

(28 February 2014 – to date)

[This is the current version and applies as from **28 February 2014**, i.e. the date of commencement of the Financial Services Laws General Amendment Act 45 of 2013 – **to date**]

## **NATIONAL PAYMENT SYSTEM ACT 78 OF 1998**

*(Gazette No. 19402, Notice No. 1382, dated 28 October 1998. Commencement date: 28 October 1998)*

### **as amended by:**

*National Payment System Amendment Act 22 of 2004 – Government Notice 1295 in Government Gazette 26949, dated 30 October 2004. Commencement date: 30 October 2004.*

*National Credit Act 34 of 2005 – Government Notice 230 in Government Gazette 28619, dated 15 March 2006. Commencement date of section 172: 1 June 2006 [Proc. No 22. Gazette No. 28824, dated 11 May 2006]*

*Co-operative Banks Act 40 of 2007 – Government Notice 217 in Government Gazette 30802, dated 22 February 2008. Commencement date: 1 August 2008 [Government Notice 818. Gazette No. 31292, dated 1 August 2008]*

*Financial Services Laws General Amendment Act 22 of 2008 – Government Notice 1071 in Government Gazette 31471, dated 30 September 2008. Commencement date: 1 November 2008 [GN 1170, Gazette No. 31561, dated 31 October 2008]*

*Financial Markets Act 19 of 2012 - Government Notice 70 in Government Gazette 36121 dated 1 February 2013. Commencement date: 3 June 2013 [Proc. No. 12, Gazette No. 36485]*

*Financial Services Laws General Amendment Act 45 of 2013 – Government Notice 15 in Government Gazette 37237, dated 16 January 2014. Commencement date: 28 February 2014, unless otherwise indicated [Government Notice 120, Gazette No 37351, dated 18 February 2014].*

It is hereby notified that the President has assented to the following Act which is hereby published for general information -

*(English text signed by the President)*

*(Assented to 20 October 1998.)*

## **ACT**

Prepared by:

In partnership with:

**To provide for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa; and to provide for connected matters.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

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### 1. Definitions

In this Act, unless the context otherwise indicates -

“**bank**” means a bank as defined in section 1 of the Banks Act;

“**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990);

“**branch of a foreign institution**” means a branch by means of which a foreign institution conducts the business of a bank in the Republic in terms of a written authorisation granted by the Registrar of Banks in terms of section 18A of the Banks Act;

“**clear**” or “**clearing**” means the exchange of payment instructions;

**“clearing, netting and settlement agreements”** means written agreements with regard to clearing, netting or settlement, concluded between clearing system participants or settlement system participants;

*(Definition of “clearing, netting and settlement agreements” inserted by section 1(a) of Act 22 of 2004)*

*(Definition of “clearing, netting and settlement agreements” substituted by section 33(a) of Act 22 of 2008)*

**“clearing system participant”** means a bank, a mutual bank, a co-operative bank, a branch of a foreign institution or designated clearing system participant that clears in the manner contemplated in section 4(2)(d)(i);

*(Definition of “clearing system participant” inserted by section 33(b) of Act 22 of 2008)*

**“Companies Act”** means the Companies Act, 1973 (Act No. 61 of 1973);

*(Definition of “Companies Act” inserted by section 1(a) of Act 22 of 2004)*

**“co-operative bank”** has the meaning assigned to it in section 1 of the Co-operative Banks Act, 2007;

*(Definition of “co-operative bank” inserted by section 90 of Act 40 of 2007)*

**“Co-operative Banks Act”** means the Co-operative Banks Act, 2007;

*(Definition of “Co-operative Banks Act” inserted by section 90 of Act 40 of 2007)*

**“designated clearing system participant”** means a person specified in the notice referred to in section 6(3)(a);

*(Definition of “designated clearing system participant” inserted by section 33(c) of Act 22 of 2008)*

**“designated settlement system”** means a settlement system designated in terms of section 4A;

*(Definition of “designated settlement system” inserted by section 1(a) of Act 22 of 2004)*

**“designated settlement system operator”** means the person specified in the notice referred to in section 4A(5) as the operator of that system;

*(Definition of “designated settlement system operator” inserted by section 1(a) of Act 22 of 2004)*

**“designated settlement system participant”** means-

(a) a person that is a participant in the designated settlement system in accordance with the rules governing the operation of the system; or

(b) a person that is an operator of the designated settlement system;

*(Definition of “designated settlement system participant” inserted by section 1(a) of Act 22 of 2004)*

**“money”** means a banknote or coin issued by the Reserve Bank in terms of section 10(1)(a)(iii), read with section 14 of the South African Reserve Bank Act;

