



1486

PARLIAMENT OF KENYA LIBRARY

THE NATIONAL TREASURY

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

P. O. Box 30007-00100
NAIROBI

D/Lap

Ref. No. CONF. 36/02

18th August 2014

Mr. Justin Bundi, CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
NAIROBI



① Mrs. Wangari
Please arrange for
tabling tomorrow.
The original + other attachments
have been forwarded
to Mr. Wasike.
J.M.W.
18/8

Dear Mr. Bundi

RE: THE NATIONAL PAYMENT SYSTEM REGULATIONS, 2014

This refers to you letter Ref. KNA/DL/2014/05 dated 15th July 2014, addressed to the Cabinet Secretary for the National Treasury, vide which, you advised the Cabinet Secretary to publish the above regulations, in accordance with the provisions of section 11(1) of the Statutory Instruments Act and thereafter accompany the instrument with an Explanatory Memorandum pursuant to section 11(2) of the Act.

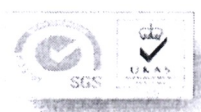
Enclosed herewith please find the following documents for your necessary action:-

- (i) The Kenya Gazette Vol. CXVI- N0. 98 of 15th August 2014;
- (ii) Kenya Gazette Supplement No. 119 (Legislative Supplement No. 43) of 1st August 2014, containing Legal Notice No. 109 on the National Payment System Regulations, 2014;
- (iii) An Explanatory Memorandum on the Regulations; and
- (iv) A Statutory Impact Assessment Statement on the Regulations

Yours Sincerely
[Signature]

**DR. KAMAU THUGGE, EBS
PRINCIPAL SECRETARY/NATIONAL TREASURY**

② Wanjim
Pbe prepare to table,
record in the register
and send to Director, CTR
L.W.
20/8



EXPLANATORY MEMORANDUM

THE NATIONAL PAYMENT SYSTEM REGULATIONS, 2014

The National Payment System Act (No. 39 of 2011)

The National Treasury

Gazetted on: 1st August, 2014

Tabled on:

1.0 Purpose of the Regulations

The purpose of the statutory instrument is to provide for the application of the provisions of the National Payments System Act (No. 39 of 2011). The Act provides the Central Bank of Kenya with an overall mandate to make provision for the regulation and supervision of payment systems and payment service providers, and for connected purposes.

2.0 Legislative Context

Under sections 31 of the Act, the Minister/Cabinet Secretary for the National Treasury may make regulations generally for the better carrying into effect the provisions of this Act with regard to the following:-

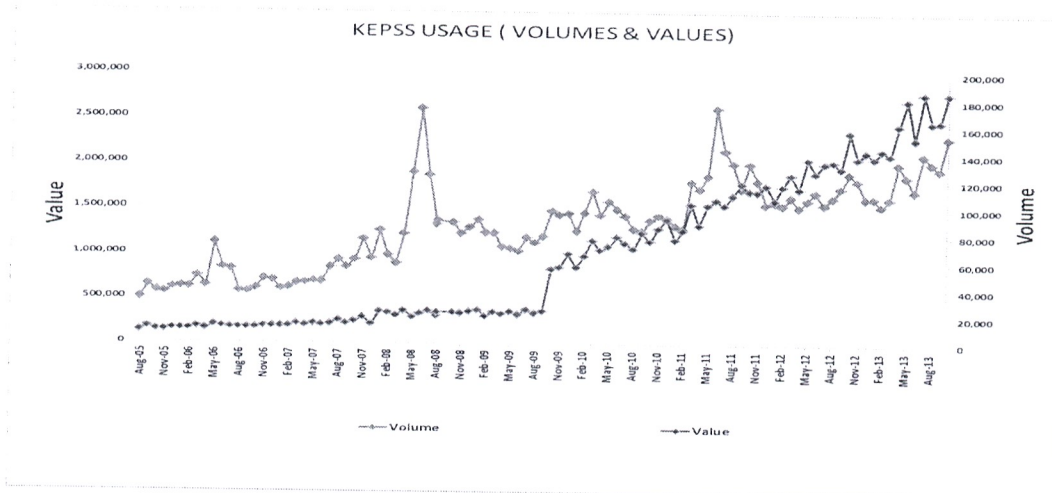
1. Authorisation of payment service providers.
2. Promotion of greater efficiency and effectiveness of the payment, clearing and settlement systems.
3. Provision of an enabling environment for the development of various instruments and mechanisms for an integrated, modern and technologically sound payment system for transfer of funds between transacting parties.
4. Facilitation of irrevocability of payment and finality of settlement arrangements.
5. Containment of payment systems risks through designation of payment systems and payment instruments.

