

# **BANK OF NAMIBIA**

## **GUIDELINES FOR ISSUERS OF ELECTRONIC MONEY & OTHER PAYMENT INSTRUMENTS IN NAMIBIA**

**DATE: MARCH 2012**

### **1. Purpose**

The purpose of these guidelines is to provide issuers of electronic money (e-money) and issuers of other payment instruments with guidance with respect to:

- 1.1.** Minimum requirements for authorization to issue e-money or other payment instruments in Namibia;
- 1.2.** General conditions for using agents to provide e-money or other payment-related services;
- 1.3.** Requirements for contracts with agents or other service providers;
- 1.4.** Mitigation and management of risks related to the provision of e-money or other payment-related services; and
- 1.5.** Types of e-money accounts and services (e-money issuers only);

### **2. Application**

These guidelines shall apply to all persons who intend to issue electronic money or other payment instruments in Namibia in terms of Section 5 of the *Payment System Management Act, 2003* (Act No. 18 of 2003, as amended) (the Act). Both banks and non-bank actors are permitted to apply for authorization to issue e-money or other payment instruments. Permission to provide specific services is subject to authorization by the Bank of Namibia.

### **3. Definitions**

Unless the context otherwise indicates, a word or expression defined in the *Payment System Management Act, 2003, as amended* or the *Determination on Issuing of Electronic Money in Namibia* (PSD-3) has the same meaning in these Guidelines.

### **4. Electronic Money Services & Accounts**

**4.1 Electronic Money Services:** Electronic money payment instruments can facilitate a variety of financial services. Some examples of e-money services include:

- 4.1.1** Opening an electronic money account;

- 4.1.2 Loading value onto an electronic wallet (Cash-in);
- 4.1.3 Redeeming value from an electronic wallet (Cash-out);
- 4.1.4 Paying bills;
- 4.1.5 Sending domestic money transfers;
- 4.1.6 Receiving/disbursing domestic money transfers;

Provision of any of the aforementioned services – or any other e-money services – is conditional upon receipt of authorization from the Bank.

**4.2 Types of Electronic Money Accounts:** E-money issuers may offer individual, business, and agent accounts:

**4.2.1 Individual Accounts:** Individual accounts are intended to be used by individuals.

**4.2.2 Business Accounts:** Business accounts are designed for businesses, organizations, and government entities. Business accounts may be used to facilitate a variety of payment-related services, such as the following:

- i. Payment of salaries or social benefits by government entities (government-to-person);
- ii. Payment of salaries or fees by businesses (business-to-person); or
- iii. Payment for goods received or services rendered (business-to-business or customer-to-business).

E-money issuers must notify the Bank of their intention to offer a business account at least 14 days prior to the proposed date for commencement of services. At a minimum, such notification shall include:

- iv. Name, address, and contact information of business's head office;
- v. Name, address, and contact information of business's outlets where business proposes to use e-money services;
- vi. Names and contact information of business's owners and key staff responsible for managing the relationship with the e-money issuer;
- vii. A certified true copy of the business's memorandum and articles of association or other constituent documents under which it is established;
- viii. A copy of all contracts, service-level agreements, and other relevant agreements;
- ix. Proposed transaction and balance limits for business e-money accounts;
- x. A statement that the e-money issuer has conducted appropriate due diligence and has determined that the business:
  - o Is fully compliant with all licensing requirements and all other relevant legal and regulatory requirements;
  - o Has the technical knowledge to competently operate a business e-money account and comply with all legal requirements; and
  - o Possesses good moral character.

**4.2.3 Agent Accounts:** Agent accounts are designed to facilitate the transfer and usage of e-money funds and accounts. Since agents perform a number of functions on behalf of the e-money issuer – including cash-in and cash-out, among others – higher transaction and balance limits will be necessary in order to provide sufficient liquidity and ensure customers' access to funds. As agents are acting on behalf of the e-money issuer, the risk of agent abuse should be addressed contractually between each e-money issuer and its agents.

