

REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT ON THE NATIONAL PAYMENT SYSTEMS BILL, 2019

1.0 Introduction

The National Payment Systems Bill, 2019 was read for the first time on 14th November 2019 and referred to the Committee on Finance, Planning and Economic Development in accordance with Rule 128 of the Rules of Procedure of Parliament.

2.0 Object of the Bill

The object of the Bill is to regulate payment systems; to provide for the safety and efficiency of payment systems; to provide for the functions of the central bank in relation to payment systems; to prescribe the rules governing the oversight and protection of payment systems; to provide for financial collateral arrangements; to regulate payment services providers; to regulate issuance of electronic money; to provide for the oversight of payment instruments and for other related matters.

3.0 Methodology

The Committee held meetings and received memoranda from the following:

1. Minister of Finance, Planning and Economic Development
2. Bank of Uganda
3. Uganda Communications Commission
4. Capital Markets Authority
5. Financial Intelligence Authority
6. Uganda Securities Exchange
7. Uganda Telecom Limited
8. Private Sector Foundation
9. MTN Uganda
10. Airtel Uganda

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11. Uganda Bankers Association
12. Financial Technology Service Providers Association
13. PayWay Uganda Limited
14. SafeBoda Uganda Limited
15. Uber BV

4.0 Observations by the Committee

The Committee observed that:

- (i) Currently there is no comprehensive payment system law in Uganda. Bank of Uganda relies on Article 162 (1) of the Constitution which provides that Bank of Uganda shall encourage and promote economic development through effective and efficient operations of the banking and credit system to develop the payment and securities settlement systems. Such payment systems include the Real Time Gross Settlement System (RTGS) for interbank transfer, the Automated Clearing House (ACH) System for the clearance of cheques, and the Electronic Fund Transfers (EFT). The securities settlement systems, including the Central Securities Depository (CSD) system operated by Bank of Uganda and Securities Central Depository System operated by Uganda Securities Exchange have been implemented.
- (ii) Due to the absence of a national payment systems law, there is uncertainty in the market with regard to licensing of payment systems service providers who are not financial institutions. As such there is limited regulation and oversight of payment systems and inadequate protection of payment and securities settlement systems.
- (iii) Uganda's economy is growing and developing steadily which has seen a shift from traditional payment systems to the evolution of new systems such as electronic and mobile money. There exists a vacuum

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in certain aspects such as licensing, regulation and supervision of the providers of the emerging payment systems thus posing a danger to users of the payment systems. There is need for a legal framework to regulate, govern and oversee these emerging payment systems.

(iv) Regulation of mobile money and other financial services offered over communication platforms in the communications sector is guided by the Mobile Money Guidelines and select provisions under the Uganda Communications Act, 2013 on provision of value for money services. The current legal regime is however weak and does not sufficiently address all the issues regarding digital financial services. Furthermore, the broad legal framework for financial sector does not cover non-financial institutions like MTN, Airtel, Uganda Telecom, PayWay, SafeBoda and Uber that provide payment systems. This bill will address the regulatory gaps that have affected users of these payment systems for some time.

(v) The bill seeks to regulate the issuance of electronic money and electronic money transfer including the requirement for establishment of a subsidiary legal entity for purposes of issuing electronic money, management of trust accounts for electronic money issuers, protection of the trust and special accounts, accrual of interest in trust accounts directly to the consumers and provision for pecuniary and custodial sanctions for breach of the law. This will enhance protection of consumers who use these services.

(vi) The interpretation clause defines a payment system as ‘... a system used to effect a transaction through the transfer of money value and includes the institutions, payment instruments, person, rules, procedures, standards and technologies that make the transfer possible.’ This definition is too wide as it attempts to define operators,

users/those who interact with the payment system as payment system themselves. Some of these institutions are again separately defined in the Bill either as payment service providers, payment system operators and participants. This double definition is likely to create confusion in concisely defining what a payment system is. Under clause 6 of the bill, the categories of payment systems are clearly stipulated. The definition of payment system should be harmonized with clause 6 to facilitate ease of enforceability once the law is enacted.

(vii) The Bill in its current form does not cater for a fair competition and does not provide for prohibition of anti-competitive behavior. There is need for provisions that provide for promotion of fair competition in the sector. These will ensure that operators do not engage in activities which have or are intended or are likely to have the effect of unfairly preventing or distorting competition in relation to any activity relating to payment systems. They will protect small players in the industry especially financial technology companies which are mainly owned by Youth against the dominant players in the market.

