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GOVERNMENT GAZETTE

STAATSKOERANT

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OFFICE OF THE PRESIDENT

No. 1382.

28 October 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 78 of 1998: National Payment System Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1382.

28 Oktober 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 78 van 1998: Nasionale Betalingstelselwet, 1998.

*(English text signed by the President.)
(Assented to 20 October 1998.)*

ACT

To provide for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa; and to provide for connected matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context otherwise indicates—
 - (i) **“bank”** means a bank as defined in section 1 of the Banks Act; (i)
 - (ii) **“Banks Act”** means the Banks Act, 1990 (Act No. 94 of 1990); (ii)
 - (iii) **“branch of a foreign institution”** means a branch by means of which a foreign institution conducts the business of a bank in the Republic in terms of a written authorisation granted by the Registrar of Banks in terms of section 18A of the Banks Act; (xv) 25
 - (iv) **“clear”** or **“clearing”** means the exchange of payment instructions; (xix)
 - (v) **“money”** means a banknote or coin issued by the Reserve Bank in terms of section 10(1)(a)(iii), read with section 14 of the South African Reserve Bank Act; (viii) 30
 - (vi) **“mutual bank”** means a mutual bank as defined in section 1 of the Mutual Banks Act; (x)
 - (vii) **“Mutual Banks Act”** means the Mutual Banks Act, 1993 (Act No. 124 of 1993); (xxi) 35
 - (viii) **“netting”** means the determination of the nett payment obligations between two or more system participants within a payment clearing house or the determination of the nett settlement obligations between two or more system participants within the payment system; (ix) 40

(Engelse teks deur die President geteken.)
(Goedgekeur op 20 Oktober 1998.)

WET

Om voorsiening te maak vir die bestuur, administrasie, bedryf en regulering van en toesighouding oor betaling-, verrekening- en vereffeningstelsels in die Republiek van Suid-Afrika; en om voorsiening te maak vir verbandhoudende aanleenthede.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

INHOUD VAN WET

- | | |
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| | 1. Woordomskrywing |
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| | 3. Betalingstelselbestuursliggaam |
| | 4. Oogmerke en reëls van betalingstelselbestuursliggaam |
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Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- | | |
|----|---|
| | (i) “bank” ’n bank soos omskryf in artikel 1 van die Bankwet; (i) |
| | (ii) “Bankwet” die Bankwet, 1990 (Wet No. 94 van 1990); (ii) |
| 25 | (iii) “betalingsinstruksie” ’n instruksie aan ’n stelseldeelnemer om fondse oor te dra of om ’n betaling te maak; (x) |
| | (iv) “betalingstelsel” ’n stelsel wat die maak van betalings tussen ’n betaler en ’n begunstigde moontlik maak; (xii) |
| | (v) “betalingstelselbestuursliggaam” ’n liggaam wat ingevolge artikel 3(1) deur die Reserwebank erken is; (xiii) |
| 30 | (vi) “betalingsverpligting” ’n verpligting wat deur een stelseldeelnemer aan ’n ander verskuldig is as gevolg van die verrekening van een of meer betalingsinstruksies; (xi) |
| | (vii) “betalingsverrekeningshuis” ’n reëling tussen twee of meer stelseldeelnemers wat die verrekening van betalingsinstruksies tussen daardie stelseldeelnemers beheer; (ix) |
| 35 | (viii) “geld” ’n banknoot of munt wat ingevolge artikel 10(1)(a)(iii), saamgelees met artikel 14 van die Wet op die Suid-Afrikaanse Reserwebank, deur die Reserwebank uitgereik is; (v) |

- (ix) **"payment clearing house"** means an arrangement between two or more system participants governing the clearing of payment instructions between those system participants; (vii)
- (x) **"payment instruction"** means an instruction to a system participant to transfer funds or make a payment; (iii) 5
- (xi) **"payment obligation"** means an indebtedness that is owed by one system participant to another as a result of the clearing of one or more payment instructions; (vi)
- (xii) **"payment system"** means a system that enables payments to be effected between a payer and a beneficiary; (iv) 10
- (xiii) **"payment system management body"** means a body recognised by the Reserve Bank in terms of section 3(1); (v)
- (xiv) **"person"** includes any partnership; (xi)
- (xv) **"Reserve Bank"** means the South African Reserve Bank referred to in section 2 of the South African Reserve Bank Act; (xii) 15
- (xvi) **"settlement instruction"** means an instruction given to the settlement system by a system participant or by a payment clearing house to effect settlement of one or more payment obligations or to discharge any other obligation of one system participant to another system participant; (xvi)
- (xvii) **"settlement obligation"** means an indebtedness that is owed by one system participant to another as a result of one or more settlement instructions; (xviii) 20
- (xviii) **"settlement system"** means a system established and operated by the Reserve Bank for the discharge of payment and settlement obligations between system participants; (xvii)
- (xix) **"South African Reserve Bank Act"** means the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); (xx) 25
- (xx) **"system operator"** means a person authorised by the payment system management body to provide clearing processing services on behalf of two or more system participants or a payment clearing house; (xiv)
- (xxi) **"system participant"** means a member of the payment system management body. (xiii) 30

