



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

BANK OF NAMIBIA

No. 766

2024

DETERMINATION UNDER THE PAYMENT SYSTEM MANAGEMENT ACT, 2023

In my capacity as Governor of the Bank of Namibia (the Bank), and under the powers vested in the Bank by virtue of section 45 of the Payment System Management Act, 2023 (Act No. 14 of 2023), I hereby issue the Determination on the Designation of Systemically Important Systems and Authorisation of Financial Market Infrastructures in Namibia (PSD-13), which Determination shall become effective on 26 November 2024.

J. !GAWAXAB
GOVERNOR
BANK OF NAMIBIA

Windhoek, 5 November 2024

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PART I: PRELIMINARY

1. **Short Title** – Determination on the Designation of Systemically Important Systems and Authorisation of Financial Market Infrastructures in Namibia (PSD-13).
2. **Application** – This Determination applies to payment service providers and payment system operators authorised, under sections 10 and 11 of the Payment System Management Act, 2023 (Act No. 14 of 2023), to operate within the national payment system. This Determination sets out the criteria for designating systemically important systems, the criteria for authorising financial market infrastructures, as well as the designation and authorisation process to be

followed when the Bank designates systemically important systems and authorises financial market infrastructures, respectively.

3. **Definitions** – In this Determination, unless the context indicates otherwise, the words and expressions used will have the same meaning as assigned in the Payment System Management Act, 2023 (Act No. 14 of 2023).

“Act” means the Payment System Management Act, 2023 (Act No. 14 of 2023);

“administrative penalties” means a penalty determined by the Bank under section 40(1) of the Act;

“Bank” means the Bank of Namibia as referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020);

“clearing system” means a payment system with a set of rules and procedures through which participants agree and must comply with exchanging instructions to transfer funds or securities to other participants through a centralised system or at a single location, and may include a mechanism for calculating participants’ mutual position with a view of facilitating the settlement of their obligations in the settlement system;

“designation” means the process of designation of a payment, clearing or settlement system as a systemically important system, to regulate and manage systemic risk;

“financial market infrastructure” means a multilateral systemically important system among participating institutions, including the operator of the system, used for purposes of clearing, settlement or recording payments, securities, derivatives or other financial transactions;

“national payment system” means the entire payments ecosystem and includes all the payment systems, clearing systems, settlement systems and the rules, standards, arrangements, procedures, laws, agreements, technologies, payment instruments and institutions that are used in the processing and transferring of funds and securities;

“payment system” means an authorised system that enables the payment and transfer of funds or value, and includes – (a) a clearing system or settlement system; and (b) the rules, procedures, standards, technologies, instructions, institutions, participants, infrastructure and persons related to that system;

“payment system operator” means a person authorised under the Act to operate a payment system;

“Principles of Financial Market Infrastructures” means the international standards for financial market infrastructures (i.e. Payment Systems, central securities depositories, securities settlement systems, central counterparties and trade repositories) issued by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

“systemically important system” means a system that has a significant impact on the national payment system which is capable of triggering or transmitting disruptions among system participants or to the entire national payment system, if it is not sufficiently protected against risk;

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

“settlement system” means a system established and operated by the Bank to facilitate the transfer of funds for the discharge of payment and settlement obligations between system participants.

PART II: STATEMENT OF POLICY

4. **Authorisation** – Authority for the Bank to issue this Determination is provided for under section 45 of the Act.
5. **Purpose** – The Bank is responsible for designating and overseeing systemically important systems pursuant to section 25 of the Act. Section 25 provides that if the Bank is of the opinion that a payment system is a systemically important system, the Bank must designate that payment system as a designated payment, clearing or settlement system in the national payment system, in the manner and on the terms and conditions as the Bank may determine by notice in the *Gazette*.

Designated payment systems are systemically important systems. Any deficiency in its design or disruption in its operations, has a significant impact on the national payment system, and which is capable of triggering or transmitting disruptions among system participants or to the entire national payment system, if not sufficiently protected against risk.

The Act further empowers the Bank to authorise payment services and payment systems as financial market infrastructures in the interest of the national payment system and the public. Financial market infrastructures are multilateral systemically important systems among participating institutions, used for purposes of clearing, settlement or recording payments, securities, derivatives or other financial transactions.

