

THE REQUIREMENTS AND PROCEDURE FOR OBTAINING AUTHORIZATION AS A PAYMENT SERVICE PROVIDER

A. INTRODUCTION

Section 2 of the National Payment System Act defines a “Payment System” as an arrangement that enables the execution of payments between a payer and a beneficiary, or facilitates the circulation of money. The Act defines the system to include the instruments and procedures that relate thereto.

A Payment Service Provider is defined to include:

- (a) a person, company or organization that acts as a provider with respect to sending, receipt, storage and processing of payments or the provision of other services in relation to payment services by utilizing any electronic system;
- (b) a person, company or organization that owns, possesses, operates, manages or controls a public switched network for the provision of payment services; and
- (c) a person, company or organization that processes or stores data on behalf of payment service providers or the users of such services.

The various forms of Kenya’s payment systems are categorized into:

- (a) The Large Value Payment System which is further categorized into:
 - (i) the Kenya Electronic Payment and Settlement System; and
 - (ii) the Regional Payment System which comprises the East African Payment System that serves the East African Community and the Regional Payment and Settlement System that serves COMESA member states; and
 - (iii) the Retail Payment System that comprises electronic money (e-money) issuers, mobile money payments, clearing house (cheques and ETFs), debit and credit cards, payment switches, gateways and aggregators.

Based on the Central Bank of Kenya’s report as at 17th November 2023, only 35 institutions had been approved to deal in the business of payment service providers. They include Safaricom PLC, Airtel Money Kenya Limited, Telkom Kenya Limited, Pesapal Limited and Jumia Payment Services Kenya Limited.

B. LEGAL FRAMEWORK

The Central Bank of Kenya, established under section 3 of the Central Bank of Kenya Act Cap 491 of the Laws of Kenya, formulates and implements the country’s monetary policy and has the mandate to promote liquidity, solvency and the proper functioning of a stable market- based financial system. The Bank also licenses and supervises all the authorized dealers of the various monetary services that fall under its purview.

Section 12 of the National Payment System Act, 2011 prohibits any person intending to engage in the business of payment service providers from conducting such business without the Bank’s authorization. Section 13 of the Act further stipulates a requirement for such persons to make an authorization application to the Bank. The National Payment System Regulations of 2014 provide a clear outline of the framework for the requirements, steps of application, the ultimate authorization and requirements for renewal of the authorization certificate. The Requirements and Procedures are analyzed herein.

Other laws that regulate the conduct of the payment service providers' business include:

- (a) the Kenya Information and Communication Act where the applicant intends to utilize mobile or e-money systems;
- (b) the Proceeds of Crime and Anti-Money Laundering Act, 2009 which prohibits actions related to money laundering and terrorism funding. PSPs have an obligation to report to the Bank on compliance with the provisions of the Act;
- (c) the Consumer Protection Act, 2012 that provides for safeguards to ensure the interests and rights of consumers are protected and enforced. PSPs are required to provide their services in a manner that complies with the safeguards under the Act; and
- (d) the Data Protection Act, 2021 which provides for safeguard mechanisms for enhancing privacy for personal data. PSPs are required to register as Data Controllers and/or Data Processors and ensure that they conduct their business in a manner that complies with the provisions of the Act.

C. REQUIREMENTS FOR BECOMING A PAYMENT SERVICE PROVIDER

For a person to meet the Legal threshold for becoming a Payment Service Provider, they are required to meet the criteria set out under the National Payment System Act and the Regulations. A summary of the requirements is as follows:

- (a) the entity must incorporate a company using the name that it intends to run its PSP business;
- (b) the entity must have the statutory initial capital of:
 - (i) Kshs. 5,000,000 in case it intends to obtain approval as an electronic retail payment service provider;
 - (ii) Kshs. 50,000,000 in case it intends to obtain approval as a designated payment instrument issuer;
 - (iii) Kshs. 20,000,000 in case it intends to obtain approval as an e-money issuer; and
 - (iv) Kshs. 1,000,000 in case it intends to obtain approval as a small e-money issuer.
- (c) the entity must obtain a license from the Communications Authority of Kenya in case it intends to provide mobile or e-money services;
- (d) the entity must be compliant with all its tax obligations and obtain a current tax compliance certificate;
- (e) the entity must prepare a business plan that complies with the specifications required by the Bank;
- (f) the entity must establish a trust with any of the bank's duly licensed by the Central Bank of Kenya to ensure the customers funds are safeguarded (the contents of the Trust Deed establishing the Trust must be in line with the requirements under Regulation 26 of the National Payment System Regulations, 2014);
- (g) the entity must carry out an audit as to the risk and the continuity of its business practices and prepare a report on the same;
- (h) the entity must register as data controller and processor, prepare a privacy policy and prepare a report that shows how its systems will safeguard the customers' sensitive data, the measures for detecting and remedying potential breaches and compliance with the Data Protection Act;
- (i) the entity must assess the intended company's ownership structure and shareholding, their qualifications, and reputation to ensure they meet the test under the Fit and Proper Form set out under the Second Schedule of the Regulations;

- (j) the entity must develop an elaborate operational program and prepare a report to that effect. The report ought to provide for:
- (i) Terms & Conditions applicable to the customers and/or agents and cash merchants;
 - (ii) Drafts of the standard contracts between the prospective PSP and the customers and/or cash merchants;
 - (iii) A draft copy of the master agreement between the entity and the commercial banks;
 - (iv) Operational policies and procedures;
 - (v) A draft outsourcing contract, in case the entity intends to outsource third party services; and
 - (vi) A due diligence report on the proposed third parties.