Powers and duties of Reserve Bank regarding payment system

2. (1) The Reserve Bank, as contemplated in section 10(1)(c) of the South African Reserve Bank Act, may exercise the powers and must perform the duties conferred and imposed on it by this Act. 35

(2) The board of directors of the Reserve Bank may, in writing and on such conditions as the board considers necessary—

- (a) delegate to any officer of the Reserve Bank any power conferred on the Reserve Bank by this Act; or
- (b) authorise any such officer to perform any duty imposed on the Reserve Bank by this Act. 40

(3) Any delegation of a power or authorisation to perform a duty under subsection (2)—

- (a) does not prevent the board of directors of the Reserve Bank from exercising that power or performing that duty; and
- (b) may at any time be withdrawn in writing by that board. 45

Payment system management body

3. (1) Subject to subsection (2), the Reserve Bank may recognise a payment system management body established with the object of organising, managing and regulating the participation of its members in the payment system. 50

(2) The Reserve Bank may recognise a payment system management body as contemplated in subsection (1) if that Bank is satisfied that—

- (a) the payment system management body, as constituted, fairly represents the interests of all banks, mutual banks and branches of foreign institutions participating in the payment system; 55
- (b) the deed of establishment or constitution, as the case may be, and the rules of the payment system management body, including the rules relating to admission as members of that body, are fair, equitable and transparent; and

- (ix) **"nettoberekening"** die bepaling van die netto betalingsverpligtinge tussen twee of meer stelseldeelnemers binne 'n betalingsverrekeningshuis of die bepaling van die netto vereffeningsverpligtinge tussen twee of meer stelseldeelnemers binne die betalingstelsel; (viii)
- 5 (x) **"onderlinge bank"** 'n onderlinge bank soos omskryf in artikel 1 van die Wet op Onderlinge Banke; (vi)
- (xi) **"persoon"** ook enige vennootskap; (xiv)
- (xii) **"Reserwebank"** die Suid-Afrikaanse Reserwebank bedoel in artikel 2 van die Wet op die Suid-Afrikaanse Reserwebank; (xv)
- 10 (xiii) **"stelseldeelnemer"** 'n lid van die betalingstelselbestuursliggaam; (xxi)
- (xiv) **"stelseloperator"** 'n persoon wat deur die betalingstelselbestuursliggaam gemagtig is om verrekeningsverwerkingsdienste namens twee of meer stelseldeelnemers of 'n betalingsverrekeningshuis te lewer; (xx)
- (xv) **"tak van 'n buitelandse instelling"** 'n tak deur middel waarvan 'n buitelandse instelling, ingevolge 'n skriftelike magtiging wat ingevolge artikel 18A van die Bankwet deur die Registrateur van Banke toegestaan is, in die Republiek die bedryf van 'n bank uitoefen; (iii)
- 15 (xvi) **"vereffeningsinstruksie"** 'n instruksie wat 'n stelseldeelnemer of 'n betalingsverrekeningshuis aan die vereffeningstelsel gerig het om die vereffening van een of meer betalingsverpligtinge te bewerkstellig of om enige ander verpligting van een stelseldeelnemer teenoor 'n ander stelseldeelnemer te vereffen; (xvi)
- (xvii) **"vereffeningstelsel"** 'n stelsel wat deur die Reserwebank opgerig is en bedryf word ten einde die vereffening van betalings- en vereffeningverpligtinge tussen stelseldeelnemers te bewerkstellig; (xviii)
- 25 (xviii) **"vereffeningsverpligting"** 'n verpligting wat een stelseldeelnemer aan 'n ander verskuldig is as gevolg van een of meer vereffeninginstruksies; (xvii)
- (xix) **"verreken"** of **"verrekening"** die uitruiling van betalingsinstruksies; (iv)
- (xx) **"Wet op die Suid-Afrikaanse Reserwebank"** die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989); (xix)
- 30 (xxi) **"Wet op Onderlinge Banke"** die Wet op Onderlinge Banke, 1993 (Wet No. 124 van 1993). (vii)

Bevoegdhede en pligte van Reserwebank betreffende betalingstelsel

- 2. (1) Die Reserwebank, soos beoog in artikel 10(1)(c) van die Wet op die Suid-Afrikaanse Reserwebank, kan die bevoegdhede uitoefen en moet die pligte verrig wat by hierdie Wet aan hom verleen en opgelê word.
- (2) Die raad van direkteure van die Reserwebank kan, skriftelik en op die voorwaardes wat die raad nodig ag—
- 40 (a) enige bevoegdheid by hierdie Wet aan die Reserwebank verleen, aan enige beampte van die Reserwebank delegeer; of
- (b) enige sodanige beampte magtig om enige plig by hierdie Wet aan die Reserwebank opgelê, te verrig.
- (3) Enige delegering van 'n bevoegdheid of magtiging om 'n plig te verrig, kragtens subartikel (2)—
- 45 (a) verhoed nie die raad van direkteure van die Reserwebank om daardie bevoegdheid of plig uit te oefen of te verrig nie; en
- (b) kan te eniger tyd skriftelik deur daardie raad ingetrek word.

