

ACT 662
PAYMENT SYSTEMS ACT, 2003

ARRANGEMENT OF SECTIONS

Establishment and Supervision of Payment Systems

1. Establishment and designation of payment systems by the Bank of Ghana.
2. Access to participation in the system of institutions approved by the Bank.
3. Supervision of established and designated systems.
4. Systemic risk.
5. Retention of records.

Customer Information and Parties' Obligation in respect of a Transaction

6. Need for transparency.
7. Customer information prior to execution or receipt of a transfer.
8. Customer information subsequent to the execution or receipt of a transfer.
9. Rights of parties to negotiate obligations under a transaction.
10. Obligation as to transfer time.
11. Obligation to make funds available upon transfer.
12. Delay attributable to originator or beneficiary.
13. Other rights.
14. Obligation to transfer full amount.
15. Obligation to refund in the event of non-execution.

Finality and Insolvency

16. Finality.
17. Irrevocability.
18. Settlement.
19. Netting agreements and netting rules.
20. Collateral for payment and settlement of obligations.

General and Miscellaneous Provisions

21. Settlement of disputes.
22. Admissibility of evidence.
23. Regulations.
24. Offences by body of persons.
25. Interpretation.

26. Transitional and saving provision.

ACT 662
PAYMENT SYSTEMS ACT, 2003(1)

AN ACT to provide for the establishment, operation and supervision of electronic and other payment, clearing and settlement systems; to provide for the rights and responsibilities of transacting and intermediating parties and for other related matters.

Establishment and Supervision of Payment Systems

1. Establishment and designation of payment systems by the Bank of Ghana

(1) The Bank of Ghana may

- (a) establish, operate, promote and supervise payment, funds transfer, clearing and settlement systems, subject to the rules that it may publish, and
- (b) designate any other payment, funds transfer, clearing and settlement systems, operating in the country which, the Bank considers to be in the public interest for the Bank to supervise under this Act.

(2) A designation under subsection (1) (b) shall be in writing and addressed to a person the Bank of Ghana reasonably believes is the operator of the system.

2. Access to participation in the system of institutions approved by the Bank

(1) The Bank of Ghana may give access to a system established under subsection (1) (a) of section 1 to a bank, financial institution or any other institution whose participation the Bank considers to be in the interest of efficient operation of the system.

(2) Where the Bank of Ghana considers that participation by an institution referred to in subsection (1) in a system is no longer in the interest of efficient operation of the system, the Bank may, by notice in writing to the institution published in the *Gazette*, withdraw accessibility of the system from the institution from the date specified in the notice.

(3) Subject to section 4, the Bank of Ghana shall not withdraw access without giving the institution a reasonable opportunity to make representations to the Bank.

3. Supervision of established and designated systems

(1) The Bank of Ghana may in supervising a system established or designated under subsection (1) (b) of section 1,

- (a) demand information as to the operation of the system from its operators;
- (b) inspect the premises, equipment, computer hardware, software, any communication system, books of accounts, and any other document or electronic information which the Bank may require in relation to the system;

- (c) direct changes to be made to the terms of any rules, agreements or practices pursuant to which the system is operated efficiently and in the public interest;
 - (d) direct changes to be made to the rules concerning access to the system in order to ensure that the system is operated efficiently and in the public interest; and
 - (e) exercise any other powers prescribed by the Regulations.
- (2) The operators of the system shall comply with the Bank's directions provided under subsection (1).
- (3) Information and documents obtained by the Bank of Ghana under subsections (1) and (2), shall be treated as confidential subject to the disclosure that the Bank considers necessary in the public interest.
- (4) An operator who contravenes any of the provisions in subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment for two years or both the fine and the imprisonment.

4. Systemic risk

- (1) Where the Bank of Ghana considers that
- (a) there is systemic risk, namely, the risk that the failure of one or more institutions participating in a system within the meaning of section 1 to meet their payment or settlement obligations, may result in any of the other participating institutions being unable to meet their respective payment or settlement obligations, or
 - (b) a person is engaged in or about to engage in an act, omission or a conduct with respect to the system, which may result in systemic risk, or is contrary to the public interest, effectiveness or security of the system,
- the Bank may issue a directive in writing requiring the institution or person to
- (c) perform the acts that are necessary to remedy the situation and to cease or refrain from engaging in the act, omission or conduct, or
 - (d) provide the Bank with the information and the documents relating to the matters specified in the directive, within the period specified in the directive.
- (2) A person who without good reason refuses or fails to comply with a directive issued under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units and the Bank of Ghana may take steps under the Regulations to safeguard the system without prejudice to the criminal or civil proceedings that may be instituted against that person.

5. Retention of records

- (1) Despite anything to the contrary in an enactment on record keeping, records created during the course of the operation and administration of a system established and operated or designated by the Bank of Ghana under section 1 shall be retained for a minimum period of six years from the date of creation of the record.
- (2) Records may be retained in electronic form.