**“mutual bank”** means a mutual bank as defined in section 1 of the Mutual Banks Act;

**“Mutual Banks Act”** means the Mutual Banks Act, 1993 (Act No. 124 of 1993);

**“netting”** means the determination of the nett payment obligations between two or more clearing system participants within a payment clearing house or the determination of the nett settlement obligations between two or more settlement system participants within a settlement system;

*(Definition of “netting” substituted by section 1(b) of Act 22 of 2004)*

*(Definition of “netting” substituted by section 33(d) of Act 22 of 2008)*

**“payment clearing house (PCH)”** means an arrangement between two or more clearing system participants and Reserve Bank settlement system participants, excluding a designated settlement system operator governing the clearing or netting of payment instructions between those clearing system participants and Reserve Bank settlement system participants;

*(Definition of “payment clearing house” substituted by section 1(c) of Act 22 of 2004)*

*(Definition of “payment clearing house” substituted by section 33(e) of Act 22 of 2008)*

**“payment instruction”** means an instruction to transfer funds or make a payment;

*(Definition of “payment instruction” substituted by section 1(d) of Act 22 of 2004)*

**“payment obligation”** means an indebtedness that is owed by one clearing system participant or settlement system participant to another clearing system participant or settlement system participant as a result of the clearing of one or more payment instructions;

*(Definition of “payment obligation” substituted by section 1(e) of Act 22 of 2004)*

*(Definition of “payment obligation” substituted by section 33(f) of Act 22 of 2008)*

**“payment system”** means a system that enables payments to be effected or facilitates the circulation of money and includes any instruments and procedures that relate to the system;

*(Definition of “payment system” substituted by section 1(f) of Act 22 of 2004)*

**“payment system management body”** means a body recognised by the Reserve Bank in terms of section 3(1);

**“PCH system operator”** means a person, other than a designated settlement system operator, that clears on behalf of any two or more Reserve Bank settlement system participants;

*(Definition of “PCH system operator” inserted by section 1(g) of Act 22 of 2004)*

**“person”** includes a trust;

*(Definition of “person” substituted by section 1(h) of Act 22 of 2004)*

**“Reserve Bank”** means the South African Reserve Bank referred to in section 2 of the South African Reserve Bank Act;

**“Reserve Bank settlement system”** means a settlement system established and operated by, or under the control of, the Reserve Bank;

*(Definition of “Reserve Bank settlement system” inserted by section 1(i) of Act 22 of 2004)*

**“Reserve Bank settlement system participant”** means-

- (a) the Reserve Bank;
- (b) a bank, a mutual bank, a co-operative bank or a branch of a foreign institution; or
- (c) a designated settlement system operator,

that participates in the Reserve Bank settlement system;

*(Definition of “Reserve Bank settlement system participant” inserted by section 1(i) of Act 22 of 2004)*

*(Definition of “Reserve Bank settlement system participant” substituted by section 90 of Act 40 of 2007)*

**“secondary co-operative bank”** means a secondary co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007;

*(Definition of “secondary co-operative bank” inserted by section 90 of Act 40 of 2007)*

**“settlement”** means the discharge of settlement obligations;

*(Definition of “settlement” inserted by section 1(i) of Act 22 of 2004)*

**“settlement instruction”** means an instruction given to a settlement system by a settlement system participant or by a PCH system operator on behalf of a Reserve Bank settlement system participant to effect settlement;

*(Definition of “settlement instruction” substituted by section 1(j) of Act 22 of 2004)*

**“settlement obligation”** means an indebtedness that is owed by one settlement system participant to another as a result of one or more settlement instructions;

*(Definition of “settlement obligation” substituted by section 1(k) of Act 22 of 2004)*

**“settlement system”** means a system for the discharge of payment or settlement obligations or the discharge of payment and settlement obligations between participants in that system;

*(Definition of “settlement system” substituted by section 1(l) of Act 22 of 2004)*

**“settlement system participant”** means-

- (a) a Reserve Bank settlement system participant; or

- (b) a designated settlement system participant;

*(Definition of “settlement system participant” inserted by section 1(m) of Act 22 of 2004)*

“**South African Reserve Bank Act**” means the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

“**systemic risk**” means the risk that failure of one or more settlement 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;

*(Definition of “systemic risk” inserted by section 1(n) of Act 22 of 2004)*

*(Definition of “systemic risk” substituted by section 33(g) of Act 22 of 2008)*

“**system operator**” means a person, other than a designated settlement system operator, authorised in terms of section 4(2)(c) to provide services to any two or more persons in respect of payment instructions.