3.0 Policy Background

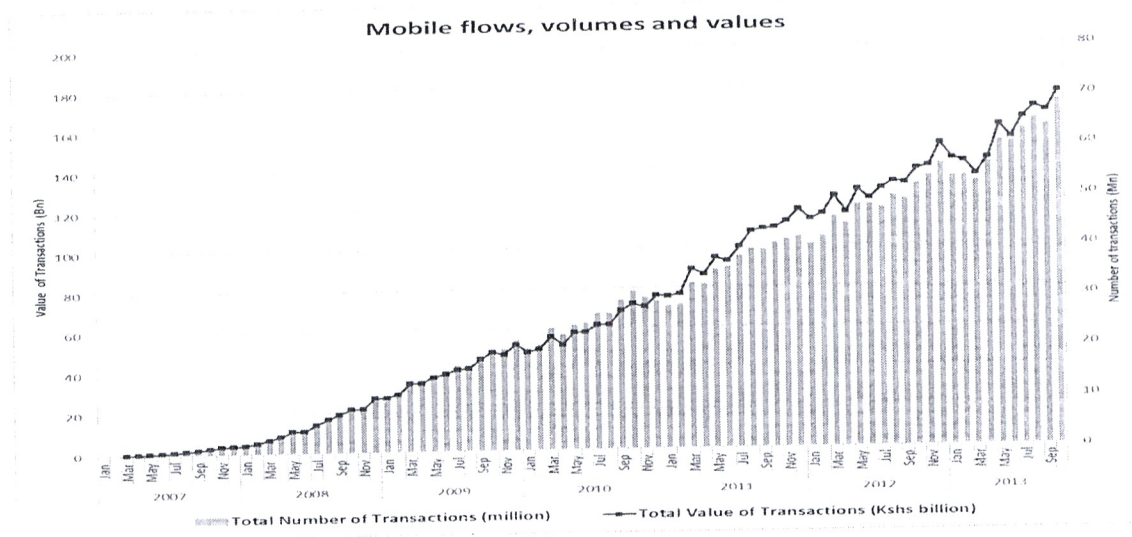
Section 4 A 1(d) of the Central Bank of Kenya Act empowers the Central Bank of Kenya to formulate and implement such policies as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems. In view of this enabling statute, the Central Bank of Kenya has directed great effort to the modernization of the payment systems in the last two decades.

The objective of the modernization process was to systematically and continuously implement policies that would ultimately enable the country's payment system to attain international standards and ensure that Kenya becomes a financial hub in the region as well as the preferred investment destination. Furthermore, a fundamental policy objective for payments modernization remains the achievement of safety, efficiency and effectiveness of the payment system as well as promoting access and inclusion to financial services. To achieve these objectives, the Bank works in close liaison with the Government, the Banking Industry and other stakeholders.

One key milestone was the implementation of the Kenya Electronic Payments and Settlement System (KEPSS), the country's Real Time Gross Settlement (RTGS) System in July 2005. KEPSS implementation facilitated the mitigation of risks associated with the previous paper-based inter-bank settlement system; transformed the management of liquidity in the banking industry; reduced the systemic importance of the Automated Clearing House (ACH); and enhanced financial stability while providing an efficient mechanism for monetary policy transmission. KEPSS has continued to register remarkable growth in both volume and value of transactions processed signifying increased usage by the public as indicated in the chart below.



The second milestone was the facilitation of mobile based funds transfer payments system. This notable innovation in Kenya's payments system environment has provided greater access and increased convenience to many low income households and micro-enterprises in Kenya, including those in rural areas who do not have access to conventional banking. The phenomenal growth in the transaction volumes and values since the rollout of the first mobile money transfer system in 2007 underlines the popularity and usage of mobile money transfer platforms, as indicated in the chart below. In view of their depth and outreach, mobile payment platforms have become an integral part of the national payments system as their scope in terms of number of transactions is wider than that of the large value payment systems. Integration of the mobile platform into the banking industry has enabled customers to access traditional banking services and increased financial inclusion for both the banked and unbanked. Some of the players in mobile money transfers arena include; M-Pesa, Airtel Money, yuCash, Orange Money, and Tangaza, among others.



