

CHAPTER 24:23
NATIONAL PAYMENT SYSTEMS ACT

Act 21/2001

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AN ACT to provide for the recognition, operation, regulation and supervision of systems for the clearing of payment instructions between financial institutions, for the netting or other settlement of obligations arising from such clearing and the discharge of indebtedness arising from such netting or settlement; to make provision for the finality of payments and settlements made in accordance with such systems; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement : 16th November, 2001.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the National Payment Systems Act [*Chapter 24:23*].

2 Interpretation

In this Act—

“clearing” means the exchange by financial institutions of payment instructions;

“financial institution” means—

- (a) a banking institution registered in terms of the Banking Act [*Chapter 24:20*]; or
- (b) any other institution which lawfully engages in a banking activity specified in subsection (1) of section 7 of the Banking Act [*Chapter 24:20*], if the institution is recognised by the Reserve Bank as a financial institution for the purposes of this Act;

“management body”, in relation to a recognised payment system, means a body which represents participants in the system and organises and manages their participation in the system;

“Minister” means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“netting” means the determination of—

- (a) the net payment obligations between two or more financial institutions as a result of the clearing of payment instructions through a payment clearing house; or
- (b) the net settlement obligations between two or more participants in a settlement system;

“payment clearing house” means an arrangement between two or more financial institutions governing the clearing of payment instructions between them;

“payment instruction” means an instruction to a financial institution to transfer funds or make a payment, and includes—

- (a) a cheque; and
- (b) a bank draft; and
- (c) a banker’s acceptance; and
- (d) an instruction made by electronic means;

“payment obligation” means any form of indebtedness that is owed by one financial institution to another as a result of the clearing of one or more payment instructions;

“recognised payment system” means a system recognised by the Reserve Bank in terms of subsection (1) of section *three*;

“Reserve Bank”, subject to section *twenty* means the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*];

“settlement obligation” means any form of indebtedness that is owed by one participant in a recognised payment system to another such participant and which is to be discharged through a settlement system;

“settlement system” means a system established and operated by the Reserve Bank in terms of section *seven* for the discharge of settlement obligations between participants in the system;

“systemic risk” means a risk that a failure, for whatever reason, by one or more participants in a recognised payment system or a settlement system to meet their payment obligations or their settlement obligations may result in any or all of the other participants in the system being unable to meet their respective payment or settlement obligations.

PART II

PAYMENT AND SETTLEMENT SYSTEMS

3 Recognition of payment systems

(1) Subject to this section, the Reserve Bank may recognise a system that has any of the following objects—

- (a) the clearing of payment instructions between financial institutions that are participants in the system;
- (b) the settling of obligations arising from the clearing of payment instructions referred to in paragraph (a), whether through—
 - (i) the netting of the obligations or
 - (ii) set-off; or-
 - (iii) the individual settlement of each credit transfer or payment instruction
- (c) the discharge, through a settlement system established by the Reserve Bank in terms of section *seven* of any indebtedness between participants in the system which arises from the settling of obligations referred to in paragraph (b);

together with all or any of the following objects, to the extent that they are incidental to or connected with an object specified in paragraph (a), (b) or (c)—

- (i) establishing a payment clearing house for the clearing of payment instructions between all or any of the participants in the system and for the provision of services that are incidental to such clearing;
 - (ii) providing a forum for the, consideration of matters of policy and mutual interest concerning participants in the system;
 - (iii) acting as a medium of communication, on behalf of its participants, with the Government, the Reserve Bank, the Registrar of Banks and other persons and authorities;
 - (iv) dealing with other matters of interest to its participants and fostering co-operation between them.
- (2) The Reserve Bank may in terms of subsection (1) recognise different payment systems—
- (a) in respect of different classes of financial institutions; or
 - (b) in respect of different areas of Zimbabwe; or
 - (c) for the clearing of different classes of payment instructions; or
 - (d) for the netting or settlement of different classes of obligations.

