

GOVERNMENT NOTICE NO. 13

PAYMENT SYSTEMS ACT
(CAP. 74:01)

PAYMENT SYSTEMS (E-MONEY) REGULATIONS, 2019

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IN EXERCISE of the powers conferred by section 43 of the Payment Systems Act, I, GOODALL EDWARD GONDWE, Minister of Finance, Economic Planning and Development, make the following Regulations—

Citation 1. These Regulations may be cited as the Payment Systems (E-money) Regulations, 2019 and shall come into force on 1st July, 2019.

Interpretation 2. In these Regulations, unless the context otherwise requires—

“agent” means an entity or person that has been contracted by an e-money service provider to carry out or provide specified e-money services on behalf of that entity in a manner specified in these Regulations;

Cap. 44:01 “bank” has the meaning ascribed to that term in the Banking Act;

“banking business” means the business of receiving deposits or deposit substitutes from the public that are payable, with or without interest, on demand, or after the expiration of a stated period and are transferable by cheque or other means;

“cash-in” means accepting of cash and performing the necessary steps to initiate the crediting of that monetary value to the customer’s e-money account;

“cash-out” means giving out cash and performing the necessary steps to initiate the debiting of that monetary value from the customer’s e-money account;

“customer funds” means sums of money that have been received by an e-money service provider in exchange for electronic money that has been issued;

Cap. 44:01 “deposit” shall have the meaning ascribed to that term in the
46:08 Banking Act and the Microfinance Act;

“dormant account” means an e-money account, in respect of which the account holder, has not for twelve consecutive months after the last transaction in his account, conducted any transactions thereof, or corresponded with the e-money service provider concerning the account;

“e-money” means monetary value as represented by a claim on its issuer that is—

(a) electronically stored in an instrument or device including cash cards, electronic wallets (e-wallets or mobile wallets) accessible via a mobile phone or another access device such as point of sale devices, stored value card, prepaid card, and other similar instrument or device;

(b) issued against receipt of funds of an amount not lesser in value than the monetary value issued;

(c) accepted as a means of payment by persons or entities other than the issuer;

(d) withdrawable in cash or cash equivalent; and

(e) issued in accordance with these Regulations;

“e-money service provider” means an entity, whether bank or non-bank, that has been licenced or authorized by the Reserve Bank to issue e-money and provide e-money services;

“e-money services” means services provided by an e-money service provider to support the utility of e-money for a consumer which include channels such as mobile payments and services such as cash in, cash out, person to person, business to person, government to person transactions;

“Financial Intelligence Authority” means the Financial Intelligence Authority established under the Financial Crimes Act;

Cap. 7:07

“information systems audit” or “information technology audit” means an examination of the management and controls within an information technology (IT) infrastructure and includes both applications and general computer reviews;

“Know Your Customer (KYC)” means a process of performing activities related to customer due diligence in order to identify customers and ascertain relevant information pertinent to doing financial business with them;

“mobile network operator” means a telecommunications service provider that provides wireless voice and data communication as licensed by the Malawi Communications Regulatory Authority or any other body with such authority in Malawi;

“trust account” means a savings or deposit account maintained at a commercial bank and under the control and management of the e-money service provider, holding pooled funds on trust and on behalf of the customer and agents and contains a balance at least equal to the total value of e-money in circulation, and is utilized only for purposes of holding pooled funds on behalf of the customers and agents and for facilitating customer and agent transactions; and

“Reserve Bank” means the Reserve Bank of Malawi as established under the Reserve Bank of Malawi Act.

Cap.44:02

PART II—OBJECTIVE AND APPLICATION

- Objective 3. The objectives of these Regulations are to—
- (a) provide a regulatory framework for the provision of e-money services;
 - (b) provide minimum technical and operational requirements for the provision of e-money services; and
 - (c) provide minimum standards on customer protection and protection of consumer funds.
- Application 4. These regulations shall apply to e-money service providers, including banks holding trust accounts for e-money services providers.