4.0 Consultation Outcome

As provided for in the Constitution of Kenya, the Central Bank of Kenya consulted and sensitized the effect of the Regulations in the payment industry. The responses informed the policy behind the Regulations. The following stakeholder workshops were held:-

SCHEDULE OF STAKEHOLDERS' CONSULTATIONS

VENUE	DATE
Serena Hotel	1 st September 2010
Kenya School of Monetary Studies (KSMS)	3 rd February 2011
Kenya School of Monetary Studies (KSMS)	25 th March 2013
Kenya School of Monetary Studies (KSMS)	3 rd October 2013

Note:

The Stakeholders who participated in the above consultations included the following:

1. Commercial Banks
2. Kenya Bankers Association
3. Telcos (Safaricom, Airtel, Orange, Yu, Tangaza and Mobikash)

4. The National Treasury
5. Kenya Revenue Authority
6. Communication Authority of Kenya
7. Competition Authority of Kenya
8. Financial Sector Deepening (FSD Kenya)

The overwhelming outcome of the public consultation process was in favour of the issuance of the Regulations.

5.0 Guidance

The Regulations were availed on the Central Bank of Kenya website <https://www.centralbank.go.ke/> for public consultations. The Central Bank of Kenya will also engage in further stakeholders' education and dissemination through both the print and electronic media to ensure that all parties are aware of their existence and effect.

6.0 Impact

6.1 Rights and Freedoms

The coming into effect of these Regulations will have no impact on the fundamental Rights and Freedoms of the citizens and residents of the Republic of Kenya.

6.2 The Impact on the Private Sector

The coming into force of these Regulations will have the effect of ensuring that the payment sector which is comprised heavily of private sector players is well regulated and competitive this ensuring delivery of quality to consumers of payment services.

The Regulator will create a framework for the authorization of innovative payment services including mobile payment platforms to enhance efficiency and increase financial inclusion.

6.3 The Impact on the Public Sector

The Regulations provide the basis for the Central Bank of Kenya's keen interest and involvement in payment system modernization as a key component for the financial sector stability and efficient functioning of the economy and will also support and enhance the development and supervision of payment systems in the country. The Regulations are aimed at giving certainty in the operation and

regulation of the retail payment industry. This regulatory initiative seeks to operationalize the act and ensure that the design and operation of retail payment systems adequately address risk management issues, especially the curtailment of the transmission of such risks through the financial system.

7.0 Monitoring and Review

The Regulations will come into effect immediately upon adoption by Parliament. The provisions of the Regulations will enable Central Bank of Kenya of Kenya to authorize and monitor all payment service providers. The Central Bank will operationalize the National payment System Act and ensure that the design and operations of retail payment systems address risk management issues and provide adequate consumer protection. The Bank will also designate payment systems and instruments to mitigate payment system risks and achieve financial stability.

8.0 Contact

The following person can be contacted for queries on the statutory instrument;

HENRY K. ROTICH

CABINET SECRETARY FOR THE NATIONAL TREASURY

18th August, 2014

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

Provisions of the National Payment System Act	Impact
<p>Transitional Provisions</p> <p>Section 32(1)</p> <p>32. (1) Any person who, immediately before the coming into force of this Act, was—</p> <ul style="list-style-type: none"> (a) operating a system for— <ul style="list-style-type: none"> (i) the clearing of payment instructions; (ii) the netting or settlement of obligations arising from the clearing of payment instructions; or (b) issuing a payment instrument; or (c) conducting the business of a payment service provider. <p>may continue to operate the system or issue the payment instrument or conduct the business of a payment service provider for six months after the commencement of this Act, even if the system or the payment instrument has not been designated or the payment service provider has not been</p>	<p>Following gazettelement of the Regulations in the Kenya Gazette Volume CXVI – No. 98 (Kenya Gazette Supplement No. 119- Legislative Supplement No. 43- Legal Notice No.109), published on 15th August 2014, all payment service providers will be required to apply for authorisation in accordance with the requirements set out in the regulations and in compliance with the transition provisions as set out in section 32(1) of the National Payment System Act and Regulation 59 of the National Payment System Regulations.</p>

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

authorized by the Central Bank under this Act:

Provided that, after the commencement of this Act,

(a) the operator of an undesignated payment system or the issuer of an undesignated payment instrument shall, upon advice by the Central Bank, apply to the Central Bank for designation of the payment system or instrument and, if his application is declined before the six-month period has elapsed, the applicant shall cease to operate the system or issue the instrument forthwith; and

(b) the provider of an unauthorized payment service shall apply to the Central Bank for authorisation and if the application is declined before the six month period has elapsed, the provider shall cease to conduct the business of a payment service provider forthwith.

