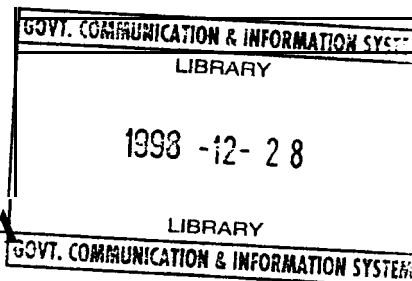




REPUBLIC OF SOUTH AFRICA



# GOVERNMENT GAZETTE

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## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1382.

28 October 1998

No. 1382,

28 Oktober 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 78 of 1998: National Payment System Act, 1998.

No. 78 van 1998: Nasionale Betalingstelselwet, 1998.

(English text signed by the President.)  
(Assented to 20 October 1998.)

# ACT

**To provide for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa; and to provide for connected matters.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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### Definitions

1. In this Act, unless the context otherwise indicates—
- (i) **“bank”** means a bank as defined in section 1 of the Banks Act; (i)
  - (ii) **“Banks Act”** means the Banks Act, 1990 (Act No. 94 of 1990); (ii)
  - (iii) **“branch of a foreign institution”** means a branch by means of which a 25 foreign institution conducts the business of a bank in the Republic in terms of a written authorisation granted by the Registrar of Banks in terms of section 18A of the Banks Act; (xv)
  - (iv) **“clear”** or **“clearing”** means the exchange of payment instructions: (xix)
  - (v) **“money”** means a banknote or coin issued by the Reserve Bank in terms of 30 section 10(1)(a)(iii), read with section 14 of the South African Reserve Bank Act: (viii)
  - (vi) **“mutual bank”** means a mutual bank as defined in section 1 of the Mutual Banks Act; (x)
  - (vii) **“Mutual Banks Act”** means the Mutual Banks Act, 1993 (Act No. 124 of 35 1993); (xxi)
  - (viii) **“netting”** means the determination of the nett payment obligations between two or more system participants within a payment clearing house or the determination of the nett settlement obligations between two or more system participants within the payment system: (ix) 40

- (ix) **“payment clearing house”** means an arrangement between two or more system participants governing the clearing of payment instructions between those system participants; (vii)
- (x) **“payment instruction”** means an instruction to a system participant to transfer funds or make a payment; (iii) 5
- (xi) **“payment obligation”** means an indebtedness that is owed by one system participant to another as a result of the clearing of one or more payment instructions; (vi)
- (xii) **“payment system”** means a system that enables payments to be effected between a payer and a beneficiary; (iv) 10
- (xiii) **“payment system management body”** means a body recognised by the Reserve Bank in terms of section 3(1); (v)
- (xiv) **“person”** includes any partnership; (xi)
- (xv) **“Reserve Bank”** means the South African Reserve Bank referred to in section 2 of the South African Reserve Bank Act; (xii) 15
- (xvi) **“settlement instruction”** means an instruction given to the settlement system by a system participant or by a payment clearing house to effect settlement of one or more payment obligations or to discharge any other obligation of one system participant to another system participant; (xvi)
- (xvii) **“settlement obligation”** means an indebtedness that is owed by one system participant to another as a result of one or more settlement instructions; (xviii) 20
- (xviii) **“settlement system”** means a system established and operated by the Reserve Bank for the discharge of payment and settlement obligations between system participants; (xvii)
- (xix) **“South African Reserve Bank Act”** means the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); (xx) 25
- (xx) **“system operator”** means a person authorised by the payment system management body to provide clearing processing services on behalf of two or more system participants or a payment clearing house; (xiv)
- (xxi) **“system participant”** means a member of the payment system management body. (xiii) 30

### **Powers and duties of Reserve Bank regarding payment system**

**2. (1)** The Reserve Bank, as contemplated in section 10(1)(c) of the South African Reserve Bank Act, may exercise the powers and must perform the duties conferred and imposed on it by this Act. 35

(2) The board of directors of the Reserve Bank may, in writing and on such conditions as the board considers necessary—

(a) delegate to any officer of the Reserve Bank any power conferred on the Reserve Bank by this Act; or

(b) authorise any such officer to perform any duty imposed on the Reserve Bank by this Act. 40

(3) Any delegation of a power or authorisation to perform a duty under subsection (2)—

(a) does not prevent the board of directors of the Reserve Bank from exercising that power or performing that duty; and 45

(b) may at any time be withdrawn in writing by that board.