PART III—ROLE OF E-MONEY SERVICE PROVIDERS

- Provision of e-money services 5.— (1) A person shall not issue e-money or provide e-money services without a licence or authorization from the Reserve Bank.
- (2) An e-money service provider shall provide and manage the delivery of secure e-money services to users.
- (3) E-money issued by service providers that do not conduct banking business in Malawi shall not be considered as deposits and shall not be presented or marketed to customers as such.
- (4) An e-money service provider, with the exception of entities that conduct banking business in Malawi, shall not undertake any other business apart from provision of e-money services.
- (5) An entity which does not conduct banking business in Malawi and is engaged in a business not related to e-money but wishes to provide e-money services shall be required to establish a separate legal entity for the operation and management of the e-money services.
- (6) The entity wishing to provide e-money services in subregulation (5) shall be allowed to establish and own not more than one subsidiary for the provision of e-money services.
- (7) An e-money service provider, with the exception of an entity that conducts banking business in Malawi, shall not grant loans based on funds received or held for the purpose of issuing or distributing e-money.
- (8) An e-money service provider shall ensure that the operations of e-money services meet all the requirements specified in these Regulations and other requirements that may be set by the Reserve Bank.
- (9) An e-money service provider shall ensure that the system has audit trails and reporting mechanisms that meet the operational, financial, regulatory and other reporting requirements as provided in these Regulations.
- (10) An e-money service provider shall ensure that e-money is—
- (a) issued in Malawi Kwacha as the legal tender in Malawi;

(b) redeemable at face or par value to the Malawi Kwacha such that it cannot be purchased at a discount or at more than face value;

(c) only issued when an equal amount of funds has first been deposited into a trust account; and

(d) not issued on credit.

6.— (1) As a measure of protection against credit and insolvency risk, an e-money service provider, with the exception of entities that conduct banking business in Malawi, shall maintain— Capital requirements

(a) a minimum paid up capital of fifty million Kwacha (K50,000,000.00);

(b) a minimum core capital amount of hundred percent of the paid up capital or equivalent of 2% of the outstanding e-money liabilities, whichever is higher; and

(c) such other amount as may be required by the Reserve Bank from time to time.

(2) The outstanding e-money liabilities in subparagraph (1) shall be calculated as the larger of—

(a) the current amount of its outstanding e-money liabilities at the end of the prior business day; and

(b) the average outstanding electronic money liabilities over the previous six-month period.

(3) An e-money service provider which is not a bank shall have core capital comprised of the following—

(a) fully paid ordinary share capital; and

(b) retained earnings.

PART IV—PROTECTION OF CUSTOMER FUNDS

7.— (1) An e-money service provider whose services employ an electronic or mobile wallet features shall open and maintain a trust account at a bank. Management and operations of trust accounts

(2) An e-money service provider shall ensure that a trust account is managed separately from other operational accounts.

(3) An e-money service provider shall adopt necessary measures to ensure that the trust funds are managed and safeguarded in accordance with these Regulations and any other written law.

(4) An e-money service provider shall not in any way invest or intermediate funds held in the Trust Account.

(5) An e-money service provider shall not offer funds held in a trust account as collateral to any party.

(6) Funds held in a trust account shall be available on demand to meet requests from customers for redemption of the e-value that those funds hold.

(7) An e-money service provider shall ensure that—

(a) at all times, the total balance held in a trust account shall be equal to at least 100% of the total outstanding or unclaimed balance of all holders of the e-money under the service, which is the net of the aggregate value in dormant accounts under section 9;

(b) only up to 50% of total trust account funds are maintained with a single bank at any given time;

(c) no new or additional e-money is issued other than in return for an equal amount in conventional money deposited into the trust accounts;

(d) except with respect to payment of interest earned in the trust account under regulation 8, the pooled funds shall only be used to fund customer and agent transactions, such as redemption of e-value or other transactions that result in a net reduction in the value of outstanding e-money liabilities;

(e) on a daily basis, it reconciles the trust account balances with the total value of outstanding e-money liabilities and any deficiencies in the total amount held in a trust account shall be rectified by end of the next business day;

(f) a report shall be made to the Reserve Bank by end of day following the discovery of any deficiency or discrepancies in the reconciliation in (e), outlining the amount of the deficiency, how it arose and how it has been rectified; and

(g) the trust account is audited annually by certified external auditors, and that a copy of such audit report is submitted to the Reserve Bank within three (3) months of the end of the e-money service provider's financial year.

(8) A commercial bank holding a trust account shall submit to the Reserve Bank statements of the trust and interest accounts and other related information as the Reserve Bank may request.

(9) The Reserve Bank may, with reasons stated in writing and in the interest of protecting e-money holders, require e-money service providers to close a trust account with a specific bank.

Use of interest
earned in trust
accounts

8.—(1) All trust accounts held at a commercial bank shall be interest earning.

(2) An e-money service provider may negotiate the interest rate, or any other related commercial arrangements which shall be market competitive, with the bank hosting the trust account and shall notify and submit the negotiated terms to the Reserve Bank.

(3) The e-money service provider shall open and maintain a separate bank account at each of the commercial bank hosting the trust accounts for purposes of depositing interest earned in the trust accounts.

