

Criteria for authorisation to act as system operator

1. Introduction

- 1.1 In terms of section 10 (1) (c) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989 – the SARB Act), the South African Reserve Bank (the Bank) is required to perform such functions, implement such rules and procedures and, in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment, clearing or settlement systems. Furthermore, the National Payment System Act, 1998 (Act No. 78 of 1998 – the NPS Act) provides for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa, and to provide for related matters.
- 1.2 The National Payment System (NPS) encompasses the entire payment process from payer to beneficiary and includes settlement between banks. The process includes all the tools, systems, mechanisms, institutions, agreements, procedures, rules or laws applied or utilised to effect payment. The NPS enables the circulation of money, that is, it enables transacting parties to exchange value.
- 1.3 In terms of the NPS Act, the Bank may from time to time, after consultation with the payment system management body, issue directives to any person regarding a payment system or the application of the provisions of the NPS Act (section 12). Accordingly, the Directive for conduct within the National Payment System for System Operators, Directive No. 2 of 2007 is published in the *Government Gazette* Notice No. 1111 of 2007, dated 6 September 2007.
- 1.4 The NPS Act provides that the rules of the payment system management body must empower that body, currently being the Payments Association of South Africa (PASA), to authorise a person to act as a system operator (SO) in accordance with criteria recommended by PASA for approval by the Bank in terms of section 4(2) (c) (i) of the NPS Act.

- 1.5 The NPS Act defines a SO as a person, other than a designated settlement system operator, authorised in terms of section 4(2)(c) to provide services to any two or more persons in respect of payment instructions.
- 1.6 The services provided by a SO include the delivery to and/or receipt of payment instructions from a bank and/or a payment clearing house (PCH) system operator. The persons to whom services may be provided include, among others:
 - 1.6.1 banks;
 - 1.6.2 beneficiary service providers (persons who accept money or the proceeds of payment instructions, as a regular feature of their business, from multiple payers on behalf of a beneficiary);
 - 1.6.3 payer service providers (persons who accept money or the proceeds of payment instructions, as a regular feature of their business, from a payer to make payment on behalf of that payer to multiple beneficiaries);
 - 1.6.4 institutions exempted or excluded from the provisions of the Banks Act, 1990 (Act No. 94 of 1990); and
 - 1.6.5 clients of banks (any payers and beneficiaries).

2. Application for authorisation

The process to be followed for authorisation as a SO is set out below.

- 2.1 Any person qualifying as a SO in terms of the criteria provided for in section 3.1 below must apply to PASA to be authorised as a SO. Such application must be supported with the necessary documentary confirmation of compliance with the criteria contained in sections 3 and 4 for a SO. An application form is available on the PASA website at <http://authorisation.pasa.org.za>
- 2.2 PASA may, after having received an application from a person qualifying as a SO in terms of the criteria provided for in section 3 below, exempt such a person on good grounds from having to be authorised as a SO. Such exemption may be granted after PASA has consulted with the Bank and the applicant concerned. “Good grounds” for purpose of this section means any circumstance that PASA

and the Bank may deem applicable, after due consideration of such circumstances, to be of such a nature that the provision of the services by the SO would not introduce any unacceptable level of risk to the payment system or any of the persons to whom services may be provided.

2.3 PASA may also, after having provided a detailed motivation to and acquiring subsequent approval from the Bank, require any person who appears to be conducting the business of a system operator but had not been authorised to provide such services, to submit an application to be authorised to provide such services.

2.4 A SO will be authorised in respect of each service, such as EFT (electronic funds transfers), debit and credit card, etc. See the application form in this regard.

2.5 PASA is required to inform the Bank of any application, authorisation, authorisation refusal, renewal and termination of authorisation granted in terms of these criteria.

3. Criteria for the authorisation of a system operator

3.1 Any person that:

(a) operates a system (including processes and procedures);

(b) which system is used to provide a service;

(c) to any two or more persons (listed in section 1.6 above);

(d) in respect of payment instructions; and

(e) the volumes of which exceed 10 000 (ten thousand) transactions/payment instructions per month or the value of which exceeds R10 000 000.00 (ten million rand) per month in respect of all the services it is providing, must apply to PASA for authorisation as a SO.

3.2 For purposes of this section, “service” will exclude the collection or receipt of any payment due and payable to the person providing the service.

