

# **CENTRAL BANK OF THE GAMBIA**



## **REGULATION FOR THE PROVISION OF MOBILE MONEY SERVICES**

**FINANCIAL SUPERVISION DEPARTMENT (FSD)  
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**CENTRAL BANK OF THE GAMBIA  
REGULATION FOR THE PROVISION OF  
MOBILE MONEY SERVICES**

**ARRANGEMENT OF SECTIONS**

This Regulations is made Pursuant to Sections 52 and 75 of The Central Bank of The Gambia Act, 2005

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## **Section 1**

### **1.0 *Citation***

This Regulation may be cited as the Mobile Money Regulation, 2011

## **Section 2**

### **2.0 *Policy statement***

#### **2.1 *Purpose***

The purpose of this Regulation is:

- (a) To define retail transfers and provide for the delivery of retail transfers by banks and financial institutions as well as persons who are not licensed as banks or financial institutions;
- (b) To facilitate the provision of electronic payment services without compromising the safety and efficiency of the national payment system;
- (c) To provide minimum standards for consumer protection and risk management to be adhered to by all providers of retail transfers.

#### **2.2 *Scope***

This Regulation applies:

- (a) To all retail transfers utilising an electronic payment system and delivered entirely within The Gambia;
- (b) With respect to its authorisation requirements, to all payment service providers not licensed as banks or financial institutions.

## Section 3

### 3.0 Definitions

In this Regulation, unless the context otherwise requires, the words and expressions used herein shall have the following meanings assigned to them.

**“cash”** means bank notes and coins;

**“cash merchant”** means a person who, for a fee, performs cash services for a payment service provider;

**“Wholesale cash merchants”** means a person who distributes e-money for cash merchants, for a fee;

**“cash services”** means the exchange of cash for e-money and e-money for cash;  
**“client”** means a user of the services of a payment service provider;

**“complain”** means any statement of dissatisfaction of service by a client;

**“core capital”** means shareholders equity in the form of issued and fully paid-up shares of common stock, plus all disclosed reserves, less goodwill or any other intangible assets;

**“e-money”** means e-money as defined in the Mobile Money Regulation;

**“e-money issuer”** means an e-money issuer authorised to issue e-money in terms of the E-Money Regulation

**“e-money payment instrument”** means a payment instrument utilising e-money as defined in this Regulation for the purposes of making retail transfers;

**“material shareholder”** means a person who owns 5% or more of the shareholding of a company;

**“payee”** means the person who is the intended recipient of funds which is the subject of a retail transfer;

**“payer”** means a person who holds a payment account and who allows a retail transfer from that payment account;

**“payment account”** means an account held with a bank or financial institution or

an e-money account held with an e-money issuer under the E-Money Regulation;

**“payment instrument”** means any electronic instrument that enables a person to make payment, and for the purposes of this definition currency shall include e-money;

**“payment service provider”** means a person engaged in the sending, receiving, storing or processing of retail transfers;

**“points of service”** means all the physical and electronic locations where a payment service provider provides retail transfers including its head office and branches, the head office and all the outlets of its cash merchants, as well as any website that can be accessed to initiate retail transfers, but excluding automatic teller machines;

**“real time”** means that:

- (a) the retail transfer is completed, that is, the payment account of the payer is debited and the payment account of the payee is credited, instantaneously, such that there is no settlement risk; and
- (b) the payee receives written notification, simultaneous with the completion of the retail transfer, of having received the funds into his payment account;

**“retail transfer”** means a payment instrument consisting of an instruction issued by a payer to a payment service provider to debit a payment account and to credit the payment account of the payee or to make the funds available, directly or through another payment service provider, to the payee where the payee does not hold a payment account, provided that the value being transferred does not exceed **ten thousand dalasis**; and for the purposes of this Regulation, the term **“payment service”** shall refer to the provision of retail transfers or any component thereof by one or more payment service providers.