(4) A minimum of 95% of the total interest earned in the trust account, net of any standard fees, costs or charges related to the administration of the trust accounts, shall be distributed to the individual e-money accounts of subscribers by the e-money service provider.

(5) A maximum of 5% of the total interest earned or otherwise accrued to balances in the trust accounts in subregulations (1) to (3) net of any standard fees, costs or charges related to the administration of the trust accounts shall be used for the benefit of or otherwise paid to the e-money service provider.

(6) The criteria, procedure and other details pertaining to the payment of the interest in subregulations (4) and (5) shall be as provided in the First Schedule hereto.

(7) E-money accounts for institutions, corporates, businesses, merchants and agents shall be excluded from receiving part of the total interest in subregulation (4).

(8) The type of administrative fees, costs and charges allowed to be applied to the trust and interest accounts shall be as provided in the First Schedule hereto.

(9) An e-money service provider shall account for the distribution of the interest earned in all its trust accounts in the annual audit report in regulation 7 (7) (g).

(10) An e-money service provider or a commercial bank which contravenes regulations 7 and 8 commits an offence and shall on conviction be liable to a fine of fifty million Kwacha (K50,000,000.00) and to imprisonment for seven years.

9.— (1) An e-money service provider shall treat as dormant an e-money account that has no customer initiated transactions for a period of twelve (12) consecutive months.

Treatment of
dormant
e-money
accounts

(2) The e-money service provider shall, prior to treating an account as dormant, notify the owner of the account at least a month before the twelve (12) months have elapsed.

(3) An e-money service provider shall adhere to the following regarding treatment of dormant accounts—

(a) block the account and permit no further transactions until reactivated by the customer, supported by verifiable identification;

(b) endeavour to locate and/or notify the customer that the account is blocked and provide instructions on reactivation; and

(c) reactivate accounts that have been dormant for a period of less than 7 years.

(4) An e-money service provider shall be required to keep records of all dormant accounts and the associated unclaimed value for a period of 7 years.

10.— (1) The Reserve Bank shall open an unclaimed balances account for each e-money service provider for the purpose of holding unclaimed balances from dormant accounts.

Sequestration
of total value
in dormant
accounts and
procedure for
reimbursements

(2) An e-money service provider shall transfer the total value of funds in dormant accounts for the preceding 12 months period to the Reserve Bank on a monthly basis.

(3) An e-money service provider holding e-money balances in accounts that have been dormant for a period of more than 12 months prior to coming into force of these Regulations shall transfer such funds to the Reserve Bank within two (2) months from the effective date.

(4) An e-money service provider shall be required to make available at all its business premises, forms to be filled by claimants of dormant accounts, who may be original account holders, their representatives, or their beneficiaries and such persons shall be able to claim the funds from the e-money service provider within a period of seven (7) years after the relevant account has been declared dormant.

(5) A claimant under subregulation (4) shall submit to the e-money service provider, evidence of entitlement to money in the dormant account which shall include a valid identity document and proof of representation to the original account holder in case of a representative and beneficiaries of deceased estates.

(6) An e-money service provider shall ensure that any claim is processed within ten (10) working days from the date it is received.

(7) Upon being satisfied of the validity of claim in subregulations (5) and (6), the e-money service provider shall submit to the Reserve Bank a written request for the return of the funds from its unclaimed balances account which shall include details of the claimant, claimed amount and a copy of the claim.

(8) The Reserve Bank shall return the claimed funds within ten (10) working days from the date of receipt of the claim by transferring the relevant amount from the e-money service provider's unclaimed balances account to a trust account maintained by the e-money service provider at a commercial bank for onward re-imburement to the claimant.

(9) The Reserve Bank shall inform the e-money service provider each time it effects the transfer in subregulation (8) to the trust accounts.

(10) An e-money service provider shall effect reimbursement to the claimant within five (5) working days of receiving the advice of the transfer in subregulation (9) from the Reserve Bank.

(11) An e-money service provider shall make a written advice to the Reserve Bank of a trust account which shall be used for remitting the dormant funds in subregulation (2) and receiving the claimed funds in subregulation (8) at all times.

(12) An e-money service provider shall ensure that claimants are refunded their money through an e-money account registered in their name on the e-money service provider's platform, or, if they do not hold an account with that service provider, through physical cash made through a cash out transaction conducted on behalf of the claimant, or through any other appropriate means.

(13) All funds in the unclaimed funds accounts at the Reserve Bank that remain unclaimed after a period of 7 years shall be transferred to the main Government account at the Reserve Bank.

