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OF THE

REPUBLIC OF NAMIBIA

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General Notice

BANK OF NAMIBIA

No. 667

2018

DETERMINATION UNDER THE PAYMENT SYSTEM MANAGEMENT ACT, 2003, AS AMENDED

In my capacity as Governor of the Bank of Namibia (The Bank), and under the powers vested in the Bank by virtue of section 14 of the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended, I hereby issue this **Determination on Issuing of Electronic Money in Namibia (PSD-3)**, which Determination shall become effective on date of publication in the *Gazette*.

I. SHIMI
GOVERNOR

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PART I: PRELIMINARY

1. **Short Title** - Electronic Money Determination
2. **Application** - This Determination will apply to all persons who intend to issue electronic money (e-money) in Namibia in terms of Section 5 of the Payment System Management Act, 2003 (Act No.18 of 2003), as amended (the Act). Banking institutions and non-bank institutions who intend to issue e-money are required to do so in accordance with this

Determination. Banking institutions and non-bank institutions that issue e-money will be collectively referred to as “e-money issuers”. All (new applicants and existing) e-money issuers will be subjected to an assessment process, based on this Determination, in order to ensure compliance with the minimum requirements for issuing e-money in Namibia. All e-money issuers must be able to demonstrate their full compliance within six (6) months after issuance and publication of this Determination in the *Gazette*.

3. **Definitions** - In this Determination, unless the context otherwise indicates, the words and expressions used herein will have the same meaning assigned to them in the Act and cognate expressions will have corresponding meaning:
- 3.1. “**Act**” means the Payment System Management Act, 2003 (Act No. 18 of 2003), as amended.
- 3.2. “**Agent**” means an entity appointed by an e-money issuer to perform certain e-money-related services on its behalf.
- 3.3. “**Banking institution**” means a public company authorised under the Banking Institutions Act, 1998 (Act No. 2 of 1998), as amended.
- 3.4. “**Customer**” means an e-money user.
- 3.5. “**Customer Due Diligence**” or “**CDD**” means actions taken by an e-money issuer to ensure that prospective and existing customers are properly identified, verified and that their financial activities are actively monitored, as required under the Financial Intelligence Act, 2012 (Act No. 13 of 2012).
- 3.6. “**Electronic money**” or “**e-money**” means monetary value as represented by a claim on its issuer, that is:
- a) Stored electronically;
 - b) Issued on receipt of funds;
 - c) Accepted as a means of payment by persons other than the issuer; and
 - d) Redeemable upon demand for cash in Namibia Dollar.
- E-money can be issued through various access devices such as card-based products e.g. prepaid cards and electronic-based products e.g. via the internet, mobile phone or any other electronic device.
- 3.7. “**Electronic money issuer**” or “**E-money issuer**” refers collectively to a banking institution or a non-bank institution authorised to issue e-money under this Determination.
- 3.8. “**E-money scheme**” means the e-money operating systems, networks, servers, agreements and technical standards and rules.
- 3.9. “**Electronic money wallet**” or “**e-money wallet or e-wallet**” means an application software or device on which monetary value is stored and which allows the holder of the wallet to make electronic transactions. The wallet may be stored on the internet or devices such as a mobile phone or computer, or products such as pre-paid cards.
- 3.10. “**Interoperability**” means the technical compatibility that allows for different payment systems to connect with one another, thus enabling e-money products and services from different e-money issuers to interact and exchange information, which further enables a user of one e-money issuer’s scheme to send to or receive money from another user on a different e-money issuer’s scheme.
- 3.11. “**Non-bank institution**” refers broadly to any institution or person other than a licensed or registered banking institution that intends to or issues e-money.
- 3.12. “**Outstanding electronic money liabilities**” means the aggregate of all unredeemed e-money funds held in individual wallets, business and agent wallets.
- 3.13. “**PSMA E-Money Circular**” means an operational circular issued by the Bank in terms of the Act outlining further e-money operational requirements.
- 3.14. “**PSMA E-Money Guidelines**” means an operational guideline document issued by the Bank in terms of the Act, outlining further e-money operational requirements.
- 3.15. “**Remittances**” means cross-border or domestic person-to-person transfers of relatively low monetary value.
- 3.16. “**Trust account**” means an account under the control of an e-money issuer held at a licensed banking institution for and on behalf of e-money users who have exchanged cash for e-money.

4. **Authorisation** - Authority for the Bank to issue this Determination is provided for by Section 14 of the Act.