## Section 4

### *4.0 Authorization of payment service providers*

- 4.1 A Mobile Money service provider, shall, before commencing such business, apply to the Bank for authorisation by submitting an application in the form set out in Schedule 1 to this Regulation. The application shall be accompanied by the following information:

- (a) The type of services to be offered as well as the programme of operations to offer these services;
- (b) The geographic locations where the services will be offered and the physical accessibility of these services to portions of the population not currently served by similar services;
- (c) The public interest that will be served by the provision of the payment service;
- (d) A business plan including an indicative budget for the first three financial years which demonstrates that the applicant is able to operate efficiently and safely;
- (e) Evidence that the payment service provider holds the initial capital set out in clause 6;
- (f) A description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;
- (g) A description of the internal control mechanisms which the applicant has established to comply with its AML obligations as set in the Anti-Money Laundering Act and the relevant regulations.
- (h) A description of the applicant's structural organisation including, where applicable, a description of its intended use of cash merchants, branches and outsourcing arrangements, and its participation in a national or international payment system;
- (i) How the payment service provider shall settle the inter-bank payment obligations arising from its provision of retail transfers;
- (j) The identity of its owners, provided that in the case of public companies only material shareholdings must be declared;
- (k) The identity of directors and persons responsible for the management of the payment service provider and, where the activities for which authorisation is being sought will be conducted in a separate division, the persons responsible for the management of that division, as well as evidence that they are of good repute and possess the appropriate knowledge and experience to perform the proposed services;
- (l) The applicant's registration documents;

- (m) The address of the applicant's head office.

The Bank may, within 30 days of receiving the information set out in this clause, request additional information from the payment service provider. The payment service providers shall provide such additional information within 14 days of receiving the request from the Bank.

- 4.2 The Bank shall, within 30 days of receiving the complete information requested under 4.1, authorise a person as a payment service provider if:

- (a) The person is a limited liability company registered in The Gambia;
- (b) The person has adequately provided all the information required under clause 4.1;
- (c) The Bank's assessment is that the payment service provider can provide retail transfers safely and efficiently;
- (d) Where the person also engages in other commercial activities, the non-payment activities shall not impair either the financial soundness of the payment service provider or the ability of the Bank to monitor the payment service provider's compliance with the obligations laid down in this Regulation;
- (e) The person keeps separate and distinct business divisions for its payment services from the other business divisions of that person;
- (f) The material owners and ownership structure are suitable;
- (g) The person holds the core capital required under clause 6;
- (h) The person has obtained an appropriate licence under the Central Bank Act 2005 and remains in compliance with the said Act and license conditions;
- (i) The person has lodged a non-refundable application fee with the Bank of Ten Thousand Dalasis or any such amount that may be determined by the Bank from time to time.

- 4.3 Where authorization has been granted under this clause, the Bank may impose conditions subject to which the authorization is granted and may add, vary, or substitute conditions attached thereto.

- 4.4 An authorisation issued under this clause shall, unless earlier revoked, be valid up to the 31<sup>st</sup> December of the year in which it is issued.



- 4.5 An authorisation made under this clause may on expiry be renewed for a further period of twelve months, provided that where an application for renewal is made the authorisation shall be deemed to continue in force until the application for renewal is determined. An application for renewal shall be made at least 3 months prior to the expiry of the authorisation, shall be in the prescribed form set out in Schedule 1 to this Regulation and shall be accompanied by a bankers cheque for an amount of Ten Thousand Dalasis. Applications for renewals shall be considered in accordance with the provisions of sub-clause 5.2 and the Central Bank may require an applicant for renewal to submit any or all of the information set out in clause 4.1.
- 4.6 The Bank may, subject to clause 4.7, by notice in writing to an authorised payment service provider, revoke or suspend an authorisation under this clause for such period as it may specify, if the authorised payment service provider ;
- (a) Ceases to carry on business in The Gambia or goes into liquidation or is wound up, or is otherwise dissolved; or
  - (b) Fails to comply with the provisions of this Regulation or any conditions attached to an authorisation;
- 4.7 Before revoking or suspending an authorisation under this clause, the Bank shall give an authorised payment service provider not less than fourteen days notice in writing of the grounds for the proposed revocation or suspension and shall consider any representations made to it in writing by the authorised payment service provider within that period.

## **Section 5**

### ***5.0 Capital requirements***

- 5.1 A payment service provider, other than a licensed bank, financial institution and an authorised e-money issuer, shall, at the time of authorisation, hold a core capital of not less than Ten Million dalasis.
- 5.2 Notwithstanding the core capital requirement at the time of authorisation, payment service providers shall at all times hold core capital equal to or greater than.
- (a) Ten Million Dalasis; and
  - (b) Security deposit of Five Million Dalasis which may be invested in Treasury bills. The security deposit shall be subject to review from time to time.