Betalingstelselbestuursliggaam

- 3. (1) Behoudens subartikel (2) kan die Reserwebank 'n betalingstelselbestuursliggaam erken wat gestig is met die oogmerk om die deelname van sy lede aan die betalingstelsel te organiseer, te bestuur en te reguleer.
- (2) Die Reserwebank kan 'n betalingstelselbestuursliggaam soos beoog in subartikel (1) erken indien die Reserwebank daarvan oortuig is dat—
- 55 (a) die betalingstelselbestuursliggaam, soos saamgestel, op 'n regverdigde wyse die belange van alle banke, onderlinge banke en takke van buitelandse instellings wat aan die betalingstelsel deelneem, verteenwoordig;
- (b) die akte van oprigting of grondwet, na gelang van die geval, en die reëls van die betalingstelselbestuursliggaam, met inbegrip van die reëls aangaande toelating tot lidmaatskap, regverdig, billik en deursigtig is; en

- (c) it will be enabled to adequately oversee the affairs of the payment system management body and its members in the discharge of the Reserve Bank's responsibilities, specified in section 10(1)(c)(i) of the South African Reserve Bank Act, regarding the monitoring, regulation and supervision of payment, clearing and settlement systems. 5

(3) Only—

- (a) the Reserve Bank; and
- (b) a bank, mutual bank or branch of a foreign institution that complies with the entrance and other applicable requirements laid down in the rules of a payment system management body, 10

may be members of the payment system management body.

(4) No body, member of that body or any other person may participate in the settlement system unless—

- (a) in the case of that body, the body is recognised by the Reserve Bank as a payment system management body in terms of subsection (1); or 15
- (b) in the case of that other person, the person is a member of a payment system management body recognised by the Reserve Bank as contemplated in paragraph (a).

Objects and rules of payment system management body

4.(1) The objects of the payment system management body are to manage and control 20 all matters affecting payment obligations and the clearing or netting of payment obligations and, in connection with those objects—

- (a) to provide a forum for the consideration of matters of policy and mutual interest concerning its members;
- (b) to act as a medium for communication by its members with the South African 25 Government, the Reserve Bank, the Registrar of Banks, the Registrar of Financial Institutions, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and
- (c) to deal with and promote any other matter of interest to its members and to 30 foster co-operation between them.

(2) In addition to any other provisions thereof, the rules of the payment system management body must empower that body—

- (a) to admit members and to regulate, control and terminate membership;
- (b) to constitute, establish or dissolve any body, committee or forum consisting of 35 its members and which has an impact on, interfaces with, has access to or makes use of payment, clearing or settlement systems or operations;
- (c) to—
 - (i) determine the criteria subject to which any person is to be authorised to 40 act as a system operator within the payment system in order to provide specific services to one or more members of the payment system management body or to act on behalf of those members; and
 - (ii) authorise that person as such a system operator in accordance with those criteria; and
- (d) to determine criteria subject to and in accordance with which a member may 45 be authorised to introduce any person to provide payment services.

Settlement provisions

5. (1) In this section “money” means a banknote or coin issued by the Reserve Bank in terms of section 10(1)(a)(iii) read with section 14 of the South African Reserve Bank Act. 50

(2) The discharge of settlement obligations between system participants is effected in money or by means of entries passed through the settlement system.

- (c) die Reserwebank daartoe in staat gestel sal word om behoorlik toesig te hou oor die sake van die betalingstelselbestuursliggaam en sy lede by die nakoming van die Reserwebank se verantwoordelikhede, vermeld in artikel 10(1)(c)(i) van die Wet op die Suid-Afrikaanse Reserwebank, met betrekking tot die monitering en regulering van en toesighouding oor betaling-, verrekening- of vereffeningstelsels.
- (3) Slegs—
- (a) die Reserwebank; en
- (b) 'n bank, onderlinge bank of tak van 'n buitelandse instelling wat voldoen aan die toelatings- en ander toepaslike vereistes neergelê in die reëls van 'n betalingstelselbestuursliggaam, mag lede van die betalingstelselbestuursliggaam wees.
- (4) Geen liggaam, lid van daardie liggaam of enige ander persoon mag aan die vereffeningstelsel deelneem nie tensy—
- (a) in die geval van daardie liggaam, die liggaam ingevolge subartikel (1) deur die Reserwebank as 'n betalingstelselbestuursliggaam erken is; of
- (b) in die geval van daardie ander persoon, die persoon 'n lid is van 'n betalingstelselbestuursliggaam wat soos in paragraaf (a) beoog deur die Reserwebank erken is.

