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General Notice

BANK OF NAMIBIA

No. 137

2017

DETERMINATION UNDER THE PAYMENT SYSTEM MANAGEMENT ACT, 2003 (ACT NO. 18 OF 2003), AS AMENDED

In my capacity as Governor of the Bank of Namibia (The Bank), and under the powers vested in the Bank by virtue of Section 14 and section 16A of the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended. I hereby issue this **Determination on the Imposition of Administrative Penalties in the National Payment System (PSD-8)**, which Determination shall become effective on date of publication in the *Gazette*.

I. W. SHIMI
GOVERNOR
BANK OF NAMIBIA

Windhoek, 25 April 2017

Payment System Determination (PSD-8)**IMPOSITION OF ADMINISTRATIVE PENALTIES IN
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PART I: PRELIMINARY**1. Short Title**

Imposition of Administrative Penalties in the National Payment System

2. Application

This Determination shall apply to all authorised participants in the National Payment System.

3. Definitions

In this Determination, words and phrases shall carry their ordinary meanings. Unless the context otherwise indicates, the words and expressions used herein shall have the same meaning assigned to them in the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended and cognate expressions shall have corresponding meanings:

- 3.1** “**Act**” – means the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended.
- 3.2** “**Administrative Penalties**” – penalties imposed by the Bank without the intervention of a court, subject to right of appeal as per section 15 of the Act and then to the High Court.
- 3.3** “**Administrative Sanctions**” – refers to a warning, caution, instruction and an administrative penalty that may be imposed by the Bank to an authorised participant.
- 3.4** “**Authorised Participants**” – refers to payment system participants, service providers and payment instrument issuers, authorised by the Bank to operate in the National Payment System.

4. Authorisation

Authority for the Bank to issue this Determination is provided in section 14 and section 16A of the Act.

PART II: STATEMENT OF POLICY

5. Purpose

- 5.1** The purpose of imposing administrative penalties is to promote high standards of regulatory conduct by deterring authorised participants from committing contraventions and encouraging those who are non-compliant to take appropriate remedial action. Additionally, imposing administrative penalties also prevents, or at least, reduces recourse to costlier and time consuming enforcement actions such as criminal prosecution. The ultimate objective of this Determination is to promote awareness and enhance transparency of the procedure used to impose administrative penalties in the National Payment System.
- 5.2** This Determination provides and explains the following:
- (a) The guiding assessment principles and criteria to assess cases of delay in compliance by authorised participants; and
 - (b) The procedure and process the Bank shall use to determine and calculate an appropriate administrative penalty amount.

6. Scope

This Determination shall apply to all authorised participants in the National Payment System that have delayed to comply with any Directive, Determination, Guideline, Standard, Circular, Specification, Order or Notice issued by the Bank under section 13 and section 14 or any other section of the Act.

PART III: ASSESSMENT AND IMPLEMENTATION

7. Assessment Principles

- 7.1** The Bank may consider the following principles when appraising or taking a decision to impose administrative penalties on authorised participants in the National Payment System:

- (a) The nature of the delay in compliance including the likelihood that the same or similar type of infringement will recur if an administrative penalty is not imposed by the Bank;
- (b) Whether or not the delay in compliance has been intentional, deliberate or a negligent action by the authorised participant;
- (c) The seriousness or severity of the delay in compliance including its impact and any other threat or potential threat that it might pose to the relevant authorised participant, other authorised participants and/or the entire National Payment System;
- (d) Whether the delay in compliance has the potential of hindering the Bank from ensuring the safety, security, efficiency and cost effective operation of the National Payment System;
- (e) The duration and frequency of the delay in compliance;
- (f) The behaviour of the authorised participant after the delay in compliance has been identified, including the degree of co-operation showed during the assessment;
- (g) Whether the authorised participant immediately brought the delay in compliance to the attention of the Bank and/or any other regulatory or law enforcement agencies;
- (h) Whether the authorised participant has taken reasonable steps to put in place effective remedial action to discontinue the delay in compliance;
- (i) If prior actions taken by the Bank in the form of a notice, warning, meeting or order, proved ineffective to deter the delay in compliance;
- (j) Previous disciplinary records and compliance history of the authorised participant in its operations within the five-year period immediately before the delay in compliance;
- (k) Whether the relevant authorised participant derived any economic benefit from the delay in compliance or had any economic impact on any other third party;
- (l) The financial condition of the authorised participant, using the CAMELS rating, at the time of imposing the administrative penalty or during the offsite and onsite investigation; and
- (m) Whether the delay in compliance will or has the potential of introducing any risks in the relevant authorised participant's business model, settlement and clearing abilities, risk management systems and eventually the National Payment System, these risks are outlined in Appendix I, Schedule 2 of this Determination.

