

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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THE NATIONAL PAYMENT SYSTEMS ACT, 2015

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THE UNITED REPUBLIC OF TANZANIA



NO.4 OF 2015

I ASSENT,
JAKAYA MRISHO KIKWETE
President
25th April, 2015

An Act to make provisions for the regulation and supervision of payment systems, regulation of electronic payment instruments, electronic money, payment system service providers, validity and enforceability of netting arrangements, finality and settlement of payment instructions and to make provisions for related matters.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
commencement

1. This Act may be cited as the National Payment Systems Act, 2015 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Application

2. This Act shall apply to Mainland Tanzania as well as Tanzania Zanzibar.

Interpretation

3. In this Act, unless the context requires otherwise-

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“bank” has the meaning ascribed to it under the Banking and Financial Institutions Act;

“Bank” means the Bank of Tanzania;

“body corporate” means a bank, financial institution or any other public or private company;

“clearing house” means a central location or central processing mechanism through which financial institutions agree to exchange payment instructions or other financial obligations;

“clearing” means exchange of payment instruments that involve transmitting, reconciling and confirming payment orders or transfer instructions prior to settlement, including the netting of instructions and the establishment of final positions for settlement;

“consumer” means a user of electronic payment services provided by a payment system provider;

“electronic fund transfer” means transfer of money through an electronic terminal or device from one account to another;

“electronic money issuer” means a payment system provider that is licenced to issue electronic money and assumes responsibilities and liabilities for the electronic money issued;

“electronic money” means monetary value as represented by a claim on its issuer, that is electronically

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- stored in an instrument or device, issued against receipt of funds of an amount not lesser in value than the monetary value issued, accepted as means of payment by persons or entities other than the issuer and can be redeemed in cash;
- “electronic payment service” means a payment service delivered in electronic form by a licenced payment service provider in accordance with this Act;
- “final settlement” means the discharge of an obligation by a transfer of funds which is irrevocable and unconditional;
- “financial institution” has the meaning ascribed to it under the Banking and Financial Institutions Act;
- “information” means any data, record, return or document in any form or manner whether oral, written, in any visual recording, any sound recording, any electronic, magnetic, mechanical, computer records or other recording on any substance, material, thing or article;
- “netting arrangement” means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation to be discharged by a party or parties in the clearing or settlement system;
- “netting” means determination of the net payment or net settlement obligations between two or more parties in a clearing or settlement system;
- “payment system participant” means a body corporate, acting alone or under an arrangement with

another body corporate to provide electronic payment service licenced under this Act;

“payment instrument” means an instrument in electronic or written form used for ordering transmission or payment of money;

“payment system” means a facility consisting of payment instruments, banking and transfer of money procedures, interbank funds transfer systems or payment system provider’s systems that ensure the circulation of money;

“payment system provider agent” means a sole proprietor or a body corporate that has been contracted through an agency agreement for a payment system provider to perform the functions of selling electronic money and redeeming cash equivalent of the electronic money;

“payment system provider” means a body corporate that provides electronic payment service licenced under this Act;

“settlement” means an act that discharges obligations in respect of funds or securities transfer between two or more parties; and

“systemically important payment system” means a payment system that has a significant impact on the economy which is capable of triggering or transmitting disruptions amongst payment system participants or to the economy if it is not sufficiently protected against risk.

PART II
POWERS AND FUNCTIONS OF THE BANK

Powers and
functions of
the Bank

4. (1) Without prejudice to any other written laws, the Bank shall-

- (a) grant a licence and approval in accordance with this Act;
- (b) regulate, supervise, investigate and oversee the operations of payment systems;
- (c) provide settlement services to payment systems;
- (d) provide settlement services to a clearing-house and a central securities depository;
- (e) own and operate a real-time gross settlement system;
- (f) co-ordinate payment systems activities with relevant stakeholders;
- (g) participate in inter-bank clearing and settlement operations; and
- (h) be responsible for the administration of this Act.

(2) For purposes of this section, the term “central securities depository” means a facility or an institution for holding securities, which enables securities transactions to be processed by book entry in electronic form.

PART III
PAYMENT SYSTEM

Prohibition to
operate
payment
system

5. A person shall not operate a payment system without a payment system licence issued by the Bank in accordance with this Act.

Eligibility for
licensing
payment
system

6.-(1) A payment system that may be eligible to be licenced by the Bank shall have any of the following objects:

- (a) clearing of payment instructions between financial and non financial institutions;
- (b) settling of obligations arising from the clearing of payment instructions;
- (c) transfer of funds from one account to another using any electronic device;
- (d) transfer of electronic money from one electronic device to the other;
- (e) provision of technological services to facilitate switching, routing, clearing, data management for or on behalf of a payment system provider;
- (f) facilitation of interoperability of payment systems and services between payment systems providers and consumers;
- (g) provision of electronic payment services to the unbanked and under-banked population;
- (h) establishing a payment clearing house;
- (i) provision of financial communication network; or
- (j) any other objects as may be prescribed by the Bank.

(2) For purposes of this section, the term “interoperability” means a seamless transfer of payment instructions or funds from an account of one payment system provider or user to another payment system provider’s or user’s account of a different service provider.

Application
for payment
system licence

7.-(1) A body corporate which intends to operate a payment system shall apply in a prescribed form for a payment system licence.

(2) An application made under subsection (1) shall be accompanied by such information as may be prescribed by the Bank.

(3) The Bank may grant a licence when it is satisfied that the applicant has met the licensing criteria stipulated under this Act including payment of licence fee and any other requirement specified by the Bank.

(4) Within thirty days following receipt of an application or where further information has been required, after receipt of such information, the Bank may either grant or reject the application.

(5) The Bank may, where it grants a licence, impose such terms and conditions, as it may deem appropriate.

(6) A licence shall be valid for a period of five years unless it is otherwise suspended or revoked.

(7) Where an application is rejected the Bank shall give reasons for the rejection.

(8) Subject to subsection (7) -

(a) an applicant whose application is rejected may reapply if the deficiencies that formed the basis for rejection of the initial application have been rectified; and

(b) the Bank may either grant or reject the reapplication.

(9) Where an applicant is aggrieved by the decision made under this section may apply to the Governor of the Bank within thirty days after receipt of such notice of rejection for review of the decision.

Renewal of
payment
system licence

8.-(1) The holder of a licence granted under this Part may, within six months before the expiration of such licence, apply to the Bank for renewal.

(2) On receipt of an application under subsection (1), the Bank may renew the licence upon-

- (a) payment of renewal fee; and
- (b) fulfilment of such terms and conditions applicable for grant of licence.

(3) The Bank may refuse to renew a licence if it is satisfied that the applicant has failed to comply with the conditions contained in the previous licence.

Suspension of
payment
system licence

9.-(1) The Bank may suspend a payment system licence where-

- (a) it is satisfied that a payment system provider has failed to meet communication infrastructure requirements prescribed by the Bank;
- (b) it is satisfied that the affairs of the payment system provider are being conducted in a manner that is detrimental to the interests of its payment system participants or users; or
- (c) the payment system provider is directed to suspend services under any other written law.

(2) Subject to subsection (1), the Bank may call upon a licensee to show cause why the licence shall not be suspended.

(3) Where the licensee fails to show cause to the satisfaction of the Bank, the Bank may suspend the licence or make any other order as it may deem appropriate.

Revocation of
payment
system licence

10.-(1) The Bank may revoke a licence of a payment system provider where -

-
- (a) any other licence related to payment systems is revoked under any other written law;
 - (b) the provider voluntarily requests revocation;
 - (c) the provider provides false or misleading information when applying for a licence;
 - (d) the provider fails to comply with the terms and conditions of the licence or any remedial measures required under this Act;
 - (e) the provider engages in a pattern of unsafe or unsound practices that threaten its financial condition or is detrimental to the interests of the payment system providers or users;
 - (f) the provider refuses to permit an inspection or provide information required by the Bank or is otherwise in breach of provisions of this Act;
 - (g) the provider ceases to do payment systems business in the United Republic;
 - (h) the provider is insolvent as determined by the Bank or court of law; or
 - (i) the provider fails to comply with any requirements under this Act.

(2) Subject to subsection (1), the Bank may issue a seven days notice calling upon a licensee to show cause why the licence should not be revoked.

(3) Where the licensee fails to show cause to the satisfaction of the Bank, the Bank may revoke the licence or make any other order as it may deem appropriate.

Publication of
Notice of
Revocation

11. Where a licence is revoked under this Part, the Bank shall-

- (a) within three working days following the date of revocation, publish a notice of revocation in newspapers of wide circulation in the United Republic; and
- (b) take any other steps necessary to inform the general public of such revocation.

Prohibition of
undesired
conduct

12.-(1) A payment system provider or a payment system participant shall not engage in any act, which is likely to-

- (a) result in systemic risk; or
- (b) prejudice the integrity, effectiveness or security of the payment system.

(2) The Bank shall direct a payment system provider or a payment system participant who has engaged in an act prohibited in subsection (1) to remedy the situation in such manner as the Bank may deem appropriate.

Cessation to
hold office

13.-(1) Any person who is in the management of a payment system shall cease to hold office, in case of -

- (a) bankruptcy;
- (b) conviction for an offence involving fraud or dishonesty;
- (c) removal from office by a competent authority;
- (d) unsound mind; or
- (e) death.

(2) A person who was in the management of a payment system whose licence was revoked, shall not without the approval of the Bank act in the management of any other payment system.

Offence under
this Part

14. A person who contravenes any provision of this Part commits an offence and is liable on conviction, and if that person is:

- (a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
- (b) a body corporate, to a fine of not less than five hundred million shillings.

PART IV PAYMENT INSTRUMENTS

Prohibition
to issue
payment
instruments
without
licence or
approval

15.-(1) A person shall not issue an electronic payment instrument without a licence or an approval issued by the Bank.

(2) Subject to subsection (1), the Bank shall, where the payment system provider applicant is a—

- (a) non-bank or non-financial institution, issue a licence; or
- (b) bank or financial institution, issue an approval.

Eligibility of
payment
instrument

16. An electronic payment instrument shall be eligible for licensing or approval by the Bank, if it is capable of -

- (a) ordering or transmitting payment instructions;
- (b) storing of information on a device for purposes of effecting payments;
- (c) being accepted for fulfilling payment obligations on point of sales, merchants outlets or over the internet; or

- (d) having any other ability that the Bank may prescribe.

Application
for payment
instrument
licence or
approval

17.-(1) A payment system provider that intends to operate a payment instrument shall apply in a prescribed form for a licence or an approval.

(2) An application made under subsection (1) shall be accompanied by such information as may be prescribed by the Bank.

(3) The Bank shall grant a licence or approval when it is satisfied that the applicant has met the licensing or approval criteria under this Act and any other requirement specified by the Bank.

(4) Within ten days following receipt of an application or where further information has been required, after receipt of such information, the Bank shall either grant or reject application.

(5) Where an application is rejected the Bank shall give reasons for the rejection.

(6) Subject to subsection (5) -

- (a) an applicant whose application is rejected may reapply if the deficiencies that formed the basis for rejection of the initial application have been rectified; and
- (b) the Bank may either grant or reject the reapplication.

(7) Where an applicant is aggrieved by the decision made under this section may apply to the Governor of the Bank within thirty days after receipt of such notice of rejection for review of the decision.

Suspension
of licence or
approval

18.-(1) The Bank may suspend a licence or an approval of an operating payment instrument where it is satisfied that:

- (a) a payment system provider failed to meet communication infrastructure requirements prescribed by the Bank;
- (b) the payment instrument is detrimental to the interests of the users; or
- (c) the payment system provider was directed to suspend services under any other written law.

(2) Subject to subsection (1), the Bank may call upon a licensee or an approved person to show cause why the licence or approval shall not be suspended.

(3) Where a licensee or approved person fails to show cause to the satisfaction of the Bank, the Bank may suspend the licence or approval or make any other order as it may deem appropriate.

Revocation
of licence or
approval

19.-(1) The Bank may revoke a licence or an approval of a payment instrument where-

- (a) any other licence or approval related to payment systems is revoked under any other written law;
- (b) the provider voluntarily requests revocation;
- (c) the provider provides false or misleading information when applying for the licence or approval; or
- (d) the provider fails to comply with the terms and conditions of the licence or approval.

(2) Subject to subsection (1), the Bank may issue a seven days notice calling upon a licensee or an approved person to show cause why the licence or approval should not be revoked.