*(Definition of “system operator” substituted by section 1(o) of Act 22 of 2004)*

“**system participant**” .....

*(Definition of “system participant” deleted by section 1(p) of Act 22 of 2004)*

“**tertiary co-operative bank**” means a tertiary co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007;

*(Definition of “tertiary co-operative bank” inserted by section 90 of Act 40 of 2007)*

## 2. Powers and duties of Reserve Bank regarding payment system

- (1) The Reserve Bank, as contemplated in section 10(1)(c) of the South African Reserve Bank Act, may exercise the powers and must perform the duties conferred and imposed on it by this Act.
- (2) The board of directors of the Reserve Bank may, in writing and on such conditions as the board considers necessary -
  - (a) delegate to any officer of the Reserve Bank any power conferred on the Reserve Bank by this Act; or
  - (b) authorise any such officer to perform any duty imposed on the Reserve Bank by this Act.
- (3) Any delegation of a power or authorisation to perform a duty under subsection (2) -

- (a) does not prevent the board of directors of the Reserve Bank from exercising that power or performing that duty; and
- (b) may at any time be withdrawn in writing by the board.

*(Section 2(3)(b) substituted by section 2 of Act 22 of 2004)*

### **3. Payment system management body**

- (1) Subject to subsection (2), the Reserve Bank may recognise a payment system management body established with the object of organising, managing and regulating the participation of its members in the payment system.
- (2) The Reserve Bank may recognise a payment system management body as contemplated in subsection (1) if the Reserve Bank is satisfied that-
  - (a) the payment system management body, as constituted, fairly represents the interests of its members;
  - (b) the deed of establishment or constitution, as the case may be, and the rules of the payment system management body, including the rules relating to admission as members of that body, are fair, equitable and transparent; and
  - (c) the payment system management body will enable the Reserve Bank to adequately oversee the affairs of the payment system management body and its members and will assist the Reserve Bank in the discharge of the Reserve Bank's responsibilities, specified in section 10(1)(c)(i) of the South African Reserve Bank Act, regarding the monitoring, regulation and supervision of payment, clearing and settlement systems.

*(Section 3(2) substituted by section 3(a) of Act 22 of 2004)*

(2A)

- (a) The Reserve Bank may, if it is no longer satisfied that the payment system management body complies with the requirements specified in subsection (2) and after it has consulted with the members of the payment system management body, withdraw its recognition of the payment system management body.
- (b) Such withdrawal of recognition will in no way affect any arrangements made, including rules and agreements, or authorisations given by the payment system management body prior to such withdrawal, unless otherwise determined by the Reserve Bank.

*(Section 3(2A) inserted by section 3(b) of Act 22 of 2004)*

- (3) Besides the Reserve Bank, the following may also be members of a payment system management body:

(a) A bank, mutual bank, a co-operative bank or branch of a foreign institution; and  
*(Section 3(3)(a) substituted by section 90 of Act 40 of 2007)*

(b) a designated clearing system participant,  
*(Section 3(3)(b) substituted by section 34(a) of Act 22 of 2008)*

that complies with the entrance and other applicable requirements laid down in the rules of the payment system management body.

*(Section 3(3) substituted by section 3(c) of Act 22 of 2004)*

(3A) .....  
*(Section 3(3A) inserted by section 3(d) of Act 22 of 2004)*  
*(Section 3(3A) deleted by section 34(b) of Act 22 of 2008)*

(4) No person may participate in the Reserve Bank settlement system unless-

(a) such person is the Reserve Bank, a bank, a mutual bank, a co-operative bank or a branch of a foreign institution and, in the case where a payment system management body has been recognised by the Reserve Bank as contemplated in subsection (1), such person is a member of the payment system management body so recognised;

(b) such person is a designated settlement system operator; or

(c) such person meets the criteria for participation in the Reserve Bank settlement system as established by the Reserve Bank in consultation with the payment system management body.

*(Section 3(4) substituted by section 3(e) of Act 22 of 2004)*

*(Section 3(4) amended by section 90 of Act 40 of 2007)*

*(Section 3(4) substituted by section 34(c) of Act 22 of 2008)*

(5) No person may be allowed to clear as contemplated in section 4(2)(d)(i) unless, in the case where a payment system management body has been recognised by the Reserve Bank as contemplated in subsection (1), such person is a member of the payment system management body so recognised.