7.2 The Bank may consider any other principle not listed under Section 7.1 of this Determination if it deems it material and appropriate when appraising or taking a decision to impose an administrative penalty.

8. Administrative Sanctions

8.1 For the purpose of promoting and maintaining high standards of conduct and management in the National Payment System, the Bank may take a decision to impose any of the following administrative sanctions:

- (a) A warning and/or instruction to the relevant authorised participant not to repeat the conduct which led to the delay in compliance; or
- (b) Proceed to section 9 of this Determination.

8.2 The Bank will regard a delay in compliance as resolved if and when:

- (a) The authorised participant puts in place acceptable measures and/or controls to ensure that the delay in compliance will not occur again; or
- (b) The authorised participant has communicated to the Bank an acceptable proposed date and/or time on which the delay in compliance will be rectified; or
- (c) The resolution of the matter as per section 15 of the Act or the High Court.

9. Imposition of an Administrative Penalty

9.1 Whenever the Bank considers it appropriate to impose an administrative penalty against an authorised participant, it will, before taking such an action, issue to the authorised participant concerned, by hand or via mail, a notice of delay in compliance, which will contain:

- (a) The full details of the authorised participant;
- (b) The nature of the delay in compliance;
- (c) The administrative penalty amount that the Bank intends to impose; and
- (d) The right of the authorised participant to make a written representation within 14 business days after the notice is served to show cause as to why the administrative penalty should not be imposed.

9.2 If no satisfactory explanation is received after 14 business days from the date of the written notice, the Bank will, by written notice inform the authorised participant to pay to the Bank the administrative penalty within 30 business days of receipt of notice.

9.3 The Bank, as mandated by Section 16A (3) of the Act, may impose administrative daily penalties not exceeding N\$100 000 for each day of non-compliance, which amount may not exceed N\$1 000 000 in total for each case of non-compliance.

9.4 A daily administrative penalty amount will be calculated from the date the delay in compliance occurred or from the date the Bank becomes aware of the delay in compliance.

9.5 In the event that an authorised participant appeals against a decision taken by the Bank to impose an administrative penalty, the Bank shall reserve such a decision until the appeal process is concluded and waive the administrative penalty amount calculated during the appeal process.

- 9.6** The amount of any administrative penalty imposed by the Bank will be calculated in accordance with:
- (a) The assessment principles outlined under section 7 of this Determination; and
 - (b) The level of potential risk that an authorised participant has or will expose unto themselves or introduce into the National Payment System as outlined under appendix I, schedule 2 of this Determination.

10. Appendix

Appendix I of this Determination provides three schedules.

- 10.1** The first schedule consists of the assessment principles listed under section 7 of this Determination coupled with the mitigating factors with various weights assigned to each principle and factor;
- 10.2** The second schedule provides a risk assessment matrix to measure the severity of each violation; and
- 10.3** The third schedule outlines the administrative penalty structure that will be used to derive the appropriate administrative penalty amount dependent on the scores obtained from schedule 1 and schedule 2.

PART IV: OTHER REGULATORY REQUIREMENTS

11. Procedural rules

When imposing administrative penalties, the Bank will follow the procedural rules provided under section 16A of the Act.

12. Remedial Measures

- 12.1** The Bank will follow the remedial procedure provided under section 15 of the Act when an authorised participant considers itself aggrieved by a decision taken and or an administrative penalty imposed by the Bank under this Determination. The Bank may also use any other relevant legislation in the interest of ensuring a safe, secure, efficient and cost-effective operation of National Payment System.
- 12.2** This Determination is not exhaustive and may be supplemented and/or amended from time to time.

13. Effective Date

The effective date of this Determination shall become effective from the date of publication in the *Gazette*.