(viii) Under clause 13 (1) (h) entry into "insolvency proceedings" is part of the circumstances under which the Central Bank may revoke or suspend a license. "Insolvency proceedings" include those where a financially stressed company is permitted under the law to continue operating business and this should not lead to revocation of a license. Under the Insolvency Act, 2011, insolvency proceedings include bankruptcy and arrangement for individuals, receivership, administration and liquidation for corporate entities. Administration being a corporate rescue mechanism means that the company still has a chance to survive the financial challenges and return to trading profitably. On the other hand, liquidation results in the company being dissolved and

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ceasing trading. Therefore, revocation of a license should be limited to a participant who goes into liquidation.

- (ix) The bill provides that an electronic money issuer shall issue electronic money only after an equivalent is deposited in the trust account or special account opened in accordance with this Act. The money in the trust account is invested by the financial institutions and earns interest. The interest earned on the trust account or special account shall be credited to an interest account opened for that purpose in the financial institution in which the trust account of special account is held and shall be distributed to the benefit of consumers as determined by the central bank.

- (x) Clause 68 of the Bill requires all payment service providers or a payment system operator to establish and maintain a primary data center in relation to payment systems services in Uganda. However, the provision requires all payment service providers or a payment system operator to have a primary data center in Uganda yet they don't hold customer accounts. Only electronic money issuers hold accounts of customers and this data should be available to the central bank in case the companies go into liquidation. Therefore, only electronic money issues should be required to establish and maintain primary data centers in Uganda.

5.0 Recommendation

The Committee recommends that the National Payment Systems Bill, 2019 be passed into law subject to the proposed amendments.

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PROPOSED AMENDMENTS TO THE NPS BILL

CLAUSE 2. INTERPRETATION

(1) Under the definition of close- out netting provision;

- Substitute for the first 5 lines the following;

“close- out netting provision”, means a provision of an agreement by which, on occurrence of an enforcement event and by the operation of netting, set off or otherwise-

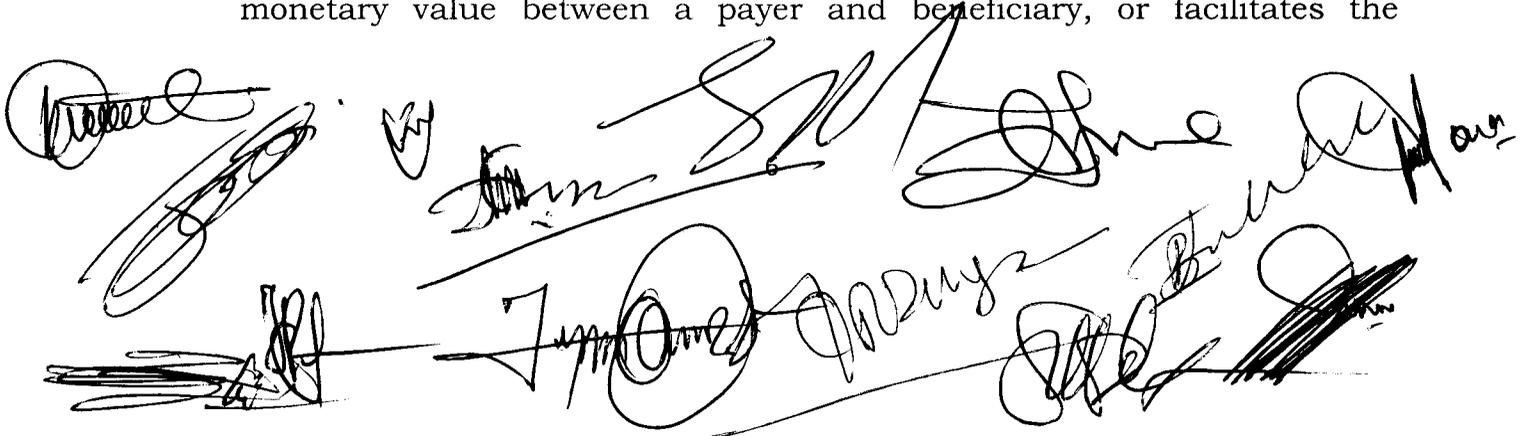
- Under paragraph (a), insert the word “aggregate” between the words “estimated” and “current”.

Justification.

1. Close out netting does not only apply to arrangements, it should apply to any series of transactions in which payments may be due by both parties to the other.
2. To include a consolidation of the estimated current values.

(2) Substitute for the definition of “payment system”, the following;

 “payment system” means a system or arrangement used to transfer monetary value between a payer and beneficiary, or facilitates the



circulation of money, and includes any instruments, rules, procedures, standards and technologies that relate to the system;

Justification

The definition of a payment system in the bill is too wide. it defines operators and those who interact with the payment systems (institutions, persons and payment instruments)as payment systems themselves.