PART II: STATEMENT OF POLICY

5. **Purpose** - The purpose of this Determination is to provide for the minimum requirements that potential issuers of e-money must satisfy before issuing e-money in Namibia.
6. **Scope** - This Determination will apply to all persons (banking institutions and non-bank institutions) who intend to issue e-money in Namibia. No person may issue e-money other than an institution allowed or authorised under this Determination.
7. **The Position of the Bank** - It is the Bank's position that this Determination aims to create an enabling and fair environment in which electronic money can be issued in a manner that is safe, efficient, secure and cost effective for the benefit of the National Payment System. Furthermore, the Determination aims to promote the availability and acceptance of e-money with the potential to increase financial inclusion and specifying necessary safeguards and controls to mitigate the risks associated with e-money schemes and ensuring consumer protection.
8. **Application of the Act** - Unless expressly stated otherwise, the provisions of the Act, as well as the related Determinations and Directives, Guidelines and Circulars, will apply to all e-money issuers.

PART III: IMPLEMENTATION

9. Authorisation to Issue Electronic Money in Namibia

9.1 Banking Institutions:

- 9.1.1 A banking institution that intends to issue e-money must formally notify the Bank, at least three (3) months in advance, of its intention to issue e-money, after which, the Bank will formally pronounce itself to such an intention. This is to ensure that e-money operations are in line and comply with the relevant standards of issuing e-money, as set in this Determination.
- 9.1.2 A banking institution's notification must explain the nature and functionality of the proposed e-money operations including all information and / or supporting documentation as prescribed by the Bank in the PSMA E-money Guidelines.
- 9.1.3 A banking institution may not issue e-money until 9.1.1 is fulfilled.

9.2 Non-Bank Institutions:

- 9.2.1 A non-bank institution that intends to issue e-money must formally apply to the Bank for authorisation, which application must include all documents, data, or other information as prescribed in the PSMA E-money Guidelines.
- 9.2.2 The Bank will issue a non-bank institution with a license to issue e-money upon the applicant satisfying all the application requirements, which authorisation or a license to issue e-money may not be transferred from one entity to another without written approval by the Bank.
- 9.2.3 An application for authorisation must be accompanied by an application fee as prescribed in the PSMA E-money Circular and will irrespective of whether the application is granted or refused, not be refunded.
- 9.2.4 An authorised non-bank institution e-money issuer is required to pay an authorisation fee as prescribed in the PSMA E-money Circular.

- 9.2.5** A non-bank institution entity must, in respect of the authorisation to issue e-money, and before 31 January of each year, pay to the Bank the prescribed annual fees in respect of such a year.
- 9.2.6** The Bank may suspend or revoke a license of a non-bank institution under the circumstances outlined under section 17 and 18 of this Determination.

9.3 Additional Requirements for Non-Bank Institutions

- 9.3.1** A non-bank institution (already engaged in other business interests) that intends to submit an application to issue e-money in addition to other services (not related to e-money) must establish a separate entity whose activities will be limited to the issuance of e-money and the provision of related services i.e. value add services.
- 9.3.2** The Bank may consider a request for a waiver from the requirement 9.3.1 in exceptional circumstances. For the Bank to consider such waiver, a non-bank institution must prove that:
- a)** Compliance with such a requirement would be unduly burdensome;
 - b)** The protection of the e-money user is not compromised; and
 - c)** Granting a waiver would not compromise the Bank's ability to effectively supervise the non-bank e-money issuer.

9.4 Additional Limitations

- 9.4.1** Non-bank e-money issuers are not permitted to engage in banking business, as defined by the Banking Institutions Act, 1998 (Act No.2 of 1998), as amended, unless duly assessed and licensed to do so.
- 9.4.2** Non-bank e-money issuers are not permitted to act as payment service providers as defined in the Act, unless duly assessed and registered to do so.
- 9.4.3** E-money customer funds may not be classified as deposits and e-money users may not be referred to as depositors by an e-money issuer.