11.— (1) The following shall not be subject to attachments, garnishee orders or seizures or claims by an issuer's creditors or be available for distribution by a liquidator to the issuer's creditors in the event of winding-up or liquidation of the e-money service provider—

- (a) funds held in trust accounts;
- (b) interest earned in trust accounts;
- (c) unclaimed balances accounts at the Reserve Bank; and
- (d) an e-service provider's minimum capital.

Restriction against creditor claims, garnishee orders, seizures and attachments

(2) For purposes of this Regulation, 'winding-up' means any of the following proceedings in relation to an e-money service provider—

- (a) a winding-up order by a third party;
- (b) a resolution for voluntary winding-up; or
- (c) entry of the institution into administration.

PART V—TECHNICAL REQUIREMENTS

12.— (1) At a minimum, an e-money service provider shall ensure that—

(a) the system employed uses secure transaction authentication methods, including personal identification numbers (PINs), passwords, smart cards, biometrics and digital certificates, based on its assessment of risk;

Minimum standards on security, messaging and data protection

(b) all transactions on an account are being permitted only by validation through a minimum of two factor authentication which is a combination of a customer's personal identification number (PIN) and account, phone or card number, or other secure combinations;

(c) the system used by the service is designed to reduce the likelihood of unauthorized users initiating transactions and that customers fully understand the risks associated with use of the service;

(d) the system maintains an audit trail to facilitate detection of errors, fraud and tempering incidences and their proper documentation;

(e) appropriate measures are in place to promote adequate segregation of duties, roles, responsibilities and rights of different categories of users of the system, and between the business and technical functions; and

(f) use up to date firewall and intrusion detection systems to avoid direct connection between the internet and the e-money service providers' systems.

(2) An e-money service provider shall ensure that appropriate measures are in place to protect the data integrity of payment transactions, records and information and the systems should use up-to-date data encryption and messaging standards at all stages of transaction processing.

(3) An e-money service provider shall uphold privacy and confidentiality of customer data and adhere to up-to-date standards in relation to data and privacy protection.

(4) The terms and conditions of the use of the e-money service shall disclose conditions under which customer data will be kept and used.

Interoperability
of e-money
services

13.— (1) An e-money service provider shall employ systems capable of being interoperable with other payment systems in Malawi and internationally.

(2) An e-money service provider shall in addition to these Regulations, comply with the Interoperability of Retail Payment Services Directive (2017) related to its operations and services.

(3) Notwithstanding subregulation (2), the Reserve Bank reserves the right to order interoperability and non-exclusivity from an e-money service provider at any given time, upon providing the e-money service provider with notice and reasonable time to conform to the order or directive as determined by the Reserve Bank.

Risk
Management,
disaster
recovery and
business
continuity

14.— (1) An e-money service provider shall ensure that it has—

- (a) effective capacity;
- (b) business continuity;
- (c) disaster recovery sites;
- (d) back-up arrangements; and
- (e) incident response and contingency plans,

to ensure continuous availability of services and to help manage, contain and minimize problems arising from unexpected events, both internal and external, that may hamper provision of services.

(2) An e-money service provider shall ensure regular testing of its contingency facilities and maintain proper infrastructure and schedules for backing up data for the purpose of business continuity.

(3) An e-money service provider shall adopt and implement risk mitigation plans to address risks that arise in the operations of the service.

(4) An e-money service provider shall comply with any risk management requirements including technical standards that may be issued by the Reserve Bank.

Requirement
for information
systems audit

15.— (1) An e-money service provider shall ensure that the system it operates is subjected to an information systems audit conducted by a certified external systems auditor on an annual basis.

(2) The systems audit in subregulation (1) shall cover areas such as security, data protection, risk management, disaster recovery and business continuity, and compliance to internationally recommended standards in these areas.

(3) An e-money service provider shall submit the results of the systems audit in subregulations (1) and (2) to the Reserve Bank within three months after the end of the e-money service provider's financial year.

PART VI - OPERATIONAL REQUIREMENTS

16.— (1) An e-money service provider shall be required to put in place and maintain processes, procedures and documentation that support the e-money service. Transaction and user records

(2) An e-money service provider shall put in place a system to maintain accurate and complete records of e-money issued, the identity of e-money account holders, transactions undertaken by e-money holders and the individual and aggregate balances held by e-money holders and the actions of all users of the system.

(3) The document generated pursuant to subregulations (1) and (2) shall be made available for inspection by the Reserve Bank.

17.— (1) An e-money service provider shall implement a system that has capacity to provide finality and completion of a transaction. Transaction processing

(2) An e-money service provider shall ensure that transactions are performed only when the system is up and running.