(3) Where the licensee or approved person fails to show cause to the satisfaction of the Bank, the Bank may revoke the licence or approval or make any other order as it may deem appropriate.

Offence
under this
Part

20. A person who contravenes any provision of this Part commits an offence and is liable on conviction, and if that person is:

- (a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
- (b) a body corporate, to a fine of not less than five hundred million shillings.

PART V ELECTRONIC CHEQUES

Cheque
presentment

21. Any person may present a cheque in an electronic form in a payment system.

Electronic
cheque
presentment

22.-(1) The Bank shall prescribe the manner of electronic cheque presentment for payment through a clearing house.

(2) Subject to subsection (1), a bank may present a cheque for payment to another bank, on whom it is drawn, by electronically transmitting its essential features instead of presenting the cheque itself.

Admissibility
of electronic
image of
cheques as
evidence

23. In the event of proceedings in a court of a law, tribunal or any other judicial proceedings, a cheque or a certified copy of it or the essential details of the cheque retrieved from an electronic medium, which is the subject of

proceedings in a court of a law, tribunal or any other judicial proceedings, shall be admissible as evidence.

PART VI
ELECTRONIC MONEY

Prohibition to
issue
electronic
money
without
licence or
approval

24.-(1) A person shall not be an issuer of electronic money without a licence or an approval issued by the Bank.

(2) Subject to subsection (1), the Bank shall, where the payment system provider applicant is a-

(a) non-bank or non-financial institution, issue a licence; and

(b) bank or financial institution, issue an approval.

Electronic
money issuer
eligibility
requirements

25. The Bank shall prescribe eligibility requirements for an electronic money issuer, which shall include corporate structure, permissible services and capital adequacy.

Application
for electronic
money
issuance
licence or
approval

26.-(1) A person who intends to issue electronic money shall apply in a prescribed form for an electronic money issuance licence or approval.

(2) An application made under subsection (1) shall be accompanied by such information as may be prescribed by the Bank.

(3) The Bank shall grant a licence or approval when it is satisfied that the applicant has met the licensing criteria under this Act and any other requirement specified by the Bank.

(4) Within thirty days following receipt of an application or where further information has been required, after receipt of such information, the Bank shall either grant or reject the application.

(5) The Bank may, where it grants a licence or approval, impose such terms and conditions as it may deem appropriate.

(6) A licence or an approval shall be valid for a period of five years unless suspended or revoked.

(7) When an application is rejected or revoked, the Bank shall provide reasons for the rejection or revocation.

(8) Subject to subsection (7)-

(a) an applicant whose application is rejected may reapply if the deficiencies that formed the basis for rejection of the initial application have been rectified; and

(b) the Bank may either grant or reject the reapplication.

(9) Where the application is rejected and the applicant is aggrieved by that decision, he may apply for review to the Governor of the Bank within thirty days after receipt of such notice of rejection.

Renewal of
electronic
money
issuance
licence or
approval

27.-(1) The holder of a licence or approval granted under this Part may, six months before the expiry of such licence or approval, apply to the Bank for renewal.

(2) On receipt of an application under subsection (1), the Bank may renew the licence or approval upon-

(a) payment of renewal fee for the licence; and

(b) fulfilment of such terms and conditions applicable for grant of licence.

(3) The Bank may refuse to renew a licence or approval if the applicant has failed to comply with the conditions contained in the previous licence or approval.

Suspension of licence or approval to issue electronic money

28.-(1) The Bank may suspend a licence or an approval to issue electronic money where-

- (a) it is satisfied that the affairs of the electronic money issuer are being conducted in a manner that is detrimental to the financial system or to the users of the electronic money; or
- (b) the payment system provider is directed to suspend to offer services under any other written law.

(2) Subject to subsection (1), the Bank may call upon a licensee or an approved person to show cause why the licence or approval shall not be suspended.

(3) Where a licensee or an approved person fails to show cause to the satisfaction of the Bank, the Bank may suspend the licence or approval or make any other order as it may deem appropriate.

Revocation of electronic money issuer licence or approval

29.-(1) The Bank may revoke a licence or an approval of the electronic money issuer where-

- (a) any other licence or approval related to payment systems is revoked under any other written law;
- (b) the issuer voluntarily requests revocation;
- (c) the issuer provided false or misleading information when applying for a licence or approval;
- (d) the issuer failed to comply with the terms and conditions of the licence or approval or any remedial measures required under this Act;
- (e) the issuer engaged in a pattern of unsafe or unsound practices that threaten its financial

condition or is detrimental to the interests of the payment system providers or users;

- (f) the issuer refused to permit an inspection or provide information required by the Bank or is otherwise in breach of provisions of this Act;
- (g) the issuer ceased to do electronic money issuance business in the United Republic;
- (h) the issuer is insolvent as determined by the Bank or court; or
- (i) the issuer failed to comply with any requirements under this Act.

(2) Subject to subsection (1), the Bank may issue a seven days notice calling upon a licensee or an approved person to show cause why the licence or approval shall not be revoked.

(3) Where a licensee or an approved person fails to show cause to the satisfaction of the Bank, the Bank may revoke the licence or approval or make any other order as it may deem appropriate.

Electronic
money
issuance and
circulation

30.-(1) An electronic money issuer licenced or approved to issue electronic money shall-

- (a) issue electronic money only after equivalent cash is deposited in the trust account or a special account in accordance with this Act;
- (b) ensure that the electronic money issued is equal to the cash deposit held in a trust account or a special bank account in accordance with this Act;
- (c) submit in electronic form to the bank holding the trust account, the names of all subscribers

and users of the electronic money service whose funds are in the trust account, in prescribed period; and

(d) comply with such requirements, as the Bank shall prescribe.

(2) Redemption of cash from electronic money or purchase of electronic money may be conducted at agents under agency agreements with a payment system provider licenced or approved to issue electronic money.

(3) The Bank shall prescribe agents regulations to govern their conduct that may include compliance with anti-money laundering laws, liquidity requirement, customer due diligence and handling of consumers.

Offence under
this Part

31. A person who contravenes any provision of this Part commits an offence and is liable on conviction, and if that person is:

(a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or

(b) a body corporate, to a fine of not less than five hundred million shillings.

PART VII

TRUST ACCOUNT AND SPECIAL BANK ACCOUNT

Trust
account

32. A licenced payment system provider who is a non-bank or non-financial institution licenced as an electronic money issuer shall be required to open and maintain a trust account in accordance with this Act.

Special bank
account

33. A licenced payment system provider who is a bank or financial institution licenced as electronic money issuer shall be required to open and maintain a special account in accordance with this Act.

Trust account
management

34.-(1) A licenced electronic money issuer referred in section 32 shall establish a separate legal entity in the form of a trust to manage the trust account whose corporate structure and management has been approved by the Bank.

(2) A legal entity referred to in subsection (1) shall-

- (a) submit an application to the Bank in a prescribed form to open a trust account in a bank to facilitate issuance of electronic money;
- (b) enter into trust account agreement with a bank in the manner prescribed in the regulations; and
- (c) open the trust account at a bank for the purpose of maintaining funds of a customer who has purchased electronic money from the electronic money issuer.

(3) An electronic money issuer and a legal entity referred to in subsection (1) shall-

- (a) not commingle or use the trust account funds with any other funds of any other operations;
- (b) set up safeguard measures to protect the funds from risks that may occasion loss to beneficiaries of the funds;
- (c) mitigate concentration risk on holding the trust account by placing it in different banks as may be prescribed by the Bank;

- (d) ensure that any interest accrued in the trust account is effected directly to benefit the consumer as may be prescribed by the Bank;
 - (e) audit and publish financial statements of the trust entity in respect of the trust account;
 - (f) submit a report on the operations of the trust account to the Bank on monthly basis or such other intervals as the Bank may prescribe;
 - (g) ensure demand of cash withdraw from the account is honoured;
 - (h) ensure that the funds in the trust account are at all times equal to the electronic money issued; and
 - (i) comply with any other requirement as the Bank may prescribe.
- (4) A person who contravenes any provisions of this section commits an offence and is liable on conviction, and if that person is:
- (a) a natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
 - (b) a body corporate, to a fine of not less than five hundred million shillings.

Special bank
account
management

35.-(1) A licenced electronic money issuer referred to in section 33 shall-

- (a) submit a notice to the Bank in a prescribed form for opening a special account to facilitate issuance of electronic money;
- (b) open a special account for holding deposits received from a customer who has purchased

- electronic money from the electronic money issuer;
- (c) ensure that the account has records of all customers served under electronic money service;
 - (d) ensure that the special account is protected from risks that may occasion loss to beneficiaries of the funds; and
 - (e) comply with any other requirement as the Bank may prescribe.
- (2) A person who contravenes any provisions of this section commits an offence and is liable on conviction, and if that person is:
- (a) natural person, to a fine of not less than fifty million shillings or imprisonment for a term not exceeding five years, or both; or
 - (b) a body corporate, to a fine of not less than five hundred million shillings.

PART VIII FINALITY OF PAYMENT AND NETTING ARRANGEMENTS

Validity and enforceability of finality of payments and settlement

36.-(1) A payment instruction or settlement in a payment system shall be valid and enforceable.

(2) The payment instruction or settlement under subsection (1), shall be final and irrevocable, and shall not be reversed or set aside by any person from the time the payment instruction or settlement is determined to be final.

(3) Subject to the provision of subsection (2), the Bank shall prescribe the manner of handling payment instructions or settlement made in error.

(4) Where the Bank considers that there is a likelihood for the occurrence of a systemic risk on making of a payment or settlement referred to in subsection (1), it shall-

- (a) prohibit the making of the payment or transfer instruction, or set aside the payment or transfer; and
- (b) issue a written notice to the payment system participants explaining the reasons for such prohibition or setting aside the payment or transfer.

(5) A transaction effected in contravention of this section shall be void.

Validity and enforceability of netting arrangements

37.-(1) A netting arrangement in a payment system shall be valid and enforceable.

(2) A net settlement obligation owed to a payment system provider or payment system participant under a netting arrangement that has not been discharged is provable claim in insolvency proceedings and shall be recovered for the benefit of beneficiaries.

PART IX

WINDING-UP, RECEIVERSHIP OR JUDICIAL MANAGEMENT OF PARTICIPANTS IN A PAYMENT SYSTEM

Winding-up notice

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38.-(1) An order for winding-up or placing under judicial or statutory management in terms of the Companies Act or any other insolvency law issued on a participant in a payment system shall immediately be lodged with the Bank.

(2) The order referred to in subsection (1) shall not affect any settlement of payments or instructions in a payment system made before issuance of the order.

Liquidator,
statutory
manager
bound by
payment
system
instruction
Cap 212

39.-(1) Notwithstanding anything to the contrary, the Companies Act or any other insolvency law, where an order is issued for winding-up or placing the payment system participant under judicial or statutory management, any payment or settlement obligation to which the participant in the payment system that was-

- (a) determined before the issuance of that order;
- (b) to be discharged, transferred on or after the issuance of that order; or
- (c) overdue for settlement on the date of that order, shall be binding upon the participant's liquidator, judicial or statutory manager.

(2) Subsection (1) shall apply to any payment or settlement obligation which was-

- (a) determined through the payment system before the issuance of that order;
- (b) liable for discharge or transfer on or after the issue of that order; or
- (c) overdue for settlement on the date of that order.

Priority of
payment
instructions
in winding-
up

Cap 212

40.-(1) Notwithstanding anything to the contrary in the Companies Act, or any other insolvency law where-

- (a) a participant in a payment system is wound up; and
- (b) there are undelivered transfer instructions that were drawn on the participant and cleared through the payment system before the making of the winding-up order, the undelivered transfer

instructions shall be paid from the participant's estate, and shall rank in preference above any other unsecured claim against the estate.

(2) Subsection (1) shall not be construed as permitting a payment instruction to be paid in preference to any other claim against an estate, where the instruction was certified by the payment system participant or was intended to give the drawee of the instruction a preference over other participants in the payment system or other creditors.

PART X

COLLATERAL AND FAILURE TO SETTLE ARRANGEMENTS

Collateral
arrangement

41.-(1) The Bank shall prescribe the manner of holding adequate liquid assets as collateral for securing or obtaining funds by payment system participants to facilitate settlement of their payment obligations in the payment system.