### **Payment system management body**

**3. (1)** Subject to subsection (2), the Reserve Bank may recognise a payment system management body established with the object of organizing, managing and regulating the participation of its members in the payment system. 50

(2) The Reserve Bank may recognise a payment system management body as contemplated in subsection (1) if that Bank is satisfied that—

(a) the payment system management body, as constituted, fairly represents the interests of all banks, mutual banks and branches of foreign institutions participating in the payment system; 55

(b) the deed of establishment or constitution, as the case may be, and the rules of the payment system management body, including the rules relating to admission as members of that body, are fair, equitable and transparent; and

(c) it will be **enabled** to adequately oversee the affairs of the payment system management body and its members in the **discharge** of the Reserve Bank's responsibilities, specified in section 10(1)(c)(i) of the South African Reserve Bank Act, regarding the monitoring, regulation and supervision of payment, clearing and settlement systems. 5

(3) **Only**—

(a) the Reserve Bank; and

(b) a bank, mutual bank or branch of a foreign institution that complies with the entrance and other applicable requirements laid down in the rules of a payment system management body, 10

may be members of the payment system management body.

(4) No body, member of that body or any other person may participate in the settlement system **unless**—

(a) in the case of that body, the body is recognised by the Reserve Bank as a payment system management body in terms of subsection (1); or 15

(b) in the case of that other person, the person is a member of a payment system management body recognised by the Reserve Bank as contemplated in paragraph (a).

### **Objects and rules of payment system management body**

**4.(1)** The objects of the payment system management body are to manage and control 20 all matters affecting payment obligations and the clearing or netting of payment obligations and, in connection with those objects—

(a) to provide a forum for the consideration of matters of policy and mutual interest concerning its members;

(b) to act as a medium for communication by its members with the South African 25 Government, the Reserve Bank, the Registrar of Banks, the Registrar of Financial Institutions, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and

(c) to deal with and promote any other matter of interest to its members and to 30 foster co-operation between them.

(2) In addition to any other provisions thereof, the rules of the payment system management body must empower that body—

(a) to admit members and to regulate, control and terminate membership;

(b) to constitute, establish or dissolve any body, committee or forum consisting of 35 its members and which has an impact on, interfaces with, has access to or makes use of payment, clearing or settlement systems or operations;

(c) to—

(i) determine the criteria subject to which any person is to be authorised to act as a system operator within the payment system in order to provide 40 specific services to one or more members of the payment system management body or to act on behalf of those members; and

(ii) authorise that person as such a system operator in accordance with those criteria; and

(d) to determine criteria subject to and in accordance with which a member may 45 be authorised to introduce any person to provide payment services.

### **Settlement provisions**

**5. (1)** In this section 'money' means a banknote or coin issued by the Reserve Bank in terms of section 10(1)(a)(iii) read with section 14 of the South African Reserve Bank Act. 50

(2) The discharge of settlement obligations between system participants is effected in money or by means of entries passed through the settlement system.

(3) A settlement that has been effected in money or by means of an entry to the credit of the account maintained by the beneficiary system participant with the Reserve Bank for settlement purposes, is a final and irrevocable settlement.

(4) No settlement in terms of a settlement instruction which has been finally and irrevocably effected in terms of subsection (3) may be reversed or set aside. 5

(5) When a system participant is wound up, a copy of—

(a) the application for winding-up, when it is made; and

(b) the subsequent winding-up order,

must be lodged with the Reserve Bank.

(6) When a system participant is wound up, the relevant winding-up order does, 10 despite sections 341 (2) and 348 of the Companies Act, 1973 (Act No. 61 of 1973), not affect any settlement that has become final and irrevocable in terms of subsection (3) prior to the lodgement of the copy of that order with the Reserve Bank in terms of subsection (5).

(7) The Reserve Bank may, in consultation with the payment system management 15 body, prescribe by notice in the *Gazette* such conditions, rules or procedures as it considers necessary regarding the issue of settlement instructions and discharge of settlement obligations.

### Clearing provisions

6. (1) No person may clear payment instructions unless that person is a system 20 participant.

(2) Any person that contravenes the provisions of subsection (1) is guilty of an offence.