This Determination therefore stipulates the criteria and relevant factors that the Bank will consider in determining whether or not an authorised payment service provider or payment system should be designated as a systemically important system and be authorised as a financial market infrastructure, to be subjected to enhanced oversight by the Bank.

PART III: DESIGNATION OF SYSTEMICALLY IMPORTANT SYSTEMS

6. **Eligibility for Designation as a Systemically Important System**

6.1 The Bank may not designate a payment system as a designated payment, clearing or settlement system in the national payment system, unless:

- 6.1.1 the payment system has been authorised by the Bank in terms of the Determination for the Authorisation of Payment System Operators and System Participants in the National Payment System (PSD-6); and/or
- 6.1.2 it is the payment system of a licensed/authorised payment service provider in terms of the Determination for the Licensing and Authorisation of Payment Service Providers in Namibia (PSD-1).

7. **Criteria for Designating Systemically Important Systems**

7.1 In determining whether to designate a payment system as a systemically important system, the Bank may consider the following:

- 7.1.1 **Degree of systemic risk:** whether a disruption in the operation of the payment system could further disrupt or impact the efficient functioning of the national payment system, its participants and affect public confidence in the financial system of Namibia;
- 7.1.2 **Market share:** whether the payment system is widely used in Namibia and the designation is necessary to ensure efficiency or competitiveness in any of the services provided by the payment system operator or payment service provider;

- 7.1.3 **National interest:** whether the designation is in the interest of the national payment system as per the objectives of the Act;
- 7.1.4 **Public interest:** whether the designation is in the public interest;
- 7.1.5 **Cross-border activities:** whether any cross-border activities are involved in the operations of the payment system, including the number of involved countries and the total volumes and values of processed transactions;
- 7.1.6 **Volume of transactions processed:** whether the payment system processes 30% or more of the total volume of interbank transactions annually processed in the national payment system;
- 7.1.7 **Value of transactions processed:** whether the payment system handles more than 30% of the annual value of interbank transactions or high-value payments in the country;
- 7.1.8 **Inter-dependency among participants:** the number of direct and indirect participants within the payment system, which may be impacted by potential deficiency in the design or disruptions in the operations of the payment system;
- 7.1.9 **Degree of interoperability:** whether the payment system is interoperable with other national, regional and/or international payment systems; and
- 7.1.10 any other factors the Bank may deem necessary and appropriate.

8. Designation Process

- 8.1 The Bank will initiate the designation process under this section if it considers that a payment system is satisfying or is likely to fulfil the criteria for designation as a systemically important system.
- 8.2 Should the Bank intend to designate a payment system as systemically important, it must:
 - 8.2.1 notify the payment system operator or payment service provider of its intention to designate its system as systemically important, clarify grounds of such intention, in addition to other terms and conditions attached to such designation;
 - 8.2.2 provide the payment system operator or payment service provider an opportunity to make written representation on any matters that the Bank should consider before proceeding with the designation, within thirty (30) business days from the date of receipt of the notice referred to in subsection 8.2.1; and
 - 8.2.3 upon receipt of the written representation, consider the representation made by the payment system operator or payment service provider within thirty (30) business days from the date of receipt. The Bank may seek further clarification where necessary before making a final decision.
- 8.3 Once the Bank has made a final decision, as contemplated in subsection 8.2.3, the Bank must –
 - 8.3.1 in writing, inform the payment system operator or payment service provider of its decision and the reasons for such decision within fifteen (15) business days of making the decision; and

8.3.2 publish the designation of the payment system as a systemically important system by notice in the *Gazette*.

8.4 The notice referred to under subsection 8.3.2 must specify:

8.4.1 the type of payment system that is subject to designation; and

8.4.2 the Bank's terms and conditions to which the designation is subjected to.

9. Variation and revocation of designation for Systemically Important Systems

9.1 The Bank may vary or revoke any designation made under section 8, including any terms or conditions of the designation by giving notice in accordance with section 3 of the *Regulations Relating to Variation or Revocation of Designated Entities: Payment System Management Act, 2023*.

