out full particulars of the grievance to the party to which the grievance relates, and the parties shall attempt to settle the matter by conciliation within seven business days.
- (3) If the parties are unable to settle the matter as contemplated in subsection (2), they shall attempt to settle the matter within a further period of ten business days through mediation whereby—
 - (a) the parties shall agree on a mediator;
 - (b) the mediator shall familiarize himself with the parties' respective contentions;
 - (c) the mediator and all parties shall discuss the matter at one or more meetings attended by all of them and attempt to settle the matter by consensus; and
 - (d) the parties shall share the mediator's costs equally between them.
- (4) If the parties are unable to settle the matter by conciliation under subsection (2), or by mediation under subsection (3), the matter may be referred to arbitration by a single arbitrator, and where the parties fail to agree on an arbitrator, the parties shall notify the President of the Malawi Law Society who then shall appoint an arbitrator on their behalf.
- (5) The arbitrator referred to in subsection (4) shall, as far as possible, be a person appointed on account of his or her knowledge of the law and payment systems.
- (6) The UNCITRAL Arbitration Rules of 2010 or other subsequent version that the parties may agree on, shall apply to arbitration proceedings done pursuant to this section.
- (7) The arbitrator shall reach his decision in the matter within one month after his appointment, unless the parties agree to an extension of that period.
- (8) A decision of the arbitrator shall be final and binding on the parties.

Part VIII – Miscellaneous

36. Access to information

- (1) A system operator, system participant and issuer of payment instruments shall provide information which the Reserve Bank considers necessary to ensure that the payment system is organized and operated in accordance with this Act.
- (2) A system operator or system participant in possession of information referred to in subsection (1), shall provide such information to the Reserve Bank at any time and in such form as the Reserve Bank may request from the system operator or system participant, in writing.
- (3) A system operator or system participant who contravenes subsection (1) commits an offence and, on conviction, shall be liable to a fine of K20,000,000 and to imprisonment for four years.

37. Confidentiality of information

Any information obtained by the Reserve Bank under [section 36](#) (1) which relates to a specific system operator, system participant or issuer of payment instruments, shall be confidential and shall not be disclosed by any officer to any person.

38. Use of confidential information for personal gain

An officer or a member or employee of a licensed payment system, who, for his personal advantage or the advantage of another person, makes use of any information which relates to the affairs of a particular system operator or system participant, acquired in the performance of their duties under this Act, commits an offence and shall on conviction, be liable to a fine of K50,000,000 and to imprisonment for seven years.

39. Conditions for disclosure of information

[Section 38](#) shall not apply—

- (a) if the information is disclosed to a relevant regulatory authority;
- (b) to any disclosure made by a person concerned in the performance of their functions under this Act or under the rules of any licensed settlement system, or when required to do so by a court of law or in terms of any other written law;
- (c) to the disclosure of information that is generally known to members of the public or a substantial section of the public; or
- (d) if, in the opinion of the Reserve Bank, disclosure is necessary and in the interest of the public to protect the integrity, effectiveness or security of payment systems in Malawi.

40. Indemnity of officers and other officials

Any act or matter done by any officer or by any other person in the exercise or performance or purported exercise or performance, in good faith, of any power or function under this Act, shall not give rise to any action, claim, liability, suit or demand against the officer or person concerned.

41. Retention of records

- (1) Notwithstanding anything to the contrary contained in any law relating to the retention of records, the Reserve Bank, payment system operators, system participants and issuers of payment instruments shall retain all records obtained or generated by them during the course of the operation and administration of the payment system for a minimum period of seven years as from the date of each particular record.
- (2) The retention of any record in terms of subsection (1) may be effected electronically.

42. Penalties

- (1) Any person who—
 - (a) contravenes a provision of this Act for which no penalty is specifically provided; or
 - (b) fails to comply with any direction given under this Act,commits an offence and on conviction, shall be liable to a fine of K10,000,000 and to imprisonment for two years.
- (2) Where an offence is committed by a body corporate each director, employee or agent of the body corporate shall also be liable to the same penalty in subsection (1) unless it is established that the

director, employee or agent took unreasonable applications and exercise due diligence to avoid the commission of the offence.

43. Regulations

- (1) The Minister may, on the recommendation of the Reserve Bank, make regulations for the better carrying out of the provisions of this Act.
- (2) The regulations made under subsection (1) may provide for offences with respect to acts done or carried out wholly in or outside Malawi or partly in or partly outside Malawi.
- (3) Notwithstanding section 21 (e) of the General Interpretation Act, the regulations made pursuant to this section may create offences in respect of any contravention to the regulations, and may for any such contravention, prescribe penalties up to K10,000,000 and to imprisonment for a period of up to two years.

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Part IX – Transitional arrangements

44. Transitional arrangements

- (1) Any person who, immediately before the commencement of this Act, was—
 - (a) operating a system for—
 - (i) the clearing of payment instructions; or
 - (ii) the netting or settlement of obligations arising from the clearing of payment instructions; or
 - (b) issuing payment instrument; or
 - (c) conducting the business of payment service provider,may continue to operate the system or issue the payment instrument or conduct the business of payment service provider for six months after the commencement of this Act, even if the system of the payment instrument has not been licenced or authorized by the Reserve Bank under this Act and shall, within six months of the commencement of this Act, apply to the Reserve Bank for a licence or authorization to operate such systems in accordance with this Act.
- (2) Notwithstanding subsection (1), from the commencement of this Act, the Reserve Bank may, by directives, stipulate terms and conditions or requirements for the operation of payment systems including periods within which, such terms and conditions or requirements are to be complied with by system operators.