(2) A person who continues to operate an undesignated payment system, or to issue an undesignated payment instrument, after the expiry of six months from the date of commencement of this Act commits an offence and is liable, on conviction, to a fine not exceeding one million

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

<p>(2) Before revoking or suspending an authorization under this section, the Bank shall give an authorized payment service provider, not less than fourteen days' notice in writing and shall consider any representations made to it in writing by the authorised payment service provider within that period.</p>	
<p>Section 23(1)- Audit and inspection</p> <p>23. (1) The Central Bank shall, for the purposes of carrying out its functions under this Act, conduct audits and inspections of a designated payment system or of an issuer of a designated payment instrument.</p>	<p>This will facilitate oversight of payment service providers.</p>

18th August, 2014

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

Provided that where an authorised payment service provider fails to commence business in Kenya within six months of the grant of authorisation, the authorized payment service provider shall, if still intending to conduct payment service business in Kenya, apply for authorization as if the first authorisation had never been granted.

Section 15(1)- Revocation of authorisation

15. (1) Subject to sub-section (2), the Bank may, by notice in writing to an authorised payment service provider, revoke or suspend an authorisation for such period as it may specify, if the authorised payment service provider—

- (a) ceases to carry on business in Kenya or goes into liquidation or is wound up, or is otherwise dissolved;
- (b) fails to comply with the provisions of this Act or any condition attached to an authorisation; or
- (c) conducts business in a manner detrimental to the best interests of the public.

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

<p>payment instrument.</p> <p>Section 7(1)- Recognition of a payment system management body</p> <p>7. (1) The Central Bank shall, upon designation of a payment system under this Act, automatically recognize the management body of such payment system.</p> <p>Section 12(1)- Authorisation of a payment service provider</p> <p>12. (1) No person shall, in Kenya conduct the business of a payment service provider except an authorized payment service provider.</p> <p>Section 13(1)- Application for authorisation</p> <p>13. (1) A person proposing to transact the business of a payment service provider shall, before commencing such business, apply to the Bank for authorization.</p> <p>Section 14(1)- Renewal of authorisation</p> <p>14. (1) An authorisation made under section 13 may on expiry be renewed for a further period of twelve months:</p>	<p>Recognition of a payment system management body will enhance financial system access and inclusion.</p>
<p>All payment service providers will be required to comply with requirements set out in the regulation.</p>	

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

<p>(c) such designation is in the interest of the integrity of the payment system.</p>	
<p>Section 6(1)- Designation of a payment instrument</p> <p>6. (1) The Central Bank may, by notice in the Gazette, designate a payment instrument for purposes of this Act, if the Bank is of the opinion that—</p> <p>(a) the payment instrument is of widespread use as a means of making payment and may affect the payment systems of Kenya;</p> <p>(b) the designation is necessary to protect the interests of the public; or</p> <p>(c) such designation is in the interest of the integrity of the</p>	<p>It will ensure that the design and operation of retail payment systems adequately address risk management issues, especially the curtailment of the transmission of such risks through the financial system</p>

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

<p>Savings.</p> <p>33. An issuer of a payment instrument who is licensed under the Banking Act, Cap. 488, the Building Societies Act, Cap. 489, the Kenya Post Office Savings Bank Act, Cap. 493B, the Postal Corporation of Kenya Act, 1998, No.3 of 1998 and the Microfinance Act, 2006, No.19 of 2006 shall be deemed to have met the requirements under section 6(4).</p> <p>6(4) The Central Bank shall give a written notice of designation of a payment instrument to the issuer of the payment instrument that has been designated pursuant to section 6(1). <i>(see reference below)</i></p>	
<p>Section 3(1)- Designation of a payment system</p> <p>3. (1) The Central Bank may, by notice in the Gazette, designate a payment system for the purposes of this Act, if it is of the opinion that—</p> <ul style="list-style-type: none"> (a) the payment system poses systemic risk; (b) the designation is necessary to protect the interest of the public; or 	<p>The Kenya Electronic Payments and Settlement System, (KEPSS), Kenya’s only large value payment system operated by the Central Bank of Kenya will be designated. As a result, it will provide a high degree of legal certainty to participants in a designated settlement system that they can rely on the settlements they receive.</p> <p>In turn, this will contribute to the ongoing flow of liquidity in the financial system, the overall soundness and efficiency of the financial system, and the confidence of investors and other market participants.</p>

The National Payment System Regulations, 2014 – Regulatory Impact Assessment Statement

shillings, or to imprisonment for a term not exceeding five years, or both.

(3) A person who continues to provide an unauthorized payment service after the expiry of six months from the commencement of this Act commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

Regulation 59

59. (1) Any payment system operated by the Bank that qualifies to be designated will be deemed to be designated and will be gazetted in accordance with regulation 53.

(53. (1) The Bank shall, by way of a gazette notice, designate a payment system or payment instrument in accordance with the Act.)

59. (2) Any payment service provider who commenced delivery of electronic retail transfer or e-money issuance before the commencement date of these Regulations shall comply with these Regulations within six months from the commencement date.