*(Section 3(5) added by section 3(f) of Act 22 of 2004)*

#### **4. Objects and rules of payment system management body**

(1) The objects of the payment system management body are to organise, manage and regulate, in relation to its members, all matters affecting payment instructions and, in connection with those objects-

*(Words preceding section 4(1)(a) substituted by section 4(a) of Act 22 of 2004)*



- (a) to provide a forum for the consideration of matters of policy and mutual interest concerning its members;
  - (b) to act as a medium for communication by its members with the South African Government, the Reserve Bank, the Registrar of Banks, the Co-operative Bank Supervisor, the Registrar of Financial Institutions, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and  
*(Section 4(1)(b) substituted by section 90 of Act 40 of 2007)*  
*(Section 4(1)(b) substituted by section 264 of Act 45 of 2013)*
  - (c) to deal with and promote any other matter of interest to its members and to foster co-operation between them.
- (2) In addition to any other provisions thereof, the rules of the payment system management body must empower that body-
- (a) to admit members and to regulate, control and, with the approval of the Reserve Bank, terminate membership;
  - (b) to constitute, establish or dissolve any body, committee or forum consisting of its members and which has an impact on, interacts with, has access to or makes use of payment, clearing or settlement systems or operations;
  - (c) to-
    - (i) recommend for approval by the Reserve Bank, criteria subject to which any person is granted membership of the payment system management body or is to be authorised to act as a system operator or a PCH system operator within a payment system; and  
*(Section 4(2)(c)(i) substituted by section 35(a) of Act 22 of 2008)*
    - (ii) authorise that person to act as a system operator or PCH system operator in accordance with those criteria; and
  - (d) to recommend for approval by the Reserve Bank criteria subject to and in accordance with which a member that is also a Reserve Bank settlement system participant may be authorised to-
    - (i) allow a bank, a mutual bank, a co-operative bank, a designated clearing system participant or branch of a foreign institution that is not a Reserve Bank settlement system participant to clear; or

- (ii) clear on behalf of a bank, a mutual bank, a co-operative bank, a designated clearing system participant or a branch of a foreign institution that is not a Reserve Bank settlement system participant:

Provided that the member shall settle payment obligations on behalf of such bank, mutual bank, co-operative bank, designated clearing system participant or branch of a foreign institution referred to in subparagraphs (i) and (ii).

*(Section 4(2)(d) substituted by section 90 of Act 40 of 2007)*

*(Section 4(2)(d) substituted by section 35(b) of Act 22 of 2008)*

*(Section 4(2) substituted by section 4(b) of Act 22 of 2004)*

#### **4A. Designated settlement systems**

- (1) The Reserve Bank may designate a settlement system if such designation is in the interest of the integrity, effectiveness, efficiency or security of the payment system.
- (2) In considering the designation of any settlement system, the Reserve Bank may require from the settlement system-
  - (a) the rules of the settlement system; and
  - (b) any additional information it may deem appropriate.
- (3) In considering the designation of a settlement system, the Reserve Bank may have regard to any or all of the following matters:
  - (a) The purpose and scope of the settlement system;
  - (b) the rules of the settlement system;
  - (c) any laws or regulatory requirements relating to the operation of the settlement system, and the extent to which the settlement system complies with those laws or regulatory requirements;
  - (d) the importance of the settlement system to the national financial and payment system;
  - (e) any other matters that the Reserve Bank considers appropriate.
- (4) The Reserve Bank must designate a settlement system as a designated settlement system for purposes of this Act by notice in the *Gazette* and give written notice of such designation to the designated settlement system operator.

- (5) The notice in the *Gazette* must specify-
- (a) the settlement system that is the subject of the designation;
  - (b) the person who is the operator of the settlement system that is the subject of the designation;  
and
  - (c) any terms and conditions to which the designation is subject.
- (6) The Reserve Bank may vary or revoke any designation made under subsection (4)-
- (a) by amending or revoking any condition to which the designation is subject; or
  - (b) by making the designation subject to a new condition or new conditions.
- (7) In determining whether or not to vary or revoke a designation, the Reserve Bank may have regard to the matters mentioned in subsection (3) or any or all of the following:
- (a) Any failure to comply with any condition to which the designation is subject;
  - (b) whether or not the designated settlement system has ceased to operate;
  - (c) whether or not the designated settlement system operator has knowingly furnished information or documents which are false or misleading in any material respect to the Reserve Bank in connection with the designation of the system;
  - (d) whether or not it is in the public interest to revoke the designation;
  - (e) any other matters that the Reserve Bank considers appropriate.
- (8)
- (a) No variation of the conditions to which a designation is subject or revocation of designation shall have retroactive effect.
  - (b) The variation or revocation shall not affect the validity or enforceability of the rules of the designated settlement system, nor shall it affect any payment to or out of the account of a settlement system participant or netting or settlement that took place, prior to the coming into effect of the variation or revocation.
- (9) The Reserve Bank shall, after having given written notice to the designated settlement system operator, vary or revoke the designation of the settlement system by notice in the *Gazette*.