20 Oogmerke en reëls van betalingstelselbestuursliggaam

4. (1) Die oogmerke van die betalingstelselbestuursliggaam is om alle aangeleenthede wat 'n invloed het op betalingsverpligtinge en die verrekening of nettoberekening van betalingsverpligtinge te bestuur en te beheer en om, in verband met daardie oogmerke—
- (a) 'n forum in te stel vir die oorweging van beleidsaangeleenthede en aangeleenthede van gemeenskaplike belang rakende sy lede;
- (b) op te tree as 'n medium vir kommunikasie deur sy lede met die Suid-Afrikaanse Regering, die Reserwebank, die Registrateur van Banke, die Registrateur van Finansiële Instellings, enige finansiële of ander beurs, ander openbare liggame, owerhede en beamptes, die nuusmedia, die algemene publiek en ander private verenigings en instellings; en
- (c) met enige ander aangeleentheid van belang vir sy lede te handel en dit te bevorder en om samewerking tussen hulle te bevorder.
- (2) Benewens enige ander bepalinge daarvan moet die reëls van die betalingstelselbestuursliggaam daardie liggaam magtig—
- (a) om lede toe te laat, en om lidmaatskap te reguleer, te beheer en te beëindig;
- (b) om enige liggaam, komitee of forum wat uit sy lede bestaan en wat 'n invloed het op, aaneenskakel met, toegang het tot of gebruik maak van betaling-, verrekening- of vereffeningstelsels of -bedrywe, saam te stel, in te stel of te ontbind;
- (c) om—
- (i) kriteria te bepaal onderworpe waaraan enige persoon gemagtig word om op te tree as 'n stelseloperateur binne die betalingstelsel ten einde bepaalde dienste aan een of meer lede van die betalingstelselbestuursliggaam te verskaf of ten einde namens sodanige lede op te tree; en
- (ii) ooreenkomstig daardie kriteria daardie persoon as sodanige stelseloperateur te magtig; en
- (d) om kriteria te bepaal onderworpe waaraan en ooreenkomstig waarmee 'n lid gemagtig kan word om enige persoon voor te stel om betalingsdienste te verskaf.

Vereffeningsbepalings

5. (1) In hierdie artikel beteken “geld” 'n banknoot of munt wat ingevolge artikel 10(1)(a)(iii) saamgelees met artikel 14 van die Wet op die Suid-Afrikaanse Reserwebank deur die Reserwebank uitgereik is.
- (2) Die nakoming van vereffeningsverpligtinge tussen stelseldeelnemers moet in geld of deur middel van deur die vereffeningstelsel gekanaliseerde inskrywings plaasvind.

(3) A settlement that has been effected in money or by means of an entry to the credit of the account maintained by the beneficiary system participant with the Reserve Bank for settlement purposes, is a final and irrevocable settlement.

(4) No settlement in terms of a settlement instruction which has been finally and irrevocably effected in terms of subsection (3) may be reversed or set aside. 5

(5) When a system participant is wound up, a copy of—

(a) the application for winding-up, when it is made; and

(b) the subsequent winding-up order,

must be lodged with the Reserve Bank.

(6) When a system participant is wound up, the relevant winding-up order does, 10 despite sections 341(2) and 348 of the Companies Act, 1973 (Act No. 61 of 1973), not affect any settlement that has become final and irrevocable in terms of subsection (3) prior to the lodgement of the copy of that order with the Reserve Bank in terms of subsection (5).

(7) The Reserve Bank may, in consultation with the payment system management 15 body, prescribe by notice in the *Gazette* such conditions, rules or procedures as it considers necessary regarding the issue of settlement instructions and discharge of settlement obligations.

Clearing provisions

6. (1) No person may clear payment instructions unless that person is a system 20 participant.

(2) Any person that contravenes the provisions of subsection (1) is guilty of an offence.

Control of payment intermediation

7. (1) In this section— 25

(a) “**holding company**” means a holding company contemplated in section 1(4) of the Companies Act, 1973 (Act No. 61 of 1973); and

(b) “**subsidiary**” means a subsidiary contemplated in section 1(3) of the Companies Act, 1973.

(2) Subject to subsection (3), no person may as a regular feature of that person’s 30 business accept money or payment instructions from any other person for purposes of making payment on behalf of that other person to a third person to whom that payment is due, unless the person so accepting money or payment instructions—

(a) is a system participant;

(b) is a person introduced by a system participant in accordance with criteria 35 determined in terms of section 4(2)(d);

(c) is the postal company as defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958), or the Post Office Savings Bank established by section 52 of that Act; or

(d) is a person or one of a category of persons exempted by the Minister of 40 Finance in terms of subsection (4).

(3) Subsection (2) may not be construed as prohibiting the acceptance of money or payment instructions—

(a) by any person acting as the duly appointed agent of the person to whom the 45 payment is due;

(b) by a holding company from its subsidiary, or by a subsidiary from its holding company, or by one subsidiary from another subsidiary of the same holding company; or

(c) for purposes of the effecting of a money lending transaction by an agent or a 50 mandatory as contemplated in paragraph (ff) or (gg), respectively, of the definition of “the business of a bank” in section 1 of the Banks Act.

(4) The Minister of Finance may, after consultation with the Reserve Bank and the payment system management body, by notice in the *Gazette* and subject to such conditions as the Minister may determine, exempt any person or category of persons 55 from the provisions of subsection (2) if the Minister is satisfied that such exemption will be in the public interest and will not cause undue risk to the payment system.