## **5. Minimum requirements for authorization to issue electronic money or other payment instruments in Namibia**

**5.1 Initial authorization:** The following documents and information shall be submitted to the Bank by any entity applying to issue electronic money or other payment instruments:

- 5.1.1** a certified true copy of its memorandum and articles of association or other constituent documents under which it is established;
- 5.1.2** a certified true copy of its certificate of incorporation or business registration in Namibia;
- 5.1.3** a certified true copy of its latest audited financial statements;
- 5.1.4** the name, place, and date of its establishment;
- 5.1.5** the principal business and field of operations;
- 5.1.6** the names, addresses, and identity card or passport numbers of all directors and chief executive officer;
- 5.1.7** if it is a company, the names and addresses of its substantial shareholders and its related corporations; and
- 5.1.8** if it is not a company, the names and addresses of its shareholders, partners, or other persons having ownership by whatever name called;
- 5.1.9** any approval, authorization, license, or permit from other regulatory authorities;
- 5.1.10** evidence of sufficient funds to meet the minimum capital requirements listed in the relevant Determination;
- 5.1.11** the following information and supporting documents relating to the e-money instrument or other payment instrument:
  - i. the name, functionality, and a detailed description of the payment instrument, including payment flows and settlement and reconciliation arrangements;

- ii. a description of the intended users and the intended location(s) of use;
- iii. a business plan/feasibility study with a minimum of three years of financial projections;
- iv. a description of the technology to be used and the measures to be taken to ensure the safety of all data and funds;
- v. a description of the organization of the scheme, including: ownership, governance, roles, responsibilities, rights and obligations, and interrelationship among participants, including (as applicable): e-money issuers, technology companies, payment clearing houses, switch operators, agents, merchants, participating vendors, banking institutions, etc.;
- vi. if the scheme is not interoperable and/or involves exclusive arrangements, an explanation for why the scheme was not designed to be interoperable and non-exclusive;
- vii. a copy of the proposed client disclosure documentation, including:
  - the rights and liabilities of the issuer and the user;
  - the risks that the user may incur;
  - consumer redress and dispute resolution mechanisms; and
  - the terms and conditions of use (including transaction and balance limits, validity, fees and charges related to the payment instrument, provisions related to account dormancy and unclaimed funds, and other relevant terms and conditions).
- viii. measures for the management of funds collected from the user, including measures to ensure that such funds are protected and are available for repayment to the user (if applicable);
- ix. a list of fees and charges to be imposed by the issuer, and a description of how such fees will be shared among the issuer and other participants in the scheme (such as technology companies, agents, etc.);
- x. a description of data and information management measures taken to ensure confidentiality of transactions and customer data, and to provide for reliable transaction audit trails;
- xi. outsourcing and/or agency arrangements, if any; and
- xii. measures that ensure the safety, security, and operational reliability of the payment instrument, including policies and procedures with respect to:
  - Electronic banking;
  - Outsourcing;
  - Use of retail agents (if applicable);

- Internal controls;
- Security controls;
- Business continuity, contingency, and disaster recovery planning; and
- Internal and external audit functions.

## **6 General conditions for using agents to provide electronic money or other payment services**

**6.1 General Conditions for Use of Agents:** Prior to establishing agreements with specific agents with respect to the provision of e-money services, an issuer of e-money or another payment instrument must ensure that it has developed all of the following:

- 6.1.1** A risk assessment report that identifies key agent-related risks and internal control measures that will be taken to address these risks;
- 6.1.2** Model contracts, service-level agreements, and other model agency agreements;
- 6.1.3** Policies and procedures that address the use of agents, amended as necessary to account for agent-related risks. These include (but are not limited to) policies and procedures related to:
  - E-money;
  - Outsourcing;
  - Security; and
  - Legal compliance (including AML/CFT, data privacy, etc.).
- 6.1.1** Manuals and procedures for training agents; and
- 6.1.2** Evidence that the issuer has addressed the agent-related risk mitigation measures identified in the *Determination on Electronic Money* (if applicable) and these Guidelines.