(2) The collateral referred to in subsection (1) shall be-

- (a) used for fulfilling a participant's obligation as a result of any cause of failure to settle its obligation including insolvency; and
- (b) protected against insolvency.

(3) A participant who operates with inadequate collateral commits an offence and is liable to a fine of not less than five hundred million shillings.

Failure to
settle
arrangements

42.-(1) A payment system provider shall put in place documented failure-to-settle arrangements that prescribe the manner to which settlement failure shall be mitigated in the event of failure to settle obligations by one or more of the participant in the payment system.

(2) A payment system provider shall submit to the Bank the failure-to-settle document referred to in subsection (1).

PART XI GENERAL PROVISIONS

Submission
of returns

43.-(1) A payment system provider shall submit returns relating to operation of the payment system or electronic payment service as may be prescribed by the Bank.

(2) The Bank may use or share information obtained under subsection (1) for public consumption.

(3) A person who fails to comply with this section the Bank may impose a penalty of ten million shillings for everyday during which non compliance continues and such penalty may be recovered from any balances held in the Bank or through any other legal recourse.

Access to
information

44.-(1) The Bank shall have access to information relating to any payment system and may request, in writing, that information be furnished by payment system provider within fourteen days from the date of request.

(2) A person who fails to comply with this section the Bank may impose a penalty of ten million shillings for every day during which non compliance continues and such penalty may be recovered from any balances held in the

Bank or through any other legal recourse.

Confidentiality

45.-(1) An information obtained in terms of section 44 shall be confidential and may not be disclosed by any director or officer of the Bank unless such disclosure is required by law.

(2) Notwithstanding subsection (1), the Bank may disclose any information to another agency responsible for regulating or supervising payment system providers consequent upon information sharing agreement whether in the United Republic or abroad, as long as that information is needed and is to be used for supervisory or oversight purposes and that its confidentiality will be maintained.

Retention of
payment
system records

46.-(1) A payment system provider shall maintain record of all electronic payment transactions and information obtained or generated in the operation or administration or management of the payment system for such period as may be prescribed by the Bank.

(2) Retention of records under subsection (1) shall be in electronic and non-electronic form based on the manner of generation or obtaining of such record to ensure preservation of its originality.

(3) Subject to subsection (1), a person who intends to destroy electronic payment transaction records under this Act shall apply to the Bank for approval.

(4) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than five hundred million shillings.

Protection of
customer
information

47.-(1) Without prejudice to any other written laws a payment system provider shall-

- (a) protect the privacy of a participant and customer information; and
- (b) not disclose information of a participant or customer unless the disclosure is made in compliance with the law, an order of a court or with the express consent of the system participant or customer concerned.

(2) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than a hundred million shillings.

Time to effect
transfer of
funds to
customer's
account

48.-(1) A payment system provider, upon receipt of funds in the settlement account in respect to its customer, shall immediately transfer the funds to the customer's account.

(2) Subject to subsection (1), the Bank shall prescribe the specific time of effecting transfer of the funds on a customer's account with respect to the payment system type.

(3) A person who contravenes the provisions of this section is liable to a fine of fifteen percent per day of the funds delayed to be transferred in the customer's account.

Investigations,
inspections,
supervision
and oversight

49.-(1) For the purpose of conducting investigation, inspection, supervision and oversight under this Act, the Bank may in writing authorize its officers to-

- (a) enter and search the premises of a person that the Bank has reason to believe is providing or carrying on a payment system or providing an electronic payment service contrary to this Act;

- (b) inspect any books, computers, servers, accounts and records or take any relevant thing or information that will assist in the investigation of that person and take copies or make extracts from them; and
- (c) implement supervision and oversight on a payment system provider and the risks to which it is subjected to.

(2) In supervising and overseeing a payment system provider that operates both within the United Republic and in any other country, the Bank may enter into arrangements for sharing supervisory and oversight information on a reciprocal basis with the appropriate supervisory or oversight authorities within or outside the United Republic

Compounding
of offences

50.-(1) The Governor of the Bank or an officer specifically authorised by the Governor of the Bank by notice published in the *Gazette* may, subject to and in accordance with this section, if he is satisfied that a person has committed an offence under this Act, compound such offence by accepting from such person a sum of money.

(2) a sum of money payable under subsection (1) shall-

- (a) not exceed the maximum fine provided by this Act for that offence;
- (b) include all reasonable expenses and other payments which the Bank may have incurred in the seizure, storage, maintenance or removal of any articles seized in connection with the offence.

(3) The power conferred by this section shall be exercised where a person admits that he has committed the offence and agrees in writing in the prescribed form.

(4) The Governor of the Bank or officer exercising powers under this section shall issue the person from whom he receives any sum of money under subsection (2) a receipt in the prescribed form.

(5) The sum of money received under this section shall be paid into the Consolidated Fund after deduction of expenses and payments.

(6) Where any proceedings are brought against any person for an offence against this Act, it shall be a good defence if such person proves that the offence with which he is charged has been compounded under this section.

(7) The order for compounding offences under this section shall be treated as an order or decree of the High Court and shall be enforced as the order or decree of the High Court.

Consumer
protection in
payment
system

51.-(1) The Bank shall prescribe consumer protection requirements relevant to payment system services.

(2) Subject to subsection (1), a payment system provider shall provide a consumer with-

- (a) terms and conditions that are transparent, fair, legible, in comprehensible language and provide the rights and obligations of the parties;
- (b) complaints handling and dispute resolution mechanism; and
- (c) full disclosure of relevant information for the use of the electronic payment service including

pricing of the products and services.

(3) A payment system provider shall not mislead a consumer in any advertisement or purport to offer a service that is not approved in accordance with this Act.

Availability of
payment
system services

52. A payment system provider shall ensure that services are available to the users throughout the prescribed operational period.

Cyber-crimes
in payment
systems

53.-(1) A person who gains access to another person's financial data, record or transaction with the aid of any device, electronic device or any scheme or method that facilitate retrieval of information and data without permission commits an offence.

(2) A person shall not intentionally and without lawful excuse produce, sell, procure for use, import, export, distribute or deal with-

- (a) a device that is designed or adapted for the purpose of accessing financial information;
- (b) a computer password, access code or any data by which a computer system is capable of being accessed; or
- (c) the computer program with intent that may be used by him or another person for the purpose of committing an offence.

(3) A person who contravenes the provisions under this section commits an offence and on conviction is liable to a fine of ten million shillings or three times the value of the property illegally obtained whichever is greater, or to imprisonment for a term not exceeding five years, or both.

Cooperation
between
regulators in
payment
systems

54. The Bank shall cooperate with other regulators and Government agencies relevant to payment systems in areas of monitoring, supervision of payment systems, enhancing efficiency of Government payments, tax payments and other financial payments.

Immunity

55. An action or other proceedings shall not lie or be instituted against any officer or employee of the Bank in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of powers conferred by this Act.

Regulations,
directives, and
circulars

56.-(1) The Governor of the Bank may make regulations and rules in the *Gazette* which are consistent with this Act for proper and effective implementation of this Act.

(2) Without prejudice to subsection (1), the Governor of the Bank shall make regulations in areas of:

- (a) licensing requirements;
- (b) participating in payment systems;
- (c) electronic payment instrument, electronic money, electronic cheque;
- (d) payment system provider's agents;
- (e) finality of payments and settlement;
- (f) collateral arrangement;
- (g) specific time of effecting transfer of the funds on customer's account;
- (h) trust account management;

- (i) retention period for payment system transactions information; and
- (j) consumer protection requirements.

(3) The Governor of the Bank may, without publishing in the *Gazette*, may issue directives, standards, guidelines, orders and circulars regulating the manner by which the objectives of this Act may be carried out.

Transitional
provision

57.-(1) A person who, before the commencement of this Act, obtained a written approval of the Bank to operate a payment system or issue a payment instrument, shall within six months of commencement of this Act apply for a licence in accordance with this Act.

(2) A person referred to in subsection (1), who continues to-

- (a) operate a payment system;
- (b) issue a payment instrument;
- (c) issue electronic money; or
- (d) issue any other payment system services,

after expiry of six months following the date of commencement of this Act commits an offence and is liable on conviction to a fine of not less than one hundred million shillings or to imprisonment for a term of not exceeding five years, or to both.

PART XII
CONSEQUENTIAL AMENDMENTS
AMENDMENT OF THE BILLS OF EXCHANGE ACT (CAP. 215)

Construction
Cap. 215

58. This Part shall be read as one with the Bills of Exchange Act hereinafter referred to as the “principal Act”.

Amendment of
section 41

59. The principal Act is amended in section 41, by adding subsection (4) as follows:

“(4) Notwithstanding subsection (1), a cheque may be presented in a payment system electronically.”.

Amendment of
section 52

60. The principal Act is amended in section 52, by inserting the following proviso in subsection (4):

“Provided that, this subsection shall not apply in electronic presentment of cheque or a bill in any other written law.”.

Passed in the National Assembly on the 23rd March, 2015.

THOMAS D. KASHILILAH
Clerk of the National Assembly

SHERIA YA MIFUMO YA MALIPO YA TAIFA, 2015

MPANGILIO WA VIFUNGU

Kifungu *Jina*

SEHEMU YA KWANZA

1. Jina la Sheria na tarehe ya kuanza kutumika.
2. Matumizi.
3. Tafsiri.

SEHEMU YA PILI
MAMLAKA NA MAJUKUMU YA BENKI

4. Mamlaka na majukumu ya Benki.

SEHEMU YA TATU
MFUMO WA MALIPO

5. Marufuku ya kuendesha mfumo wa malipo.
6. Stahiki ya leseni ya mfumo wa malipo.
7. Maombi ya leseni ya mfumo wa malipo.
8. Kuomba upya leseni ya mfumo wa malipo.
9. Kusimamishwa kwa leseni ya mfumo wa malipo.
10. Ufutaji wa leseni ya mfumo wa malipo.
11. Kutoa taarifa ya ufutwaji wa leseni.
12. Mienendo isiyofaa.
13. Kusitishwa uongozi.
14. Kosa chini ya Sehemu hii.

SEHEMU YA NNE
NYENZO ZA MALIPO

15. Marufuku ya kutoa nyenzo za malipo bila idhini.
16. Sifa stahiki za nyenzo ya malipo.
17. Maombi ya leseni au idhini ya kutoa nyenzo ya malipo.
18. Kusimamishwa kwa muda kwa leseni au idhini ya kutoa nyenzo ya malipo.
19. Ufutaji wa leseni au idhini ya kutoa nyenzo ya malipo.
20. Kosa chini ya Sehemu hii.

SEHEMU YA TANO
HUNDI ZA KIELEKTRONIKI

21. Uwasilishaji wa hundi.
22. Uwasilishaji wa hundi kwa njia ya kielektroniki.
23. Kukubalika mahakamani kwa viashiria vya kielektroniki vya hundi.

SEHEMU YA SITA
FEDHA ZA KIELEKTRONIKI

24. Marufuku kutoa fedha za kielektroniki bila leseni au idhini.
25. Sifa stahiki za kutoa fedha za kielektroniki.
26. Maombi ya leseni au idhini ya utoaji wa fedha za kielektroniki.
27. Kuomba upya leseni au idhini ya utoaji wa fedha za kielektroniki.
28. Kusimamisha kwa muda leseni au idhini ya kutoa fedha za kielektroniki.
29. Kufutwa kwa leseni au idhini ya kutoa fedha za kielektroniki.
30. Utoaji na mzunguko wa fedha za kielektroniki.
31. Kosa chini ya Sehemu hii.

SEHEMU YA SABA
AKAUNTI YA UDHAMINI NA AKAUNTI MAALUM

- 32. Akaunti ya udhamini.
- 33. Akaunti maalum.
- 34. Uendeshaji wa akaunti maalum.
- 35. Usimamizi wa akaunti maalum.

SEHEMU YA NANE
UKOMO WA MALIPO NA MIPANGO YA UHALISI WA
MALIPO

- 36. Uhalali na nguvu ya kisheria kwa ajili ya utimilifu wa malipo.
- 37. Uhalali na nguvu ya kisheria ya utaratibu wa uhalisi wa malipo.

SEHEMU YA TISA
KUFUNGA NA KUSIMAMIA UFILISI WA MASHIRIKA
YANAYOTUMIA MFUMO WA MALIPO

- 38. Amri ya kufunga shirika.
- 39. Mfilisi na msimamizi wa kisheria kubanwa na maelekezo ya mifumo ya malipo.
- 40. Kipaumbele cha maelekezo ya malipo wakati wa kufunga kampuni.