(3) The Reserve Bank shall not recognise a payment system in terms of subsection (1) unless it is satisfied that—

- (a) only financial institutions and the Reserve Bank are permitted to become participants in the system; and
- (b) the system fairly represents the interests of all financial institutions that re or will become participants in the system; and
- (c) the Reserve Bank will be able adequately to monitor and regulate the system and the activities of its participants in order to ensure compliance with this Act and the Banking Act [*Chapter 24:20*]; and
- (d) the constitution and any rules governing the system are fair, equitable and transparent and make adequate provision for—
 - (i) admitting financial institutions into the system as participants and regulating and terminating their participation; and
 - (ii) controlling its participants use of payment clearance or settlement systems or operations; and
 - (iii) appointing a management body or committee, representative of the participants, to organise and manage the system and the participants' participation in it; and.
 - (iv) appointing any person as a system operator within the system in order to provide clearing processing services to or on behalf of participants; and
 - (v) criteria according to which a participant may be authorised to introduce any person to provide payment services.

4 Approval of amendments to constitution and rules of recognised payment system

No amendment to the constitution of any recognised payment system, or to the rules governing the system, shall have effect until they have been approved by the Reserve Bank.

5 Constitution and rules of recognised payment system to be open to inspection

The constitution of every recognised payment system and any rules governing the system, together with any amendments to that constitution and those rules, shall be kept at—

- (a) the offices of the Reserve Bank; and
- (b) the head office in Zimbabwe of every participant in the system; and shall be open for inspection there by members of the public at all times during normal office hours.

6 Withdrawal of recognition from payment system

(1) Subject to subsections (2) and (3), the Reserve Bank may, by notice in writing to the management body of the system concerned, withdraw its recognition of a recognised payment system if the Bank has reasonable grounds for believing that—

- (a) the system no longer fairly represents the interests of all financial institutions that are or should become participants in the system; or
- (b) the management body has contravened any provision of this Act or of the system's constitution; or
- (c) the manner in which the system is being conducted does not adequately protect the system against systemic risk;

and that it is in the public interest to withdraw its recognition from the system concerned.

(2) Before withdrawing its recognition from a system in terms of subsection (1), the Reserve Bank shall notify the system's management body, in writing, that it is considering doing so and of its reasons for considering such a step, and shall give the management body a reasonable opportunity to make representations in the matter.

(3) The Reserve Bank shall not withdraw its recognition from a system in terms of subsection (1) without paying due regard to any representations made by the system's management body.

7 Establishment and operation of settlement system

(1) The Reserve Bank shall establish and operate a system for the discharge, through the Reserve Bank, of any indebtedness arising from the clearing of payment instructions between participants in a recognised payment system.

(2) The Reserve Bank may specify rules and procedures for the discharge of settlement obligations in any settlement system established in terms of subsection (1):

Provided that no such rules shall be made without adequate consultation with the participants in the system.

(3) Section *five* shall apply, *mutatis mutandis*, in respect of any rules and procedures specified in terms of subsection (2).

8 Discharge of settlement obligations within settlement system

(1) In subsection(2)—

“money” means banknotes and coins that are legal tender in terms of section 41 or 44, as the case may be, of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*].

(2) The discharge of a net settlement obligation between participants in a recognised payment system shall be effected—

(a) in money; or

(b) by means of entries made to the participants’ settlement accounts maintained with the Reserve Bank.

9 Provision of information to Reserve Bank

In addition to any information that is required to be provided to the Reserve Bank in terms of the Banking Act [*Chapter 24:20*], the management body of every recognised payment system, and every participant in the system, shall provide the Reserve Bank with such reports, returns and other information as the Reserve Bank may reasonably require regarding—

(a) the volumes and values of payment instructions cleared in the system; and

(b) the volumes or values of the participants’ payment obligations and settlement obligations; and

(c) any other information regarding the operation of the system.

10 Control of undesirable conduct in regard to recognised payment system

(1) If the Reserve Bank has reasonable grounds to believe that a management body or a participant in a recognised payment system or a settlement system is engaging in or is about to engage in any act, omission or course of conduct which—

(a) results or is likely to result in systemic risk; or

(b) prejudices or will prejudice the integrity, effectiveness or security of the system concerned;

the Reserve Bank may issue a written direction requiring that management body or participant, as the case may be, to do any one or more of the following—

(i) to cease engaging in the act, omission or course of conduct concerned;

(ii) to do such things as the Reserve Bank may specify to remedy the situation;

(iii) to provide the Reserve Bank with such information relating to the matter as is specified in the direction.

(2) Any person who contravenes or fails to comply with any provision of a direction in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars.