- (3) 'n Vereffening wat uitgevoer is in geld of deur middel van 'n inskrywing tot die krediet van die rekening wat 'n begunstigde stelseldeelnemer by die Reserwebank in stand hou vir vereffeningsdoeleindes, is 'n finale en onherroeplike vereffening.
- (4) Geen vereffening ingevolge 'n vereffeningsinstruksie wat ingevolge subartikel 5 (3) finaal en onherroeplik uitgevoer is, mag omgekeer of tersyde gestel word nie.
- (5) Wanneer 'n stelseldeelnemer gelikwideer word, moet 'n afskrif van—
- (a) die aansoek om likwidasië, wanneer dit gedoen word; en
 - (b) die daaropvolgende likwidasiëbevel,
- by die Reserwebank ingedien word.
- 10 (6) Wanneer 'n stelseldeelnemer gelikwideer word, het die tersaaklike likwidasiëbevel, ondanks artikels 341(2) en 348 van die Maatskappywet, 1973 (Wet No. 61 van 1973), geen uitwerking op enige vereffening wat ingevolge subartikel (3) finaal en onherroeplik geword het voor die indiening, ingevolge subartikel (5), van die afskrif van daardie bevel by die Reserwebank nie.
- 15 (7) Die Reserwebank kan, in oorleg met die betalingstelselbestuursliggaam, die voorwaardes, reëls of prosedures wat dit nodig ag met betrekking tot die uitreiking van vereffeningsinstruksies en die nakoming van vereffeningsverpligtinge, by kennisgewing in die *Staatskoerant* voorskryf.

Verrekeningsbepalings

- 20 6. (1) Geen persoon mag betalingsinstruksies verreken nie, tensy daardie persoon 'n stelseldeelnemer is.
- (2) Enige persoon wat die bepaling van subartikel (1) oortree, is aan 'n misdryf skuldig.

Beheer van betalingsbemiddeling

- 25 7. (1) In hierdie artikel beteken—
- (a) “**filiaal**” 'n filiaal beoog in artikel 1(3) van die Maatskappywet, 1973 (Wet No. 61 van 1973); en
 - (b) “**houermaatskappy**” 'n houermaatskappy beoog in artikel 1(4) van die Maatskappywet, 1973.
- 30 (2) Behoudens subartikel (3), mag geen persoon as 'n staande kenmerk van daardie persoon se besigheid geld of betalingsinstruksies van 'n ander persoon aanvaar vir die doel om namens sodanige ander persoon 'n betaling aan 'n derde persoon aan wie sodanige betaling verskuldig is, te maak nie, tensy die persoon wat aldus geld of betalingsinstruksies aanvaar—
- 35 (a) 'n stelseldeelnemer is;
 - (b) 'n persoon is wat, ooreenkomstig kriteria ingevolge artikel 4(2)(d) bepaal, deur 'n stelseldeelnemer voorgestel is;
 - (c) die posmaatskappy soos omskryf in artikel 1 van die Poswet, 1958 (Wet No. 44 van 1958), of die Posspaarbank ingestel by artikel 52 van daardie Wet is;
 - 40 (d) 'n persoon of een van 'n kategorie persone is wat ingevolge subartikel (4) deur die Minister van Finansies vrygestel is.
- (3) Subartikel (2) word nie so uitgelê dat dit die aanvaarding van geld of betalingsinstruksies—
- 45 (a) deur iemand wat optree as die behoorlik aangestelde agent van die persoon aan wie die betaling verskuldig is;
 - (b) deur 'n houermaatskappy van sy filiaal, of deur 'n filiaal van sy houermaatskappy, of deur een filiaal van 'n ander filiaal van dieselfde houermaatskappy; of
 - 50 (c) vir doeleindes van die bewerkstelling van 'n geldleningstransaksie deur 'n agent of 'n lashebber soos onderskeidelik beoog in paragraaf (ff) of (gg) van die omskrywing van “die bedryf van 'n bank” in artikel 1 van die Bankwet, verbied nie.
- (4) Die Minister van Finansies kan, na oorleg met die Reserwebank en die
- 55 betalingstelselbestuursliggaam, by kennisgewing in die *Staatskoerant* en onderworpe aan die voorwaardes wat die Minister bepaal, enige persoon of kategorie persone van die bepaling van subartikel (2) vrystel indien die Minister daarvan oortuig is dat sodanige vrystelling in die openbare belang sal wees en nie oormatige risiko vir die betalingstelsel sal meebring nie.

(5) Any person that contravenes the provisions of subsection (2) is guilty of an offence.

Netting agreements and netting rules

8. (1) The provisions of this section apply despite anything to the contrary in the law relating to insolvency or in the Banks Act or the Mutual Banks Act. 5

(2) If a system participant is wound up or placed under judicial management or a curator is appointed to a system participant, any provision contained in a written netting agreement to which that system participant is a party, or any netting rules and practices applicable to the system participant, is binding upon the liquidator, judicial manager or curator, as the case may be, in respect of any payment or settlement obligation— 10

(a) which has been determined through netting prior to the issue of the winding-up order or judicial management order or the appointment of the curator, as the case may be; and

(b) which is to be discharged on or after the date of the winding-up order, judicial management order or the appointment of the curator, as the case may be, or the discharge of which was overdue on the date of the winding-up order, judicial management order or appointment of the curator, as the case may be. 15

Utilisation of assets provided as security to Reserve Bank or payment clearing house

9. Despite anything to the contrary in the law relating to insolvency, any asset of a system participant which was provided prior to the issue of any order for that system participant's winding-up, by that participant— 20

(a) to the Reserve Bank as security for a loan in respect of its settlement obligations may be utilised by the Reserve Bank to the extent required for the discharge of those settlement obligations of the system participant; or 25

(b) in terms of a written agreement with any payment clearing house, as security in respect of its payment obligations, may be utilised by the payment clearing house to the extent required for the discharge of those payment obligations.