SEHEMU YA KUMI
DHAMANA NA KUSHINDWA KUFANYA UTIMILIFU WA MALIPO

- 41. Utaratibu wa dhamana.
- 42. Utaratibu wa kufuata endapo itashindikana kuhitimishwa kwa malipo

SEHEMU YA KUMI NA MOJA
MASHARTI YA JUMLA

43. Kuwasilisha marejesho.
44. Upatikanaji wa taarifa.
45. Usiri wa taarifa za mtoa huduma ya mfumo wa malipo.
46. Utunzaji wa kumbukumbu za mfumo wa malipo.
47. Uhifadhi wa taarifa za mteja.
48. Muda wa kuingiza fedha kwenye akaunti ya mteja.
49. Uchunguzi, ukaguzi na usimamizi.
50. Kufifilisha makosa.
51. Kumlinda mlaji katika mfumo wa malipo.
52. Upatikanaji wa huduma ya mfumo wa malipo.
53. Makosa ya kimtandao katika mfumo wa malipo.
54. Ushirikiano baina ya wasimamizi katika mfumo wa malipo.
55. Kinga.
56. Kanuni, maelekezo na miongozo.
57. Masharti ya mpito.

SEHEMU YA KUMI NA MBILI
MAREKEBISHO YATOKANAYO
MAREKEBISHO YA SHERIA YA HAWALA ZA FEDHA (SURA YA 215)

58. Tafsiri.
59. Marekebisho ya kifungu cha 41.
60. Marekebisho ya kifungu cha 52.

JAMHURI YA MUUNGANO WA TANZANIA



NA.4 YA 2015

NAKUBALI,

JAKAYA MRISHO KIKWETE

Rais

25 Aprili, 2015

Sheria ya kuweka masharti kwa ajili ya udhibiti na usimamizi wa mifumo ya malipo, udhibiti wa nyenzo za kielektroniki, uhaulishaji wa fedha kwa njia ya kielektroniki, watoa huduma ya mifumo ya malipo, uhalali wa nguvu ya sheria kwa utimilifu wa malipo, uhalali wa nguvu ya sheria kwa mipango ya uhalisi wa malipo, na kuweka masharti kwa ajili ya mambo yanayohusiana na Sheria hii.

[.....]

Imetungwa na Bunge la Jamhuri ya Muungano wa Tanzania.

SEHEMU YA KWANZA
MASHARTI YA AWALI

Jina la Sheria
na tarehe ya
kuanza
kutumika

1. Sheria hii itajulikana kama Sheria ya Mifumo ya Malipo ya Taifa ya mwaka 2015 na itanza kutumika katika tarehe ambayo Waziri ataiteua na kuitangaza kupitia Gazeti la Serikali.

Matumizi

2. Sheria hii itatumika Tanzania Bara na Tanzania Zanzibar.

Tafsiri

Sura 342

3.-Katika Sheria hii, isipokuwa kama itaelezwa vinginevyo-

“benki” ina maana kama ilivyo kwenye Sheria ya Benki na Taasisi za Fedha;

“Benki” maana yake ni Benki Kuu ya Tanzania;

"fedha za kielektroniki" maana yake ni fedha kama ilivyowakilishwa na dai kwa mtoaji wa fedha za kielektroniki, ambayo huifadhiwa kielektroniki katika nyenzo au kifaa, iliyotolewa dhidi ya kupokea fedha taslimu kiasi ambacho si pungufu ya thamani ya fedha taslimu iliyotolewa, iliyokubalika kama njia ya malipo na watu au taasisi tofauti na mtoaji wa fedha za kielektroniki, na inaweza kukombolewa ikawa fedha taslimu;

"huduma ya malipo kwa njia ya kielektroniki" maana yake ni huduma ya malipo kwa njia ya kielektroniki inayotolewa na mtoa huduma ya mfumo wa malipo aliyepewa leseni kwa mujibu wa Sheria hii;

- "kituo cha kubadilishana nyaraka za madai" maana yake ni mahali au utaratibu maalum ambao taasisi za fedha zimekubaliana kutumia katika kubadilishana maelekezo ya kufanya malipo au madai mengine ya kifedha baina yao;
- "kubadilisha" maana yake ni kubadilishana nyenzo za malipo zinazohusu kutuma, kufanya ulinganifu, kuthibitisha au kuhamisha fedha kabla ya kufanya malipo, ikiwa ni pamoja na maelekezo ya kufanya malipo halisi na kuweka ukomo wa kufanya malipo;
- "malipo ya mwisho" maana yake ni utimilifu wa uhaulishaji wa malipo ambao umefikia ukomo na haubadilishwi au hauwekewi masharti;
- "mfumo muhimu wa malipo" maana yake ni mfumo wa malipo wenye athari kubwa katika uchumi ambao usipodhibitiwa vya kutosha unaweza kusababisha au kupelekea misukosuko kwa washiriki katika mfumo wa malipo au uchumi kwa ujumla;
- "mfumo wa malipo" maana yake ni mfumo unaojumuisha nyenzo za malipo, taratibu za kibenki au za kuhaulisha fedha kati ya benki moja na nyingine au baina ya watoa huduma ya mfumo wa malipo ambao unahakikisha mzunguko wa fedha kwa mujibu wa idhini itolewayo chini ya Sheria hii;
- "mlaji" maana yake ni mtumiaji wa huduma za malipo ya kielektroniki zinazotolewa na mtoa huduma ya mfumo wa malipo;

- "mpango wa kufikia uhalisi wa malipo" maana yake ni makubaliano ya kimaandishi ya kubadilisha madai kadhaa kuwa dai moja halisi linalohitajika kulipwa na mtu au watu katika mfumo wa kubadilisha au kuhitimisha malipo;
- "mshiriki katika mfumo wa malipo" maana yake ni shirika linaloshiriki katika mfumo wa malipo kwa mujibu wa Sheria hii;
- "mtoa huduma ya mfumo wa malipo" maana yake ni shirika, linalojishughulisha peke yake au kwa kushirikiana na shirika lingine katika na kutoa huduma ya malipo ya kielektroniki iliyoidhinishwa kwa mujibu wa Sheria hii;
- "mtoaji wa fedha za kielektroniki" maana yake ni mtoa huduma ya mfumo wa malipo aliyepewa leseni ya kutoa fedha za kielektroniki na aliye na majukumu na anayewajibika na fedha hizo za kielektroniki;
- "nyenzo ya malipo" maana yake ni kifaa kilicho katika mfumo wa kielektroniki au wa kimaandishi inayotumika katika upitishaji au ulipaji wa fedha;
- "shirika" maana yake ni benki, taasisi ya fedha au shirika lolote la umma au binafsi;
- "taasisi ya fedha" ina maana kama ilivyo kwenye Sheria ya Benki na Taasisi za Fedha;
- "taarifa" maana yake ni data, kumbukumbu, marejesho au nyaraka iliyo katika mfumo wowote ama katika maneno, katika maandishi, iliyorekodiwa kimuonekano, kisauti, kielektroniki, kisumaku, kiufundi, kumbukumbu za kompyuta au kumbukumbu nyingine iliyo katika hali,

Sura 342

chombo, kitu au kifaa chochote;

- "uhaulishaji wa fedha kwa njia ya kielektroniki" maana yake ni uhamishaji wa fedha kwa njia ya temino au kifaa cha kielektroniki kutoka akaunti moja kwenda nyingine;
- "uhalisi wa malipo" maana yake ni utambuzi wa malipo halisi au utimilifu wa malipo halisi baina ya watu wawili au zaidi katika mfumo wa ubadilishanaji wa malipo au mfumo wa utimilifu wa malipo;
- "utimilifu" maana yake ni kitendo cha kulipa madai kikamilifu yatokanayo na uhaulishaji wa fedha au dhamana baina ya watu wawili au zaidi; na
- "wakala wa mtoa huduma ya mfumo wa malipo" maana yake ni mmiliki pekee au shirika ambalo limeingia mkataba wa uwakala na mtoa huduma ya mfumo wa malipo kuuza fedha za kielektroniki na kukomboa fedha taslimu zenye thamani sawa na fedha hizo za kielektroniki.

SEHEMU YA PILI
MAMLAKA NA MAJUKUMU YA BENKI

Mamlaka na majukumu ya Benki

- 4.-(1)** Bila ya kuathiri masharti ya sheria nyingine yoyote, Benki itatekeleza na inayo mamlaka ya-
- (a) kutoa leseni ya mfumo wa malipo;
 - (b) kudhibiti, kusimamia, kuchunguza na kukaguashughuli za mfumo wa malipo;
 - (c) kutoa huduma ya utimilifu wa malipo kwa mfumo wa malipo;

- (d) kutoa huduma ya utimilifu wa malipo kwa kituo cha kubadilishana nyaraka za madai, na kwa kituo kikuu cha uhifadhi wa dhamana;
- (e) kumiliki na kuendesha mfumo wa utimilisho wa malipo ufanyikao kwa muda halisi;
- (f) kuratibu shughuli za mfumo wa malipo kwa kushirikiana na wadau husika;
- (g) kushiriki katika uendeshaji wa mfumo unaojumuisha nyenzo za malipo na mfumo wa utimilisho wa malipo baina ya benki na benki; na
- (h) usimamizi wa mfumo wa malipo kwa mujibu wa Sheria hii.

(2) Kwa madhumuni ya kifungu hiki, neno “hifadhi kuu ya dhamana mbalimbali” linamaanisha chombo au taasisi ya kuhifadhi dhamana, ambayo inawezesha miamala ya dhamana ihifadhiwe kwa mfumo wa kielektroni.

SEHEMU YA TATU MFUMO WA MALIPO

Marufuku
kuendesha
mfumo wa
malipo

5. Mtu haruhusiwi kuendesha mfumo wa malipo bila leseni iliyotolewa na Benki kwa mujibu wa Sheria hii.

Stahiki ya
leseni ya
mfumo wa
malipo

6.-(1) Mfumo wa malipo ambao wenye sifa zifuatazo unaweza kupewa leseni-

- (a) ubadilishaji wa maelekezo ya malipo baina ya taasisi za fedha ambazo ni washiriki katika mfumo;
- (b) utimilifu wa majukumu ya malipo yanayotokana na ubadilishaji wa maelekezo ya malipo;
- (c) uhaulishaji wa fedha kutoka akaunti moja kwenda akaunti nyingine kwa kutumia kifaa chochote cha kielektroniki;
- (d) uhaulishaji wa fedha za kielektroniki kutoka kwenye kifaa kimoja cha kielektroniki kwenda kwenye kifaa kingine;
- (e) kutoa huduma za kiteknolojia ili kuwezesha uhamishaji, upelekeaji, ubadilishaji, usimamizi wa data kwa ajili ya, au kwa niaba ya mtoa huduma ya mfumo wa malipo;
- (f) uwezesaji wa utendaji kazi wa pamoja wa mifumo ya malipo na huduma baina ya watoa huduma wa mfumo wa malipo na walaji;
- (g) utoaji wa huduma za malipo ya kielektroniki kwa watu wasio na huduma za kibenki na walio na huduma hafifu za kibenki;
- (h) kuanzisha kituo cha kubadilishana nyaraka za madai;
- (i) utoaji wa mtandao wa mawasiliano ya kifedha; au
- (j) malengo mengine yoyote yatakayoainishwa na Benki.

(2) Kwa madhumuni ya kifungu hiki, neno “utendaji kazi wa pamoja” maana yake ni uhaulishaji wa maelekezo za malipo ama fedha bila kizuizi chochote kutoka akaunti ya mtoa huduma wa malipo mmoja ama mtumiaji kwenda kwa mtoa huduma wa malipo mwingine au mtumiaji wa akaunti ya mtoa huduma mwingine.

Maombi ya leseni ya mfumo wa malipo

7.-(1) Asasi inayohitaji kuendesha mfumo wa malipo tapaswa kuomba leseni ya kutoa huduma ya mfumo wa malipo kwa kujaza fomu iliyoainishwa kwa madhumuni ya leseni ya mfumo wa leseni..

Maombi yaliyofanywa chini ya kifungu kidogo cha (1), yataambatishwa na taarifa kama zitakavyoainishwa na Benki.