(3) An e-money service provider, where feasible, shall utilize a functionality to enable a customer initiating a transaction to verify the name and number of the intended recipient of the funds for confirmation before a transaction is completed.

(4) All transactions shall have, at a minimum, the following data features which are made available to both the system and the user—

(a) transaction amount;

(b) transaction type;

(c) transaction date and time;

(d) transaction fees and charges;

(e) transaction reference number;

(f) agent details, if applicable;

(g) customer identification details; and

(h) where a mobile handset and SIM are used to effect the transaction, the mobile number associated with that SIM.

(5) Users shall get immediate value and notification for every successful transaction.

(6) The system shall produce error messages to the payer for every failed transaction indicating the reason for the failure.

(7) An e-money service provider shall provide an account statement of previous transactions, in either electronic form or hard copies if requested by customers.

(8) All transaction records shall be retained in electronic form for a period of at least seven years.

Transaction
limits

18.— (1) The Reserve Bank shall prescribe limits on transaction values and balance limits on e-money accounts for following categories of users—

- (a) individual subscribers; and
- (b) agents.

(2) The actual transaction limits in subregulation (1) shall be as provided in the Second Schedule hereto.

(3) E-money accounts for corporate bodies shall be exempted from transaction and balance limits.

(4) An e-money service provider shall put in place appropriate measures that prevent processing of transactions that are above the prescribed limits or that exceed the set account balances, and shall ensure that customers are aware of the transaction and balance limits.

(5) Inward receipts into the mobile money account such as from a cash-in or a person-to-person transaction shall only count against the account balance limit but not for transaction limits.

(6) For purposes of this Regulation, 'transaction limits' means limits for total value of transactions originating from a mobile money account and involving a transfer of e-value out of that account.

Notification of
significant
changes to the
e-money
service

19.— (1) An e-money service provider shall notify the Reserve Bank of any intention to effect a significant change to the nature, scope, rules, procedures and operations of its services at least 30 days before the intended implementation date thereof.

(2) For purposes of this Regulation, significant changes include—

- (a) change in electronic delivery mechanism used to provide services;
- (b) introduction of new services offered on the platform;
- (c) change in the ownership of the e-money service provider,
- (d) change in partnership agreements with entities used to provide services;
- (e) merger or acquisition of two or more e-money service providers;
- (f) notable changes in transaction volume;
- (g) notable changes in the size of agent network; and
- (h) changes in rules and procedures that impact on the delivery of the services, its users and other market players.

PART VII – AGENTS

Agent recruit-
ment and
registration

20.— (1) An e-money service provider may recruit business entities or natural persons as agents to facilitate business activities with customers.

(2) An e-money service provider shall be responsible for the conduct of its agents who shall execute all activities under the authority of the e-money service provider.

(3) An e-money service provider shall carry out due diligence on its agents and identify the agent by obtaining the following information—

(a) verifiable name, address, signature or bio-data where the proposed agent is an individual; and

(b) in the case of agents who are registered business entities—

(i) copies of certificate of registration or incorporation;

(ii) copies of memorandum and articles of association;

(iii) board approval to participate in the e-money agency arrangement; or

(iv) physical address of head office and list of branches, agencies, or kiosks if applicable.

(4) An e-money service provider shall ensure that each of its agents is assigned a unique identification number and shall maintain an up-to-date register of its agents' details.

21.— (1) An e-money service provider shall enter into an a contract with an agent that lays down responsibilities of both parties.

Agent
contract and
functions

(2) An e-money service provider shall submit a copy of the agent contract to the Reserve Bank for notification including any subsequent amendments thereto.

(3) The e-money service provider shall ensure that its agents—

(a) conduct cash-in and cash-out in exchange of e-money and other e-money related services as identified by the e-money service provider, which may include acceptance of payments for utility bills, loan payments and disbursement and salaries for partner entities of the e-money service;

(b) maintain sufficient liquidity to honor cash-out obligations to its customers;

(c) when registering new customers, perform the relevant Know-Your-Customer and customer due diligence requirements;

(e) display tariffs and charges as provided by the e-money service provider, as well as agent identification number and toll-free customer service number in a conspicuous place;

(f) do not charge any additional fees or tariffs to customers above those specified by the e-money service provider;

(g) customers are not charged transaction fees directly by the agents;

(h) do not conduct customer transactions when the system is down.