### Control of payment intermediation

7. (1) In this section— 25

(a) “**holding company**” means a holding company contemplated in section 1(4) of the Companies Act, 1973 (Act No. 61 of 1973); and

(b) “**subsidiary**” means a subsidiary contemplated in section 1(3) of the Companies Act, 1973.

(2) Subject to subsection (3), no person may as a regular feature of that person’s 30 business accept money or payment instructions from any other person for purposes of making payment on behalf of that other person to a third person to whom that payment is due, unless the person so accepting money or payment instructions—

(a) is a system participant;

(b) is a person introduced by a system participant in accordance with criteria 35 determined in terms of section 4(2)(d);

(c) is the postal company as defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958), or the Post Office Savings Bank established by section 52 of that Act; or

(d) is a person or one of a category of persons exempted by the Minister of 40 Finance in terms of subsection (4).

(3) Subsection (2) may not be construed as prohibiting the acceptance of money or payment instructions—

(a) by any person acting as the duly appointed agent of the person to whom the 45 payment is due;

(b) by a holding company from its subsidiary, or by a subsidiary from its holding company, or by one subsidiary from another subsidiary of the same holding company; or

(c) for purposes of the effecting of a money lending transaction by an agent or a 50 mandatory as contemplated in paragraph (ff) or (gg), respectively, of the definition of “the business of a bank” in section 1 of the Banks Act.

(4) The Minister of Finance may, after consultation with the Reserve Bank and the payment system management body, by notice in the *Gazette* and subject to such conditions as the Minister may determine, exempt any person or category of persons 55 from the provisions of subsection (2) if the Minister is satisfied that such exemption will be in the public interest and will not cause undue risk to the payment system.

(5) Any person that contravenes the provisions of subsection (2) is guilty of an offence.

#### Netting agreements and netting rules

8. (1) The provisions of this section apply despite anything to the contrary in the law relating to insolvency or in the Banks Act or the Mutual Banks Act. 5

(2) If a system participant is wound up or placed under judicial management or a curator is appointed to a system participant, any provision contained in a written netting agreement to which that system participant is a party, or any netting rules and practices applicable to the system participant, is binding upon the liquidator, judicial manager or curator, as the case may be, in respect of any payment or settlement obligation— 10

- (a) which has been determined through netting prior to the issue of the winding-up order or judicial management order or the appointment of the curator, as the case may be; and
- (b) which is to be discharged on or after the date of the winding-up order, judicial management order or the appointment of the curator, as the case may be, or the discharge of which was overdue on the date of the winding-up order, judicial management order or appointment of the curator, as the case may be. 15

#### Utilisation of assets provided as security to Reserve Bank or payment clearing house

9. Despite anything to the contrary in the law relating to insolvency, any asset of a system participant which was provided prior to the issue of any order for that system participant's winding-up, by that participant— 20

- (a) to the Reserve Bank as security for a loan in respect of its settlement obligations may be utilised by the Reserve Bank to the extent required for the discharge of those settlement obligations of the system participant; or 25
- (b) in terms of a written agreement with any payment clearing house, as security in respect of its payment obligations, may be utilised by the payment clearing house to the extent required for the discharge of those payment obligations.

#### Information

10. (1) The Reserve Bank has access to any information relating to the volumes or values of payment and settlement instructions or payment and settlement obligations, and system participants must on request provide such information to the Reserve Bank. 30

(2) Subject to subsection (3), any information—

- (a) obtained by the Reserve Bank in terms of subsection (1); and
- (b) identifying a specific system participant, 35

is confidential and may not be disclosed by any director or officer of the Reserve Bank to any person, except to an officer of the Reserve Bank who requires that information for purposes of the execution of his or her duties in terms of this Act, the South African Reserve Bank Act, the Banks Act or the Mutual Banks Act.

(3) Despite subsection (2) of this section and section 33 of the South African Reserve Bank Act, the Reserve Bank may disclose any information of which the disclosure is necessary to protect the integrity, effectiveness or security of the payment system. 40

(4) A person that contravenes the provisions of subsection (2) is guilty of an offence.

#### Settlement of disputes

11. (1) In this section "business day" means any day other than a Saturday, Sunday or public holiday. 45

(2) If any system participant considers itself wronged by a decision taken by the Reserve Bank under a provision of this Act, the matter is deemed to constitute a dispute between that system participant and the Reserve Bank, which dispute must be settled as provided in this section.