6. Need for transparency

A system shall operate in accordance with the principles of transparency, so that users are aware of the conditions on which transfers are effected.

7. Customer information prior to execution or receipt of a transfer

On request, an institution shall make available to its actual and prospective customer in a comprehensible form, information on conditions for transfer through the system, including at least,

- (a) an indication of the time needed for the funds to be credited to the account of the beneficiary's institution;
- (b) an indication of the time needed for the funds credited to the account of the institution to be credited to the beneficiary's account;
- (c) details of the charges payable by the customer; and
- (d) details of the complaints and redress procedures available to the customer and means of access to them.

8. Customer information subsequent to the execution or receipt of a transfer

(1) Unless expressly agreed to the contrary, after the execution or receipt of transfer, the institution shall supply its customer with clear information in a comprehensible form including at least,

- (a) a reference enabling the customer to identify the transaction,
- (b) the original amount of the transfer, and
- (c) the amount of charges payable by the customer.

(2) Where the originator has specified that the charges for a transfer are to be wholly or partly borne by the beneficiary, the beneficiary shall be informed accordingly by the beneficiary's institution.

9. Rights of parties to negotiate obligations under a transaction

Despite the minimum obligations stated as applicable to a transfer through a system under this Act, parties may assume greater obligations through agreement or through the operation of the rules of the system.

10. Obligation as to transfer time

(1) The originator's institution shall execute a transfer within the time limit agreed with the originator or in the absence of an express agreement, within the standard time limit applicable to the system.

(2) Where the agreed time limit is not complied with, the originator's institution shall compensate the originator by payment of interest calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period from the end of the agreed time limit to the date on which the funds are credited to the account of the beneficiary's institution.

(3) Where non-execution of a transfer by the originator's institution within the agreed time limit is attributable to an intermediary institution, that institution shall be required to reimburse the originator's institution in respect of the compensation paid to the originator by the originator's institution.

11. Obligation to make funds available upon transfer

(1) The originator's institution shall make the funds resulting from a transfer available to the beneficiary within the time limit agreed with the beneficiary or in the absence of an express agreement, within the standard time limits applicable to the system.

(2) Where the agreed time limit is not complied with, the beneficiary's institution shall compensate the beneficiary by payment of interest, calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period from the end of the agreed time to the date on which the funds are credited to the beneficiary's account.

12. Delay attributable to originator or beneficiary

Compensation shall not be paid to an originator or a beneficiary under sections 9 and 10 where the originator's institution or the beneficiary's institution can establish that the delay is attributed to the originator or the beneficiary.

13. Other rights

Sections 10 and 11 shall not prejudice any other rights available to persons participating in the execution of the transfer.

14. Obligation to transfer full amount

(1) The originator's institution, an intermediary institution and the beneficiary's institution are each obliged to execute a transfer for the full amount, unless the originator specifies that the costs of the transfer are to be borne wholly or partly by the beneficiary.

(2) Subsection (1) does not limit the rights of the beneficiary's institution to charge the beneficiary for the administration of the beneficiary's account.

(3) This section is subject to the rules of the relevant system.

15. Obligation to refund in the event of non-execution

(1) Subject to subsection (4), if after a transfer has been accepted by the originator's institution the relevant amount is not credited to the account of the beneficiary's institution, the originator's institution shall, without prejudice to any other claim which may be made, make a refund to the originator of the amount of the transfer plus interest and the charges paid by the originator for the transfer.

(2) The interest shall be calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period beginning from the date of the transfer to the date of the refund.

(3) Where the transfer is made using an intermediary institution, the institution which has accepted the transfer shall reimburse the originator's institution against its liability under subsection (1), and where that intermediary institution itself used another intermediary institution, the latter shall be reimbursed by that institution accordingly.

(4) Where the transfer was not completed because of

(a) an error or omission in the instructions given by the originator to the originator's institution, or

(b) non-execution of the transfer by an intermediary institution expressly chosen by the

originator,

the originator's institution and any other institution involved is obliged to use its best endeavours to obtain a refund of the amount of the transfer which may be subject to charges for the expenses incurred in connection with the transfer.

Finality and Insolvency

16. Finality

A system shall specify the principles applicable to achieve finality in its operations as provided for in sections 7 to 20.

17. Irrevocability

(1) A transfer is executed at the time specified in the rules of the system.

(2) Without prejudice to the remedies that may exist to recover an equivalent amount of transfer in the case of fraud, mistake or similar vitiating factors, a transfer is irrevocable once executed.

18. Settlement

(1) Subject to the rules of the system, the discharge of settlement obligations between institutions participating in the system is effected by means of entries to accounts maintained with the Bank of Ghana for settlement purpose.

(2) A settlement effected in accordance with subsection (1) is final and irrevocable.

19. Netting agreements and netting rules

(1) This section applies despite anything to the contrary in the law relating to insolvency.