(4) The Reserve Bank may request an e-money service provider to remove an agent from its register if the Reserve Bank has—

(a) received and verified adverse information on the agent that may affect the provision of e-money services;

(b) reason to believe that the e-money service provider has not carried out proper due diligence on the agent; and

(c) reasonable grounds to suspect that its connection with the provision of services through the agent—

(i) is involved in, or has attempted to be involved in money laundering or terrorist financing; or

(ii) the risk of such activities in subparagraph (i) taking place would be increased through the continued employment of the agent.

(5) Agents and partners shall not be contractually limited to act as agents of only one e-money service provider and the agreements between e-money service provider and its agents or partners shall not include exclusivity clauses.

(6) Where the Reserve Bank suspends or revokes the licence or authorization of an e-money service provider, all its agents shall immediately cease to provide services on behalf of that agent.

Training and supervision of agents

22.—An E-money service provider shall be responsible for the provision of appropriate training and supervision of its agents, which shall include the following—

(a) use of the e-money system for conducting all agent activities;

(b) customer due diligence that adequately covers anti-money laundering and Know-Your-Customer requirements;

(c) knowledge to provide customer support and education;

(d) monitoring of agent liquidity; and

(e) handling of customer complaints.

Submission of data and information to the Reserve Bank

PART VIII – OVERSIGHT BY THE RESERVE BANK OF MALAWI

23.— (1) An e-money service provider shall submit to the Reserve Bank, data and information in respect of the operations of the e-money services and compliance with the prevailing legal, regulatory and oversight requirements.

(2) An e-money service provider shall provide the information required under subregulation (1) on periodic or ad hoc basis in such form, and verified in such manner, as the Reserve Bank may prescribe from time to time.

(3) Notwithstanding subregulation (2), for oversight purposes and in the interest of modernising the data collection processes, an e-money service provider may be required to provide online read-only access to its e-money transactions data to the Reserve Bank to help ensure quality, accuracy, scope, timeliness and ease of submission of the transaction data as generated by the e-money service provider.

(4) Notwithstanding subregulations (1) to (3), an e-money service provider shall submit to the Reserve Bank—

(a) a record of interest earned in the trust accounts as part of its monthly reporting;

(b) a written notification to the Reserve Bank of any distribution of the interest in subregulations 8 (4) and 8 (5) at the end of each quarter;

(c) a certified copy of the audit report on the trust accounts in regulation 7 (7) (g) and the distribution of interest earned in the trust accounts in regulation 8 (4) and (5) on an annual basis;

(d) a certified copy of the information systems audit report in regulation 15, on an annual basis;

(e) the total number of dormant accounts and total value of the funds in the dormant accounts from the preceding 12 months in regulation 9, as part of its monthly reporting;

(f) any material changes in the e-money service in regulation 19;

(g) any indications of suspected or confirmed fraud, security breaches, material service interruption or other significant issues that may affect the safety and efficiency of the e-money service; and

(h) any indications of breach, compromise and loss of confidential data.

(5) An e-money service who contravenes subregulations (1) to (3), or who provides misleading or false information to the Reserve Bank commits an offense and shall on conviction be liable to a fine of ten million Kwacha (K10,000,000.00) and to imprisonment for four years.

PART IX: CONSUMER PROTECTION AND DISPUTE RESOLUTION

24.— (1) An e-money service provider shall adopt market conduct and consumer protection measures that comply with principles of—

Requirements
on consumer
protection

(a) price transparency;

(b) full disclosure of information;

(c) protection of customer assets;

(d) protection of personal information;

(e) access to recourse mechanisms;

(f) provision of customer advice; and

(g) availability of terms and conditions of use of the service in plain language or language understood by the customer.

(2) At a minimum, an e-money service provider shall make available to new account holders the following information upon opening their e-money accounts—

(a) that e-money may be redeemed at any time at par value to the Malawi Kwacha;

(b) the available features, functionalities and products to enable customers to effectively use the service and manage their e-money accounts;

(c) the applicable and prevailing fees and charges related to their use of the service;

(d) terms and conditions applicable to the use of the e-money service; and

(e) available customer care procedures for complaints handling, including, customer care contact numbers and other contact details for the e-money service provider.

Dispute
resolution
mechanisms

25.— (1) An e-money service provider shall put in place a complaints handling and dispute resolution mechanism to handle complaints from its customers and agents, which shall include a toll-free phone number.

(2) An e-money service provider shall ensure that information about procedures for handling customer complaints is easily available to its users.

(3) An e-money service provider shall designate members of staff to handle customer complaints and disputes relating to the service.

(4) An e-money service provider shall submit its complaints handling and dispute resolution procedures to the Reserve Bank for oversight purposes.