Information

10. (1) The Reserve Bank has access to any information relating to the volumes or values of payment and settlement instructions or payment and settlement obligations, and system participants must on request provide such information to the Reserve Bank. 30

(2) Subject to subsection (3), any information—

(a) obtained by the Reserve Bank in terms of subsection (1); and

(b) identifying a specific system participant, 35

is confidential and may not be disclosed by any director or officer of the Reserve Bank to any person, except to an officer of the Reserve Bank who requires that information for purposes of the execution of his or her duties in terms of this Act, the South African Reserve Bank Act, the Banks Act or the Mutual Banks Act.

(3) Despite subsection (2) of this section and section 33 of the South African Reserve Bank Act, the Reserve Bank may disclose any information of which the disclosure is necessary to protect the integrity, effectiveness or security of the payment system. 40

(4) A person that contravenes the provisions of subsection (2) is guilty of an offence.

Settlement of disputes

11. (1) In this section "business day" means any day other than a Saturday, Sunday or public holiday. 45

(5) Enige persoon wat die bepalings van subartikel (2) oortree, is aan 'n misdryf skuldig.

Nettoberekeningsooreenkomste en -reëls

8. (1) Die bepalings van hierdie artikel is van toepassing ondanks enigiets tot die teendeel in die reg aangaande insolvensie of in die Bankwet of die Wet op Onderlinge Banke.

(2) Indien 'n stelseldeelnemer gelikwedeer word, onder geregtelike bestuur geplaas word of 'n kurator oor 'n stelseldeelnemer aangestel word, is enige bepaling wat in 'n skriftelike nettoberekeningsooreenkoms waarby daardie stelseldeelnemer 'n party is, of enige nettoberekeningsreëls en -prosedures wat op die stelseldeelnemer van toepassing is, bindend vir die likwidateur, geregtelike bestuurder of kurator, na gelang van die geval, met betrekking tot enige betalings- of vereffeningsverpligting—

- (a) wat vasgestel is deur die nettoberekening daarvan voor die uitreiking van die likwidasiebevel of geregtelike bestuursbevel of die aanstelling van die kurator, na gelang van die geval; en
- (b) wat nagekom moet word op of na die datum van die likwidasiebevel, geregtelike bestuursbevel of aanstelling van die kurator, na gelang van die geval, of waarvan die nakoming agterstallig was op die datum van die likwidasiebevel, geregtelike bestuursbevel of aanstelling van die kurator, na gelang van die geval.

Aanwending van bates as sekuriteit aan Reserwebank of betalingsverrekeningshuis verskaf

9. Ondanks enigiets tot die teendeel in die reg aangaande insolvensie, kan enige bate van 'n stelseldeelnemer wat, voor die uitreiking van 'n bevel vir die likwidasie van daardie stelseldeelnemer, deur daardie deelnemer—

- (a) aan die Reserwebank verskaf is as sekuriteit vir 'n lening ten opsigte van sy vereffeningsverpligtinge, deur die Reserwebank aangewend word in die mate wat nodig is vir die nakoming van daardie vereffeningsverpligtinge van die stelseldeelnemer; of
- (b) ingevolge 'n skriftelike ooreenkoms met enige betalingsverrekeningshuis as sekuriteit verskaf is vir sy betalingsverpligtinge, deur die betalingsverrekeningshuis aangewend word in die mate wat nodig is vir die nakoming van sodanige betalingsverpligtinge.

Inligting

10. (1) Die Reserwebank het toegang tot enige inligting met betrekking tot die volumes of waardes van betalings- en vereffeningsinstruksies of betalings- en vereffeningsverpligtinge, en stelseldeelnemers moet sodanige inligting op versoek aan die Reserwebank verskaf.

(2) Behoudens subartikel (3) is enige inligting wat—

- (a) die Reserwebank ingevolge subartikel (1) verkry het; en
- (b) 'n bepaalde stelseldeelnemer identifiseer,

vertroulik en mag nie deur enige direkteur of beampte van die Reserwebank aan enige persoon openbaar gemaak word nie, behalwe aan 'n beampte van die Reserwebank wat sodanige inligting nodig het vir die doeleindes van die uitvoering van sy of haar pligte ingevolge hierdie Wet, die Wet op die Suid-Afrikaanse Reserwebank, die Bankwet of die Wet op Onderlinge Banke.

(3) Ondanks subartikel (2) van hierdie artikel en artikel 33 van die Wet op die Suid-Afrikaanse Reserwebank kan die Reserwebank enige inligting openbaar waarvan die openbaarmaking nodig is om die integriteit, doeltreffendheid of sekuriteit van die betalingstelsel te beskerm.

(4) 'n Persoon wat die bepalings van subartikel (2) oortree, is aan 'n misdryf skuldig.

Bylegging van geskille

11. (1) In hierdie artikel beteken "besigsheidsdag" 'n ander dag as 'n Saterdag, Sondag of openbare vakansiedag.

(2) If any system participant considers itself wronged by a decision taken by the Reserve Bank under a provision of this Act, the matter is deemed to constitute a dispute between that system participant and the Reserve Bank, which dispute must be settled as provided in this section.

