



Policy Guidelines

Recognition of Clearance and Settlement System Operators

POLICY FOR THE RECOGNITION OF CLEARANCE AND SETTLEMENT SYSTEM OPERATORS

1. SCOPE AND COVERAGE

- 1.1 This paper provides the guidelines to be followed in the recognition of clearance and settlement system operators as stipulated under Section 3 of the National Clearance and Settlement Systems(NCSS) Act (CAP 46:06) and Regulations 2005 effective February 18, 2005.*
- 1.2 The guidelines are intended to provide guidance to operators on recommended principles and sound practices for managing risks in their introduction and operations of clearance and settlement system.*
- 1.3 The process to be followed for the evaluation of a clearance and settlement system operator against the criteria both for initial recognition and, ongoing authorisation, of a clearance and settlement system operator is set out herein.*

2. AUTHORITY

- 2.1 The NCSS Act 2003 further empowers the Bank to:*
- (a) recognise clearance and/or settlement systems operators*
 - (b) determine the criteria subject to which any person is to be recognised to act as a clearance and/or settlement system operator within the payment system and to provide specific services to one or more members or to act on behalf of those members; and*
 - (c) recognise that person, as a clearance and settlement system operator in accordance with those criteria.*
- 2.2 Applications for recognition as a clearance and/or settlement system operators, are required to meet the criteria in accordance with the NCSS Act, 2003. The criteria is applied for the initial recognition as a clearance and/or settlement system operator and thereafter, as a standard for annual reviews of the licence.*

2.3 *The Bank shall conduct oversight inspections and examinations on operators and service providers to assess the adequacy of risk management based on requirements provided in these guidelines.*

3. **DEFINITIONS**

3.1 **Payments clearing** *is the process by which information is transferred among banking institutions whereby the payer's account is debited and the payee account is credited. This includes the initial processing of the payment request by a bank, its physical or electronic transfer within or between banks that are involved in the transfer, and the debiting and crediting of the payer's and payee's accounts, respectively. Although accounting entries have occurred, funds have not been transferred between the payer's and payee's accounts until settlement occurs.*

3.2 **Settlement** *involves the actual movement of funds among banks, usually in the form of balances held by banks at the central bank, to honour the payment obligation.*

3.3 **A clearance and settlement system operator** *is defined in the NCSS Act and supporting Regulations as "a person contracted to provide specialised services to a clearance and settlement system".*

3.4 **A management body** *in relation to a recognised payments system means "a body which represents participants in the system and organises and manages their participation in the system".*

4. **GUIDING PRINCIPLES**

4.1 *Applications for a certificate of recognition to provide clearing and/or settlement services shall be considered taking into account the potential for causing disturbances and risks in order to maintain a safe, secure, and robust payments system in the country.*

4.2 *In evaluating an application, the Bank will consider any issues or concepts relative to risk with regard to the recognition of a clearance and/or settlement system operator that may be referred to it by member banks, or Clearing House Participant Groups ("CHPGs").*

4.3 *The Bank requires that the CHPG for the particular payment stream provides its recommendation in respect of the recognition of the service provider for that payment stream. Therefore, it is required that the clearance and settlement system operator shall be recognised, per clearing service, which it provides.*

- 4.4 *A clearance and settlement system operator participant (through its CHPG) may only appoint a service provider to provide it with a clearing and/or settlement service, subject to recognition by the Bank.*

5. TYPES OF INSTITUTIONS TO BE LICENSED

- 5.1 *The Bank may recognise locally incorporated institutions to operate clearance and settlement systems for the clearance and/or settlement of different classes of obligations provided that only (a) licensed financial institutions and the Central Bank are permitted to be participants in the System (Section 3 of the Act) (Regulation 5). (b) Operators that meet the criteria specified at 6 hereunder. The following institutions/persons are exempted from the recognition requirements of the Act:*

- (a) *Botswana Savings Bank (BSB);*
- (b) *A building society registered in terms of the Building Society Act;*
- (c) *A person who is acting as dully appointed agent of the person to whom the payment is due;*
- (d) *Botswana Postal Services established under Botswana Postal Services Act 1989; and*
- (e) *Any person exempted by the Bank of Botswana in terms of section 3 of the NCSS Act.*