## Section 6

### 6.0 *Cash merchants*

- 6.1 A payment service provider may utilise cash merchants to perform cash services, provided the payment service provider can execute the retail transfers that support the cash services in real time.
- 6.2 Payment service providers that intend to utilise cash merchants shall, at least 60 days prior to commencing the utilisation of cash merchants, advise the Bank in writing of their intention and provide the following information to the Bank:
- (a) The procedure for recruiting cash merchants;
  - (b) The proposed geographic location of cash merchants;
  - (c) A copy of the proposed standard agreement with cash merchants, which shall provide, amongst others, that the cash merchant is under an obligation, when requested to do so by the Bank, to provide information and access to their premises, systems and records, to the Bank;
  - (d) The policies and procedures approved by the payment service provider for the provision of cash services through cash merchants, including anti-money laundering controls to be implemented by cash merchants in terms of the AML Act;
  - (e) A description of the technology to be used for delivering cash services;
  - (f) A risk assessment report of the provision of cash services through cash merchants including the control measures that will be applied to mitigate the risks;
  - (g) The security measures to be adopted for the premises of cash merchants; and
  - (h) The cash merchant manual and any materials used for training cash merchants.
  - (i) The Bank may require the payment service provider to submit additional information.
- 6.3 The Bank may, by notice in writing to a payment service provider intending to appoint cash merchants, instruct the payment service provider to desist from proceeding with the provision of services through cash merchants if the information provided to the Bank under 6.2 is incorrect or if the information

indicates that the payment service provider will not comply with the provisions of this Regulation or any other legal provision if it proceeds with the provision of cash services through cash merchants. The Bank shall provide reasons for its decision and shall afford the payment service provider an opportunity to amend its documents.

- 6.4 Payment service providers may appoint, through written agreement, a person as cash merchant if that person:
- (a) Possesses such registrations, business licenses, or permits as may be required for the performance of its commercial activities;
  - (b) Can lawfully provide the proposed cash services;
  - (c) Holds a payment account with the bank, financial institution or e-money issuer utilised by the payment service provider and, if the payment service provider is not a licensed bank or financial institution, also holds an account with a licensed bank or financial institution;
  - (d) Is financially sound and has provided the payment service provider with adequate financial records to prove its financial soundness proportional to the volumes and values which it will handle;
  - (e) Has provided evidence to the payment service provider indicating that its management has the necessary experience and competence to perform the cash services.
- 6.5 Payment service providers may, subject to 6.4, appoint wholesale cash merchants to distribute e-money to cash merchants.
- 6.6 A payment service provider utilising cash merchants to perform cash services shall communicate the following information to the Bank in the prescribed form set out in Schedule 2 and update the information on a quarterly basis:
- (a) The name, physical address, postal address and telephone numbers of the cash merchants, as well as the physical address and telephone numbers of each of the outlets of the cash merchant at which it will provide cash services;
  - (b) The identity of the persons responsible for the management of the cash merchants; and the Bank shall insert this information in a public electronic register of cash merchants.

- 6.7 A payment service provider utilising cash merchants to perform cash services shall:
- (a) Provide adequate training and support to its cash merchants, including cash merchants manual containing the policies, rules and operational regulations needed to ensure the safe and efficient provision of services to clients;
  - (b) Maintain effective oversight over the activities of its cash merchants; and
  - (c) Maintain records of the number, volumes and values of transactions carried out by each cash merchant.
- 6.8 Cash merchants and wholesale cash merchants contracted to payment service providers shall comply with the Anti-Money Laundering Act.

## **Section 7**

### **7.0 *Outsourcing***

- 7.1 Where a payment service provider intends to outsource operational functions of its provision of payment services, it shall inform the Bank at least 30 days before such outsourcing agreement is implemented.
- 7.2 Outsourcing of material operational functions may not be undertaken in such a way as to impair the quality of the payments service provider's internal control and the ability of the Bank to monitor the payment service provider's compliance with the Act and this Regulation.
- 7.3 For the purpose of clause 7.2 an operational function shall be regarded as material if a defect or failure in its performance would materially impair the continuing compliance of the payment service provider with the requirements of its authorisation under this Regulation, or its financial performance, or the soundness or the continuity of its payment services. When a payment service provider outsources a material operational function, it shall comply with the following conditions:
- (a) The outsourcing shall not result in the abdication by senior management of its responsibility;
  - (b) The relationship and obligations of the payment service provider to its clients under this Regulation shall not be altered;

- (c) The Bank shall be able to exercise its oversight and supervisory powers under clause 14 in respect of the third parties to whom functions are outsourced;
- (d) The requirements with which the payment service provider must comply in order to be authorised and remain so, including any conditions imposed by the Bank, shall not be undermined;

## **Section 8**

### ***8.0 Compliance requirements/risk management***

- 8.1 Payment service providers shall utilise open systems capable of becoming interoperable with other payment systems in the country and internationally.
- 8.2 Payment system providers shall comply with the technical standards determined by the Bank from time to time.
- 8.3 Payment system providers shall comply with the risk management regulations which may be published by the Bank from time to time.

