NATIONAL PAYMENT SYSTEM ACT 78 OF 1998

DIRECTIVE FOR CONDUCT WITH IN THE NATIONAL PAYMENT SYSTEM IN RESPECT OF SYSTEM OPERATORS

DIRECTIVE No. 2 OF 2007

Published under General Notice 1111 in *Government Gazette* 30261 of 6 September 2007.

1. Background, purpose and position of the South African Reserve Bank

1.1 Background

1.1.1 In terms of section 10(1)(c) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989 - the SARB Act), the South African Reserve Bank (the Bank) is required to perform such functions, implement such rules and procedures and, in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment, clearing or settlement systems. Furthermore, the National Payment System Act, 1998 (Act No. 78 of 1998 - the NPS Act) provides for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa, and for connected matters.

1.1.2 The National Payment System (NPS) encompasses the entire payment process from payer to beneficiary and includes settlement between banks. The process includes all the tools, systems, mechanisms, institutions, agreements, procedures, rules or laws applied or utilised to effect payment. The NPS enables the circulation of money, that is, it enables transacting parties to exchange value.

1.1.3 In terms of the NPS Act, the 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 the NPS Act (section 12).

1.2 Purpose

The Bank is issuing this directive to provide for the conduct of system operators within the NPS.

1.3 Position of the Bank

1.3.1 Payments can be made by using different sources, for example money, and funds such as deposits, prepaid amounts, credits accumulated from discounts received and credit available to the payer.

1.3.2 Traditionally, only banks accepted money or payment instructions from persons for purposes of making payments and were involved in the processing and services relating to payment instructions required in this regard. However, in recent years, persons other than banks have also ventured into this domain.

1.3.3 The Bank acknowledges that the provision of services relating to payment instructions to two or more persons by persons other than banks, in certain circumstances, adds value to the users of the NPS in a broader market, provided that risk in the NPS is controlled.

1.3.4 The rules and criteria for the conduct of banks and payment clearing house (PCH) system operators (as opposed to system operators) in relation to the processing and clearing of payment instructions are provided for and managed by the relevant payment system management body subject to the oversight of the Bank and, therefore, falls outside of the scope of this directive.

1.3.5 This directive governs a system operator in respect of the services it provides to any two or more persons in respect of payment instructions, including the delivery to and/or receipt of payment instructions from a bank and/or a PCH system operator. The persons to whom services may be provided include, amongst others:

(a) banks;

(b) beneficiary service providers;

(c) payer service providers;

(d) institutions exempted or excluded from the provisions of the Banks Act, 1990 (Act No. 94 of 1990); and

(e) clients of banks.

1.3.6 Persons who process payment instructions, including the delivery to and/or receipt of payment instructions from a bank and/or a PCH system operator, on their own behalf, are not considered system operators in terms of this directive. Such persons are, however, required to meet the same level of compliance with operational and technical requirements as required in terms of sections 3.4.1 to 3.4.4 of the Criteria for System Operators (See “Criteria to act as a System Operator”).

2. Definitions

In this directive, unless the context indicates otherwise, the words and expressions used herein shall have the same meaning assigned to them in the NPS Act and cognate expressions shall have corresponding meanings.

2.1 “Beneficiary service provider” means a person who accepts money or the proceeds of payment instructions, as a regular feature of that person’s business, from multiple payers on behalf of a beneficiary; and

2.2 “Payer service provider” means a person who accepts money or the proceeds of payment instructions, as a regular feature of that person’s business, from a payer to make payment on behalf of that payer to multiple beneficiaries.

3. Directive

3.1 Any person acting as a system operator shall:

3.1.1 meet the criteria as recommended by the relevant payment system management body, which criteria have been approved by the Bank in terms of section 4 (2)(c) (i) of the NPS Act;

3.1.2 have a written agreement with each person to whom the services are rendered in terms of which it is appointed as a system operator;

3.1.3 keep the information in respect of the services rendered to any person confidential and separate;

3.1.4 in respect of the bank accounts from which funds are to be paid from or to which funds are to be transferred to, only act in accordance with instructions issued by the person to whom the service is rendered, and not pay such funds from or transfer such funds to its own account;

3.1.5 keep separate and distinct the business divisions of that person who provides system operator services from the other business divisions of that person who provides payments to third persons (see Directive 1 of 2007);

3.1.6 refrain from providing services which allow the offsetting of mutual obligations by trading partners or persons for whom they are processing payment instructions; and

3.1.7 keep records of each and every payment instruction processed by it for a period of five (5) years.

4. Conclusion

4.1 This directive is not exhaustive and may be supplemented and/or amended from time to time.

4.2 System operators are obliged to act in accordance with the NPS Act and, in particular, this directive. Contravention of this directive is an offence in terms of section 12 of the NPS Act.

4.3 This directive becomes effective 3 (three) months after the date of publication hereof.

4.4 Persons who are uncertain as to whether their current or future business practices are aligned with this directive should initiate discussions with the National Payment System Department of the Bank to clarify the matter.

Any enquiry or clarification concerning this directive may be addressed to:

The Head: National Payment System Department
South African Reserve Bank
PO Box 427
Pretoria
0001
or to the following e-mail address: npsdirectives@resbank.co.za