6. CRITERIA FOR THE RECOGNITION OF A CLEARANCE AND/OR SETTLEMENT SYSTEM OPERATOR

6.1 Qualifying Criteria

6.1.1 Any person who:

- (a) *operates a system (including processes and procedures) of which the system is used to provide a service in respect of payment instruction and*

- (b) *meets the volumes and values of which acceptable levels will be determined by the Bank from time to time;*

6.2 Financial Criteria

6.2.1 *A Clearance and Settlement System Operator shall meet the following requirements:*

- (a) *be a company registered in terms of the Companies Act, or any amendments thereto or in terms of any other appropriate domestic and/or international legislation;*
- (b) *maintain adequate accounting records and prepare financial statements that conform with the Generally Accepted Accounting Practice (GAAP) and/or any other international accounting standards issued and adopted in Botswana from time to time ;*
- (c) *cause such records and financial statements to be audited annually; and*
- (d) *be in a sound financial condition and ensure that the clearing services can be provided for at least twelve months or as directed by the Bank.*

6.3 Pricing Criteria

- (a) *Ensure fair and transparent pricing;*
- (b) *Pricing policy shall be accessible and publicly disclosed;*
- (c) *Ensure that no undisclosed cross-subsidisation of a service provided by it shall take place and shall monitor such cross-subsidisation; and*
- (d) *Ensure that clearing services will be available to all member banking institutions on equitable price structures.*

6.4 Service Criteria

- (a) *Ensure that a clearance and settlement system will have priority at all times;*
- (b) *Enter into service level agreements with each banking institution or participant using the clearing and settlement service;*

- (c) *Ensure that service levels agreements are consistently met;*
- (d) *Enter into a settlement agreement with the Bank;*
- (e) *No sort at source, i.e. “**sorting at source**” is a process whereby a person (payment facilitator) sorts payment instructions per bank to deliver the payment instructions directly to such bank, thereby effectively by-passing the clearing process;*
- (f) *No multiple acquiring, i.e. “**multiple acquiring**” is a process whereby payment instructions are presented by a person for collection through a single device or multiple devices to more than one bank or delivered to a clearance and settlement system operator in terms of arrangements with more than one bank;*
- (g) *No float holding, i.e. “**float holding**” is the acceptance of third party payments from the general public (with an obligation to pay the third party beneficiary at a later date) as a regular feature of the business and earn interest on the funds held prior to onward payment to a third party on behalf of the payer;*
- (h) *No netting of payment instructions, in respect of obligations between two or more parties. “**Netting of payment instructions**” is the process whereby, on a given date, only the net amounts of the transactions between parties are made to the Clearing House;*
- (i) *Information of clients must be kept separate, so as not to result in the loss of the origination of the transaction;*
- (j) *Cannot accept signing powers on a clients bank account for the purposes of transferring funds or making payments;*
- (k) *Must be in a position to answer 90 percent of all queries within 1 business day;*
- (l) *Must be adequately insured against claims by clients and/or beneficiaries; and*

6.5 Managerial and Human Resources Criteria

6.5.1 *A clearance and settlement system operator shall have management and human resources with the appropriate experience necessary for the operation of specialised*

systems, with specific reference to high-volume, time-critical transaction processing, to enable it to provide payment system services.

6.6 Operational and Technical Criteria

- (a) *The operational and technical capabilities must provide the clearing and/or settlement services for current and planned volumes and complete the clearing and settlement function on a daily or more frequent basis as required by the relevant Clearing House agreement;*
- (b) *Maintenance of operational processes and technology platforms to ensure business continuity and achievement of agreed service levels;*
- (c) *Ensure secure communications facilities to enable an interface with the Botswana Interbank Settlement System (BISS) according to the standards and requirements set by the Bank;*
- (d) *Provide payment and clearing services to Clearing House participants that have signed the appropriate Clearing House agreement and are members of the clearing and settlement system, or persons who are otherwise approved by Bank to use the clearing services;*
- (e) *Ensure that suitable escalation procedures are in place:*
 - (i) *Between the service provider and Clearing House participants with regard to the clearing services;*
 - (ii) *Between the service provider, and the Bank, when required by the service agreement;*
 - (iii) *Ensure that the service provider contact person(s) is/are available minimally during operational hours and empowered to undertake all escalating procedures; and*
 - (iv) *That these escalation procedures are reviewed and tested on a regular basis;*