**6.2 Notification of Intention to Offer Services through Agents:** An issuer that has complied with the general conditions for offering e-money services or other payment services through agents may submit a notification to the Bank of its intention to contract a specific agent or agents to provide services on its behalf. This notification, which must be submitted at least 14 days prior to the proposed date for commencement of services, must include, at a minimum, the following information:

- 6.1.1** Name, address, and contact information of proposed agent's head office;
- 6.1.2** Name, address, and contact information of agent's outlets where issuer proposes to offer services;
- 6.1.3** Names and contact information of agent's owners and key agent staff responsible for managing the relationship with the issuer;
- 6.1.4** A certified true copy of the agent's memorandum and articles of association or other constituent documents under which it is established;
- 6.1.5** A copy of all contracts, service-level agreements, and other relevant agency agreements, highlighting any material changes from the model documents previously developed (see above);
- 6.1.6** Proposed transaction and balance limits for agent e-money accounts (if applicable);

- 6.1.7** A statement that the issuer has conducted appropriate due diligence and has determined that the proposed agent:
- i. Is fully compliant with all licensing requirements and all other relevant legal and regulatory requirements;
  - ii. Is legally permitted to act as an agent;
  - iii. Has sufficient financial resources to effectively carry out the duties of an agent;
  - iv. Has the technical knowledge to competently offer e-money services or other payment services and comply with all legal requirements;
  - v. Is willing and able to meet all Customer Due Diligence requirements and comply with the *Financial Intelligence Act, 2007* and its accompanying regulations; and
  - vi. Possesses good moral character.

## **7 Safe Storage of Customer Funds by E-Money Issuers**

**7.1 Outstanding e-money liabilities to be held in trust:** All e-money issuers must ensure that customer funds are protected against loss. Except as otherwise provided under Section 7.2, all outstanding e-money liabilities must be held in trust subject to a written instrument established under the *Trust Moneys Protection Act 34 of 1934*. Funds held in trust shall be placed in accounts in one or more licensed banking institutions in Namibia.

**7.2 Alternative methods of compliance:** If compliance with Section 7.1 would be unduly burdensome, an e-money issuer may apply to the Bank for a waiver. E-money issuers seeking a waiver must provide evidence that their proposed alternative method for safeguarding customer funds would be at least as effective as holding funds in trust under Section 7.1. Any proposed alternative must meet the following requirements:

- (i) Funds equalling at least 100% of the value of aggregate outstanding e-money liabilities must be set aside to repay customers; and
- (ii) These funds must be adequately protected against loss and against creditors' claims in the event that the e-money issuer becomes insolvent.

The Bank, in its sole discretion, shall determine whether exceptional circumstances exist justifying a waiver, and whether the proposed alternative meets the necessary requirements described above.

## **8 Risk Management and Mitigation**

While e-money and other payment services offer the potential for fostering financial inclusion, they also present certain risks. These risks may include credit, operational, legal (compliance), liquidity, reputation, consumer protection, and AML/CFT risks, all of which must be effectively mitigated. A number of important risk mitigation measures can be classified into three categories:

- (i) electronic banking/payment risk;
- (ii) outsourcing risk; and
- (iii) risk related to the use of retail agents.

**8.1 Electronic banking/payment risk:** The Bank for International Settlements' (BIS) Basel Committee on Banking Supervision has developed principles governing the management of electronic banking risk. In addition to fourteen key principles related to Board and management oversight, security controls, and management of legal and reputational risk, the [Risk Management Principles for Electronic Banking](#) include appendices detailing sound practices with respect to:

- 8.1.1** security control;
- 8.1.2** authorization;
- 8.1.3** audit trails;
- 8.1.4** customer privacy;
- 8.1.5** outsourcing of e-banking services; and
- 8.1.6** issues related to capacity, business continuity, and contingency planning.

All issuers of e-money or other payment instruments<sup>1</sup> are expected to ensure that their schemes are fully compliant with the contents of this document. References to “banks” within the document shall apply to all issuers of e-money or other payment instruments.

**8.2 Outsourcing risk:** Many payment schemes involve outsourcing of certain services. For example, e-money issuers often rely upon retail agents to act on their behalf at the local level, providing services such as account opening, loading and redemption of e-money to/from an electronic wallet, bill payments and money transfers, and other activities.