(3) The system participant concerned must in writing furnish the Reserve Bank with full particulars of its grievance, and thereafter the system participant and the Reserve Bank must attempt to settle the dispute by consensus within seven business days of the receipt by the Reserve Bank of those particulars. 5

(4) If the system participant and the Reserve Bank do not succeed in settling the dispute as contemplated in subsection (3), they may agree to attempt to settle the dispute by mediation within a further period of 10 business days. 10

(5) Mediation as contemplated in subsection (4) means a process whereby—

- (a) the system participant concerned and the Reserve Bank agree on a mediator;
- (b) the mediator familiarises himself or herself with the position held by the system participant concerned and the Reserve Bank, respectively; 15
- (c) the mediator, the system participant concerned and the Reserve Bank discuss the dispute at a meeting attended by them all;
- (d) the system participant concerned and the Reserve Bank at or following such meeting attempt to settle the dispute by consensus; and
- (e) the system participant concerned and the Reserve Bank share the mediator's costs equally. 20

(6) If the system participant concerned and the Reserve Bank are unable to settle the dispute by consensus as contemplated in either subsection (3) or (5), the dispute must be referred—

- (a) to a single arbitrator to be agreed on between the system participant and the Reserve Bank; or 25
- (b) failing such agreement, to an arbitrator appointed at the request of the system participant and the Reserve Bank by a recognised body concerned with the facilitation and promotion of the resolution of disputes by means of mediation or arbitration. 30

(7) An arbitrator referred to in subsection (6) must, as far as possible, be a person appointed on account of his or her knowledge of the law and the payment system.

(8) The provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), apply, with the changes required by the context, to an arbitration contemplated in subsection (6).

(9) The decision of the arbitrator is final and binding on the system participant concerned and the Reserve Bank. 35

Directives by Reserve Bank

12. (1) In this section “systemic risk” means the risk that the failure of one or more system participants, for whatever reason, to meet their payment obligations within the payment system or their settlement obligations within the settlement system, may result in any or all of the other system participants being unable to meet their respective payment or settlement obligations. 40

(2) If reasonable grounds exist to believe that any person is engaging in or is about to engage in any act, omission or course of conduct, with respect to the payment system, that results or is likely to result in systemic risk, or is or will be contrary to the public interest in the integrity, effectiveness or security of the payment system, the Reserve Bank may issue a directive in writing requiring that person— 45

- (a) to cease or refrain from engaging in the act, omission or course of conduct or to perform such other acts as are necessary to remedy the situation and are specified in the directive; or 50
- (b) to provide the Reserve Bank with such information and documents, relating to the matter, as are specified in the directive,

within the period specified in the directive.

(3) Any person who neglects, refuses or fails to comply with a directive issued under subsection (2)(a) is guilty of an offence. 55

(2) Indien 'n stelseldeelnemer hom veronreg ag deur 'n besluit wat deur die Reserwebank kragtens 'n bepaling van hierdie Wet geneem is, word die aangeleentheid geag 'n geskil tussen daardie stelseldeelnemer en die Reserwebank uit te maak, welke geskil bygelê moet word soos in hierdie artikel bepaal.

5 (3) Die betrokke stelseldeelnemer moet die Reserwebank skriftelik voorsien van volle besonderhede van sy beswaar, en daarna moet die stelseldeelnemer en die Reserwebank poog om binne sewe besigheidsdae vanaf die ontvangs deur die Reserwebank van daardie besonderhede die geskil by ooreenstemming by te lê.

10 (4) Indien die stelseldeelnemer en die Reserwebank nie daarin slaag om die geskil soos in subartikel (3) beoog by ooreenstemming by te lê nie, kan hulle ooreenkom om te poog om binne 'n verdere tydperk van 10 besigheidsdae die geskil by wyse van bemiddeling by te lê.

(5) Bemiddeling soos beoog in subartikel (4) beteken 'n proses waarby—

15 (a) die betrokke stelseldeelnemer en die Reserwebank ooreenkom op 'n bemiddelaar;

(b) die bemiddelaar homself of haarself vertrouwd maak met die onderskeie standpunte van die betrokke stelseldeelnemer en die Reserwebank;

(c) die bemiddelaar, die betrokke stelseldeelnemer en die Reserwebank die geskil bespreek by 'n vergadering wat deur hulle almal bygewoon word;

20 (d) die betrokke stelseldeelnemer en die Reserwebank by of na daardie vergadering poog om die geskil by ooreenstemming by te lê; en

(e) die betrokke stelseldeelnemer en die Reserwebank die koste van die bemiddelaar gelykop deel.

(6) Indien die betrokke stelseldeelnemer en die Reserwebank nie in staat is om die 25 geskil by ooreenstemming soos beoog in óf subartikel (3) óf subartikel (5) by te lê nie, moet die geskil verwys word—

(a) na 'n enkele arbiter op wie die stelseldeelnemer en die Reserwebank ooreenkom; of

30 (b) by gebreke van sodanige ooreenkoms, na 'n arbiter wat op versoek van die stelseldeelnemer en die Reserwebank aangestel word deur 'n erkende liggaam wat betrokke is by die vergemakliking en bevordering van die bylegging van geskille deur middel van bemiddeling of arbitrasie.

(7) 'n Arbiter bedoel in subartikel (6) moet, sover moontlik, 'n persoon wees wat aangestel word op grond van sy of haar kennis van die reg en die betalingstelsel.