(3) Benki itatoa leseni pale ambapo itaridhika kuwa muombaji ametimiza vigezo vya kupata leseni vilivyoainishwa chini ya Sheria hii pamoja na malipo ya tozo ya leseni na kukidhi masharti mengine yatakavyoainishwa na Benki.

(4) Ndani ya siku thelathini baada ya kupokea maombi ya leseni au pale ambapo taarifa za ziada zimehitajika na kupokelewa, Benki inaweza kukubali au kukataa maombi hayo.

(5) Wakati wa kutoa leseni, Benki inaweza kuweka vigezo na masharti kama itakavyoona inafaa.

(6) Leseni itadumu kwa kipindi cha miaka mitano isipokuwa kama itasitishwa au kufutwa.

(7) Endapo maombi ya leseni yamekataliwa, Benki itatoa sababu za kukataa.

(8) Kwa kuzingatia kifungu kidogo cha (7)-

(a) muombaji, ambaye maombi yake yamekataliwa, anaweza kuomba tena endapo mapungufu yaliyofanya maombi yake yakataliwe yamerekebishwa; na

(b) Benki inaweza kukubali au kukata maombi mapya.

(9) Pale ambapo maombi yamekataliwa na muombaji hajaridhika na uamuzi kwa mujibu wa kifungu hiki anaweza kuomba kwa Gavana wa Benki mapitio ya maombi yake ndani ya siku thelathini baada ya kupokea taarifa ya kukataliwa.

Kuomba upya leseni ya mfumo wa malipo

8.- Mmiliki aliyepewa leseni chini ya Sehemu hii anaweza, ndani ya miezi sita kabla ya kumalizika muda wa leseni hiyo, kuomba upya leseni kutoka Benki.

Baada ya kupokea maombi chini ya kifungu kidogo cha (1), Benki inaweza kutoa upya leseni baada ya-

- (a) kupokea malipo ya ada ya leseni mpya; na
- (b) kutimiza vigezo na masharti yanayotumika katika utoaji wa leseni.

(3) Benki inaweza kukataa kutoa upya leseni endapo itaridhika kuwa mwombaji alishindwa kutekeleza masharti yaliyomo kwenye leseni ya awali.

Kusimamishwa kwa leseni ya mfumo wa malipo

9.-(1) Benki inaweza kusimamisha kwa muda leseni endapo-

- (a) itajiridhisha kwamba mtoa huduma ya mfumo wa malipo ameshindwa kukidhi matakwa ya miundombinu ya mawasiliano yaliyoainishwa na Benki;
- (b) imejiridhisha kwamba shughuli za mtoa huduma ya mfumo wa malipo zinaendeshwa kwa namna ambayo inaathiri maslahi ya washiriki na watumiaji wa mifumo ya malipo; au

(c) mtoa huduma ya mfumo wa malipo amesimamishwa kwa muda kutoa huduma kwa mujibu wa sheria nyingine yoyote.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki inaweza kumtaka mwenye leseni kutoa sababu kwa nini leseni yake isisimamishwe.

(3) Pale ambapo mwenye leseni ameshindwa kutoa sababu za kuridhisha, Benki inaweza kusimamisha kwa muda leseni hiyo au kutoa amri nyingine kwa namna itakavyoona inafaa.

Ufutaji wa leseni ya mfumo wa malipo

10.-(1) Benki inaweza kufuta leseni ya mtoaji wa huduma ya mfumo wa malipo endapo-

- (a) leseni nyingine ya mtoa huduma ya mfumo wa malipo inayohusiana na mfumo wa malipo imefutwa kwa mujibu wa sheria nyingine yoyote;
- (b) mtoa huduma ya mfumo wa malipo ameomba kwa hiari leseni yake ifutwe;
- (c) mtaa huduma ya mfumo wa malipo taarifa za kupotosha wakati wa kuomba leseni;
- (d) ameshindwa kukidhi masharti na vigezo vya leseni;
- (e) amejihusisha na mienendo isiyo salama au isiyo ridhisha ambayo inaathiri hali yake ya kifedha au ina madhara kwa maslahi ya watoa huduma wa mfumo ya malipo au watumiaji wa huduma hizo;
- (f) amekataa kuruhusu kukaguliwa au kutoa taarifa zinazohitajika na Benki;

- (g) ameacha kufanya biashara ya mifumo ya malipo katika Jamhuri ya Muungano;
 - (h) amefilisika kama ilivyoainishwa na Benki au Mahakama; au
 - (i) ameshindwa kutimiza matakwa mengine yaliyomo kwenye Sheria hii.
- (2) Kwa kuzingatia kifungu kidogo cha (1), Benki inaweza kumtaka mwenye leseni kutoa sababu kwa nini leseni yake isifutwe.
- (3) Pale ambapo mwenye leseni ameshindwa kutoa sababu zakuridhisha, Benki inaweza kufuta leseni hiyo au kutoa amri nyingine kwa namna itakavyoona inafaa.

Kutoa taarifa
ya ufutwaji wa
leseni

11. Endapo leseni imefutwa kwa mujibu wa masharti yaliyomo katika Sehemu hii, Benki-

- (a) ndani ya siku tatu za kazi baada ya tarehe ya kufutwa kwa leseni itatoa tangazo la kufutwa kupitia kwenye magazeti yenye mzunguko mkubwa katika Jamhuri ya Muungano; na
- (b) itachukua hatua nyingine stahiki kutoa taarifa kwa umma kwa ujumla kuhusu kufutwa kwa leseni hiyo.

Mienendo
isiyoafaa

12.-(1) Mtoa huduma ya mfumo wa malipo au mshiriki wa mfumo wa malipo haruhusiwi kushiriki katika kitendo chochote ambacho kinaweza-

- (a) kusababisha athari za kimfumo; au
- (b) kuathiri uadilifu, ufanisi au usalama wa mfumo wa malipo.

(2) Benki itamuelekeza mtoa huduma ya mfumo wa malipo au mshiriki wa mfumo wa malipo ambaye ameshiriki katika

kitendo kilichokatazwa na kifungu kidogo cha (1), kurekebisha hali hiyo kwa namna ambayo Benki itaona inafaa.

Kusitishwa
uongozi

- 13.**-(1) Mtu ambaye yupo katika menejimenti ya mfumo wa malipo, ataondolewa kwenye nafasi hiyo endapo mtu huyo-
- (a) atakuwa ni mufilisi;
 - (b) hatiani kwa kosa linalohusiana na udanganyifu au kukosa uaminifu;
 - (c) ataondolewa kwenye cheo chake na mamlaka husika;
 - (d) atakosa akili timamu; au
 - (e) amefariki dunia.
- (2) Mtu aliyekuwa kwenye menejimenti ya mfumo wa malipo ambaye leseni yake ilifutwa, hataruhusiwa kuwa katika menejimenti nyingine ya asasi yenye kutoa huduma ya mfumo wa malipo bila idhini ya Benki.

Kosa chini ya
Sehemu hii

- 14.** Mtu yeyote atakayekiuka masharti yoyote katika Sehemu hii, atakuwa ametenda kosa na akipatikana na hatia na endapo kosa limetendwa na -
- (a) mtu binafsi, atawajibika kulipa faini isiyopungua shilingi milioni hamsini au kifungo kisichopungua miaka mitano au vyote kwa pamoja; au
 - (b) asasi, itawajibika kulipa faini isiyopungua shilingi milioni mia tano.

SEHEMU YA NNE
NYENZO ZA MALIPO

Marufuku ya
kutoa nyenzo
za malipo bila
idhini

- 15.**-(1) Mtu hatatoa nyenzo ya malipo ya kielektroniki bila kuwa na leseni au idhini iliyotolewa na Benki.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki itatoa leseni kwa muombaji wa kutoa huduma ya mfumo wa malipo ambaye si taasisi ya kifedha na itatoa idhini kwa mwombaji wa kutoa huduma ya mfumo wa malipo ambaye ni taasisi ya kifedha.

Sifa stahiki za nyenzo ya malipo

16. Nyenzo ya kielektroniki ya malipo ambayo ina moja kati ya sifa zifuatazo inaweza kupewa leseni au kuidhinishwa na Benki endapo inaweza-

- (a) kuagiza au kuhaulisha maelekezo ya malipo;
- (b) kutunza taarifa kwenye kifaa kwa ajili ya kutuma malipo;
- (c) kutumiwa na kukubalika kwa ajili ya kuhitimisha malipo kwenye kituo cha mauzo, vituo vya wauzaji au kwenye mdahalishi; au
- (d) kuwa na sifa nyingine zozote kama ambavyo Benki itakavyoainisha.

Maombi ya leseni au idhini ya kutoa nyenzo ya malipo

17.-(1) Mtoa huduma ya mfumo wa malipo anayetaka kutoa nyenzo ya malipo anapaswa kuomba leseni au idhini kupitia fomu iliyoainishwa na Benki.

(2) Maombi yaliyofanywa chini ya kifungu kidogo cha (1), yataambatishwa na taarifa kama itakavyoainishwa na Benki.

(3) Benki itatoa leseni au idhini endapo itaridhika kuwa muombaji ametimiza vigezo vya upatikanaji wa leseni au idhini na amekidhi matakwa mengine yatakayoainishwa na Benki.

(4) Ndani ya siku kumi baada ya kupokea maombi au endapo taarifa za ziada zilizohitajika na kupokelewa, Benki inaweza kukubali au kukataa maombi hayo.

(5) Endapo maombi yatakataliwa, Benki sababisha sababu za kukataa.

(6) Kwa kuzingatia kifungu kidogo cha (5)-

(a) muombaji, ambaye maombi yake yamekataliwa, anaweza kuomba tena endapo mapungufu yaliyofanya maombi yake yakataliwe yamerekebishwa; na

(b) Benki inaweza kukubali au kukata maombi mapya.

(7) Pale ambapo maombi yamekataliwa na muombaji hajaridhika na uamuzi huo anaweza kuomba Gavana wa Benki kufanya mapitio ya maombi yake ndani ya siku thelathini baada ya kupokea taarifa ya kukataliwa.

Kusimamishwa
kwa leseni au
idhini ya kutoa
nyenzo ya
malipo

18.-(1) Benki inaweza kusimamisha leseni au idhini ya kutoa nyenzo ya malipo endapo itajiridhisha kwamba -

(a) mtoa huduma ya mfumo wa malipo ameshindwa kukidhi matakwa ya kutoa nyenzo ya malipo;

(b) nyenzo ya malipo inaathari kwa maslahi ya watumiaji wa mifumo ya malipo; au

(c) mtoa huduma ya mfumo wa malipo alisimamishwa kwa muda kutoa huduma kwa mujibu wa sheria nyingine yoyote.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki inaweza kumtaka mwenye leseni kutoa sababu kwa nini leseni yake isisimamishwe.

(3) Pale ambapo mwenye leseni ameshindwa kutoa sababu zakuridhisha, Benki inaweza kusimamisha kwa muda leseni hiyo au kutoa amri nyingine kwa namna itakavyoona inafaa.

Ufutaji wa
leseni au idhini
ya kutoa
nyenzo ya
malipo

19.-(1) Benki inaweza kufuta leseni au idhini ya kutoa nyenzo ya malipo endapo-

- (a) leseni au idhini nyingine ya mtoa huduma ya mfumo wa malipo inayohusiana na mifumo ya malipo imefutwa kwa mujibu wa sheria nyingine yoyote;
- (b) mtoa huduma ya mfumo wa malipo ameomba kwa hiari leseni au idhini ya kutoa nyenzo ya malipo yake ifutwe;
- (c) mtoa huduma ametoa taarifa za uongo au za kupotosha wakati wa kuomba leseni au idhini; au
- (d) mtoa huduma ameshindwa kukidhi masharti na vigezo vya leseni au idhini.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki inaweza kutoa notisi ya siku saba kumtaka mwenye leseni kutoa sababu kwa nini leseni yake isifutwe.

(3) Pale ambapo mwenye leseni ameshindwa kutoa sababu zakuridhisha, Benki inaweza kufuta leseni hiyo au kutoa amri nyingine kwa namna itakavyoona inafaa.

Kosa chini ya
Sehemu hii

20. Mtu yeyote aliyekiuka masharti yoyote chini ya Sehemu hii, atakuwa ametenda kosa na akipatikana na hatia binafsi na endapo kosa limetendwa na -

- (a) mtu, atawajibika kulipa faini isiyopungua shilingi milioni hamsini au kifungo kisichopungua miaka mitano au vyote kwa pamoja; au
- (b) asasi, litawajibika kulipa faini isiyopungua shilingi milioni mia tano.