14. Enquiries

All enquirers related to this Determination shall be directed to:

The Director: Payment and Settlement Systems Department
Bank of Namibia
P.O Box 2882
Windhoek

Appendix I

Schedule 1: Assessment Principles Matrix

Assessment Principles	Severity Levels						Weight ¹	Severity Score	Value (Weight X Severity)
	0	1	2	3	4	5			
Intent	Non-intentional	Should have known	-	Non-malicious Intent	-	Deliberate	5		
Likelihood of recurrence	None	Unlikely	-	Likely	-	Significant likelihood	5		
Hindrance	None	Low Impact	Medium-Low Impact	Medium (Moderate) Impact	High-Medium Impact	High Impact	4		
Duration	0 months	3 months	6 months	12 months	1-2 years	≥2 years	4		
Frequency	Zero violations	One violation	-	Several violations =<3	-	Numerous violations =>3	4		
Previous disciplinary records and compliance history	None	Prior cautionary advices	Prior warning for similar violations	Minor cases of prior cautioning for similar violations =<3	Cases of prior cautioning for similar violations =>3	Prior regulatory actions / resolutions outstanding	3		
Continuation after notification / warning	No notification / warning received	Ceased immediately	Ceased shortly after notification	Agree ceasing date with Bank after warning	Unfavorable ceasing date communicated	Continuation after notification / warning with no intervention	4		
Informed the Bank of Delay in Compliance	Immediately	Less than 24 hours	Less than 2 Days	Not later than 1 week	After a Month	After and Beyond 2 months	4		
Co-operation with the regulator	Full co-operation with timely responses and remediation	Significant co-operation by the participant	-	Moderate co-operation by the participant	-	No co-operation by the participant	4		
Economic benefit derived	No benefit	Minimum benefit to relevant participant	-	Moderate benefit to relevant participant	-	Significant benefit to relevant participant	3		
Negligence	Oblivious	-	-	Ignorant	-	Negligent	4		
History of previous Administrative Penalties	None	Prior cautionary advices	Prior warning for similar violations	Minor cases of prior cautioning for similar violations =<3	Cases of prior cautioning for similar violations =>3	Prior regulatory actions / resolutions outstanding	3		
Financial condition of non-compliant participant	CAMELS 5	CAMELS 4	CAMELS 3	CAMELS 2	CAMELS 1	-	3		

¹ The weights assigned are normalised to give accumulated scores of not more than 100 maximum violation severity points (weight x severity / 4) per assessment.

Severity Levels									
Mitigating Principles	0	1	2	3	4	5	Weight ¹	Severity Score	Value (Weight X Severity)
Voluntary informing of the regulator of the contravention or delay in compliance	Contra-vention observed / detected by regulator	Contra-vention reported by 3 rd party	-	Delay in communicating the contra-vention / non-compliance	-	Compre-hensively informed regulator; full facts and implications disclosed	-3		
Voluntary restitution or other corrective actions	No voluntary action taken	Forced regulatory action needed.	-	Correc-tive action taken. Partially effective	-	Correc-tive action taken appropriately and timely.	-4		
Effective compliance program	No Program	Risk Naïve	Risk Aware	Risk Defined	Risk Managed	Risk Enabled	-5		

Schedule 2: Risk Assessment Matrix

The risk severity levels will be calculated by taking into account the seriousness, impact and potential threat of each incident.

Severity Levels									
Risk Types	0	1	2	3	4	5	Weight ¹	Severity Score	Value (Weight X Severity)
Systemic Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	5		
Settlement Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	5		
Operational Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	4		
Reputation Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	4		
Liquidity Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	3		
General Business Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	3		
Legal Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	3		
Credit Risk	No Risk	Low Risk	Medium-Low Risk	Medium (Moderate) Risk	High-Medium Risk	High Risk	3		

¹ The weights assigned are normalised to give accumulated scores of not more than 100 maximum violation severity points (weight x severity / 4) per assessment.

Assessment Total

Schedule 1 Subtotal	
Schedule 2 Subtotal	
Grand Total (Subtotal 1 + Subtotal 2)	

Schedule 3: Administrative Penalty Amount

Violation Severity Points Lower bound	Violation Severity Points Upper bound	Admin. Penalty Lower bound N\$	Admin. Penalty Upper bound N\$	Suggested Admin. Penalty N\$
1	10	0	10,000.00	
11	20	10,001.00	20,000.00	
21	30	20,001.00	30,000.00	
31	40	30,001.00	40,000.00	
41	50	40,001.00	50,000.00	
51	60	50,001.00	60,000.00	
61	70	60,001.00	70,000.00	
71	80	70,001.00	80,000.00	
81	90	80,001.00	90,000.00	
91	100	90,001.00	100,000.00	