*(Section 4A inserted by section 5 of Act 22 of 2004)*

## 5. Settlement provision

- (1) Settlement is effected in money or by means of entries passed through the Reserve Bank settlement system or a designated settlement system.
- (2) A settlement that has been effected in money or by means of an entry to the credit of the account maintained by a settlement system participant in the Reserve Bank settlement system or a designated settlement system is final and irrevocable and may not be reversed or set aside.
- (3) An entry to or payment out of the account of a designated settlement system participant to settle a payment or settlement obligation in a designated settlement system is final and irrevocable and may not be reversed or set aside.

*(Section 5 substituted by section 6 of Act 22 of 2004)*

## 6. Clearing provisions and designated clearing system participants

*(Heading substituted by section 36(a) of Act 22 of 2008)*

- (1) No person may clear payment instructions unless that person is a -
  - (a) Reserve Bank settlement system participant; or
  - (b) bank, mutual bank, a designated clearing system participant, a co-operative bank or branch of a foreign institution that is allowed to clear in terms of section 4(2)(d)(i).

*(Section 6(1)(b) substituted by section 90 of Act 40 of 2007)*

*(Section 6(1)(b) substituted by section 36(b) of Act 22 of 2008)*

*(Section 6(1) substituted by section 7 of Act 22 of 2004)*

- (2) Any person that contravenes the provisions of subsection (1) is guilty of an offence.
- (3)
  - (a) The Reserve Bank may designate a clearing system participant by notice in the *Gazette* which notice must specify-
    - (i) the name of the clearing system participant that is the subject of the designation;
    - (ii) the Reserve Bank settlement system participant or participants associated with that clearing system participant; and
    - (iii) any terms and conditions to which the designation is subject.

- (b) The Reserve Bank may vary or revoke any designation made under paragraph (a)-
  - (i) by amending or revoking any condition to which the designation is subject; or
  - (ii) by making the designation subject to a new condition or new conditions.
- (c) In determining whether or not to vary or revoke a designation the Reserve Bank may have regard to any or all of the following:
  - (i) Any failure to comply with any condition to which the designation is subject;
  - (ii) whether or not the designated clearing system participant has knowingly furnished information or documents which are false or misleading in any material respect to the Reserve Bank in connection with the designation;
  - (iii) whether or not it is in the public interest to revoke the designation;
  - (iv) any other matters that the Reserve Bank considers appropriate.
- (d) No variation of the conditions to which a designation is subject or revocation of designation shall have retroactive effect.
- (e) The Reserve Bank must after having given written notice to the Reserve Bank settlement system participant who settles payment obligations on behalf of the designated clearing system participant and to the designated clearing system participant, vary or revoke the designation of that designated clearing system participant by notice in the *Gazette*.

*(Section 6(3) added by section 36(c) of Act 22 of 2008)*

## **6A. Effectiveness and efficiency of the National Payment System**

- (1) As of 1 July 2006, a person may not change, manipulate, maintain or apply a payment system in any manner that provides preferential treatment to a payment instruction over any other payment instruction in that system, unless such preferential treatment is prescribed by law.
- (2) With regard to any credit agreement concluded on or before 30 June 2006, which is subject to a payment system that provides preferential treatment to a payment instruction over any other payment instruction in that system, other than preferential treatment prescribed by law, such preferential treatment must be terminated on or before 31 December 2007.
- (3) A person providing access to or allowing participation in a payment system may not deny any person access to or participation in that payment system if that second person meets the criteria set by the first mentioned person.

- (4) The criteria referred to in subsection (3) for access to or participation in a payment system must be fair, transparent and equitable.
- (5) A person who contravenes any provision of this section is guilty of an offence.  
*(Section 6A inserted by section 172 of Act 34 of 2005)*

## **7. Payments to third persons**

A person may as a regular feature of that person's business accept money or payment instructions from any other person for purposes of making payment on behalf of that other person to a third person to whom that payment is due, if-

- (a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, a designated clearing system participant, branch of a foreign institution, or a designated settlement system operator; or  
*(Section 7(a) substituted by section 90 of Act 40 of 2007)*  
*(Section 7(a) substituted by section 37 of Act 22 of 2008)*

- (b) the first-mentioned person is the postal company defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958), or the Postbank as defined in section 51 of the Postal Services Act, 1998 (Act No. 124 of 1998); or