**SEHEMU YA TANO
HUNDI ZA KIELEKTRONIKI**

Uwasilishaji
wa hundi

21. Mtu yeyote anaweza kuwasilisha hundi kwa njia ya kielektroniki katika mfumo wa malipo.

Uwasilishaji
wa hundi kwa
njia ya
kielektroniki

22.-(1) Benki itaainisha namna ya kuwasilisha hundi kwa njia ya kielektroniki kupitia kituo cha kubadilishana nyaraka za madai.

(2) Kwa kuzingatia kifungu kidogo cha (1), benki inaweza kuwasilisha hundi kwa ajili ya malipo kwenye benki husika, kwa kuwasilisha viashiria muhimu vya hundi husika kwa njia ya kielektroniki badala ya kuwasilisha hundi yenyewe.

Kukubalika
mahakamani
kwa viashiria
vya
kielektroniki
vya hundi

23. Katika shauri mahakamani, baraza au shauri lolote lenye asili ya kimahakama, hundi au nakala ya hundi iliyothibitishwa au viashiria muhimu vya hundi vilivyotolewa kielektroniki kuhusiana na shauri lililopo mahakamani, baraza au shauri la kimahakama vitakubalika kama ushahidi.

**SEHEMU YA SITA
FEDHA ZA KIELEKTRONIKI**

Marufuku
kutoa fedha za
kielektroniki
bila leseni au
idhini

24.-(1) Mtu hataruhusiwa kutoa fedha za kielektroniki bila ya kuwa na leseni au idhini ya utoaji wa fedha za kielektroniki iliyotolewa na Benki.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki itatoa kwa muombaji wa huduma ya mfumo wa malipo kwa muombaji ambaye-

- (a) si benki au si taasisi ya kifedha, leseni; na
- (b) ni benki idhini.

Sifa stahiki za kutoa fedha za kielektroniki

25. Benki itaainisha sifa stahiki kwa mtoaji wa fedha za kielektroniki ambazo zitajumuisha muundo wa asasi, huduma zinazoruhusiwa kutolewa na kiwango cha mtaji.

Maombi ya leseni au idhini ya utoaji wa fedha za kielektroniki

26.-(1) Mtu ambaye anakusudia kutoa fedha za kielektroniki atapaswa kuomba leseni au idhini ya utoaji wa fedha za kielektroniki kupitia fomu itakayoainishwa na Benki.

(2) Maombi yaliyofanywa chini ya kifungu kidogo cha (1) yataambatishwa na taarifa kama itakavyoainishwa na Benki.

(3) Benki itatoa leseni au idhini pale ambapo itaridhika kuwa muombaji ametimiza vigezo vya upatikanaji wa leseni au idhini kama vilivyoainishwa chini Sheria hii na kukidhi masharti mengine yatakayoainishwa na Benki.

(4) Ndani ya siku thelathini baada ya kupokea maombi ya leseni au idhini au pale ambapo taarifa za ziada zilizohitajika zimepokelewa, Benki inaweza kukubali au kukataa maombi hayo.

(5) Benki inaweza, pale ambapo inatoa leseni au idhini, kuweka vigezo na masharti kama itakavyoona inafaa.

(6) Leseni au idhini itadumu kwa kipindi cha miaka mitano isipokuwa kama itasimamishwa au kufutwa.

(7) Endapo maombi yatakataliwa, Benki itatoa sababu za kuyakataa.

(8) Kwa kuzingatia kifungu kidogo cha (7)-

(a) muombaji, ambaye maombi yake yamekataliwa anaweza kuomba tena endapo upungufu uliosababisha maombi yake yakataliwe yamerekebishwa.

(b) Benki inaweza kukubali au kukata maombi mapya.

(9) Pale ambapo maombi yamekataliwa na muombaji hajaridhika na uamuzi huo anaweza kuomba kwa Gavana wa Benki kufanya mapitio ya maombi yake ndani ya siku thelathini baada ya kupokea taarifa ya kukataliwa.

Kuomba upya leseni au idhini ya utoaji wa fedha za kielektroniki

27.- Mmiliki wa leseni au idhini ya utoaji wa fedha za kielektroniki chini ya Sehemu hii anaweza kuomba upya leseni kutoka Benki miezi sita kabla ya kumalizika muda wa leseni au idhini hiyo.

Baada ya kupokea maombi chini ya kifungu kidogo cha (1), Benki inaweza kutoa upya leseni au idhini baada ya-

(a) kupokea malipo ya ada ya leseni mpya; na

(b) kutimiza vigezo na masharti yanayotumika katika utoaji wa leseni.

(3) Benki inaweza kukataa kutoa leseni au idhini mpya endapo muombaji ameshindwa kutekeleza masharti yaliyomo kwenye leseni au idhini ya awali.

Kusimamisha kwa muda leseni au idhini ya kutoa fedha za kielektroniki

28.-(1) Benki inaweza kusimamisha kwa muda leseni au idhini ya kutoa fedha za kielektroniki endapo-

(a) imejiridhisha kwamba shughuli za mtoaji wa fedha za kielektroniki zinaendeshwa kwa namna ambayo inaathiri usalama wa mfumo wa fedha au watumiaji fedha za kielektroniki; au

(b) mtoa huduma ya mfumo wa malipo amesimamishwa kwa muda kutoa huduma kwa mujibu wa sheria nyingine yoyote.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki inaweza kumtaka mwenye leseni au idhini kutoa sababu kwa nini leseni au idhini yake isisimamishwe.

(3) Pale ambapo mwenye leseni au idhini ameshindwa kutoa sababu zakuridhisha, Benki inaweza kusimamisha kwa muda leseni au idhini hiyo au kutoa amri nyingine kwa namna itakavyoona inafaa.

Kufutwa kwa leseni au idhini ya kutoa fedha za kielektroniki

29.-(1) Benki inaweza kufuta leseni au idhini ya mtoaji wa fedha za kielektroniki endapo kuhusiana na mtoaji wa fedha za kielektroniki-

- (a) leseni au idhini yake nyingine inayohusiana na mfumo wa malipo imefutwa kwa mujibu wa sheria nyingine yoyote;
- (b) yeye mwenyewe ameomba kwa hiari leseni au idhini yake ifutwe;
- (c) ametoa taarifa za uongo au za kupotosha wa kuomba leseni au idhini;
- (d) ameshindwa kukidhi masharti na vigezo vya leseni au idhini au ameshindwa kukidhi masharti ya maboresho yaliyotakiwa chini ya Sheria hii;
- (e) amejihusisha na mienendo isiyo salama au isiyoridhisha ambayo inaathiri hali yake ya kifedha au ina madhara kwa maslahi ya watoa huduma wa mifumo ya malipo au watumiaji wa huduma hizo;
- (f) amekataa kuruhusu kukaguliwa au kutoa taarifa zinazohitajika na Benki ama vinginevyo amekiuka masharti ya Sheria hii;

- (g) ameacha kufanya biashara ya mifumo ya malipo katika Jamhuri ya Muungano;
- (h) amefilisika kama ilivyoamuliwa na Benki au mahakama; au
- (i) ameshindwa kutimiza matakwa mengine yaliyomo kwenye Sheria hii.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki inaweza kutoa notiisi ya siku saba kumtaka mwenye leseni au idhini kutoa sababu kwa nini leseni au idhini yake isifutwe.

(3) Pale ambapo mwenye leseni au idhini ameshindwa kutoa sababu zakuridhisha, Benki inaweza kufuta leseni au idhini hiyo au kutoa amri nyingine kwa namna itakavyoona inafaa.

Utoaji na
mzunguko wa
fedha za
kielektroniki

30.-(1) Mtoaji wa fedha za kielektroniki aliyepewa leseni au idhini ya kutoa fedha za kielektroniki atapaswa kuzingatia yafuatayo-

- (a) atatoa fedha za kielektroniki baada tu ya fedha taslimu zenye thamani sawa na fedha za kielektroniki kuwekwa katika akaunti ya udhamini au akaunti maalumu kwa mujibu wa Sheria hii;
- (b) atahakikisha kwamba fedha za kielektroniki zilizotolewa zinalingana na fedha taslimu zilizopo kwenye akaunti ya udhamini au akaunti maalumu kwa mujibu wa Sheria hii;
- (c) atawasilisha Benki kwa njia ya kielektroniki, majina ya wote walioandikishwa na watumiaji wa fedha za kielektroniki ambao fedha zao zipo kwenye akaunti ya udhamini, katika muda utakaoainishwa; na
- (d) atatimiza masharti, kama ambavyo Benki itaainisha kwa kanuni.

(2) Kukombolewa kwa fedha taslimu kutoka kwenye fedha za kielektroniki au kununua fedha za kielektroniki kunaweza kufanyika kwa wakala chini ya mkataba wa uwakala baina ya mtoa huduma ya mfumo wa malipo aliye na leseni au idhini ya kutoa fedha za kielektroniki.

(3) Benki itaainisha kanuni za uwakala za kusimamia utendaji wa wakala, ambazo zitajumuisha masharti yanayokidhi masharti ya sheria ya kuzuia fedha haramu, mahitaji ya ukwasi namna ya kumtambua aina ya mteja, huduma kwa mteja.

Kosa chini ya
Sehemu hii

31. Mtu yeyote atakayekiuka sharti lolote chini ya Sehemu hii, atakuwa ametenda kosa na akipatikana na hatia na endapo kosa limetendwa na -

- (a) mtu binafsi, atawajibika kulipa faini isiyopungua shilingi milioni hamsini au kifungo kisichopungua miaka mitano au vyote kwa pamoja; au
- (b) asasi, itawajibika kulipa faini isiyopungua shilingi milioni mia tano.

SEHEMU YA SABA

AKAUNTI YA UDHAMINI NA AKAUNTI MAALUM

Akaunti ya
Udhamini

32. Mtoa huduma ya mfumo wa malipo mwenye leseni ambaye si asasi ya kibenki au si asasi taasisi ya kifedha yenye leseni ya kutoa fedha za kielektroniki itapaswa kufungua na kuendesha akaunti ya udhamini kwa mujibu wa Sheria hii.

Akaunti
Maalum

33. Mtoa huduma ya mfumo wa malipo mwenye leseni ambaye ni benki au asasi ya kibenki yenye leseni ya kutoa fedha za kielektroniki itapaswa kufungua na kuendesha akaunti maalum kwa mujibu wa Sheria hii.

Uendeshaji
wa akaunti
maalum

34.-(1) Mtoaji wa fedha za kielektroniki mwenye leseni aliyerejewa katika kifungu cha 32 atapaswa kuanzisha asasi nyingine ya kisheria na yenye muundo wa asasi ya udhamini kwa ajili ya kuendesha akaunti ya udhamini, na ambayo muundo wake na uendeshaji wake kiutawala utaidhinishwa na Benki-

(2) Asasi yenye mamlaka kisheria iliyoainishwa kwenye kifungu kidogo cha (1)-

- (a) itawasilisha Benki maombi ya kufungua akaunti ya udhamini kwa kutumia fomu iliyoainishwa kwa ajili ya kuwezesha utoaji wa fedha za kielektroniki katika benki;
- (b) itaingia mkataba wa akaunti ya udhamini na benki kama itakavyobainishwa katika kanuni; na
- (c) itafungua akaunti ya udhamini katika benki kwa ajili ya kutunza fedha za wateja walionunua fedha za kielektroniki kutoka kwa mtoaji wa fedha za kielektroniki;

(3) Mtoa fedha za kielektroniki na asasi yenye mamlaka ya kisheria iliyorejewa katika kifungu kidogo cha (1)-

- (a) hazitachanganya au kutumia fedha zilizomo kwenye akaunti ya udhamini na fedha za shughuli nyingine;
- (b) zitaweka utaratibu wa usalama wa kulinda fedha zilizomo kwenye akaunti ya udhamini dhidi ya madhara yanayoweza kusababisha hasara kwa fedha za wanufaika;
- (c) zitadhibiti madhara ya kutunza akaunti ya udhamini kwa kufungua akaunti hiyo katika benki mbalimbali kama itakavyoainishwa na Benki;
- (d) zitahakikisha kwamba riba yoyote inayopatikana kwenye akaunti ya udhamini inamnufaisha moja kwa moja mteja kama itakavyoainishwa na Benki;

- (e) zitakagua na kuchapisha taarifa za fedha zinazohusiana na asasi ya udhamini kuhusiana na akaunti ya udhamini;
 - (f) zitahakikisha kwamba maelekezo ya kutoa fedha kwenye akaunti ya udhamini yanazingatiwa;
 - (g) zitahakikisha kwamba wakati wote fedha zilizopo katika akaunti ya udhamini zinalingana na fedha za kielektroniki zilizotolewa; na
 - (h) zitazingatia matakwa mengine yoyote ambayo Benki itaainisha.
- (4) Mtu yeyote atakayekiuka sharti lolote chini ya kifungu hiki, atakuwa ametenda kosa na akipatikana na hatia na endapo kosa limetendwa na-
- (a) mtu binafsi, atawajibika kulipa faini isiyopungua shilingi milioni hamsini au kifungo kisichopungua miaka mitano au vyote kwa pamoja; au
 - (b) asasi, itawajibika kulipa faini isiyopungua shilingi milioni mia tano.

