

A hand holding a pen is positioned over a calculator and several financial documents, including a payment voucher and a ledger. The documents contain various fields and numbers, such as 'Date: 04.01.20', 'Amount: 2,076.00', and 'Total: 1,184.32'. The background is a light-colored, textured surface.

INTEGRATED LEGAL CONSULTANTS

**THE NEW LAW ON PAYMENT SYSTEMS
AND SERVICES IN GHANA:
AN OVERVIEW OF NEW MATTERS**



Editor's Note

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, the firm has introduced the publication of newsletters on legal and economic issues that would be of interest to the client and equally affect their transactions. This is our eighth edition.

Payment and financial services are an integral part of every economy and most governments take steps to actively regulate this sector. In March 2019, the Payment Systems and Services Bill was passed into law. The law was aimed at amending and consolidating the laws and guideline that regulate institutions that issue electronic money and offer payment services in Ghana.

In this issue, we have highlighted certain aspects of the Payment Systems and Services Act 2019 (Act 987) and have discussed some of the key legal concepts the new law introduces in relation to payment services in Ghana.

We hope you find it informative and educative. Your feedback is welcome.

We trust that you are staying safe in these unusual times.

Happy Reading!

Esohe Olajide
Editor

Olusola Ogundimu
Editor-In-Chief



This newsletter includes general information about legal issues and developments in the law. Such materials are for informational purposes only and may not necessarily reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. You need to contact a lawyer licensed in your jurisdiction for advice on specific legal issues and problems

THE NEW LAW ON PAYMENT SYSTEMS AND SERVICES IN GHANA: AN OVERVIEW OF NEW MATTERS

The rapid change in technology has rendered “*the Payment Systems Act 2003, (Act 662)*” unable to address risks emanating from the new forms of payment streams in Ghana, this therefore led to the passing into law of “*the Payment Systems and Services Act 2019, (Act 987)*” in 2019.

The goal of Act 987 is to provide an elaborate framework to address the weaknesses of the previous law and offer formidable protection of individual rights in this area.

This article discusses the key legal concepts introduced and the general overview of Act 987 on payment systems and services in Ghana.

The first thing to note is the change of the name of the previous Act from “*the Payment Systems Act 2003, (Act 662)*” to “*the Payment Systems and Services Act 2019, (Act 987)*”. The new name was adopted in line with the purpose of Act 987 which seeks to provide for payment services in addition to payment systems in a single legislation.

The object of Act 987 is, to amend the existing legislation relating to payment systems and services in Ghana. Unlike the previous law which focused on establishing payment systems and regulating their operations, Act 987 goes beyond the establishment of payment systems to provide for payment services and institutional framework for their operations.

Section 4 empowers the Bank of Ghana (BOG) to establish the Payment Systems Advisory Committee (the Committee), which is one of the new bodies established under Act 987.

Under section 4(2) the Committee principally advises the BOG on the regulation and oversight of the payment systems, operational and technical stands of payment systems and any matters affecting payment services, clearing, and settlement of payments.

A key provision to note in Act 987 is section 8 which provides for licensing of payment service providers.

According to section 8, payment service providers under the new law, unlike the previous law, are to be licensed by the BOG before they can operate as such. Upon being licensed, there are several prescribed businesses specified as the activities such entities can engage in.

The BOG has the power to reject an application for reasons stated in the law. Each license is renewable annually, while license fees and processing fees apply.

Under Act 987, it is not sufficient to be licensed by the BOG for payment services. The entity must apply to the BOG to seek authorization to engage in payment services. Act 987 also empowers the BOG to suspend payment system licenses or authorization on certain grounds as stated within the law.

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In the same vein, the BOG may revoke the license or authorization of a payment services provider.

Where the license or authorization is revoked, the BOG shall publish, within 5 (five) working days after revocation, a notice of revocation in the Gazette, in a newspaper of national circulation and on the website of the Bank of Ghana and take any steps necessary to inform the general public of the revocation.