Appendix II of the [Risk Management Principles for Electronic Banking](#) provides guidance on managing outsourced e-banking services. For the purposes of these guidelines the term “e-banking” can be used interchangeably with “e-money”. Some of these key principles are:

- 8.2.1** To adopt appropriate processes for evaluating decisions to outsource e-banking systems or services.
- 8.2.2** Conduct appropriate risk analysis and due diligence prior to selecting an e-banking service provider and at appropriate intervals thereafter.
- 8.2.3** Adopt appropriate procedures for ensuring the adequacy of contracts governing e-banking.
- 8.2.4** Ensure that periodic independent internal and/or external audits are conducted of outsourced operations to at least the same scope required if such operations were conducted in-house
- 8.2.5** Develop appropriate contingency plans for outsourced e-banking activities.

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<sup>1</sup> Banking institutions are already required to comply with these principles per [Circular BIA 1/03](#) (24 September 2003).

**8.2.6** In the case that e-banking services are provided to third parties, the E-money issuer should ensure that their operations, responsibilities, and liabilities are sufficiently clear so that serviced institutions can adequately carry out their own effective due diligence reviews and on-going oversight of the relationship.

In addition, the BIS has published [Outsourcing in Financial Services](#), a document offering key principles on management of outsourcing risk. This document includes seven principles that specifically apply to “*regulated entities*”. For the purposes of these guidelines the term “*regulated entities*” can be used interchangeably with “*E-money issuer*”. These principles are:

**8.2.7** A regulated entity seeking to outsource activities should have in place a comprehensive policy to guide the assessment of whether and how those activities can be appropriately outsourced. The board of directors or equivalent body retains responsibility for the outsourcing policy and related overall responsibility for activities undertaken under that policy.

**8.2.8** The regulated entity should establish a comprehensive outsourcing risk management programme to address the outsourced activities and the relationship with the service provider.

**8.2.9** The regulated entity should ensure that outsourcing arrangements neither diminish its ability to fulfil its obligations to customers and regulators, nor impede effective supervision by regulators.

**8.2.10** The regulated entity should conduct appropriate due diligence in selecting third-party service providers.

**8.2.11** Outsourcing relationships should be governed by written contracts that clearly describe all material aspects of the outsourcing arrangement, including the rights, responsibilities and expectations of all parties.

**8.2.12** The regulated entity and its service providers should establish and maintain contingency plans, including a plan for disaster recovery and periodic testing of backup facilities.

**8.2.13** The regulated entity should take appropriate steps to require that service providers protect confidential information of both the regulated entity and its clients from intentional or inadvertent disclosure to unauthorised persons.

All issuers of e-money or other payment instruments that engage in outsourcing are expected to ensure that their schemes are fully compliant with the relevant content of both of these documents.

**8.3 Risk related to the use of retail agents:** In addition to well-known e-banking and outsourcing risks, the use of retail agents raises other issues with which issuers of e-money or other payment instruments may be less familiar. In this regard, the provision of such services is subject to the following requirements:



**8.3.1 Issuer's responsibility for actions of agent:** As the regulated institutions, issuers of e-money or other payment instruments are held responsible for actions taken by agents acting on their behalf. These include actions taken both with respect to customers (such as negligence or fraud in the provision of services) and with respect to regulators (such as (non)compliance with AML/CFT, customer privacy, or other regulations).

While issuers are directly liable to customers and regulators for the actions of their agents, issuers should address this issue contractually to ensure that they are able to obtain restitution from agents for any losses due to actions of agents acting on their behalf.

**8.3.2 Customer's right of recourse to issuer in event of dispute:** In the event of a dispute related to an account or transaction, customers have the right to bring a complaint directly to the issuer, rather than addressing the issue through an agent. All agents must display the issuer's full name and registration number in a conspicuous location. Furthermore, issuers of e-money or other payment instruments must provide customers with information on how to bring a dispute to the attention of the issuer, including providing a telephone number or other accessible method for expeditious resolution of disputes.