Usimamizi
wa akaunti
maalum

35.-(1) Mtoa fedha za kielektroniki mwenye leseni aliyerejewa katika kifungu cha 33-

- (a) atawasilisha Benki taarifa ya kufungua akaunti maalum iliyo katika fomu iliyoainishwa ya kufungua akaunti maalum, kwa ajili ya kuwezesha utoaji wa fedha za kielektroniki;
- (b) atafungua akaunti maalum kwa ajili ya kutunza amana za wateja walionunua fedha za kielektroniki kutoka kwa mtoaji wa fedha za kielektroniki;
- (c) atahakikisha kwamba akaunti hii ina taarifa za wateja wote wanaopata huduma ya fedha za kielektroniki;

- (d) atahakikisha kwamba akaunti maalum inalindwa dhidi ya athari ambayo inaweza kusababisha hasara kwa wanufaika wa fedha; na
 - (e) atatimiza matakwa mengine yoyote kama yatakavyoainishwa na Benki.
- (2) Mtu yeyote atakayekiuka sharti lolote chini ya kifungu hiki, atakuwa ametenda kosa na akipatikana na hatia na endapo kosa limetendwa na-
- (a) mtu binafsi, atawajibika kulipa faini isiyopungua shilingi milioni hamsini au kifungo kisichopungua miaka mitano au vyote kwa pamoja; au
 - (b) asasi, itawajibika kulipa faini isiyopungua shilingi milioni mia tano.

SEHEMU YA NANE

UKOMO WA MALIPO NA MIPANGO YA UHALISI WA MALIPO

Uhalali,
nguvu ya
kisheria na
utimilifu wa
malipo

36.-(1) Agizo la kufanya malipo au utimilifu wa uhaulishaji wa malipo katika mfumo wa malipo utakuwa halali na utakuwa na nguvu ya kisheria.

(2) Agizo la kufanya malipo au utimilifu wa malipo kwa mujibu wa kifungu kidogo cha (1) utatimilika, hautabatilika na hautafutwa na mtu yeyote kuanzia pale agizo la kufanya malipo au utimilifu wa malipo ulipothibitishwa kuwa timilifu katika mfumo wa malipo.

(3) Kwa kuzingatia masharti ya kifungu kidogo cha (2), Benki itaainisha namna ya kushughulikia maagizo ya malipo au utimilifu wa malipo yaliyofanywa kimakosa.

(4) Endapo Benki itaona kwamba kuna uwezekano wa kutokea athari ya kimfumo wakati wa kufanya malipo au utimilifu

wa malipo uliorejewa katika kifungu kidogo cha (1), Benki-

- (a) itazuia ufanyaji au uhamishaji wa maelekezo ya malipo au itatengua malipo au uhaulishaji;
- (b) itatoa taarifa ya maandishi kwa washiriki wa mfumo wa malipo ikielezea sababu ya kuzuia au kutengua malipo hayo au uhaulishaji wa malipo.

(5) Muamala wowote uliofanyika kwa kukiuka masharti ya kifungu hiki utakuwa ni batili.

Uhalali na nguvu ya kisheria ya utaratibu wa uhalisi wa malipo

37.-(1) Utaratibu wa uhalisi wa malipo katika mfumo wa malipo utakuwa halali na utakuwa na nguvu ya kisheria.

(2) Jukumu lolote la utimilifu halisi wa malipo la mtoa huduma au mshiriki katika mfumo wa malipo katika utaratibu wa uhalisi wa malipo ambao haujatimilika utakuwa ni madai yanayoweza kuthibitishwa katika shauri la ufilisi na kulipwa kwa wanufaika.

SEHEMU YA TISA

KUFUNGA NA KUSIMAMIA UFILISI WA MASHIRIKA YANAYOTUMIA MFUMO WA MALIPO

Amri ya kufunga shirika
Sura ya 212
Sura ya 342

38.-(1) Amri ya kufunga shirika, au kuliweka chini ya usimamizi wa mahakama au wa kisheria, kulingana na masharti ya Sheria ya Makampuni au Sheria nyingine yoyote ya ufilisi iliyotolewa kwa mshiriki wa mfumo wa malipo, itawasilishwa Benki mapema iwezekanavyo.

(2) Amri inayorejewa katika kifungu kidogo cha (1), haitaathiri utimilifu wowote wa malipo au maagizo ya malipo

katika mfumo wa malipo yaliyofanywa kabla ya kutolewa kwa amri hiyo.

Mfilisi na
msimamizi
wa kisheria
kubanwa na
maelekezo ya
mifumo ya
malipo
Sura ya 212
Sura ya 342

39.-(1) Bila kujali jambo lolote lililo kinyume katika Sheria ya Makampuni au sheria nyingine yoyote ya ufilisi, pale ambapo amri imetolewa ya kufunga au kumweka mshiriki wa mfumo wa malipo chini ya usimamizi wa mahakama au wa kisheria, wajibu wowote au utimilifu wa malipo yanayoelekezwa kwa mshiriki wa mfumo wa malipo ambayo-

- (a) yaliamuliwa kabla ya kutolewa kwa amri;
 - (b) yalitakiwa kutimilika, kuhaulishwa, wakati au baada ya kutoka kwa amri; au
 - (c) yalikuwa yanategemewa kutimilika katika tarehe ilipotolewa amri hiyo,
- yatambana mfilisi wa mshirika wa mfumo wa malipo, msimamizi wa mahakama au msimamizi wa kisheria.

(2) Kifungu kidogo cha (1), kitatumika kwa majukumu yoyote ya malipo au utimilifu wa malipo ambayo-

- (a) yaliamuliwa kabla ya kutolewa kwa amri hiyo;
- (b) yalitakiwa kutimilika, kuhaulishwa wakati au baada ya kutolewa kwa amri hiyo; au
- (c) yalikuwa yanategemewa kwa ajili ya utimilifu katika tarehe ilipotolewa amri hiyo.

Kipaumbele
cha
maelekezo ya
malipo
wakati wa
kufunga
kampuni
Sura ya 212

40.-(1) Bila kujali jambo lolote lililo kinyume cha Sheria ya Makampuni au Sheria nyingine yoyote ya ufilisi, pale ambapo-

- (a) mshiriki wa mfumo wa malipo atakuwa amefilisiwa; na

- (b) kuna maelekezo ya kufanya malipo ambayo hayajakamilika yaliyoelekezwa kwa mshiriki wa mfumo wa malipo na yalifanyiwa uhalisi katika mfumo wa malipo kabla ya kutolewa kwa amri ya kufilisi,

maelekezo hayo ya malipo ambayo hayajakamilika yatalipwa kutoka kwenye mali za mshiriki huyo wa mfumo wa malipo, na yatapewa kipaumbele cha juu dhidi ya madeni yote yale yasiyo na dhamana kutoka katika mali za mshiriki huyo.

(2) Kifungu kidogo cha (1), hakitatafsiriwa kuruhusu maelekezo ya malipo yalipwe kwa kipaumbele cha juu dhidi madeni mengine yoyote dhidi ya mali, pale ambapo maelekezo yalithibitishwa na mshiriki huyo wa mfumo wa malipo au ilikusudiwa kumpa mwenye hati ya malipo maelekezo yenye kipaumbele dhidi ya washirika wengine wa mfumo wa malipo au wadai wengine.

SEHEMU YA KUMI

DHAMANA NA KUSHINDWA KUFANYA UTIMILIFU WA MALIPO

Utaratibu wa
dhamana

41.-(1) Benki itaainisha namna ya kutunza mali za kutosha katika hali ya kifedha kama dhamana kwa ajili ya kudhamini madeni au majukumu ya malipo ya mshiriki wa mfumo wa malipo kwa ajili ya kutimiza wajibu wake wa malipo.

(2) Dhamana iliyorejewa katika kifungu kidogo cha (1)-

- (a) itauzwa ili kutekeleza wajibu wa mshiriki wa mfumo wa malipo kutokana na kushindwa kutimiza wajibu wake wa kuhitimisha malipo; na
- (b) italindwa dhidi ya ufilisi.

(3) Mshiriki wa mfumo wa malipo ambaye anaendesha mfumo wa malipo bila dhamana ya kutosha, akipatikana na hatia, atawajibika kulipa faini isiyopungua shilingi milioni mia tano.

Utaratibu wa kufuata endapo itashindikana kuhitimisha malipo

42.-(1) Mtoa huduma wa mfumo wa malipo ataweka utaratibu wa kushindwa kuhitimisha malipo wa kimaandishi utakaoainisha jinsi ambavyo kushindwa kuhitimisha malipo kutadhibitiwa endapo mmoja au baadhi ya washiriki katika mfumo wa malipo atashindwa kuhitimisha malipo.

(2) Mtoa huduma ya mfumo wa malipo atawasilisha Benki kimaandishi utaratibu wa kushindwa kuhitimisha malipo uliorejewa katika kifungu kidogo cha (1).

SEHEMU YA KUMI NA MOJA MASHARTI YA JUMLA

Kuwasilisha marejesho

43.-(1) Mtoa huduma ya mfumo wa malipo atawasilisha marejesho yanayohusiana na uendeshaji wa mfumo wa malipo au huduma kama itakavyoainishwa na Benki.

(2) Benki inaweza kutumia au kutoa taarifa iliyoipokea chini ya kifungu kidogo cha (1) kwa ajili ya matumizi ya umma.

(3) Benki inaweza kumtoa mtu atakayekiuka masharti ya kifungu hiki faini ya shilingi milioni kumi kwa kila siku ya ukiukwaji wa sharti hili, na faini hii inaweza kutolewa kutoka kwenye bakaa iliyo Benki au kupitia utaratibu mwingine wa kisheria.

Upatikanaji wa taarifa

44.-(1) Benki itakuwa na uwezo wa kupata taarifa inayohusiana na mfumo wowote wa malipo na inaweza kuelekeza taarifa iwasilishwe na mtoa huduma ya mfumo wa malipo kwa maandishi ndani ya siku kumi na nne kuanzia tarehe ya maombi.

(2) Benki inaweza kumtoza mtu atakayekiuka masharti ya kifungu hiki faini ya shilingi milioni kumi kwa kila siku ya ukiukwaji wa sharti hili, na faini hii inaweza kutolewa kutoka kwenye bakaa iliyo Benki au kupitia utaratibu mwingine wa kisheria.

Usiri wa taarifa za mtoa huduma ya mfumo wa malipo

45.-(1) Taarifa iliyopatikana kwa mujibu wa kifungu cha 44 itakuwa ni siri na haitatolewa na mkurugenzi au afisa yeyote wa Benki isipokuwa kama taarifa hiyo inahitajika kwa mujibu wa sheria.

(2) Bila kujali kifungu kidogo cha (1), Benki inaweza kutoa taarifa yoyote kwa wakala mwingine mwenye jukumu la kudhibiti au kusimamia mifumo ya malipo inayotokana na mkataba wa kupeana taarifa, ama ndani ya Jamhuri ya Muungano au nje ya nchi, iwapo taarifa hiyo inahitajika na itatumika kwa ajili ya usimamizi au uangalizi na itaendelea kuwa siri.

Utunzaji wa kumbukumbu za mfumo wa malipo

46.-(1) Mtoa huduma ya mfumo wa malipo atatunza kumbukumbu za miamala yote ya malipo kwa njia ya kielektroniki na taarifa alizozipata au alizozitengeneza wakati wa uendeshaji au usimamizi wa mfumo wa malipo kwa kipindi ambacho Benki itaainisha.