## **Section 9**

### ***9.0 Ring fencing/safeguarding requirements***

- 9.1 A payment service provider engaged in retail transfers as well as other commercial activities as envisaged in clause 4.2(d), shall safeguard the funds which have been received from payers or from other payment service providers for the execution of retail transfers, as follows:
  - (a) It shall not transfer the funds to its own account used for normal business operations nor commingle the funds with the funds of any person other than payers and payees on whose behalf the funds are held,
  - (b) where the funds are still held by the payment service provider and not yet delivered to the payee or transferred to another payment service provider by the end of the business day on which the funds were received,
    - (i) the funds shall be deposited in a separate account with a bank; and

- (ii) the payment service provider shall obtain insurance cover or some other comparable guarantee, payable in the event of bankruptcy to payees on whose behalf money is held by the payment service provider, from an insurance company or a bank, which does not belong to the same group as the payment service provider, for an amount equivalent to the aggregate daily balance held in the separate bank account referred to in clause 9.1(b)(i) during the preceding calendar month, provided that this sub-clause shall not apply to a bank or financial institution.

## **Section 10**

### ***10.0 Execution of payments***

- 10.1 A payer may not revoke a retail transfer instruction once it has been received by the payee's payment service provider.
- 10.2 The payment service provider(s) involved in a retail transfer shall transfer the full amount of the payment transaction and shall not deduct charges from the amount transferred, other than charges expressly agreed to by the client in advance, or which the client has received notice of in terms of clause 12.1(b).
- 10.3 Payment service providers shall ensure that the amount of the retail transfer is credited to the payee's payment account or the funds made available to the payee at the latest by the end of the third business day after the receipt of the instruction from the payer.
- 10.4 The payment service provider shall be liable to the payer for the defect in execution of payment. The payment service provider shall not be liable to the payer when the retail transfer requires transmission to a second payment service provider (the payee's payment service provider) and the payer's payment service provider can prove transmission of the retail transfer to the second payment service provider.

Where a payment service provider is liable under this clause for the non-execution or defective execution of a retail transfer, he/she shall without undue delay restore the debited payment account to the state in which it would have been had the defective transaction not taken place, including a refund of the charges imposed.

- 10.5 The payment service provider shall be liable for payment transactions performed without the knowledge of the client, provided that such liability may be contractually excluded in circumstances where the payment service provider can prove an element of fault on the side of the client in the use of the service.

## **Section 11**

### ***11.0 Consumer Protection***

#### ***11.1 Disclosure***

- (a) A payment service provider shall provide a clear and understandable description of the services which it offers and the rates, terms, conditions and charges for such services and shall publish such information and display it prominently at all points of service.
- (b) A payment service provider shall notify clients, as well as the Bank, in writing of any material changes in the rates, terms, conditions and charges at which it offers its services and shall do so at least 7 days before the changes take effect.
- (c) The Bank may from time to time publish any information it considers useful to clients, which information may include, but not be limited to tariffs, quality of service and statistical information.
- (d) A payment service provider shall provide its clients at the point of service with:-
  - (i) the name of the payment service provider ; and
  - (ii) a telephone number that provides access to its customer care system.
- (e) After the amount to be transferred through a retail transfer is debited to the payer's payment account, the payer's payment service provider shall without undue delay provide the payer with the following information:
  - (i) A reference enabling the payer to identify each payment transaction;
  - (ii) The name of the payee and its payment account details;
  - (iii) The amount of the retail transfer;
  - (iv) The amount of any charges for the transaction and, where applicable, a breakdown thereof;
  - (v) The date of debit.
- (f) After the amount transferred through a retail transfer is credited to the payee's payment account or paid to the payee, the payee's payment service provider shall without undue delay provide the payee with the following information:
  - (i) The reference enabling the payee to identify the payment transaction;
  - (ii) The name of the payer and any information transferred with the payment transaction;

- (iii) The amount of the retail transfer;
  - (iv) The amount of any charges for the transaction and, where applicable, a breakdown thereof;
  - (v) The date of credit, where applicable.
- (g) Where a retail transfer will not be completed in real time, the payment service provider will provide the payer with the maximum execution time for the transfer to reach the payment account of the payee.
- (h) A payment service provider may not charge the client for fulfilment of its disclosure and information obligations under this Regulation.