(3) The system participant concerned must in writing furnish the Reserve Bank with 5 full particulars of its grievance, and thereafter the system participant and the Reserve Bank must attempt to settle the dispute by consensus within seven business days of the receipt by the Reserve Bank of those particulars.

(4) If the system participant and the Reserve Bank do not succeed in settling the dispute as contemplated in subsection (3), they may agree to attempt to settle the dispute 10 by mediation within a further period of 10 business days.

(5) Mediation as contemplated in subsection (4) means a process whereby—

- (a) the system participant concerned and the Reserve Bank agree on a mediator;
- (b) the mediator familiarises himself or herself with the position held by the system participant concerned and the Reserve Bank, respectively; 15
- (c) the mediator, the system participant concerned and the Reserve Bank discuss the dispute at a meeting attended by them all;
- (d) the system participant concerned and the Reserve Bank at or following such meeting attempt to settle the dispute by consensus; and
- (e) the system participant concerned and the Reserve Bank share the mediator's 20 costs equally.

(6) If the system participant concerned and the Reserve Bank are unable to settle the dispute by consensus as contemplated in either subsection (3) or (5), the dispute must be referred—

- (a) to a single arbitrator to be agreed on between the system participant and the 25 Reserve Bank; or
- (b) failing such agreement, to an arbitrator appointed at the request of the system participant and the Reserve Bank by a recognised body concerned with the facilitation and promotion of the resolution of disputes by means of mediation or arbitration. 30

(7) An arbitrator referred to in subsection (6) must, as far as possible, be a person appointed on account of his or her knowledge of the law and the payment system.

(8) The provisions of the Arbitration Act, 1965 (Act No. 42 of 1965) apply, with the changes required by the context, to an arbitration contemplated in subsection (6).

(9) The decision of the arbitrator is final and binding on the system participant 35 concerned and the Reserve Bank.

### Directives by Reserve Bank

**12. (1)** In this section “systemic risk” means the risk that the failure of one or more system participants, for whatever reason, to meet their payment obligations within the payment system or their settlement obligations within the settlement system, may result 40 in any or all of the other system participants being unable to meet their respective payment or settlement obligations.

(2) If reasonable grounds exist to believe that any person is engaging in or is about to engage in any act, omission or course of conduct, with respect to the payment system, that results or is likely to result in systemic risk, or is or will be contrary to the public 45 interest in the integrity, effectiveness or security of the payment system, the Reserve Bank may issue a directive in writing requiring that person—

- (a) to cease or refrain from engaging in the act, omission or course of conductor to perform such other acts as are necessary to remedy the situation and are specified in the directive; or 50
- (b) to provide the Reserve Bank with such information and documents, relating to the matter, as are specified in the directive,

within the period specified in the directive.

(3) Any person who neglects, refuses or fails to comply with a directive issued under subsection (2)(a) is guilty of an offence. 55

(4) respective of whether criminal proceedings have been or may be instituted against a person in respect of **an offence** referred to in subsection (3), the Reserve Bank may apply to a High Court having jurisdiction for an order directing that person to comply with a directive issued under subsection (2).

### Retention of records

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**13. (1)** Despite anything to the **contrary** in any legislation relating to the retention of records, the Reserve Bank and system participants must retain **all** records obtained by them during the course of the operation and administration of the settlement system for a period of five years as **from** the date of each particular record.

(2) The retention of records in **terms** of subsection (1) may be effected by means of a computer as defined in section 1(1) of **the** Computer Evidence Act, 1983 (Act No. 57 of 1983).

### Penalties

**14.** Any person convicted of an **offence** referred to in—

(a) section **6(2)**, **7(5)** or **12(3)**, is liable to a fine not exceeding R 1 million or to 15 imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or

(b) section **10(4)**, is liable to a fine not exceeding R 1000 or to imprisonment for a period not **exceeding** six months, or to both such fine and such imprisonment.

20

### Review of Act

**15.** The Reserve Bank must, with the co-operation of the payment system management body, establish a **standing committee**—

(a) to review this Act from time to time; and

(b) to make recommendations to the Minister of Finance with regard to 25 amendments to this Act **which**—

(i) in the opinion of that **committee**, have become advisable owing to changed circumstances; or

(ii) the administration of **this** Act has shown to be advisable.

### Short title

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**16.** This Act is called the National Payment System Act, 1998.