It is important to note that before an entity can engage in electronic money business, it must be licensed under Act 987 and authorisation sought and obtained from the BOG.

Section 28 of Act 987 provides that an applicant whose application for license or authorization is refused by the BOG this Act may, within 30 (thirty) days, petition the BOG review of the refusal. The Bank of Ghana has 30 (thirty) days within which to review the decision. There is a further right of appeal to the Chief Justice of the Republic of Ghana if, upon the review, the applicant remains dissatisfied.

Upon receipt of the appeal the Chief Justice will form an adjudicative panel of 3 (three) members to hear the matter. The decision of the panel is subject to a further appeal to the High Court.

Under the previous law, disputes between an institution and the BOG to be resolved by mediation process.

Section 17 of Act 987 provides for capital requirement and states that a payment service provider must, while in operation, maintain in the country, a minimum paid-up capital as determined by the BOG. Where a service provider fails to do so, the BOG may suspend the license of the payment service provider.

By virtue of section 20 of Act 987, it is required that a payment service provider has a tested technology system which is equipped with fraud monitoring and detection tools, valid third-party certification from a reputable certification authority, and cyber-security policy, where applicable. It is important to note that it is prohibited under section 31 of Act 987 for a payment service provider to engage in banking business or any business activity prohibited by the BOG.

Also, of importance is the fact that the current Act also regulates how electronic money should be issued. Act 987 requires that electronic money accounts and transactions be denominated in Ghana Cedis. It further provides that electronic money is to be issued at par value on the receipt of funds and upon request by the electronic money holder, redeemed at any time and at par value, the monetary value of the electronic money held. On redemption, not less than ninety per cent of the interest accrued, shall be paid to the electronic money holder.



By the intervention of Act 987, consumers in the payment systems and services business are offered some level of protection. The introduction of this protection for the consumer is a new provision introduced under Act 987. The Act codifies the universal principles of consumer protection under Section 44 of Act 987.

Section 45 requires that issuers and payment services providers must have high-quality systems and ensure the availability of services. Section 46 provides for transaction charges. It provides that a customer who is a holder of an electronic money account shall only pay for transaction charges as advertised. Act 987 also establishes a complaint procedure to further proper protection of the consumer.

Introduced by Act 987 is the new institutional framework being the establishment of the Clearing House. According to section 70, the BOG may establish a Clearing House and designate an institution it considers proper to manage the Clearing House.

The institution will report to the BOG and be under the supervision of a department designated by the BOG.

The law allows a principal to use its agents to serve its customers. Note that the principal must apply to the BOG for permission to use an agent prior to appointment of the agent.

The principal-agent relationship must be regulated by an Agency Agreement which must contain terms specified in Section 87 of Act 987.

Act 987 also contains provisions relating to offences and applicable penalties thereto. Section 8 makes it a criminal offence to conduct the business of payment services without a valid and subsisting license.

One who is convicted for such an offence shall be punished for a term of imprisonment not less than 4 (four) years and not more than 7 (seven) years or liable to pay a fine of not less than 2000 (two thousand) penalty units or to both.

It is also a criminal offence to engage in the business of electronic money transfers without a license. Persons convicted of such offence shall be punished by a term of imprisonment not less than 4 (four) years and not more than 7 (seven) years or liable to a fine of not less than 1500 (one thousand five hundred) penalty units or to both. It is equally a criminal offence to contravene the terms of a license or authorization as an electronic money issuer.

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Furthermore, a party who carries on businesses without authorization shall be liable to pay an administrative penalty of 5000 (five thousand) penalty units.

Section 104 provides that the payment and settlement system in existence before the coming into force of Act 987 will continue to operate subject to the provision of Act 987.

Furthermore, an electronic money issuer or payment service provider shall apply for an authorization or a license under the current law within 9 (nine) months of the coming into force of t Act 987 as it has completely repealed Act 662.

In conclusion, this is one Act that business entities, financial and payment service providers should look out for and take steps to comply with its provisions.

By Godwin Dakpo (Intern 2019)

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