

Bangladesh Payment and Settlement Systems Regulations, 2009

DRAFT



Payment Systems Division
Department of Currency Management and Payment Systems
Bangladesh Bank

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With a view to regulating and supervising the existing and future payment and settlement systems in Bangladesh in terms of Article 7 A (e) of the Bangladesh Bank Order, 1972; the Board of Directors of the Bangladesh Bank is pleased to make the following regulations, in exercise of the powers conferred by Article 82(1) and 82(2) (k) of the Bangladesh Bank Order 1972.

1. Short Title and Commencement

- (1) These regulations shall be called Bangladesh Payment and Settlement Systems Regulations, 2008.
- (2) These regulations shall come into force with effect from2009.

2. The Objectives of the Regulations

The objectives of these regulations shall be:

- (a) to regulate, and supervise payment systems that operate in Bangladesh, including cross border transactional activities in Bangladesh that affect its currency;
- (b) to regulate the transfer and movement of funds in Bangladesh Taka within Bangladesh and cross-border transfers which are also subject to the Foreign Exchange Regulation Act 1947;
- (c) to establish effective regulation and supervision on the issuance and use of payment instruments, mechanisms, and channels; and
- (d) to regulate the establishment and operations of payment systems and payment services in Bangladesh, setting forth the rights and obligations of participants in such systems.
- (e) to ensure secure and efficient arrangements for settlement on a gross basis, as well as on a bilateral or multilateral netting basis.

3. Definitions

For these regulations the following definitions shall apply:

- (1) *“Bank Company”*: means a bank company established under the Bank Company Ain 1991;
- (2) *“Cash”*: means notes and coins that are legal tender in Bangladesh;
- (3) *“Cheque”*: A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.
(Section 6 of The Negotiable Instruments Act, 1881.)
- (4) *“Cheque Image”* means a digital representation of the front and back of a cheque.;
- (5) *“Clearing”*: means the exchange of payment instructions between system participants or between systems, and includes without limitation, the processes associated with clearing, sorting, editing, netting and prioritizing such instructions or orders in whatever form these take;



- (6) *“Designated Payment System”*: refers to any payment system that operates in Bangladesh with license from Bangladesh Bank;
- (7) *“Electronic Fund Transfer”*: means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a bank to debit or credit an account maintained with that bank through electronic means and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfer initiated by telephone, internet and card payment ;
- (8) *“Financial Institution”*: means such non-banking financial institutions, as are defined in Section 2 (kha)(aa) of the Financial Institutions Act, 1993;
- (9) *“Gross Settlement”*: means the settlement of funds or securities transfer instructions that occurs individually on an instruction by instruction basis;
- (10) *“Legal Tender”*: means bank notes and coins issued by the Bangladesh Bank and/or Government as legally accepted instrument of payment for goods, services and debts ;
- (11) *“Net Settlement”*: means a settlement procedure in which final settlement of transfer instructions occurs on a net basis at one or more discrete, pre-specified time during the processing day;
- (12) *“Participant”*: means an entity that is authorized by Bangladesh Bank to participate in a payment system;
- (13) *“Payment Instruction”* :means any instrument, authorisation or order in any form, including electronic means, to effect a payment,-
 - (i) by a person to a system participant; or
 - (ii) by a system participant to another system participant ;
- (14) *“Payment Instrument”*: means any instrument whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment;
- (15) *“Payment System”*: means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them;
- (16) *“Payment System Operator”* refers to an entity licensed by the Bangladesh Bank for operating a settlement system for payment activities between participants of which the principal participant must be a scheduled bank or financial institution maintaining accounts with Bangladesh Bank for meeting Cash Reserve Requirement;
- (17) *“Payment Service Provider”* refers to an entity licensed and approved by the Bangladesh Bank that provides payment service(s) to its participants or to a payment system for the purpose of facilitating payment(s) or the payment processes settling their transactions through a scheduled bank or financial institution maintaining accounts with Bangladesh Bank for meeting Cash Reserve Requirements;
- (18) *“Real Time Gross Settlement”*: means a settlement that effects final settlement of funds, payment obligations and book entry of securities and instruments on a real-time transaction-by-transaction basis as these occur during operating hours in a processing day;
- (19) *“Settlement”* is an act that discharges obligations in respect of funds or securities transfers between two or more parties;



- (20) "Truncation" means a settlement process in which the physical transfer of a paper based payment instrument is substituted by the exchange and storage of its image and the corresponding electronic information.