D. STEPS AND PROCEDURES IN OBTAINING APPROVAL

(a) Preliminary Engagement

The prospective applicant sends an inquiry on whether they meet the threshold of becoming a PSP either via the email: nps@centralbank.go.ke or a letter addressed to the to the Assistant Directors, Payment Services of the CBK. The CBK responds to the inquiry within a week by attaching links to the National Payment System Act, 2011, the National Payment System Regulations, 2014 and the A-Z PSP Authorization checklist. The Bank may also invite the prospective applicant to a preliminary meeting with an objective of understanding their business intention and enlightening the prospective applicant on the application requirements.

(b) Company and Product Name Approval

The Applicant is required to propose and book at least three business names with the registrar of companies. The applicant subsequently submits the proposed names to CBK submit three proposed names in the order of preference. The Applicant is required to submit these documents in this phase:

- (i) the prospective PSP's business model including the scope of proposed business activities and marketing strategy;
- (ii) the company's proposed objects;
- (iii) the company's ownership structure and governance;
- (iv) evidence of sources and availability of capital;
- (v) proposed financial projections for 3 years;
- (vi) legal and regulatory compliance function;
- (vii) high level outlines of proposed infrastructure and internal controls; and
- (viii) high level outlines of the proposed risk management policies and procedures and internal control systems manual.

The name becomes valid for a period of 12 months from the date of approval.

(c) Application for Authorization Certificate

The Applicant makes the application through Form I set out in the First Schedule and a sworn affidavit consistent with Annex 1 template of the National Payment System Regulations, 2014. The application can only be done upon obtaining approval for the proposed company and product name. The application is to be accompanied by a non-refundable fee of Kshs. 5,000. The application should contain information on the items set out under part (c) of this guide.

(d) Issuance of Authorization Certificate

The CBK will assess the application to ascertain whether the Applicant meets the requirements for approval of a PSP. The Bank subsequently issues the applicant with a letter of intent requiring them to pay the authorization fee of Kshs. 100,000. Upon receipt of the payment, the CBK issues the Applicant an Authorization Certificate to commence and run the PSP business.

In case the CBK rejects the application, it issues a communication to that effect with reasons for the decision. The Bank's decision may lay out the conditions that the Applicant ought to satisfy prior to the re-submission of the application for consideration. Once the Bank is satisfied that Applicant has satisfied the conditions set out in its decision, it proceeds to approve the re-submitted application.

(e) Renewal of the Authorization Certificate

Section 14 of the National Payment System Act stipulates a requirement for an Applicant who has received an Authorization Certificate to renew the certificate for a further period of twelve months. An application for renewal must be lodged within 2 months prior to the expiry of the formerly issued certificate. Regulation 9 of the National Payment System Regulations, 2014 provides that an application for renewal should be made in Form 2 set out in the First Schedule to the Regulations. The application should be accompanied by such information required by the CBK. The renewal application should also be accompanied by the renewal fees set out in the First Schedule. The renewal fees are as follows:

The PSP's Gross Annual Value (Kshs)	Annual Renewal Fess (Kshs)
Less than 1 billion	20,000.00
1 billion – 10 billion	100,000.00
11 billion – 50 billion	500,000.00
51 billion – 100 billion	1,000,000.00
101 billion – 500 billion	5,000,000.00
501 billion – 1000 billion	10,000,000.00
Above 1000 billion	15, 000,000.00

About Lexserve & Our Partnership with Muma & Kanjama Advocates in Offering the Relevant Services Required to Obtain a Payment Service Provider Authorization Certificate

The process for obtaining PSP Authorization Certificate is rigorous and complex. This tends to consume so much time and expenses and requires technical expertise. That's where we come in. Lexserve Commercial is a one stop online legal tech company with an objective of offering high quality and professional legal services on a convenience basis.

We will help you through the entire process and ensure that you successfully obtain your PSP Authorization Certificate. We will also offer you the other required services that include:

- (a) incorporation of the company required for running a PSP business;

- (b) obtaining CAK's license in case you intend to offer mobile or e-money payment services;
- (c) filing your returns and complying with all tax obligations and obtaining a tax compliance certificate;
- (d) preparing a business plan that complies with the CBK's requirements;
- (e) drafting a trust deed and incorporating the trust required under the NPS Act;
- (f) carrying out a legal audit to ensure that you are compliant with all the legal requirements under the Data Protection Act, Proceeds of Crime and Anti-money Laundering Act, the National Payment System Act and Regulations and the Consumer Protection Act;
- (g) drafting a Privacy Policy and standard engagement contracts for your agents and customers; and
- (h) drafting policies and procedures required by the CBK