- (f) *Maintain appropriate technological platforms that meet industry interface standards (including security standards) with planned obsolescence, upgrading and replacement programmes in place; and*
- (g) *Have acceptable documented disaster recovery plans that are tested regularly but minimally twice a year, although within reasonable operational constraints, these plans should be tested every three months.*

6.7 Legal and Contractual Requirements

6.7.1 *The clearance and settlement system operator shall enter into a written service level agreement with each Clearing House participant that:*

- (a) *satisfies the Bank that it meets all the requirements of the Clearing House requirements, existing Regulatory Framework, NCSS Act and Regulations and any other applicable laws and has made appropriate provisions in respect of:*
 - (i) *staff and management competence;*
 - (ii) *acceptable crisis and problem resolution management, including escalation procedures;*
 - (iii) *capacity planning;*
 - (iv) *compliance with service level agreements;*
 - (v) *transparent pricing structures;*
 - (vi) *settlement instructions to the BISS on behalf of Clearing House participants at the standard and in the format as set out by the Bank from time to time;*
 - (vii) *provision of Management Information Systems (“MIS”) statistical data as required, and within agreed timeframes;*
 - (viii) *ensuring continuity of all functions performed by it on behalf of the Clearing House participants in the event of its failure to meet the terms and conditions of the agreements that it has with the Clearing House participants for any reason whatsoever;*
 - (ix) *the liability of the service provider;*
 - (x) *the agreement being governed by and construed according to Botswana law and that the parties shall submit to jurisdiction of Botswana Courts;*
 - (xi) *consideration for “failure to settle” arrangements.*

(b) *the provision of information and in particular that the service provider will, subject to the terms and conditions of the service level agreement:*

- *retain all records obtained by itself during the course of providing the clearing and settlement service, for a period as required by appropriate legislation;*
- *provide required information owned by each Clearing House participant to such Clearing House participant;*
- *treat each Clearing House participant's information as confidential and keep such information confidential from other Clearing House participant's and any other party;*
- *supply information requested to the Bank in terms of the written mandate of the Clearing House participant and/or the provisions of the NCSS Act. Client information of any nature (such as client names and account numbers) is excluded from any such mandate or provision. This exclusion of the provision of any client related information will not apply, however, when said provision is requested by the Bank or another accredited institution acting within the confines of Anti Money Laundering legislation;*
- *provide and manage an information database that can be accessed by Clearing House participants as well as the Bank in terms of the written mandates of Clearing House participants and/or the provisions of the NCSS Act. This database may be used to extract and model information required to fulfil management and regulatory duties. Such information will at all times be treated as confidential and no Clearing House participant will be given access to information other than its own or as mandated by the Clearing House participant.*

6.8 Risk Requirements

6.8.1 *The service provider shall, subject to the provisions of its service level agreement, meet the following requirements.*

- (a) *Promptly and diligently adhere to all reasonable risk management and risk mitigation measures as expected of a.....; in writing in terms of the rules;*

- (b) *Promptly and diligently adhere to and implement risk reduction measures as soon as possible after discovering it is non-compliant;*
 - (c) *Participate at reasonable intervals at the written request of the CHPG in periodic, appropriate testing of its systems to identify and limit potential, unacceptable operational risks;*
 - (d) *Cooperate with the Bank and the CHPG to develop and implement enhanced risk management procedures in respect of risks identified by the Bank and/or the CH PG; and/or*
 - (e) *Neither engages with nor provides assistance to Clearing House participants or third parties in regard to practices, which are notified by the Bank to the clearance and settlement system operator in writing, and agreed by the clearance and settlement system operator to be unsound.*
- 6.8.2 *The clearance and settlement system operator must ensure that its audit committee and/or its auditors is/are fully informed of these criteria and that a report by the audit committee and/or the auditors will address compliance with these criteria.*

7. APPLICATION PROCESS

- 7.1 *A potential clearance and/or settlement system operator qualifying in terms of 6 above must submit a written application to the Bank together with the necessary supporting documentation accompanied by a non-refundable application fee, determined by the Bank from time to time.*
- 7.2 *The written request must be submitted to: Director of Payments and Settlement Department, Bank of Botswana, Private Bag 154, Gaborone.*
- 7.3 *The application for recognition of the clearance and settlement system operator will be considered by the Bank, within the period of six months. A Certificate of Recognition of a clearance and settlement system in Form 2 set out in the Schedule shall be issued duly signed by the Governor of the Bank of Botswana.*
- 7.4 *The CHPG's will consider the request of the clearance and settlement system operator in terms of their responsibilities to manage and control each specific Clearing House under their control, and will make an appropriate recommendation to members in respect of the clearance and settlement system operator.*
- 7.5 *The application for recognition of the clearance and settlement system operator will be considered by the Bank, within the period of six months. When the Bank is satisfied that an application meets all the requirements A Certificate of Recognition of a*

clearance and settlement system in Form 2 set out in the Schedule shall be issued duly signed by the Governor of the Bank of Botswana.