35 (8) Die bepalinge van die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965), is, met die veranderinge wat deur die samehang verlang word, van toepassing op 'n arbitrasie beoog in subartikel (6).

(9) Die beslissing van die arbiter is finaal en bindend op die betrokke stelseldeelnemer en die Reserwebank.

40 Lasgewings deur Reserwebank

12. (1) In hierdie artikel beteken “sistemiese risiko” die risiko dat die onvermoë van een of meer stelseldeelnemers, om watter rede ookal, om hul betalingsverpligtinge in die betalingstelsel of hul vereffeningsverpligtinge in die vereffeningstelsel na te kom, tot gevolg kan hê dat enige van of al die ander stelseldeelnemers nie in staat sal wees 45 om hul onderskeie betalings- of vereffeningsverpligtinge na te kom nie.

(2) Indien daar redelike gronde bestaan om te vermoed dat enige persoon hom inlaat of gaan inlaat met enige handeling, versuim of gedrag, met betrekking tot die betalingstelsel, wat sistemiese risiko tot gevolg het of waarskynlik tot gevolg sal hê, of wat in stryd met die openbare belang by die integriteit, doeltreffendheid of sekuriteit 50 van die betalingstelsel is of sal wees, kan die Reserwebank 'n skriftelike lasgewing uitreik wat van daardie persoon vereis—

(a) om die handeling, versuim of gedrag te staak of hom daarvan te weerhou of om die handeling te verrig wat nodig is om die situasie te herstel en wat in die lasgewing bepaal word; of

55 (b) om die Reserwebank van die inligting en dokumente, met betrekking tot die aangeleentheid, wat in die lasgewing bepaal word, te voorsien, binne die tydperk wat in die lasgewing bepaal word.

(3) 'n Persoon wat nalaat, weier of versuim om aan 'n lasgewing te voldoen wat kragtens subartikel (2)(a) uitgereik is, is skuldig aan 'n misdryf.

(4) Irrespective of whether criminal proceedings have been or may be instituted against a person in respect of an offence referred to in subsection (3), the Reserve Bank may apply to a High Court having jurisdiction for an order directing that person to comply with a directive issued under subsection (2).

Retention of records

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13. (1) Despite anything to the contrary in any legislation relating to the retention of records, the Reserve Bank and system participants must retain all records obtained by them during the course of the operation and administration of the settlement system for a period of five years as from the date of each particular record.

(2) The retention of records in terms of subsection (1) may be effected by means of a computer as defined in section 1(1) of the Computer Evidence Act, 1983 (Act No. 57 of 1983).

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Penalties

14. Any person convicted of an offence referred to in—

- (a) section 6(2), 7(5) or 12(3), is liable to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
- (b) section 10(4), is liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

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Review of Act

15. The Reserve Bank must, with the co-operation of the payment system management body, establish a standing committee—

- (a) to review this Act from time to time; and
- (b) to make recommendations to the Minister of Finance with regard to amendments to this Act which—
 - (i) in the opinion of that committee, have become advisable owing to changed circumstances; or
 - (ii) the administration of this Act has shown to be advisable.

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Short title

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16. This Act is called the National Payment System Act, 1998.

- (4) Ongeag of strafregtelike verrigtinge ten opsigte van 'n misdryf bedoel in subartikel (3) teen 'n persoon ingestel is of ingestel kan word, kan die Reserwebank by 'n Hoë Hof wat regsbevoegdheid het, aansoek doen om 'n bevel waarby daardie persoon gelas word om aan 'n lasgewing wat kragtens subartikel (2) uitgereik is, te voldoen.

Behoud van rekords

13. (1) Ondanks enigiets tot die teendeel in enige wetgewing aangaande die behoud van rekords, moet die Reserwebank en stelseldeelnemers alle rekords wat hulle in die loop van die bedryf en administrasie van die vereffeningstelsel verkry het vir 'n tydperk van vyf jaar behou met ingang van die datum van elke bepaalde rekord.

(2) Die behoud van rekords ingevolge subartikel (1) kan geskied deur middel van 'n rekenaars soos omskryf in artikel 1(1) van die Wet op Rekenaargetuïenis, 1983 (Wet No. 57 van 1983).

Strawwe

14. 'n Persoon wat skuldig bevind word aan 'n misdryf bedoel in—
- (a) artikel 6(2), 7(5) of 12(3), is strafbaar met 'n boete van hoogstens R1 miljoen of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met daardie boete sowel as daardie gevangenisstraf; of
 - (b) artikel 10(4), is strafbaar met 'n boete van hoogstens R1 000 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met daardie boete sowel as daardie gevangenisstraf.

Hersiening van Wet

15. Die Reserwebank moet, in samewerking met die betalingstelselbestuursliggaam, 'n staande komitee stig—
- (a) om hierdie Wet van tyd tot tyd te hersien; en
 - (b) om aanbevelings by die Minister van Finansies te doen aangaande wysigings van hierdie Wet wat—
 - (i) na die oordeel van daardie komitee, raadsaam geword het as gevolg van veranderde omstandighede; of
 - (ii) die administrasie van hierdie Wet as raadsaam aangetoon het.

Kort titel

16. Hierdie Wet heet die Nasionale Betalingstelselwet, 1998.