(2) Where an institution that participates in a system established or designated under section 1 is wound up and placed in administration or otherwise declared insolvent by a Court, a provision contained in a written netting agreement to which that institution is a party or the netting rules and practices applicable to the system are binding on the liquidator or administrator of the institution in respect of the payment or settlement obligation which

(a) has been determined through netting prior to the issue of the winding-up or administration order, and

(b) is to be discharged on or after the date of the winding-up or administration order or the discharge of which was overdue on the date of the winding-up or administration order.

20. Collateral for payment and settlement of obligations

Despite anything to the contrary in the law relating to insolvency, an asset of an institution that participates in a system, which, prior to the issue of an order for the winding-up or administration of that institution was provided to

(a) the Bank of Ghana, or

(b) the operators of the system designated under subsection (1) (b) of section 1,

as security in respect of the institution's payment or settlement obligations, may be utilised by the Bank

or by the operators of the designated system to the extent required for the discharge of those payment or settlement obligations.

General and Miscellaneous Provisions

21. Settlement of disputes

(1) Where an institution that participates in a system considers itself wronged by a decision taken by the Bank of Ghana under this Act and the matter cannot be resolved between the institution and the Bank, the matter may be referred for settlement by mediation by the parties.

(2) For the purpose of subsection (1),

- (a) the institution and the Bank of Ghana shall agree on a mediator,
- (b) the mediator shall familiarise himself or herself with the position held by the institution and the Bank,
- (c) the mediator, the institution and the Bank shall discuss the dispute at a meeting attended by all of them, and
- (d) the institution and the Bank shall agree to share the mediator's costs equally.

(3) This section does not apply to a dispute that falls within section 4.

22. Admissibility of evidence

Without prejudice to the admissibility of evidence in a Court, information that relates to a transfer through a system contained in,

- (a) a document,
- (b) computer print-out, hard copy, microfilm, floppy or hard disc or any other electronic media or form,

is admissible as evidence of or relating to the transfer, subject to the Court's discretion as to the weight to be given to the evidence.

23. Regulations

The Bank may make Regulations

- (a) for the effective and efficient supervision of established and designated systems;
- (b) setting out disciplinary procedures for participants in the operation of a system; and
- (c) necessary to give effect to this Act.

24. Offences by body of persons

(1) Where an offence is committed under this Act or under the Regulations or directives given under this Act by a body of persons,

- (a) in the case of a body corporate, every director or an officer of that body shall be deemed to have committed that offence; and
- (b) in the case of a partnership, every partner or officer of that body shall be deemed to have

committed that offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1) if that person proves that the offence was committed without the knowledge or connivance of that person, and that due care and diligence was exercised by that person to prevent the commission of the offence having regard to the circumstances.

25. Interpretation

In this Act, unless the context otherwise requires,

“access” as used in section 2, means the participation by a bank, financial institution or other institution as a participating member of the system concerned;

“administration” means a legal process by which a court upon a petition made to it that a company is likely to become insolvent or unable to pay its debts, makes an order appointing an administrator to take charge of the company’s affairs for the proper management of the company in part or in whole with the object of forestalling liquidation, if possible;

“Bank” means in the Bank of Ghana established under the Bank of Ghana Act, 2002 (Act 612);

“bank” means a bank as defined in the Banking Act, 2004 (Act 673);

“beneficiary” means the final recipient of a transfer for whom the corresponding funds are made available in an account to which the recipient has access;

“Court” means a court of competent jurisdiction;

“designation” means a written notification under subsection (2) of section 1 addressed to persons whom the Bank reasonably believes to be the operators of a system which the Bank considers it is in the public interest to designate and supervise;

“finality” means the confirmation explicitly or implicitly, that a payment or settlement is irreversible and irrevocable;

“institution” means a bank, a department or agency of the Government or any other organisation approved by the Bank as eligible to open a settlement account with the Bank;

“intermediary institution” means an institution which is neither that of the originator nor that of the beneficiary and which participates in the execution of a transfer;

“netting” means the determination of the payment obligations between two or more institutions which participate in a system within the scope of this Act or the determination of the net settlement obligations between two or more institutions which participate in the system, and **“netting provisions”**, **“netting agreements”**, **“netting rules”** and **“netting practices”** shall be constructed accordingly;

“originator” means a person who orders the making of a transfer to a beneficiary;

“Regulations” means the relevant Regulations made under this Act;

“system” means a payment, funds transfer, clearing and settlement system within the meaning of section 1;

“transfer” means a transaction carried out on the initiative of an originator through an institution with a view to making available an amount of money to a beneficiary at another institution;

“transparency” means the conditions under which transfers will be effected and will be made

available to users of a system as provided for in sections 6 to 15.

26. Transitional and saving provision

A payment and settlement system in existence on the date of commencement of this Act shall continue to operate subject to the provisions of this Act.

Endnotes

1 (Popup - Footnote)

1. This Act was assented to on 31st December, 2003, and notified in the *Gazette* on 31st December, 2003.