



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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No. 4479

### CONTENTS

*Page*

#### GOVERNMENT NOTICE

No. 88 Promulgation of Payment System Management Amendment Act, 2010 (Act No. 6 of 2010), of the Parliament ..... 1

## Government Notice

### OFFICE OF THE PRIME MINISTER

No. 88

2010

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 6 of 2010: Payment System Management Amendment Act, 2010.

## Act No. 6, 2010 PAYMENT SYSTEM MANAGEMENT AMENDMENT ACT, 2010

## EXPLANATORY NOTE:

- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.
- [            ] Words in bold type in square brackets indicate omissions from existing provisions.

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**ACT**

To **amend the Payment System Management Act, 2003, so as to empower the Bank of Namibia to determine standards for user fees and charges for service delivery, to ensure compliance thereof and to take remedial actions for non-compliance; to provide for administrative penalties; to create certain offences; and to provide for incidental matters.**

*(Signed by the President on 23 April 2010)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia as follows:

**Amendment of section 1 of Act No. 18 of 2003**

1. Section 1 of the Payment System Management Act, 2003 (hereinafter referred to as the principal Act) is amended -

- (a) by the insertion after the definition of "Companies Act" of the following definitions:

"cost-effectiveness" means the pricing of payment system service or other connected service in a manner that accurately reflects the cost of producing such service;

"fees or charges" means costs payable by a user of payment system service or other connected service;"; and

- (b) by the addition after the definition of "this Act" of the following definition:

"user" means a system participant or a service provider, and includes a customer or client of the system participant or service provider;".

**Amendment of section 2 of Act No. 18 of 2003**

2. Section 2 of the principal Act is amended by the insertion after paragraph (c) of subsection (2) of the following paragraphs:

- "(d) to ensure that the fees or charges payable by a user are in the public interest, promote competition, efficiency and cost-effectiveness in service delivery and comply with the standards determined by the Bank;

**Act No. 6, 2010 PAYMENT SYSTEM MANAGEMENT AMENDMENT ACT, 2010**

- (e) to take remedial actions as the Bank may direct, if the Bank is of the opinion that the fees or charges referred to in paragraph (d) are not in the public interest, do not promote competition, efficiency or cost-effectiveness in service delivery, or do not comply with the standards determined by the Bank."

**Insertion of sections 16A and 16B in Act No. 18 of 2003**

3. The following sections are inserted in the principal Act after section 16:

**"Administrative penalties**

**16A.** (1) The Bank may impose administrative penalties on any person for any delay in complying with any directive, determination, guideline, standard, circular, specification, order or notice issued by the Bank, under section 13, 14 or any other section.

(2) Before making a decision to impose any administrative penalty on a person, the Bank must serve on the person a written notice calling on the person to show cause as to why the penalty should not be imposed on the person.

(3) If a satisfactory explanation is not received within 14 days from the date of receipt of the written notice referred to in subsection (2), the Bank may impose an administrative penalty in an amount not exceeding N\$100 000 for each day of non-compliance, which amount may not exceed N\$1 000 000 in total.

**Offence relating to instrument, device, apparatus or material or component thereof**

**16B.** A person who -

- (a) makes, adapts or repairs;
- (b) buys or sells;
- (c) exports from or imports into Namibia; or
- (d) possesses or uses,

any instrument, device, apparatus, material or a component thereof that the person knows or reasonably ought to have known that it has been used or is intended for use in forging or falsifying a payment instrument, or for use in defrauding a lawful holder of a payment instrument, commits an offence."

**Substitution of section 17 of Act No. 18 of 2003**

4. The principal Act is amended by the substitution for section 17 of the following section:

**Act No. 6, 2010      PAYMENT SYSTEM MANAGEMENT AMENDMENT ACT, 2010****“Penalties**

17. A person convicted of an offence under -
- (a) section 5(5), 6(2), 7(4), or [13(2)] 16B is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment; or
  - (b) section 11(2) [or 14(2)] is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.”

**Short title**

5. This Act is called the Payment System Management Amendment Act, 2010.