3.3 Financial criteria

A SO shall prove that it is a going concern and for this purpose it shall:

- 3.3.1 be a registered company in terms of the Companies Act, 1973 (Act No. 61 of 1973) or a registered close corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984) or in terms of any relevant international legislation;
- 3.3.2 maintain accounting records on a continual basis and prepare annual financial statements that conform with generally accepted accounting practice;
- 3.3.3 cause such records and annual financial statements to be audited where appropriate;
- 3.3.4 be adequately insured against claims by clients and/or beneficiaries;
- 3.3.5 provide a certified copy of the report of the external auditors in respect of the latest financial year end. The financial year end must have been within the 12 months preceding this application; and
- 3.3.6 on request, provide to the Bank certified copies of its audited annual financial statements.

3.4 Operational and technical criteria

A SO shall:

- 3.4.1 have tested its systems to ensure it is operationally and technically capable of providing the service:
 - (a) that its systems are interoperable with the relevant banks and/or PCH system operator; and
 - (b) must be confirmed by the appropriate PCH system operator or if relevant, each of the banks concerned, which confirmation shall not unreasonably be withheld.
- 3.4.2 in the event of providing a service in respect of payment instructions issued by means of cards issued by any card association, ensure that it has been certified by and/or registered with such a card association. This must be confirmed by the relevant card association;
- 3.4.3 provide confirmation within the application form from its chief executive officer, managing director or equivalent on the board of directors if it is a company or of its member/s if it is a close corporation, that it has an appropriate documented business continuity plan in place in respect of the service;

- 3.4.4 provide confirmation within the application form from its chief executive officer, managing director or equivalent on the board of directors if it is a company or of its member/s if it is a close corporation, that it has an appropriate disaster recovery plan in place that is tested and audited regularly (at least once a year); and
- 3.4.5 once authorised as a SO, inform the Bank and, if required, PASA, of significant changes to systems or processes, modifications and/or enhancements which may impact on the risk profile of the payment system, for consideration/approval, prior to the implementation thereof.

3.5 Legal and contractual requirements

The SO shall enter into a written service level agreement with each person to whom services are provided, that:

- 3.5.1 obliges the parties to comply with all the appropriate requirements and rules for providing a service as contemplated in section 3.1, *inter alia*, the NPS Act and any other applicable law, and contains provisions in respect of:
 - 3.5.1.1 proper crisis and problem management, including escalation procedures;
 - 3.5.1.2. performance in terms of service levels;
 - 3.5.1.3 a disaster recovery plan which ensures continuity of all functions performed by it on behalf of the persons to whom the services are provided;
 - 3.5.1.4 the liability of the SO;
 - 3.5.1.5 the agreement being governed by and construed according to South African law and that the parties shall submit to the jurisdiction of South African courts;.
 - 3.5.1.6 the provision of information and in particular that the SO will, subject to the terms and conditions of the service agreement:
 - (a) retain all records obtained by itself during the course of providing the service, for a period as required by the NPS Act and any appropriate legislation;
 - (b) provide required information, owned by each person to whom such service is provided;

- (c) treat the information of each person to whom such service is provided as confidential and keep such information confidential from other persons subject to a lawful request for the disclosure of the same; and
- (d) supply information requested regarding the person being serviced in terms of the written mandate of such person and/or the provisions of the NPS Act to the Bank or PASA where applicable. Client information of any nature (such as client names and account numbers) is excluded from any such mandate or provision.

3.5.2 In the event of conflict between the provisions of the service agreement and this document, the provisions of this document shall prevail.

3.6 Risk requirements

The SO shall, subject to the provisions of its service agreement:

- 3.6.1 promptly and diligently adhere to all reasonable risk-management and risk-containment measures as required by PASA and/or the Bank from time to time;
- 3.6.2 promptly and diligently adhere to and implement risk-reduction measures such as becoming compliant with these criteria as soon as reasonably possible after discovering it is non-compliant or after having been notified of being non-compliant;
- 3.6.3 participate at reasonable intervals, at the written request of the persons being serviced, or as may be required in terms of the risk containment measures introduced by the Bank or PASA appropriate testing of its systems to identify and limit potential, unacceptable operational risks;
- 3.6.4 co-operate with the persons being serviced in engaging with PASA and the relevant payment clearing house participant groups (PCH PGs) to devise and implement enhanced risk-management procedures in respect of risks identified by the Bank, PASA and/or the PCH PGs;
- 3.6.5 neither engage with nor provide assistance to customers or other third parties in regard to practices which are or are deemed by the Bank, in consultation with PASA, to be unsound and which may from time to time come to that SO's attention; and
- 3.6.6 ensure that its chief executive officer, managing director or board of directors if it is a company or of its member/s if it is a close corporation, is/are fully informed of

these criteria and that, if required, a report by the above confirm/s compliance with these criteria.