**8.3.3 Bank of Namibia's right to review agent records:** In order to ensure that it is able to effectively supervise issuers of e-money or other payment instruments, the Bank reserves the right to inspect all related records, data, or other relevant information, whether in the possession of the issuer or its agent(s). Contracts with agents shall stipulate that the Bank (or its representative) may examine any agent records related to the conduct of payment business.

**8.3.4 Customer disclosure:** To reduce the risk of fraud or other forms of customer abuse, issuers of e-money or other payment instruments are required to provide customers with the following information when establishing a business relationship to offer services:

- (i) Clarification of the roles and responsibilities of the issuer, agents, and customers;
- (ii) A clear description of available services and the fees or charges for using these services;
- (iii) Detailed information on how to resolve problems, file complaints, and contact the issuer;
- (iv) A description of how to close an e-money account, including any fees associated with doing so (e-money services only);
- (v) Clarification that (e-money services only):
  - E-money may be redeemed at par value (minus any disclosed fees) at any time; and

In addition, customers must be provided with either a paper or electronic receipt following every transaction.

## 9 Contractual Requirements

**9.1 Minimum requirements for contracts with agents or service providers:** Issuers of e-money or other payment instruments should ensure that agreements with agents and service providers are governed by written contracts. These contracts should include provisions addressing the following issues, among others:

- 9.1.1 Clarification of the roles, responsibilities, and contractual liabilities of the parties to the contract;
- 9.1.2 Responsibilities of parties for providing and receiving information regarding the payment service;
- 9.1.3 Materiality thresholds and procedures for notifying the issuer of service disruptions, security threats, or other issues that create material risks;
- 9.1.4 Ownership and protection of customer data, transaction data, and other information;
- 9.1.5 Whether agents or service providers are required to obtain insurance and/or provide guarantees;
- 9.1.6 Performance benchmarks;
- 9.1.7 Termination or expiration of contracts, including circumstances leading to intervention by the issuer;
- 9.1.8 Business continuity measures;
- 9.1.9 The issuer's right to monitor and audit the agent or service provider's operations, security policies and procedures, internal controls, and business continuity and contingency plans;
- 9.1.10 The Bank of Namibia's right to inspect the data, documents, records, and premises of the agent or service provider; and
- 9.1.11 Any other requirements as determined by the Bank.

## 10 Other Required Notifications

**10.1 Terms and Conditions:** An issuer must submit a notification to the Bank of its intention to modify the Terms and Conditions of its agreements with customers holding individual e-money accounts. This notification must be submitted at least 30 days prior to the proposed date for modification of the Terms and Conditions.

**10.2 Fees and Charges:** An issuer must submit a notification to the Bank of its intention to modify any of the fees and charges applicable to customers holding individual e-money accounts. This notification must be submitted at least 1 business day prior to the proposed date for modification of the fees and charges.

## 11 Due Diligence Prior to Suspension or Cancellation of Authorization

**11.1 Suspension of Authorization:** If the Bank determines that an e-money issuer has acted in a manner warranting suspension of its authorization to issue e-money, it shall

provide the issuer with a written notice of intention to suspend authorization, including a detailed explanation of the reason(s) for suspension. The e-money issuer shall be provided with a minimum of 30 days to respond to the notice.

The Bank, in its sole discretion, may determine whether to permit the e-money issuer to continue operating until a final determination regarding suspension of authorization has been made.

**11.2 Cancellation of Authorization:** If the Bank determines that an e-money issuer has acted in a manner warranting cancellation of its authorization to issue e-money, it shall provide the issuer with a written notice of intention to cancel authorization, including a detailed explanation of the reason(s) for cancellation. The e-money issuer shall be provided with a minimum of 30 days to respond to the notice.

The Bank, in its sole discretion, may determine whether to permit the e-money issuer to continue operating until a final determination regarding cancellation of authorization has been made.

## **12 Effective Date**

These Guidelines are effective as of 1 March 2012. All issuers of e-money or other payment instruments are expected to comply with the provisions of these Guidelines.

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