4. Licensing, Authorizing and Designating Payment Systems

The Bangladesh Bank shall have jurisdiction to grant payment systems, Payment System Operator (PSO) and Payment Service Provider (PSP) licenses for the operation of payment systems and payment services in Bangladesh. Bangladesh Bank shall have jurisdiction to authorize certain cross-border payment system activities whose operations affect payment systems in Bangladesh.

- (i) On commencement of these regulations, any entity desiring to commence or continue operation of a payment systems or payment services in Bangladesh must apply for a license from the Bangladesh Bank with payment of such fees as may be prescribed by the Bangladesh Bank.
- (ii) Any entity operating payment systems in Bangladesh prior to the commencement of these regulations, shall not continue its operation by right nor shall there be a presumption of right to continue operations but such entities shall be required to apply to Bangladesh Bank for a license within sixty days of the commencement of this regulation and should be bound to meet all the criteria set out in the regulation within six months from the date of application for license for continuation of its operations.
- (iii) If an entity fails to meet the requirements set forth in these regulations the Bangladesh Bank shall determine whether to permit the operations to continue until the requirements can be met together with a remedial program or shall implement a timeline and process for the unwinding of such payment system activities.
- (iv) Bangladesh Bank shall reserve the right to approve or disapprove any application to act as payment service provider.
- (v) Bangladesh Bank may review any payment system's license to determine whether its operations are appropriate and relevant for secure and efficient delivery of payment services. If after review it determines that these ends are not best served by the payment system, it may withdraw the license and cause the system's operations to cease.
- (vi) In licensing a payment system, the Bangladesh Bank shall designate the type of system it is, together with its approved/authorized characteristics and attributes and level of regulation required by it.
- (vii) In order to obtain a license from Bangladesh Bank, a Payment System Operator or Payment Service Provider may be required to maintain capital adequacy at levels specified by Bangladesh Bank. Capital level will be determined by the type of payment system or service, average value of payments, aggregate value and other factors as the Bank deems necessary. Bangladesh Bank may enhance the capital requirements for a Payment Service Provider or Payment System Operator to be complied within a reasonable period determined by the Bangladesh Bank.
- (viii) Licensed Payment System Operator and Payment Service Provider must meet the requirements of all relevant laws, compliance with Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) procedures, as well as regulations and guidelines prescribed for them by Bangladesh Bank.



- (ix) Bank Companies and Financial Institutions maintaining accounts with Bangladesh Bank for meeting Cash Reserve Requirement are not required to obtain a new license to operate as a payment service provider but they are required to comply with instructions and reporting requirements.

5. Revocation of License

The Bangladesh Bank shall by notification revoke the license of a payment service provider or a payment system operator, if upon review and analysis, the Bangladesh Bank determines that:

- (i) the designated payment system operator or payment service provider has ceased to function ;
- (ii) the payment system operator or payment service provider knowingly furnishes incomplete, misleading or false information or documents to the Bangladesh Bank regarding its operations and its designation;
- (iii) the payment system operator or the payment service provider is in the process of winding up or dissolution in Bangladesh or elsewhere;
- (iv) one or more of the terms and conditions for authorization to operate have been violated or contravened;
- (v) the operation of a particular payment system operator or payment service provider must be terminated, as it is jeopardizing the safety and soundness of other payment systems in Bangladesh. The payment system operator/service provider will be given reasonable opportunity to remediate the conditions that are causing the safety and soundness concerns. The timeframe for bringing the system into compliance will be determined by the Bangladesh Bank based on the relevant facts for each situation.

6. Bangladesh Bank as Owner and Operator of Clearing House Operations

The Bangladesh Bank may choose to own and/or operate clearing house operations and payment systems as it deems necessary or appropriate, including a real-time gross settlement system. To ensure efficient, safe, secure operation of payments systems and for safeguarding public interest, Bangladesh Bank will issue rules, procedures, guidelines or specific instructions as it deems necessary. Bangladesh Bank will own and operate Automated Cheque Processing and Electronic Fund Transfer under the umbrella of Bangladesh Automated Clearing House (BACH).

7. Cheque Truncation and Electronic Cheque Image Presentment

(1) The Bangladesh Bank shall issue rules, procedure, guidelines and operating directives under these regulations that will govern paper-based payment items and other instruments that are eligible for truncation and electronic cheque image presentment. The purpose of imaging, image exchange and the transmission of electronic information between and among banking companies is to improve the efficiency of cheque clearing in Bangladesh.