9.2 In determining whether or not to vary or revoke a designation, the Bank may have regard to any of the following factors, as provided for in section 26 of the Act:

9.2.1 failure to comply with any term or condition to which the designation is subject to;

9.2.2 whether or not the designated entity has ceased to operate;

9.2.3 whether or not the designated entity has knowingly furnished information or documents which are false or misleading in any material respect, to the Bank in connection with the designation of the entity;

9.2.4 whether the system is no longer relevant; and

9.2.5 any other matter that the Bank considers appropriate.

9.3 Subject to subsection 9.1, the Bank must consider the submissions made by the designated entity, if any, before publishing the variation or revocation in a notice in the *Gazette*.

9.4 Any variation or revocation made under subsection 9.1 does not affect:

9.4.1 the validity or enforceability of any rules of the payment system; or

9.4.2 any payment to or out of the settlement account of the settlement system or netting or settlement that took place before the notice in the *Gazette*.

9.5 The Bank must ensure that it has followed due diligence processes before the variation or revocation of designation.

PART IV: AUTHORISATION OF FINANCIAL MARKET INFRASTRUCTURES

10. Criteria for Authorising Financial Market Infrastructures

10.1 The Bank may authorise a payment service and/or payment system as a financial market infrastructure in terms of section 3(2)(h) of the Act.

10.2 In determining whether to authorise a payment service or payment system as a financial market infrastructure, the Bank may consider:

- 10.2.1 Systemic importance:** whether the payment system has been designated as a systemically important system;
- 10.2.2 Degree of Substitutability:** whether there is an alternative payment system that can immediately and effectively process transactions or avail an equivalent payment service in the national payment system;
- 10.2.3 Recovery and resolution:** whether the disorderly failure of the payment system would likely lead to systemic disruptions for the institutions and markets supported by the payment system, or to any other financial market infrastructure to which the failing payment system is linked, and to the financial system more broadly;
- 10.2.4 Inter-connectedness:** whether the payment system inherits a high degree of interconnectedness with other payment systems, the Bank, financial market infrastructure and financial institutions;
- 10.2.5 Concentration of financial risk:** whether there is a concentration of financial risks in the operations of the payment system based on its market share;
- 10.2.6 Visibility:** whether the nature of the operations of the payment system requires a higher degree of visibility, to ensure the implementation of appropriate risk management measures to maintain financial stability; and
- 10.2.7** any other factors the Bank may deem necessary and appropriate.

11. Authorisation Process

- 11.1** The Bank will initiate the authorisation process under this section, if it considers that a payment service or payment system is satisfying or is reasonably likely to fulfil the criteria for authorisation as a financial market infrastructure.
- 11.2** Should the Bank intend to authorise a payment service or payment system as a financial market infrastructure, it must:
 - 11.2.1** notify the payment system operator or payment service provider of its intention to authorise its system as a financial market infrastructure, clarify grounds of such intention, in addition to other terms and conditions attached to such authorisation;
 - 11.2.2** a payment system operator or payment service provider must, within thirty (30) business days from the date of receipt of a notice referred in subsection 11.2.1, make written representation to the Bank on any matter that the Bank should take into consideration before granting authorisation;
 - 11.2.3** on receipt of the written representation, consider the representation made by the payment system operator or payment service provider within thirty (30) business days from the date of receipt, if any, and seek further clarification where necessary, before making a final decision;
 - 11.2.4** once the Bank has made a final decision, as contemplated in subsection 11.2.3, the Bank must –
 - (a) in writing, inform the payment system operator or payment service provider of its decision and the reasons for such decision; and

- (b) publish the authorisation of the payment system as a financial market infrastructure by notice in the *Gazette*.

11.2.5 The notice referred to under subsection 11.2.4 (b) must specify:

- (a) the type of payment system that is subject to authorisation; and
- (b) the terms and conditions to which the authorisation is subjected to by the Bank.

12. Withdrawal of authorisation for Financial Market Infrastructures

12.1 The Bank may withdraw any authorisation granted under section 11, by written notice to the financial market infrastructure and, in that notice, state the grounds for that intended action.