(3) If any person contravenes or fails to comply with any provision of a direction in terms of subsection (1), whether or not criminal proceedings have been or may be instituted against him for an offence in terms of subsection (2), the Reserve Bank may apply to the High Court for an order directing him to comply with the provision concerned.

(4) On an application in terms of subsection (3), the High Court may make such order as in its opinion will ensure proper compliance with the direction concerned

(5) This section shall be construed as additional to and not in substitution for any provision of the Banking Act [*Chapter 24:20*] that permits the Reserve Bank to issue directions to financial institutions.

PART III

FINALITY OF SETTLEMENTS WITHIN RECOGNISED PAYMENT SYSTEM OR SETTLEMENT SYSTEM

11 Finality of payments and transfers made within settlement system

(1) Notwithstanding any other law but subject to this section, a payment or transfer which is effected in accordance with a recognised payment system or a settlement system and which is intended to settle—

(a) the payment obligations or settlement obligations of a participant in the system; or

(b) what are believed by the person making the payment or transfer to be the payment obligations or settlement obligations of a participant in the system;

shall be final and irrevocable and shall not be reversed or set aside for any reason whatever:

Provided that, if it subsequently- appears that anything so paid or transferred was not in fact due, it shall constitute a fresh debt owed by the payee or transferee, as the case may be, to the person who made the payment or transfer

(2) If the Reserve Bank considers that the making of a payment or transfer referred to in subsection (1) is likely to result in systemic risk, the Reserve Bank may, by written notice to the participants concerned—

(a) prohibit the making of the payment or transfer, if it has not already been made; or

(b) set aside the payment or transfer, if it has already been made;

and shall forthwith provide the participants with a written statement of its reasons for doing so:

Provided that no such payment or transfer shall be set aside more than twenty-four hours after it has been made.

(3) Where the Reserve Bank has prohibited the making of a payment or transfer in terms of paragraph (a) of subsection (2), any transaction effected in contravention of the prohibition shall be void.

(4) Where the Reserve Bank has set aside a payment or transfer in terms of paragraph (b) of subsection (2), the payment or transfer concerned shall be void *ab initio*.

12 Payments and transfers within settlement system not subject to interdict or stay - -

Notwithstanding any other law, no interdict or other order of any court shall operate to stay any payment or transfer which is required to be made in accordance with a recognised payment system or a settlement system and which is intended to settle—

(a) the payment obligations or settlement obligations of a participant in the system; or

(b) what are believed, by the person who is required to make the payment or transfer, to be the payment obligations or settlement obligations of a participant in the system.

PART IV

WINDING UP, JUDICIAL MANAGEMENT OR CURATORSHIP OF PARTICIPANTS IN RECOGNISED PAYMENT SYSTEM

13 Reserve Bank to be notified of winding-up or judicial management of participant in recognised payment system

Where a participant in a recognised payment system is wound up or placed under judicial management or provisional judicial management in terms of the Companies Act [*Chapter 24:03*], the person at whose instance the winding-up order or the order placing the participant under judicial management or provisional judicial management, as the case may be was issued shall lodge a copy of the order with the Reserve Bank.

14 Winding up or judicial management of participant in recognised payment system not to affect finality of prior settlements

Notwithstanding anything to the contrary in the Insolvency Act [*Chapter 6:04*] or the Companies Act [*Chapter 24:03*], the winding up of a participant in a recognised payment system, or the placing of such a participant under judicial management or provisional judicial management, shall not affect the finality or irrevocability of any payment or transfer which became final and irrevocable in terms of section *eleven* before the copy of the relevant order was lodged with the Reserve Bank in terms of section *thirteen*.

15 Rules, etc., of recognised payment system binding on liquidator, judicial manager or curator

Notwithstanding anything to the contrary in the Insolvency Act [*Chapter 6:04*] or the Companies Act [*Chapter 24:03*], where a participant in a recognised payment system—

(a) is wound up or placed under judicial management or provisional judicial management in terms of the Companies Act [*Chapter 24:03*]; or

(b) is placed under curatorship in terms of the Banking Act [*Chapter 24:20*];

any provision relating to netting or settlement which is contained in the constitution or rules of the system concerned or in any agreement to which the participant is a party shall be binding upon the participant's liquidator, judicial manager, provisional judicial manager or curator, as the case may be, to the extent that it applies to any payment obligation or settlement obligation which—

(i) was determined through netting or settlement before the issue of the winding-up order or the order placing the participant under judicial management, provisional judicial management or curatorship, as the case may be; and

(ii) was either—

A. to be discharged on or after the issue of that order; or

B. was overdue for payment on the date of that order.

16 Priority of certain instruments on winding up of participant in recognised payment system

(1) In this section—

“priority payment instruction” means a money order, bank draft or similar payment instruction issued, directly or indirectly, by a participant in a recognised settlement system, but does not include an instrument issued by one such participant to another for the purpose of effecting a payment between them.