(5) A customer or agent that is not satisfied with a resolution of a complaint by an e-money service provider, may notify the e-money service provider.

(v) in the event that the customer or agent is not satisfied with the resolution provided by the e-money service provider as provided subregulation (1), the e-money service provider shall refer the matter to the Reserve Bank within forty eight (48) hours from the date of the complaint.

PART X – ENFORCEMENT

Monetary
penalties

26.— (1) An e-money service provider which fails to comply with these Regulations and for which no fine or penalty is specifically defined, commits an offence and shall on conviction be liable to a penalty of ten million Kwacha (K10,000,000.00).

(2) The Reserve Bank shall—

(a) notify the e-money service provider in writing stating the nature and the decision of the Reserve Bank on any violation;

(b) debit the applicable penalty fee from the main account of the e-money service provider maintained at the Reserve Bank, in the case of a bank; and

(c) make all necessary arrangements to ensure that an e-money service provider which is not a bank pays the penalty fee to the Reserve Bank.

Administrative
penalties

27. The Reserve Bank may impose administrative penalties, sanctions and enforcement action for violation of any of these Regulations including any or all of the following on an e-money service provider or its board of directors or managing officers—

(a) a written warning concerning the violation;

(b) prohibition from offering or operating the e-money services;

(c) prohibition from introducing new products or services or from expanding existing products or services determined to be contributing to the violation;

(d) direct an e-money service provider or its board of directors or managing officers to do a specified act or refrain from doing a specified act for one or more of the following purposes—

(i) remedy the effects of contravention;

(ii) compensate any person who has suffered loss because of the contravention; or

(iii) ensure that the e-money service provider or its board of directors or managing officers does not commit further contraventions; or

(e) recommend to the board of directors of the e-money service provider termination of employment of an officer.

PART XI — CESSATION OF E-MONEY SERVICES

28. — (1) An e-money service provider wishing to cease provision of e-money services shall notify the Reserve Bank in writing regarding the intention for the discontinuation ninety (90) days before ceasing its operations. Prior notification before cessation of services

(2) The Reserve Bank may order an e-money service provider to take any relevant action prior to withdrawing from the e-money service business.

FIRST SCHEDULE

(reg. 8)

GUIDELINES ON PAYMENT OF INTEREST EARNED IN E-MONEY TRUST ACCOUNTS TO CUSTOMER ACCOUNTS

GENERAL REQUIREMENTS

1. — (1) An e-money service provider shall, in relation to management of trust accounts, observe the following—

(a) keep in a separate bank account the interest earned in the trust account at each bank hosting such a trust account;

(b) ensure that the interest earned in the trust accounts is capitalized and transferred to the interest account on a monthly basis;

(c) maintain accurate and up-to-date records of the balances and interest earned in the trust accounts;

(d) distribute 95% of the total interest earned in the trust accounts to their customers, net of any standard fees or charges related to the administration of the accounts as applied by the banks;

(e) retain 5% of the total interest accrued in the trust accounts, net of any standard fees or charges related to the administration of the accounts;

(f) distribute the interest earned in the trust accounts on a quarterly basis and

ensure that customers receive their payments by the 14th calendar day of the month following the end of each quarter; and

(g) notify their customers each time interest has been paid at the end of each quarter.

(2) E-money accounts for institutions, corporate bodies, businesses, merchants and agents shall be excluded from receiving the interest, subject to any amendment that may be made to these Guidelines.

(3) All interest amounts existing (either capitalized or accrued) for six months prior to the time of coming into effect of these Regulations shall be included in the total amount available at the first distribution of the interest.

(4) an e-money service provider shall submit to the Reserve Bank—

(a) a record of interest earned in all its Trust Accounts, as part of its monthly reporting;

(b) at the end of each quarter, a written summary of the distribution of the interest, within 14 calendar days from the date of distribution; and

(c) annually, a certified copy of the audit report by an independent auditor on the distribution of the interest earned in all its Trust Accounts. The audit report shall be submitted by the end of the first quarter at the end of each calendar year.

FEES AND CHARGES PASSED IN TRUST ACCOUNT

2. — (1) A Bank hosting a trust account may deduct the following types of account fees and charges from the account—

(a) monthly account service fees;

(b) withholding tax on interest income or any other statutory tariffs applicable from time to time;

(c) bulk payment or transaction fees when distributing the interest;

(d) expenses for the annual audit exercise on the Trust Accounts; and

(e) any other charges as approved by the Reserve Bank from time to time.