- (c) the money is accepted or payment made in accordance with directives issued by the Reserve Bank from time to time in terms of section 12.  
*(Section 7 substituted by section 8 of Act 22 of 2004)*

## **8. Curatorship, judicial management or liquidation**

*(Heading substituted by section 90 of Act 40 of 2007)*

- (1) The provisions of this section apply despite anything to the contrary in the law relating to insolvency or in the Companies Act, the Banks Act, the Co-operative Banks Act, the Postal Services Act, 1998 (Act 124 of 1998), the Mutual Banks Act or the Financial Markets Act, 2012  
*(Section 8(1) substituted by section 90 of Act 40 of 2007)*  
*(Section 8(1) substituted by section 38(a) of Act 22 of 2008)*  
*(Section 8(1) substituted by section 111 of Act 19 of 2012)*

- (2) If a curator or similar official is appointed to a clearing system participant or a settlement system participant the curator or similar official is bound by any-
- (a) provision contained in the settlement system rules or in clearing, netting and settlement agreements to which that clearing system participant or settlement system participant is a party,

or any rules and practices applicable to the clearing system participant or settlement system participant in relation to such agreements; and

- (b) payment or settlement that is final and irrevocable in terms of section 5(2) or (3).

*(Section 8(2) substituted by section 38(b) of Act 22 of 2008)*

- (3) A curator or similar official appointed to a clearing system participant or settlement system participant may give written notice to the Reserve Bank to withdraw such participant's participation in the clearing system or the Reserve Bank settlement system, in which event such clearing system participant or settlement system participant shall no longer be entitled to clear or participate in the Reserve Bank settlement system, other than for purposes of discharging payment or settlement obligations in accordance with the settlement system rules or clearing netting and settlement agreements to which that clearing system participant or settlement system participant is a party, or any rules and practices applicable to the clearing system participant or settlement system participant in relation to such agreements.

*(Section 8(3) substituted by section 38(c) of Act 22 of 2008)*

- (4) When an application for the winding-up of a clearing system participant or Reserve Bank settlement system participant is made a copy of-

- (a) the application for winding-up, when it is presented to the court; and

- (b) any subsequent winding-up order, when it is granted,

must be lodged with the Reserve Bank as soon as practicable.

*(Section 8(4) substituted by section 38(d) of Act 22 of 2008)*

- (5) When a copy of an application for winding-up or subsequent winding-up order is lodged with the Reserve Bank in terms of subsection (4) and the Reserve Bank settlement system participant in respect of whom the copy is lodged is a designated settlement system participant, the Reserve Bank must as soon as practicable after having received the copy, notify the designated settlement system operator.

- (6) If a clearing system participant or settlement system participant is wound up the liquidator or similar official is bound by-

- (a) any provision contained in the rules of the settlement system or in clearing netting and settlement agreements to which that clearing system participant or settlement system participant is a party, or any rules and practices applicable to the clearing system participant or settlement system participant in relation to such agreements: and

- (b) any payment or settlement that is final and irrevocable in terms of section 5(2) or (3)

*(Section 8(6) substituted by section 38(e) of Act 22 of 2008)*

- (7) A clearing system participant or settlement system participant in respect of whom a copy of a winding-up order has been lodged with the Reserve Bank in terms of subsection (4) must no longer be entitled to clear or participate in any settlement system, other than for purposes of discharging payment or settlement obligations in accordance with the rules of the settlement system or clearing netting and settlement agreements to which that clearing system participant or settlement system participant is a party, or any rules and practices applicable to the clearing system participant or the settlement system participant in relation to such agreements.

*(Section 8(7) substituted by section 38(f) of Act 22 of 2008)*

- (8) Notwithstanding any written law or rule of law, a court shall not recognise or give effect to-
- (a) an order of a court exercising jurisdiction under the law of insolvency in a place outside the Republic of South Africa; or
  - (b) an act of a person appointed in a place outside the Republic of South Africa to perform a function under the law of insolvency there,

in so far as the making of the order or doing of the act would be prohibited under this Act for a court in the Republic of South Africa or a curator or similar official or liquidator or similar official.

*(Section 8 substituted by section 9 of Act 22 of 2004)*

## **9. Utilisation of assets provided as security**

Despite anything to the contrary in any law relating to insolvency, any asset of a settlement system participant which was provided prior to the issue of any order for that settlement system participant's winding-up by that participant to the Reserve Bank or the designated settlement system operator as security for a loan in respect of its settlement obligations, may be utilised by the Reserve Bank or the designated settlement system operator, as the case may be, to the extent required for the discharge of those settlement obligations of the settlement system participant.