9.5 Notification of Significant Changes to Electronic Money Services

- 9.5.1** An e-money issuer must notify the Bank of its intention to make significant changes to the scope or nature of the e-money services provided.
- 9.5.2** Such a notification must be provided at least 60 days prior to the date on which the change is to take effect, after which, the Bank will respond to the notification within 30 days after receipt of the notification. Examples of significant changes include, but are not limited to the following -
- a)** Change in electronic delivery mechanism used to provide services;
 - b)** Change in ownership or partnership / agent agreements;
 - c)** Merger / acquisition with another or more e-money issuers;
 - d)** A significant increase in transaction volume is recorded. For the purpose of this provision a significant increase would be measured as a percentage value of the e-money issuers transaction volumes, which percentage will be published in a PSMA E-money Circular from time-to-time;
 - e)** Appointment or acquiring of a new agent network.
- 9.5.3** A non-bank e-money issuer that intends to venture into other business interests separate from issuing e-money must notify the Bank at least 60 days in advance, after which, the Bank will formally pronounce itself within 30 days on such an intention.
- 9.5.4** The e-money issuer may not proceed with the envisaged change(s) until it receives the Bank's response.

10. General Conditions for Using Agents to Provide Electronic Money Services

- 10.1** E-money issuers may offer any or all approved e-money services through agents acting on their behalf, provided that they -
- 10.1.1** Notify the Bank at least 60 days prior to appointing the agents. The notification should include the due diligence done on the agents and written agency agreements that comply to the provisions of this Determination and the PSMA E-money Guidelines.
 - 10.1.2** The Bank will respond to the notification of appointing agents within 30 days after receipt of such a notification.
 - 10.1.3** Maintain a list of agents that stipulates their names, location, pool account balances, e-money volumes and values, which must be forwarded to the Bank on an annual basis.
- 10.2** E-money issuers will be held fully responsible and accountable for ensuring that their agents comply with all legal and regulatory requirements related to the provision of e-money services.
- 10.3** The Bank may, if not satisfied with the fitness and properness of an agent, instruct the e-money issuer to terminate or amend the agency agreement.

11. Specific Requirement to Issue Electronic Money in Namibia

- 11.1 Characteristics of E-Money:** E-money issuers must ensure that e-money schemes abide to the following -
- 11.1.1** E-money wallets and transactions must be denominated in Namibia Dollar and e-money balances must be redeemed at par value.
 - 11.1.2** E-money issuers may not pay interest to customers for funds held on e-money wallets, and any loyalty bonus or reward points that customers or agents may earn on an e-money wallet may not be converted into cash or e-money.
 - 11.1.3** Customer funds held in electronic wallets will not be considered as “deposits” as defined in the Banking Institutions Act, 1998 (Act No. 2 of 1998), as amended, and acceptance of customer funds by e-money issuers must not constitute deposit taking. Customer funds must be treated as “accounts payable” for accounting purposes.
 - 11.1.4** E-money issuers are not permitted to offer credit or intermediate e-money customer funds.
 - 11.1.5** E-money issuers will be subjected to transaction and balances limits as prescribed by the Financial Intelligence Centre.
- 11.2 Safe Storage of Customer Funds:** In order to ensure that customer funds are protected against loss, e-money issuers must comply with the following requirements -
- 11.2.1** An e-money issuer must open and maintain a trust account with a banking institution for the purpose of pooling funds received from customers and agents in exchange for e-money issued.
 - 11.2.2** E-money funds held in a trust account may not form part of an e-money issuer’s assets or liabilities and may not be used to meet any debt obligation of the electronic money issuer.
 - 11.2.3** Funds in a trust account may not be comingled with the funds of any natural or legal person other than the e-money users or agents on whose behalf the funds are held.
 - 11.2.4** At all times, the aggregate value of the pooled funds must equal at least 100% of the value of all outstanding e-money liabilities. These funds must be reconciled on a daily basis, with any deficiencies addressed within one (1) business day.

- 11.2.5** Except with respect to interest paid under the conditions described below, e-money pooled funds may only be used to fund customer and agent transactions, such as redemptions or other transactions that result in a net reduction in the value of outstanding e-money liabilities.
- 11.2.6** Every e-money issuer must, annually within 30 days of the next calendar year, furnish the Bank with proof of compliance to this section.

11.3 Interest Earned on Pooled Funds

- 11.3.1** E-money issuers are permitted to earn interest on pooled funds. However, issuers may only withdraw interest earned, or use interest to pay fees or charges related to the administration and maintenance of the e-money scheme, if the remaining aggregate value of the pooled funds would equal at least 100% of the value of all outstanding e-money liabilities.
- 11.3.2** Interest accrued from the trust account balances should be used to benefit the e-money scheme and thereby ensure that e-money fees and charges are in the public interest.