(2) Notwithstanding anything to the contrary in the Insolvency Act [*Chapter 6:04*] or the Companies Act [*Chapter 24:03*] but subject to this section, where a participant in a recognised payment system is wound up in terms of the Companies Act [*Chapter 24:03*], unpaid payment instructions that were drawn on the participant and cleared through the system before the making of the winding-up order shall be paid from the participant's estate and shall rank in preference above any other unsecured claim against the estate.

(3) No payment shall be made pursuant to subsection (2) in preference to any other claim against an estate unless a request for such payment has been made within sixty days after the making of the winding up order in regard to the participant concerned.

(4) Subsection (2) shall not be construed as permitting a payment instruction to be paid in preference to any other claim against an estate, where the instruction was drawn on or certified or issued by the participant concerned with a view to giving the drawee of the instruction a preference over the participant's other creditors.

PART V

GENERAL

17 Prohibition against unrecognised payment systems

(1) No financial institution shall operate or participate in any system for—

- (a) the clearing of payment instructions; or
- (b) the netting or settlement of obligations arising from the clearing of payment instructions;

unless the financial institution is a participant in a recognised payment system or a settlement system.

(2) Any financial institution that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred thousand dollars.

18 Prohibition against payment intermediation

(1) Subject to subsection (3), no person other than—

- (a) a participant in a recognised payment system acting in accordance with the system's constitution or rules; or
- (b) a person introduced by a participant in a recognised payment system in accordance with a provision of the system's constitution or rules referred to in subparagraph (v) of paragraph (d) of subsection (3) of section *three*;

shall, as a regular feature of his business, accept money or a payment instruction from any other person for the purpose of making a payment on behalf of that other person to a third person to whom the payment is due.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Subsection (1) shall not apply to—

- (a) the People's Own Savings Bank of Zimbabwe established by section 3 of the People's Own Savings Bank Act [*Chapter 24:22*]; or
- (b) a building society registered in terms of the Building Societies Act [*Chapter 24 02*] or
- (c) a person who is acting as the duly appointed agent of the person to whom the payment is due; or
- (d) the transmission of money or payment instructions between companies which are members of the same group of companies or
- (e) any person exempted by the Minister in terms of subsection (4).

(4) Minister, after consultation with the Reserve Bank may by notice in the *Gazette* exempt any person or class of persons from the provisions of subsection (1), if the Minister is satisfied that such an exemption will be in the public interest and will not cause undue risk to any recognised payment system.

(5) For the purposes of paragraph (d) of subsection (3)—

“group of companies” means companies or other bodies corporate that are related to each other as holding company and subsidiary, or as subsidiaries of the same holding company, for the purposes of section 143 of the Companies Act [*Chapter 24:03*].

19 Settlement, of disputes arising out of recognised payment system or settlement system

(1) In this section—

“business day” means any day other than a Sunday or public holiday.

(2) If—

- (a) the management body of a recognised payment system is aggrieved by any decision taken by the Reserve Bank for the purposes of this Act, including a decision to withdraw recognition from the system; or
- (b) any participant in a recognised payment system or a settlement system is aggrieved by—
 - (i) any decision taken by the Reserve Bank for the purposes of this Act; or

(ii) any decision, act or omission by the system's management body or by another participant in the system;
the matter shall be settled in accordance with this section.

(3) The aggrieved party shall provide the Reserve Bank, the management body or the other participant, as the case may be, with a written statement setting out full particulars of its grievance, and the parties shall thereupon attempt to settle the matter by consensus within seven business days.

(4) If the parties are unable to settle the matter as contemplated in subsection (3), they may attempt to settle it within a further period of ten business days by a process of mediation whereby—

- (a) the parties agree on a mediator; and
- (b) the mediator familiarises himself with the parties' respective contentions; and
- (c) the mediator and all parties discuss the matter at one or more meetings attended by them all, and attempt to settle the matter by consensus; and
- (d) the parties share the mediator's costs equally.