*(Section 9 substituted by section 10 of Act 22 of 2004)*

## **10. Information**

- (1) The Reserve Bank has access to any information relating to a payment system and the Reserve Bank settlement system, and any person must on request provide such information to the Reserve Bank in such form and at such times as the Reserve Bank may require.

*(Section 10(1) substituted by section 11(a) of Act 22 of 2004)*

- (2) Subject to subsection (3), any information -



- (a) obtained by the Reserve Bank in terms of subsection (1); and
- (b) identifying a specific clearing system participant or Reserve Bank settlement system participant,

is confidential and may not be disclosed by any director or officer of the Reserve Bank to any person, except to an officer of the Reserve Bank who requires that information for purposes of the execution of his or her duties in terms of this Act, the South African Reserve Bank Act, the Co-operative Banks Act, the Banks Act or the Mutual Banks Act.

*(Section 10(2) amended by section 11(b) of Act 22 of 2004)*

*(Section 10(2) substituted by section 90 of Act 40 of 2007)*

*(Section 10(2) substituted by section 39 of Act 22 of 2008)*

- (3) Despite subsection (2) of this section and section 33 of the South African Reserve Bank Act, the Reserve Bank may disclose information -

- (a) in the course of performing functions under any law;
- (b) for the purpose of legal proceedings;
- (c) when required to do so by a court;
- (d) if in the opinion of the Reserve Bank disclosure is in the public-interest; or
- (e) that is already publicly available *[sic]*.

*(Section 10(3) substituted by section 11(c) of Act 22 of 2004)*

*(Section 10(3) substituted by section 39 of Act 22 of 2008)*

- (4) A person that contravenes the provisions of subsection (2) is guilty of an offence.

## **11. Settlement of disputes**

- (1) In this section “business day” means any day other than a Saturday, Sunday or public holiday.
- (2) If any Reserve Bank settlement system participant considers itself aggrieved by a decision taken by the Reserve Bank under a provision of this Act, the matter is deemed to constitute a dispute between that Reserve Bank settlement system participant and the Reserve Bank, which dispute must be settled as provided in this section.

*(Section 11(2) substituted by section 12(a) of Act 22 of 2004)*

- (3) The Reserve Bank settlement system participant concerned must, within three (3) months after the decision of the Reserve Bank, in writing, furnish the Reserve Bank with full particulars of its grievance, and thereafter the Reserve Bank settlement system participant and the Reserve Bank must attempt to

settle the dispute by consensus within seven business days of the receipt by the Reserve Bank of those particulars.

*(Section 11(3) substituted by section 12(a) of Act 22 of 2004)*

- (4) If the Reserve Bank settlement system participant and the Reserve Bank do not succeed in settling the dispute as contemplated in subsection (3), they may agree to attempt to settle the dispute by mediation within a further period of 10 business days.

*(Section 11(4) substituted by section 12(a) of Act 22 of 2004)*

- (5) Mediation as contemplated in subsection (4) means a process whereby -

- (a) the Reserve Bank settlement system participant concerned and the Reserve Bank agree on a mediator;
- (b) the mediator familiarises himself or herself with the position held by the Reserve Bank settlement system participant concerned and the Reserve Bank, respectively;
- (c) the mediator, the Reserve Bank settlement system participant concerned and the Reserve Bank discuss the dispute at a meeting attended by them all;
- (d) the Reserve Bank settlement system participant concerned and the Reserve Bank at or following such meeting attempt to settle the dispute by consensus; and
- (e) the Reserve Bank settlement system participant concerned and the Reserve Bank share the mediator's costs equally.

*(Section 11(5) substituted by section 12(a) of Act 22 of 2004)*

- (6) If the Reserve Bank settlement system participant concerned and the Reserve Bank are unable to settle the dispute by consensus as contemplated in either subsection (3) or (5), the dispute must be referred-

- (a) to a single arbitrator to be agreed on between the Reserve Bank settlement system participant and the Reserve Bank; or
- (b) failing such agreement, to an arbitrator appointed at the request of the Reserve Bank settlement system participant and the Reserve Bank by a recognised body concerned with the facilitation and promotion of the resolution of disputes by means of mediation or arbitration.

*(Section 11(6) substituted by section 12(a) of Act 22 of 2004)*

- (7) An arbitrator referred to in subsection (6) must, as far as possible, be a person appointed on account of his or her knowledge of the law and the payment system.

- (8) The provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), apply, with the changes required by the context, to an arbitration contemplated in subsection (6).
- (9) The decision of the arbitrator is final and binding on the Reserve Bank settlement system participant concerned and the Reserve Bank.