8. INFORMATION TO BE PROVIDED BY CLEARANCE AND/OR SETTLEMENT SYSTEM OPERATORS

8.1 In order to enable the evaluation for recognition, the clearance and settlement system operator shall provide the relevant CHPG with the following documentation at least one (1) month prior to the required recognition date, or the anniversary of the recognition date as the case may be.

8.1.1 A copy of its certificate of incorporation, memorandum and articles of association (these only need to be provided once unless they are changed when the CHPG should be appraised of such changes);

8.1.2 A copy of its audited annual financial statements;

8.1.3 A copy of the annual audit reports, which should be made available on request, by its external auditors;

8.1.4 A list of the names and details of the Chairman, each director and Chief Executive Officer (CEO) of the service provider;

8.1.5 A statement by its board of directors that they are satisfied that the service providers employees meet the managerial and human resources criteria;

8.1.6 A report by its management in respect of achievement of service levels agreements;

8.1.7 A list of the Clearing House participants with whom it has or will enter into a service agreement in respect of the clearing service;

8.1.8 A master copy of its service agreement;

8.1.9 A report, which should be made available on request, by the Chairman of its audit committee or board that it is compliant with the criteria; and

8.1.10 Any information which the service provider is obliged to provide as set out herein, may be replaced by a report of the service providers' auditors.

8.11 *Information to be submitted in duplicate*

9. ***EVALUATION PROCEDURE TO BE FOLLOWED FOR THE RECOGNITION OF A CLEARANCE AND SETTLEMENT SYSTEM OPERATOR***

9.1 *The Bank of Botswana requires the input of:*

- (a) *the Clearing House participants, and;*
- (b) *the CHPG before it will recognise a service provider.*

9.2 *The process required to recognise a new service provider is summarised as follows:*

9.2.1 *The Clearing House participants shall evaluate the clearance and settlement system operator against the criteria set out above, and shall (conditionally) appoint and recommend (through their duly constituted CHPG) the recognition of such service provider by the Bank;*

9.2.2 *Such evaluation and appointment by the Clearing House participants shall be referred to the Bank for appropriate consideration and recommendation;*

9.2.3 *The Bank may, in the execution of its duty and in its responsibility to support the risk function performed by the Risk Advisory Committee, also advise on any issues relative to risk;*

9.2.4 *The Bank shall consider the respective recommendations (of the CHPG) and shall authorise or decline to authorise the new clearance and settlement system operator; and*

9.3 *The process set out above shall also apply to the annual renewal of existing recognition, with the exception that the appointment will have taken place in terms of the service level agreement.*

10. ***NON-RECOGNITION OR NON-COMPLIANCE***

10.1 *In the event that a clearance and/or settlement system operator fails to meet the criteria set out in clause 2 above, any committee referred to in clause 4 above may, at its discretion, and where appropriate, within its powers in respect of a new clearance and settlement system operator may take the decisions that follow:*

10.1.1 Refuse to authorise or recommend the recognition of such new clearance and settlement system operator and notify the applicant in writing stating the reasons for rejection; and/or

10.1.2 Delay or conditionally extend the recognition for a new payment system clearance and settlement system operator until such time compliance is achieved.

11. REVOCATION

11.1 The Bank may take the decision(s) that follow in respect of the annual renewal of the recognition for an existing clearance and settlement system operator:

11.1.1 Impose a moratorium on new business (until compliance with all the criteria is achieved);

11.1.2 Withdraw the existing recognition of the clearance and settlement system operator;

11.1.3 Refuse to renew the recognition or recommend the renewal of the recognition of the clearance and settlement system operator;

11.1.4 Delay or conditionally extend the recognition for a stipulated period to enable the clearance and settlement system operator to achieve compliance, and renewal if granted shall be subject to imposition of a penalty fee.