- (i). a cheque image will be recognized as the equivalent of the paper cheque that it represents;
- (ii). once the transfer of funds takes place the original cheque will no longer be negotiable;
- (iii). if the transfer of funds does not take place for any reason using the image, the original physical item may be presented for payment.



8. Designation of new Payment Instruments

- (1) Where the Bangladesh Bank is of the opinion that
 - (i) a new Payment Instrument as a means of making payment which may assume significant role in the payment system of Bangladesh; and
 - (ii) it is necessary to protect the interest of the public by ensuring the integrity, security and reliability of the Payment Instrument; the Bangladesh Bank may recognize the new Payment Instrument as a Designated Payment Instrument.
- (2) Where a Payment Instrument is recognized as a Designated Payment Instrument, the issuers of such Designated Payment Instrument shall be subject to the provisions of Clauses 9 and 10 below.

9. Issuing of Designated Payment Instruments

- (1) No Designated Payment Instrument shall be issued to a person unless the issuer has –
 - (i) complied with the requirements of these Regulations;
 - (ii) submitted to the Bangladesh Bank the documents and information as may be called for; and
 - (iii) obtained a written approval from the Bangladesh Bank to issue a Designated Payment Instrument.
- (2) The Bangladesh Bank may in giving its approval –
 - (i) require all or any of the documents submitted to be modified and altered as it may deem necessary; and
 - (ii) impose such restrictions, limitations or conditions as it may deem fit.
- (3) Any Payment Instrument so issued should have the necessary security features to make its usage secure as per the current international standards.

10. Prohibition of Issuance of Payment Instruments

- (1) The Bangladesh Bank may, by a written order, prohibit any person from issuing or using any Payment Instrument if, in its opinion –
 - (i) the issuing or use of the Payment Instrument is detrimental to the reliable, safe, efficient and smooth operation of the Payment Systems of Bangladesh or monetary policy of the Bangladesh Bank;
 - (ii) the prohibition is in the interest of the public; or
 - (iii) the Payment Instrument has been issued with an intent of defrauding the public.
 - (iv) the person has, in the opinion of the Bangladesh Bank, failed to comply with the requirements of these Regulations.



11. Settlement

(1) The payment systems participants are bound by the settlement rules and procedures established by the Bangladesh Bank. Settlement takes place with the actual transfer of value based on payment instructions, whether gross or net, final or provisional in the books of the Bangladesh Bank.

(2) If the settlement of a payment obligation through an entry to or a payment out of an account of a participant or a clearing house at the Bangladesh Bank is final and irrevocable the entry or payment shall not be reversed, repaid or set aside.

(3) The Bangladesh Bank may make settlement rules to provide the basis on which payment obligations are calculated, netted or settled including rules for taking action in the event that a participant is unable or likely to become unable to meet its obligations to the clearing house or to the other participants.

12. Oversight & Supervision

The Bangladesh Bank shall provide oversight and supervision of payment systems, payment system operators, payment service providers and payment system participants as it deems necessary to ensure the safety and soundness of such systems. Bangladesh Bank shall conduct onsite and offsite supervision of the operations of licensed payment service providers, payment system participants, payment system operators and prescribe such reporting requirement as deems necessary from time to time.

13. Collateral for Payment Obligation

Any asset of a system participant, which the participant prior to any winding up order, judicial management order, or appointment of a conservator, has provided:

- (i) to the Bangladesh Bank as collateral security in respect of a payment obligation, may be used by the Bank to the extent required for the discharge of the payment obligation;
- (ii) to a service provider as collateral security in respect of its written payment obligation with the service provider, may be used by the service provider to the extent required for the discharge of such payment obligation.

14. Public Disclosure for Payments System Operators and Payment Service Providers

A licensed Payment System Operator (PSO) or Payment Service Provider (PSP) licensed by Bangladesh Bank shall be required to publish annual reports with its audited financial statements, information on its operations, its risk management and IT practices including opinion of external audit on effectiveness of the risk management practices; the annual report to be publicly available (e.g., by uploading to its website) within three months from the close of its accounting year. Besides annual reports, PSO and PSP shall be required to disclose such other information/data as deemed necessary for safeguarding in the public interest.

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