4. Reporting requirements

A SO that has been authorised by PASA shall report to the Bank any:

- 4.1 material changes to its management, ownership and nature of business; and
- 4.2 other information that the Bank may require from time to time in terms of section 10 of the NPS Act.

5. Process for authorisation

5.1 New application

- 5.1.1 A SO qualifying in terms of section 2 above must submit a completed application form to PASA together with the necessary supporting documentation. A non-refundable application fee, determined by PASA from time to time, is payable.
- 5.1.2 The application form must be submitted electronically at the following address:
<http://authorisation.pasa.org.za>
- 5.1.3 The application form will be considered in terms of section 2.1 herein by PASA which will, on condition that all the criteria are met, authorise the SO in terms of section 4(2) (c)(ii) of the NPS Act.

5.2 Renewal

- 5.2.1 A SO must annually, 2 (two) months before the expiry of its authorisation, apply for renewal of its authorisation. The application must be accompanied by confirmation by its chief executive officer/managing director or board of directors of compliance with the criteria and requirements set out in sections 3 and 4 above and supported with documentary proof where appropriate.
- 5.2.2 The application will be considered by PASA who will, on condition that all the criteria are met, renew the authorisation in terms of section 4(2) (c)(ii) of the NPS Act.

6 Complaints and disputes

6.1 Any complaint or dispute arising from this document may be lodged with:

The Head: National Payment System Department, South African Reserve Bank,
370 Church Street, Pretoria, 0001

or mailed to:

The Head: National Payment System Department, South African Reserve Bank,
P O Box 427, Pretoria, 0001.

7. Cancellation, termination or withdrawal of authorisation

7.1 A SO intending to discontinue or terminate the provision of services as a SO must notify PASA of its intention to do so at least 3 (three) months before the termination date in which event the authorisation granted to it will be withdrawn.

7.2 Should PASA, in consultation with the Bank, decide to terminate or withdraw authorisation from a SO to act as a system operator, PASA must notify the SO of its intention to do so at least 3 (three) months before the date on which the authorisation granted to it, will be withdrawn unless the Bank issues a directive in terms of section 12(3) of the NPS Act for the system operator to cease business immediately.

7.3 Termination of any service and/or withdrawal of authorisation for whatever reason shall not release the SO from any liability or obligation which at the time of termination or cancellation has accrued to it or which thereafter may accrue in respect of any act or omission prior to such termination or cancellation.

8 Period of authorisation

8.1 A SO complying with the above criteria and requirements will be authorised by PASA for a period of 1 (one) year. Such authorisation will be renewed annually after confirmation of compliance with the criteria and requirements as provided in section 5.2 above.

9. Non-compliance

- 9.1 In the event that a person fails to meet the criteria and requirements set out in this document, PASA may refuse to authorise such person as a SO.
- 9.2 In the event of an annual renewal of an authorisation for an existing SO, PASA may refuse to renew the authorisation or delay or conditionally extend the authorisation for a stipulated period to enable the SO to achieve compliance.

10. Conclusion

- 10.1 These criteria are not exhaustive and may be reviewed, supplemented and/or amended from time to time.
- 10.2 System operators are obliged to act in accordance with the NPS Act, directives issued under the NPS Act and, in particular, these criteria.
- 10.3 Persons who are uncertain whether their current or future practices are aligned with these criteria should initiate discussions with PASA to clarify the matter.
- 10.4 Any enquiry or clarification concerning these criteria may be addressed in person at:

The Chief Executive Officer - PASA, 2nd Floor, D-Building, Sunnyside Office Park, 32 Princess of Wales Terrace, Parktown, Johannesburg, 2193.

or submitted electronically via the following address:

<http://authorisation.pasa.org.za> .