11.4 Unclaimed Funds and Dormant Wallets: This section provides procedures to be followed by e-money issuers for the treatment of dormant e-money wallets:

- 11.4.1** A customer's e-money wallet must be considered dormant if it does not register a transaction for a consecutive period of six (6) months. The transaction can be initiated either by the customer or by a third party on the customer's e-money wallet.
- 11.4.2** The concerned customer must be notified one (1) month before the 6-month period is reached that the e-money wallet will be considered dormant unless there is activity on the wallet.
- 11.4.3** An e-money issuer may not charge any fees or interest on a dormant e-money wallet.
- 11.4.4** Funds in a dormant e-money wallet must not be intermediated or treated as income by the e-money issuer.
- 11.4.5** Funds in an e-money wallet that is considered dormant, after a period of 6-months, must be dealt with in the following manner -
- a)** If the customer is known and has a primary banking account with the e-money issuer, the funds must be returned to the recipient's primary banking account; or
 - b)** If the customer's identity is known (Know Your Customer "KYC") and has no active banking account, the customer should be contacted and the full amount should be returned. In the event that the customer is deceased, funds in the e-money wallet should form part of the customer's estate;
 - c)** If the recipient of the e-money wallet is not known but the sender of the e-money is known by the e-money issuer, the funds should be returned to the sender; or
 - d)** In the event that none of the above can be applied within a period of three (3) years, the value of e-money funds in dormant wallets must be deposited in a separate bank account and be kept for a period of three (3) years after which, it can be used to develop the e-money scheme. E-money issuers must report the balances of this account to the Bank prior to it being used to develop the e-money scheme.
- 11.4.6 Termination and Reporting:** Subsequent to the provisions in 11.4.5, an e-money issuer must terminate a dormant e-money wallet and indicate to the Bank in the monthly reporting return, the number of dormant e-money wallets including the cumulative value on the dormant e-money wallets.

11.5 Minimum Capital Requirements for Non-Bank E-money Issuers

11.5.1 The purpose of requesting non-bank e-money issuers to have initial capital at the time of authorisation and to maintain ongoing capital is to protect against liquidity and insolvency risk. Non-bank e-money issuers are required to comply with the following initial and ongoing minimum capital requirements:

Initial Capital Requirement	Ongoing Capital Requirement
N\$1.5 million	Cash or liquid assets equivalent to the average of outstanding e-money liabilities calculated over the previous six (6) months.

11.5.2 At the time of authorisation, a non-bank e-money issuer is required to have an initial capital amount of N\$1.5 million.

11.5.3 Non-bank e-money issuers are required to maintain ongoing capital, either in the form of cash or other liquid assets equal to the average of outstanding e-money liabilities, calculated over the previous six (6) months.

11.5.4 The liquid assets should remain unencumbered and may be in the form of cash balances or other recognised financial instruments at banking institutions (different from where the trust account is kept) or in the form of highly liquid assets such as short-term financial instruments issued by the Government, the Bank of Namibia or as may be approved by the Bank.

11.5.5 The Bank may, on application in writing and on good cause shown, in writing permit a non-bank e-money issuer to and for such limited period of time as the Bank may specify, have capital funds which are lower than the capital funds determined under 11.5.3.

12. Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)

12.1 E-money issuers and their agents, on a regular basis, must conduct money laundering and financing of terrorism activities risk assessments and demonstrate compliance with section 24 and 39 of the Financial Intelligence Act, 2012 (Act No.13 of 2012), as well as other relevant accompanying regulations.

13. Risk Management and Mitigation, Confidentiality and Real-Time Transactions

13.1 Risk Mitigation: E-money issuers must ensure that they put in place, risk mitigation measures and appropriate security policies to safeguard the integrity, authenticity and confidentiality of data and operating systems. E-money issuers must comply with the risk mitigation measures and security standards as may be prescribed in the PSMA E-money Guidelines.

13.2 Confidentiality: E-money issuers and their agents must ensure to maintain confidentiality of all documents and information pertaining to their customers at all times and may not, on any account and at any time, disclose directly or indirectly to any person, any matter or information relating to their customers unless legally authorised to do so.

13.3 Real-Time Transactions: To avoid settlement risk, all e-money transactions affecting the value held on an e-money wallet must be processed in real time with settlement occurring on a daily basis. E-money must be credited on the e-money wallet of a customer as soon as technically possible after money has been received by an e-money issuer or its agents; e-money must be debited from the e-money wallet of the payer before it is credited to the payee's account, or immediately after if a short delay is technically required.