*(Section 11(9) substituted by section 12(b) of Act 22 of 2004)*

## **12. Directives by Reserve Bank**

- (1) The Reserve Bank may from time to time, after consultation with the payment system management body, issue directives to any person regarding a payment system or the application of the provisions of this Act.
- (2) In considering whether or not to issue a directive in terms of subsection (1), the Reserve Bank may have regard to any or all of the following aspects:
  - (a) That reasonable grounds exist to believe that any person is engaging in or is about to engage in any act, omission or course of conduct, with respect to the payment system, that results or is likely to result in systemic risk;
  - (b) that reasonable grounds exist to believe that any person is engaging in or is about to engage in any act, omission or course of conduct, with respect to the payment system that is or will be contrary to the public interest relative to the integrity, effectiveness, efficiency or security of the payment system;
  - (c) the public interest;
  - (d) the integrity, effectiveness, efficiency or security of the payment system;
  - (e) national financial stability;
  - (f) any other matters that the Reserve Bank considers appropriate.
- (3) The Reserve Bank may in writing, over and above any directive contemplated in subsection (1), issue a directive to a person requiring such person, within the period specified in the directive, to-
  - (a) cease or refrain from engaging in the act, omission or course of conduct or perform such other acts as are necessary to remedy the situation; or
  - (b) perform such acts as are necessary to comply with the directive or to effect the changes; or

- (c) provide the Reserve Bank with such information and documents, relating to the matter as specified in the directive.
- (4) The provisions of this section shall not apply to a designated settlement system.
- (5) The Reserve Bank may, after consultation with the payment system management body, cancel in writing any previously issued directives.
- (6) In considering whether or not to cancel a directive in terms of subsection (5), the Reserve Bank must have regard to the factors referred to in subsection (2).
- (7) No directive issued by the Reserve Bank shall have any retroactive effect.
- (8) Any person who neglects, refuses or fails to comply with a directive issued under subsection (1) or (3) is guilty of an offence.
- (9)
  - (a) A directive issued in terms of subsection (1) takes effect three months after it has been issued or on such earlier date as may be determined by the Reserve Bank.
  - (b) A directive issued in terms of subsection (3) takes effect immediately.  
*(Section 12 substituted by section 13 of Act 22 of 2004)*

### **13. Retention of records**

- (1) Despite anything to the contrary in any law relating to the retention of records the Reserve Bank, Reserve Bank settlement system participants, clearing system participants, PCH system operators and system operators must retain all records obtained by them during the course of the operation and administration of a payment or Reserve Bank settlement system for a period of five years from the date of each particular record.  
*(Section 13(1) substituted by section 14(a) of Act 22 of 2004)*  
*(Section 13(1) substituted by section 40 of Act 22 of 2008)*
- (2) Subsection (1) shall not apply to a designated settlement system operator, and any obligation of such a settlement system in relation to the retention of records shall be specified as a condition of the designation of such a settlement system under section 4A(5).  
*(Section 13(2) substituted by section 14(b) of Act 22 of 2004)*
- (3) The retention of records in terms of subsection (1) may be effected as envisaged in section 16 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).  
*(Section 13(3) added by section 14(c) of Act 22 of 2004)*

### **13A. Application for court order**

Irrespective of whether criminal proceedings have been or may be instituted against a person in respect of an offence in terms of any section of this Act, the Reserve Bank may apply to a High Court having jurisdiction for an order directing a person to comply with this Act or a directive issued in terms of this Act.

*(Section 13A inserted by section 15 of Act 22 of 2004)*

### **14. Penalties**

Any person convicted of an offence referred to in-

- (a) sections 6(2), 6A(4) or 12(8), is liable to a fine not exceeding R1 million, or to imprisonment for a period not exceeding five years, or to both such a fine and such imprisonment;

*(Section 14(a) substituted by section 172 of Act 34 of 2005)*

- (b) section 10(4), is liable to a fine or to imprisonment for a period not exceeding two years, or to both a fine and such imprisonment.

*(Section 14 substituted by section 16 of Act 22 of 2004)*

### **15. Review of Act**

The Reserve Bank must, with the co-operation of the payment system management body, establish a standing committee -

- (a) to review this Act from time to time; and
- (b) to make recommendations to the Minister of Finance with regard to amendments to this Act which -
  - (i) in the opinion of that committee, have become advisable owing to changed circumstances; or
  - (ii) the administration of this Act has shown to be advisable.

### **16. Short title**

This Act is called the National Payment System Act, 1998.