(2) Utunzaji wa kumbukumbu chini ya kifungu kidogo cha (1), utakuwa kwa njia ya kielektroniki na isiyo ya kielektroniki kulingana na jinsi taarifa husika ilivyopatikana au ilivyotengenezwa ili kuzingatia utunzwaji wa taarifa katika uhalisia wake.

(3) Kwa kuzingatia kifungu kidogo cha (1), mtu anayekusudia kuharibu taarifa za miamala ya malipo ya kielektroniki chini ya Sheria hii, ataomba idhini ya kuharibu taarifa hizo kutoka Benki.

(4) Mtu atakayekiuka ama kushindwa kutekeleza kifungu hiki, akipatikana na hatia, atawajibika kulipa faini isiyopungua shilingi milioni mia tano.

Uhifadhi wa taarifa za mteja

47.-(1) Bila kuathiri sheria nyingine yoyote, mtoa huduma ya mfumo wa malipo-

- (a) atalinda usiri wa taarifa za mshiriki na taarifa za mteja wa mfumo wa malipo; na
- (b) hatatoa taarifa za mshiriki au mteja wa mfumo wa malipo isipokuwa kwa mujibu wa sheria, amri ya mahakama au kwa ridhaa ya mteja husika.

(2) Mtu atakayekiuka ama kushindwa kutekeleza kifungu hiki, akipatikana na hatia, atawajibika kulipa faini isiyopungua shilingi milioni mia moja.

Muda wa kuingiza fedha kwenye akaunti ya mteja

48.-(1) Mtoa huduma wa malipo, mara baada ya kupokea malipo kwenye akaunti yake ya uhitimisho wa malipo, yanayomuhusu mteja wake, ataziingiza fedha hizo mapema iwezekanavyo kwenye akaunti ya mteja.

(2) Kwa kuzingatia kifungu kidogo cha (1), Benki itaainisha muda muafaka wa kuingiza fedha kwenye akaunti ya mteja kulingana na aina ya mfumo wa malipo.

(3) Mtu ambaye amekiuka kifungu hiki, atalipa faini ya kiasi cha asilimia kumi na tano ya fedha alizocheleweshwa kwa kila siku.

Uchunguzi, ukaguzi na usimamizi

49.-(1) Kwa madhumuni ya kufanya uchunguzi, ukaguzi na usimamizi chini ya Sheria hii, Benki inaweza kuidhinisha maafisa wake kwa maandishi-

- (a) kuingia na kupekua eneo la mtu ambaye Benki ina sababu ya kuamini anatoa au anaendesha mfumo wa malipo au anatoa huduma ya kielektroniki kinyume na Sheria hii;
- (b) kukagua vitabu, kompyuta, seva, akaunti na kumbukumbu au kuchukua kitu chochote muhimu au taarifa itakayosaidia katika kumchunguza mtu huyo na kuchukua nakala au kutoa dondoo zake; na
- (c) kumsimamia mtoa huduma wa mfumo wa malipo pamoja na athari zinazoambatana na mfumo huo.

(2) Katika kumsimamia mtoa huduma wa mfumo wa malipo anayefanya shughuli zake ndani na nje ya Jamhuri ya Muungano, Benki inaweza kuingia makubaliano na taasisi ya usimamizi kwa ajili ya kubadilishana taarifa za usimamizi ndani na nje ya Jamhuri ya Muungano.

Kufifilisha
makosa

50.-(1) Gavana wa Benki au afisa mahususi aliyeruhusiwa na Gavana wa Benki kwa kupitia taarifa iliyochapisha ndani ya *Gazeti* anaweza, kulingana na matakwa ya kifungu hiki, kama emeridhika kwamba mtu ametenda kosa ndani ya Sheria hii, atajumuisha kwakupokea fedha kutoka kwa mtu huyo.

(2) Jumla ya fedha itakayolipwa katika kifungu kidogo cha (1)-

- (a) haitazidi kiwango cha juu cha faini kilichoainishwa chini ya kosa lililotendwa dhidi ya Sheria hii; na
- (b) itajumuisha gharama za Benki zitokanazo na kukamata, kutunza, kukarabati au kuondoa kitu chochote kilichochukuliwa kutokana na kosa alilotenda pamoja na malipo mengine.

(3) Mamlaka yalioletewa katika Sheria hii yatatumiwa pale ambapo mtu atakubali kwamba ametenda kosa na amekubali

kwa maandishi kamaitakavyo ainishwa ndani ya fomu.

(4) Gavana wa Benki au afisa atakayetumia mamlaka chini ya kifungu hiki atatoa stakabadhi iliyoainishwa na fomu kwa mtu aliyetoa fedha chini ya kifungu kidogo cha (2).

(5) Fedha zozote zilizo pokelewa chini ya kifungu hiki, baada ya kutoa gharama na malipo, zitawekwa katika Mfuko Mkuu wa Hazina.

(6) Pale ambapo mashauri yamefunguliwa dhidi ya mtu huyo chini ya Sheria hii, itakakua ni utetezi mzuri iwapo mtu huyo ataonyesha ushahidi kwamba kosa analotuhumiwa limefanyiwa majumuisho chini ya kifungu hiki.

(7) Amri ya kujumuisha chini ya kifungu hiki itachukuliwa kuwa ni sawa na amri ya Mahakama Kuu na kwa maana hiyo itatumika kukaza hukumu kupitia taratibu za Mahakama Kuu.

Kumlinda
mlaji katika
mfumo wa
malipo

51.-(1) Benki itaainisha maelekezo ya kumlinda mlaji wa huduma ya mfumo wa malipo.

(2) Kwa kuzingatia kifungu kidogo cha (1), mtoa huduma ya mfumo wa malipo atatoa-

- (a) vigezo na masharti yaliyo wazi, ya haki, vinavyosomeka, vipo katika lugha inayoeleweka na kuainisha haki na wajibu wa pande zote;
- (b) utaratibu wa kusikiliza malalamiko na utatuzi wa migogoro; na
- (c) taarifa kamili ya mambo muhimu kwa ajili ya matumizi ya huduma za malipo ya kielektroniki, ikiwa ni pamoja na bei ya bidhaa na huduma.

(3) Mtoa huduma ya mfumo wa malipo hatapaswa kutoa matangazo ya biashara yenye kupotosha mlaji au huduma ambayo hajaruhusiwa kwa mujibu wa Sheria hii.

Upatikanaji
wa huduma
ya mfumo wa
malipo

52. Mtoa huduma ya mfumo wa malipo atahakikisha kwamba huduma ya mfumo wa malipo anayoitoa inapatikana kwa mtumiaji muda wote ulioidhinishwa.

Makosa ya
kimtandao
katika mfumo
wa malipo

53.-(1) Mtu ambaye amepata taarifa, kumbukumbu au data za fedha za mtu mwingine, kwa kutumia kifaa cha kielektroniki, kifaa chochote, kwa mpango au mbinu ambayo imewezesha upatikanaji wa taarifa au data kinyume na sheria, ametenda kosa.

(2) Mtu yeyote, kwa makusudi au bila idhini ya kisheria, hatatengeneza, hatauza, hatanunua kwa ajili ya matumizi, hataagiza au hatauza nje ya nchi, hatasambaza au hatajishughulisha na-

- (a) kifaa kilichotengenezwa au kubadilishwa kwa ajili ya kupata taarifa za kifedha;
- (b) kupata neno la siri la kompyuta, kiashiria cha siri cha kufungua au data yoyote ambayo itamwezesha mtu kupata taarifa zilizomo katika kompyuta; au
- (c) kuwa na programu ya kompyuta ili aitumie au itumike na mtu mwingine kwa lengo la kutenda kosa.

(3) Mtu ambaye amekiuka ama kushindwa kutekeleza kifungu hiki, ametenda kosa na akitiwa hatiani atawajibika kulipa faini ya kiasi ambacho ni kikubwa kati ya shilingi milioni kumi au mara tatu ya thamani ya mali iliyoibiwa au kifungo cha miaka isiyopungua kumi na tano au vyote kwa pamoja.

Ushirikiano
baina ya
wasimamizi
katika mfumo
wa malipo

54. Benki itashirikiana na wasimamizi wengine wanaohusika na mifumo ya malipo pamoja na taasisi za Serikali katika maeneo ya ufuatiliaji na usimamizi wa mifumo ya malipo na kuongeza ufanisi wa Serikali katika malipo, malipo ya kodi na malipo mengine ya kifedha.

Kinga

55. Shtaka au shauri lolote halitafunguliwa dhidi ya afisa au mfanyakazi yeyote wa Benki kuhusiana na kitendo chochote kilichofanyika au kuacha kufanyika, kwa nia njema katika utekelezaji wa majukumu aliyopewa na Sheria hii.

Kanuni,
maelekezo na
miongozo

56.-(1) Gavana wa Benki anaweza kutunga kanuni na masharti na kuzichapisha kwenye *Gazeti*, ambazo hazikiniani na matakwa ya Sheria hii, kwa ajili ya utekelezaji wa Sheria hii kwa ufanisi.

(2) Bila ya kuathiri kifungu kidogo (1), Gavana wa Benki anaweza kutunga Kanuni katika maeneo yafuatayo:

- (a) masharti ya leseni;
- (b) kushiriki kwenye mfumo wa malipo;
- (c) nyenzo za kielektroniki za malipo, fedha za kielektroniki, hundi za kielektroniki;
- (d) wakala wa mtoa huduma ya mfumo wa malipo;
- (e) ukomo na uhitimisho wa malipo;
- (f) utaratibu wa dhamana;
- (g) muda muafaka wa kuingiza fedha kwenye akunti ya mteja;
- (h) usimamizi wa akaunti ya udhamini;
- (i) muda wa kutunza kumbukumbu za miamala ya malipo;na
- (j) matakwa ya ulinzi wa mlaji.

(3) Gavana wa Benki, bila ya kuchapisha kwenye *Gazeti*, anaweza kutoa maagizo, miongozo, viwango, amri na waraka wa kudhibiti mwenendo wa jinsi madhumuni ya Sheria hii yanaweza kutekelezwa.

Masharti ya
mpito

57.-(1) Mtu ambaye amepata idhini ya maandishi kutoka Benki kabla ya kuanza kutumika kwa Sheria hii, ndani ya miezi sita tokea tarehe ya kuanza kutumika, atatakiwa kuomba leseni kwa mujibu wa Sheria hii.

(2) Kwa kuzingatia kifungu kidogo cha (1), mtu anayeendelea;

- (a) kuendesha mfumo wa malipo;
- (b) kutoa nyenzo ya malipo;
- (c) kutoa fedha za kielektroniki; au
- (d) kutoa huduma nyingine yoyote ya mifumo ya malipo,

baada ya miezi sita tokea tarehe ya kuanza kutumika kwa Sheria hii, atakuwa ametenda kosa na akipatikana na hatia, atalipa faini isiyopungua shilingi milioni mia moja au kwa kifungu kisichozidi miaka mitano; au vyote kwa pamoja.

**SEHEMU YA KUMI NA MBILI
MAREKEBISHO YATOKANAYO
MAREKEBISHO YA SHERIA YA HAWALA ZA FEDHA (SURA YA 215)**

Tafsiri
Sura ya 215

58. Sehemu hii itasomwa pamoja na Sheria ya Hawala za Fedha ambayo humu ndani inarejewa kama “Sheria mama”.

Marekebisho
ya kifungu
cha 41

59. Sheria mama inafanyiwa marekebisho kwenye kifungu cha 41 kwa kuongeza kifungu kidogo cha (4) kama ifuatavyo:

“(4) Bila kujali kifungu kidogo cha (1), hundi inaweza kuwasilishwa kwa njia ya kielektroniki kwenye mfumo wa malipo.”

Marekebisho
ya kifungu
cha 52

60. Sheria mama inafanyiwa marekebisho kwenye kifungu cha 52 kwa kuingiza ufafanuzi ufuatao kwenye kifungu kidogo cha (4):

“Isipokuwa kwamba, kifungu kidogo hiki hakitatumika kwenye uwasilisaji wa njia ya kielektroniki wa hundi au hawala katika sheria nyingine yoyote”.

Imepitishwa na Bunge tarehe 23 Machi, 2015.

THOMAS D. KASHILILAH
Katibu wa Bunge