14. Customer Protection

- 14.1** E-money issuers are required to take steps to ensure that customers understand the services which they are using - including the inherent risks of using such services - and are protected from fraud and other forms of customer abuse in so far as reasonably possible.
- 14.2** E-money issuers are directed to ensure that customers benefit from the provisions of 11.3.2 with regards to fees and charges associated with e-money services. The Bank reserves the right to set standards for these fees and charges as per the Act.
- 14.3** All fees and charges related to e-money services should be transparently displayed in the e-money issuers' outlets, transacting platforms, banking halls and websites, and should not be misleading or bundled, so as to ensure customers pay exactly the price that is publicly displayed.
- 14.4** An e-money issuer must display, at all its premises and those of its agents, information on how customers can bring disputes and complaints to the attention of the e-money issuer, including providing contact details or other accessible methods for expeditious resolution disputes.
- 14.5** The Bank may further prescribe, in the PSMA E-money Guidelines, specific requirements in respect to disclosure and customer protection principles.

15. Competition, Interoperability and Remittances

- 15.1 **Competition and Exclusivity:**** An e-money issuer and its agents may not engage in anti-competitive practices and exclusive contracts, arrangements or dealings that would hinder competition in the National Payment System. Any anti-competitive practices or unfair treatment in the NPS should be reported to the Bank for investigation.
- 15.2 **Interoperability:**** In its efforts to achieve full interoperability in the NPS, the Bank will consider mandating interoperability through the issuance of a regulation in line with the Bank's position on interoperability and as per the stipulations therein.
- 15.3 **Remittances:**** E-money issuers that wish to provide regional cross-border e-money/remittance services are only permitted to do so with written approval from the Bank.

16. Reporting, Oversight and Financial Statements Requirements**16.1.1 Reporting:**

- a) An e-money issuer must submit reports as prescribed by the Bank.
- b) The statistics should include total interest accrued on the trust account and attestation that the total pooled funds in the trust account are at least equal to the value of all outstanding e-money liabilities.
- 16.1 **Oversight:**** In order to ensure that it is able to effectively oversee e-money issuers, the Bank reserves the right to inspect all e-money-related records, data, or other relevant information, whether in the possession of the e-money issuer or its agent.
- 16.2 **Financial Statements:**** With the exception of a banking institution, a non-bank e-money issuer must, three (3) months after its financial year end, submit to the Bank annual audited financial statements prepared and signed off by a reputable independent auditor.

17. Suspension of the Authorisation

17.1 The Bank may suspend an authorisation to issue e-money under any of the following circumstances where:

17.1.1 The e-money issuer is carrying on business in a manner which is detrimental to the stability of the National Payment System, or is incapable of providing services as per agreed service level standards; and / or

17.1.2 There is a violation of any of the provisions of this Determination or any other applicable laws or regulations; and / or any other circumstances which the Bank may consider material to warrant suspension.

17.2 The Bank will ensure that all due diligence processes are followed before suspension of an e-money issuer is instituted.

18. Cancellation of the Authorisation

18.1 The Bank may cancel an authorisation to issue e-money under the following circumstances:

18.1.1 The e-money issuer fails to comply with this Determination and with remedial measures required by the Bank following an inspection of the affairs of the e-money issuer;

18.1.2 It is determined that an authorisation was obtained on the strength of misrepresented, inaccurate, or misleading information furnished to the Bank at the time of application;

18.1.3 There is a violation of any of the provisions of this Determination, the Act or any other applicable laws or regulations;

18.1.4 The scheme is considered not to be conducive to the national interest of Namibia;

18.1.5 The e-money issuer ceases to operate or becomes insolvent; and / or

18.1.6 Any other circumstances which the Bank may consider material to warrant cancellation.

18.2 The Bank will ensure that all due diligence processes are followed before cancellation of an authorisation to issue e-money is instituted.

19. **Administrative Penalties** - An e-money issuer that contravenes or otherwise fails to comply with this Determination will be subjected to administrative penalties as provided under the Act.

20. **Repeal of PSD-3** - This Determination repeals and replaces the Determination on Issuing Electronic Money Namibia (PSD-3), published under General Notice No. 66, in the Government Gazette No. 4909 issued on 28 March 2012.

21. **General** - This Determination is not exhaustive and may be supplemented and / or amended from time-to-time.

22. **Effective Date** - This Determination will become effective on the date of publication in the *Gazette*. However, existing e-money issuers will be granted a six-month grace period to comply with this Determination from the date of publication in the *Gazette*.

23. **Enquiries** - All enquiries related to this Determination must be forwarded to:

Director: Payment and Settlement Systems

Bank of Namibia

P.O. Box 2882

71 Robert Mugabe Avenue

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