12.2 A financial market infrastructure must, within thirty (30) business days from the date of receipt of a notice referred in subsection 12.1, make written representation to the Bank on any matter that the Bank should take into consideration before making its decision.

12.3 On receipt of the written representation, the Bank must consider the representation made by the financial market infrastructure within thirty (30) business days from the date of receipt, if any, and seek further clarification where necessary, before making a final decision.

12.4 Once the Bank has made a decision as contemplated in subsection 12.3, the Bank must:

12.4.1 in writing, inform the financial market infrastructure of its decision and the reasons for such decision within fifteen (15) business days of making the decision; and

12.4.2 publish the withdrawal in a notice in the *Gazette*.

12.5 If the financial market infrastructure does not make written representations within the thirty (30) business days from the date of receipt of the written notice, the Bank must, by written notice inform the Financial Market Infrastructure of the withdrawal of authorisation and publish such withdrawal in the *Gazette*.

12.6 The Bank must ensure that it has followed due diligence processes before the withdrawal of the authorisation.

PART V: COMPLIANCE REQUIREMENTS

13. Compliance requirements for systemically important systems and Financial Market Infrastructure

13.1 A systemically important system must observe the Principals of Financial Market Infrastructure.

13.2 A systemically important system must ensure that it, at all times, has scalable capacity to handle increases in payment volumes and that it can achieve its service level objectives.

13.3 A financial market infrastructure must ensure compliance with the Principals of Financial Market Infrastructure.

- 13.4** A financial market infrastructure must annually identify and understand the types of risks that arise in or are transmitted by its operations, must determine the sources of these risks, and put mitigating measures in place.
- 13.5** A financial market infrastructure must develop and submit to the Bank a resolution framework that provides for the recovery of the financial market infrastructure, thereby assuring its critical operations and services may be sustained, and the orderly winding down of the financial market infrastructure, should its operations become non-viable.
- 13.6** A financial market infrastructure must develop and submit to the Bank a disclosure framework providing sufficient information to enable participants to have an accurate understanding of the risks and costs it incurs by participating in the financial market infrastructure.
- 13.7** A systemically important system and financial market infrastructure should ensure an operational uptime or availability of 99.9 percent at all times, in accordance with the provisions of the *Determination of the Operational and Cybersecurity Standards within the National Payment System* (PSD-12).
- 13.8** A systemically important system and financial market infrastructure should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing, in accordance with the provisions of the *Determination of the Operational and Cybersecurity Standards within the National Payment System* (PSD-12) and any other laws applicable to, or determined by the Bank.
- 13.9** A systemically important system and a financial market infrastructure must perform self-assessments of its compliance with the applicable principles of the Principles of Financial Market Infrastructure. Such assessments must be done at least every 36 months and whenever a major system change or upgrade has been effected on the financial market infrastructure and be submitted to the Bank.
- 13.10** A systemically important system and financial market infrastructure must notify the Bank immediately or as soon as they become aware of the occurrence, of any of the following events:
- 13.10.1** an event or irregularity that impedes or prevents access to, or impairs the business operations;
 - 13.10.2** the systemically important system or financial market infrastructure being unable to meet any of the financial, statutory, contractual or other obligations of the payment system;
 - 13.10.3** any notice of non-compliance issued against the systemically important system or financial market infrastructure by any regulatory authority, whether in Namibia or elsewhere; and
 - 13.10.4** any other matter that the Bank may deem necessary and appropriate.
- 13.11** Systemically important systems and financial market infrastructure are required to submit monthly statistics to the Bank using the Regulatory Returns as provided by the Bank.

PART VI: OTHER REGULATORY REQUIREMENTS**14. Administrative penalties**

14.1 Any person that contravenes or otherwise fails to comply with this Determination will be subject to administrative penalties as provided for under section 40 of the Act.

15. General

15.1 This Determination is not exhaustive and may be supplemented and/or amended from time to time.

16. Effective date

16.1 This Determination becomes effective on the date of publication.

17. Enquiries

17.1 All enquiries related to this Determination may be forwarded to:

**The Director
National Payment System and
Financial Surveillance Department
Bank of Namibia
P. O. Box 2882, Windhoek
Namibia
Email: assessments.npsd@bon.com.na**