## ***11.2 Customer care service***

- (a) A payment service provider shall, within a period of six months after commencing the provision of payment services, establish a customer care system within which its clients can make inquiries and complaints concerning its services. A payment service provider shall, prior to the establishment of a customer care system in terms of this clause, provide adequate means for clients to file complaints and shall address such complaints within a reasonable period of 60 days from receipt of the complaint.
- (b) Payment service providers shall provide easily understood information about their complaint handling processes at all points of service.
- (c) All complaints shall be lodged within a period of 30 days from the date of occurrence.
- (d) Payment service providers shall acknowledge all complaints filed with them.
- (e) At the time of making a complaint a client shall be advised of the expected actions and timing for investigating and resolving the complaint and in the event that the payment service provider regards the complaint as frivolous or vexatious, the client shall be informed accordingly and if dissatisfied the client shall have further recourse in accordance with these this Regulation.
- (f) All complaints shall be resolved within sixty days of being lodged.
- (g) Payment service providers shall put in place processes to provide clients with sufficient information and the means to inquire on the progress of complaints and such processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by clients.
- (h) Clients shall be advised of the outcome of the investigation of their complaint, and any resulting decision by the payment service provider.



- (i) Where a client is not satisfied with a decision reached pursuant to a complaint, the payment service provider shall give the client the option of pursuing an identified escalation process by which the decision may be examined by a suitably qualified person in the payment service provider's organisation.
- (j) Complaint handling processes shall be provided free of charge but a payment service provider may impose a reasonable charge for complaint handling processes where investigation of the complaint requires the retrieval of records more than three months old, and where the retrieval results in an incremental expense or significant inconvenience to the payment service provider.
- (k) Payment service providers shall make adequate provision to ensure that people with disabilities are able to access their complaint handling processes, including ensuring that such clients can be easily represented by their authorised representatives in order to make a complaint. In cases where such clients specifically request assistance in lodging complaints, payment service providers shall be obliged to provide reasonable assistance.

### ***11.3 Client service agreements***

Payment service providers shall enter into a written client service agreement with every cash merchant and shall submit to the Bank a copy of the standard client service agreement.

### ***11.4 Confidentiality/Privacy***

- (a) Payment service providers shall keep the information in respect of services provided to any client confidential.
- (b) A payment service provider shall disclose client information in respect of services provided by them only:
  - (i) To the client concerned;
  - (ii) To the Bank;
  - (iii) When authorised in writing by the client concerned;
  - (iv) When in the public interest; or
  - (v) As required by law.

## **Section 12**

### ***12.0 Record keeping***

- 12.1 Payment service providers shall utilise systems able to provide an accurate and fully accessible audit trail of all transactions from the origin of the retail transfer to its finality.
- 12.2 A payment service provider shall keep records of every retail transfer processed by it for a period of two years.

## **Section 13**

### ***13.0 Reporting requirements and Bank oversight***

- 13.1 The Bank shall, in respect of payment service providers, exercise the oversight and supervisory powers and functions conferred on it by the Act.
- 13.2 Every payment service provider shall, within 10 days of the end of every quarter month, submit to the Bank in the forms set out in Schedules 3, information regarding:
- (a) The volumes, values and geographic distribution of each retail transfer payment instrument offered by it;
  - (b) Incidents of fraud, theft or robbery;
  - (c) Material service interruptions and major security breaches;
  - (d) Complaints reported, including remedial measures taken, those resolved and those outstanding;
- 13.3 Every payment service provider shall, within three months of the end of its financial year, submit to the Bank an audited balanced sheet, profit and loss account statement together with a copy of the auditor's report.
- 13.4 The Bank shall establish a public register of all authorised payment service providers and their points of service.

## **Section 14**

### ***14.0 DISPUTE RESOLUTION***

- 14.1 A dispute Resolution Committee (DRC) shall be established by the Bank. And without prejudice to the DRC, this Regulation shall be governed by and construed in accordance with Gambian law and the courts of The Gambia shall have jurisdiction in respect of any action brought in connection with this Regulation subject to Sub-section 14.2.
- 14.2 In the event of any dispute or disagreement arising from this Regulation, either party to the dispute may give notice to the other in writing of evidence of such dispute or disagreement and:
- a) The parties shall endeavour to amicably settle all disputes and misunderstanding which may arise in connection with this Regulation.
  - b) When amicable settlement of any dispute arising from this Regulation is impossible and the parties agree to refer the dispute to the DRC consisting of one arbitrator appointed by each party and the one arbitrator appointed by the Bank, the expenses of the arbitration shall be borne by the parties.

## **Section 15**

### ***15.0 Effective Date***

The effective date of the Regulations shall be October 15, 2011.