(5) If the parties are unable to settle the matter by consensus in terms of, sub section (3) or by mediation in terms of subsection (4), or if mediation in terms of subsection (4) has been unsuccessful, the matter shall be referred to arbitration by a single arbitrator, and the Arbitration Act, 1996 (No. 6 of 1996), shall apply in respect of the matter as if the parties had entered into an arbitration agreement contemplated by that Act:

Provided that 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.

(6) Any decision of an arbitrator on an arbitration in terms of subsection (5) shall be final and binding on the parties.

20 Exercise of functions by Reserve Bank

(1) Any function of the Reserve Bank under this Act may be exercised, on behalf of the Bank—

- (a) by the Governor of the Reserve Bank; or
- (b) subject to the directions of the Governor of the Reserve Bank, by any Deputy Governor or officer of the Reserve Bank specified by the Governor.

(2) The Governor of the Reserve Bank and any Deputy Governor or officer of the Reserve Bank specified in terms of paragraph (b) of subsection (1) shall exercise the functions referred to in that subsection in accordance with any general directions of policy that the board of directors of the Reserve Bank may give them.

(3) This section shall not be construed as limiting the Reserve Bank's power under any other law to delegate its functions under this Act.

21 Preservation of secrecy

(1) Subject to subsections (2) and (3), no—

- (a) officer or employee of the Reserve Bank; or
- (b) member or employee of a management body;

shall disclose any information which he has acquired in the performance of his functions under this Act or the constitution or rules of any recognised payment system and which relates to the affairs of a particular financial institution.

(2) The Reserve Bank may disclose any information whose disclosure, in the Reserve Bank's opinion, is reasonably necessary to protect the integrity, effectiveness or security of a recognised payment system or a settlement system.

(3) Subsection (1) shall not apply to—

- (a) any disclosure made by the person concerned in the performance of his functions under this Act or under the constitution or rules of any recognised payment system, or when required to do so by a court or in terms of any other enactment; or
- (b) the disclosure of information that is generally known to members of the public or a substantial section of the public.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

22 Use of confidential information for personal gain

(1) Subject to subsection (2), if—

- (a) any officer or employee of the Reserve Bank; or
- (b) any member or employee of a management body;

for his personal gain makes use of any information which he has acquired in the performance of his functions under this Act or under the constitution or rules of any recognised payment system, and which relates to the affairs of a particular financial institution, he shall be guilty of an offence and liable to—

- (i) a fine not exceeding two hundred thousand dollars or double the amount of his gain, whichever is the greater; or

(ii) imprisonment for a period not exceeding five years; or to both such fine and such imprisonment.

(2) It shall be a defence to a charge under subsection (1) for the person charged to show that the information which he used was generally known to members of the public or to a substantial section of the public.

23 Evidence

A document purporting to be signed by or on behalf of the Reserve Bank and stating—

- (a) that any system is or is not a recognised payment system or a settlement system; or
- (b) that any financial institution is or is not a participant in any recognised payment system or settlement system;

shall be admissible in any proceedings in any court on its production by any person, and shall be prima facie proof of the facts stated therein.

24 Review of Act

The Reserve Bank shall establish a standing committee—

- (a) to review this Act from time to time; and
- (b) to make recommendations to the Minister with regard to amendments to this Act which, in the committee's opinion, have become advisable.

25 Reserve Bank to report on recognised payment systems to Minister

The Reserve Bank shall submit to the Minister—

- (a) such reports as the Minister may require; and
- (b) such periodic reports, and at such intervals, as it considers advisable; on the operation of every recognised payment system.

26 Transitional provision: existing payment systems

Notwithstanding section *seventeen*, any person who, immediately before the date of commencement of this Act, was operating a system for—

- (a) the clearing of payment instructions; or
- (b) the netting or settlement of obligations arising from the clearing of payment instructions;

may continue to operate the system for six months after that date even if the system is not recognised by the Reserve Bank in terms of section *three*:

Provided that, as soon as possible after the date of commencement of this Act, he shall apply to the Reserve Bank for recognition of the system and, if his application is refused before the six-month period has elapsed, he shall forthwith cease to operate the system.