(2) The Bank shall not deduct any other fees costs and charges other than those stipulated in subparagraph (1)

CRITERIA FOR DISTRIBUTION OF INTEREST TO CUSTOMER ACCOUNTS

3. — (1) The distribution of the interest to customers shall be based on the daily average balances of individual e-money accounts using the following formula—

Proportion for Customer X

$$= \frac{\text{Total Interest earned} \times [95\%] \times (\text{Average daily balances of Customer X})}{\text{Total average daily balances of all Customers}}$$

(2) Average daily balances (numerator) in paragraph (1) for a customer shall be arrived at by summing their end of day balances for the relevant quarter and dividing by number of days in that period.

(3) Total average daily balances (denominator) in paragraph (1) shall be arrived at by summing all customers' average daily balances for the quarter, excluding balances for types of e-money accounts specified in paragraph 1 (2)

(4) At the end of each quarter, the e-money service provider shall consolidate or transfer the balance in all the interest accounts from all banks hosting Trust Accounts into one of the interest accounts.

(5) The e-money service provider shall transfer the total amount of interest consolidated in the interest account in paragraph 3(4) into one of the Trust Accounts held at one of the banks from where the distribution into e-money accounts shall be effected in accordance with these Guidelines

(6) An E-money service provider shall give notice in writing to the Reserve Bank of one interest account at one of the banks hosting a Trust Account which shall be used for the purpose in paragraph 3 (4)

STAKEHOLDER ROLES AND RESPONSIBILITIES

4. — (1) In addition to its other oversight roles and responsibilities over payment systems in general, the Reserve Bank shall—

(a) advocate for publicity of relevant information regarding the policy on distribution of interest earned from the Trust Accounts, including the formula used;

(b) ensure that funds held in the Trust Accounts are legally protected from creditors' and other third party claims in the event of insolvency or administration proceedings of the e-money service provider;

(c) ensure that e-money service provider and the relevant banks submit monthly and ad-hoc reports on interest earned and/or distributed, and other information in implementation of these Guidelines; and

(d) monitor operations and management of the Trust Accounts and the interest accounts on a regular basis.

(2) The e-money service providers shall—

(a) submit to the Reserve Bank terms of interest rate applicable on the Trust Account as and when they are negotiated with the commercial banks;

(b) ensure publicity of the policy on distribution of the interest earned in the Trust Accounts to their customers; and

(c) ensure at any given period that the necessary automated tools and mechanisms are employed to facilitate accurate calculation of the amount to be apportioned to each e-money account in distribution of the interest in accordance with these Guidelines.

(3) A commercial bank hosting a Trust Account shall—

(a) ensure that Trust Accounts opened by an e-money service provider have separate accounts to cater for the interest earned in them;

(b) ensure that interest earned in the Trust Account is credited to the Interest Accounts in subparagraph (a) on a monthly basis; and

(c) Provide to the Reserve Bank statements and other information related to the operations and management of the trust and interest accounts as the Reserve Bank may request.

(4) Banks providing e-money services that employ electronic or mobile wallet features shall—

(a) adhere to all requirements regarding operations and management of Trust Accounts and the associated interest accounts including distribution of the interest to the relevant e-money accounts of their customers in accordance with these Guidelines; and

(b) be allowed to maintain own trust accounts and hold 100% of the total value.

SECOND SCHEDULE

(reg.18)

TRANSACTION AND BALANCE LIMITS FOR MOBILE MONEY ACCOUNTS

TRANSACTION AND ACCOUNT BALANCE LIMIT

1. E-money service providers shall apply and observe the following limits on total daily transaction values and balances on mobile money accounts—

(a) Maximum transaction limit of—

- (i) K750,000.00 per day for personal subscriber accounts;
- (ii) K20,000,000.00 per day for agents; or
- (iii) K100,000,000.00 per day for merchants.

(b) Account balance limit of—

- (i) K1,000,000.00 on personal subscriber accounts;
- (ii) K25,000,000.00 on agent accounts; or
- (iii) K100,000,000.00 for merchants.

EXEMPTION TO TRANSACTION AND ACCOUNT BALANCE LIMITS

2. The following categories of mobile money accounts shall have no transaction and balance limits applied to them—

- (a) Super agents;
- (b) Billers and utility companies; and
- (c) Corporate bodies.

INWARD RECEIPTS NOT INCLUDED

3. Inward receipts into mobile money accounts such as cash-in or a person-to-person transaction shall only count against the account balance limit but not for transaction limits.

Made this 29th day of April, 2019.

GOODALL E. GONDWE
Minister of Finance and Economic
Planning and Development

(FILE NO. FIN/PFSPD/03/03)