(3) Under the definition of “Title transfer arrangement”

- (a) substitute for “or” , the word “ and” appearing on the second line.
- (b) delete the word “guaranteed”

Justification.

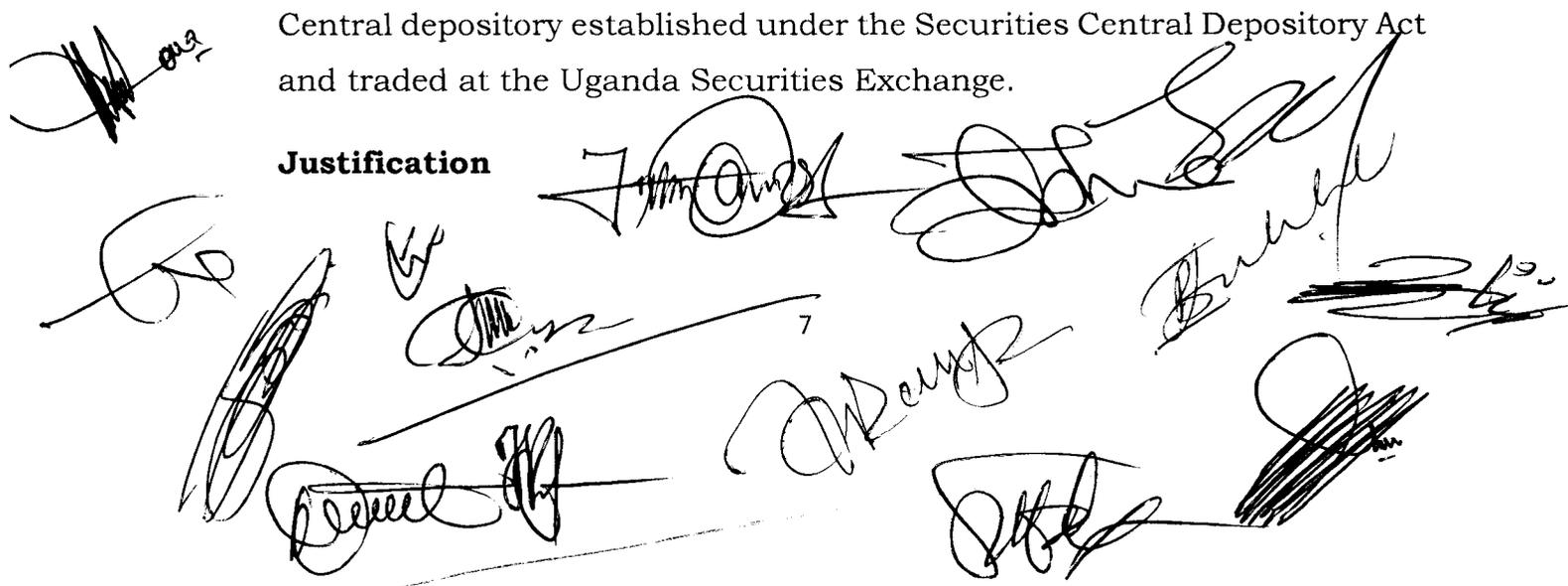
1. In most jurisdictions, title transfer involves the transferal of all rights to the collateral.
2. This definition limits title transfer arrangements to only those which cover the performance of guaranteed obligations.

CLAUSE 3. APPLICATION OF THE ACT

Rename the existing provision as (1) and insert a new sub clause (2) as follows;

“(2) This Act shall not apply to Securities deposited or held in the Securities Central depository established under the Securities Central Depository Act and traded at the Uganda Securities Exchange.

Justification



The system and settlement of securities is already catered for in the Securities Central Depository Act.

These are further regulated under the Capital Markets Authority Act.

CLAUSE 7. PROHIBITION TO OPERATE A PAYMENT SYSTEM

In sub clause (4), insert immediately after the word “**licence**” the words “as **may be prescribed**”

Justification. Disqualification should not last forever.

CLAUSE 10. GRANT OF LICENCE

Insert new sub clauses as follows;

- (a) The central bank shall grant the license within sixty days from the date of the application for a licence.
- (b) The Central Bank shall publish in a newspaper of wide circulation in Uganda, a list of all licenses under this Act, at least once every year.
- (c) Where the Central bank declines to grant a license to an applicant, the central bank shall, within 30 days, notify the applicant of its decision and specify the reasons for the refusal in writing

NEW CLAUSE

Insert new clause immediately after clause 10 as follows;

Modification of license

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- (1) The central bank may, upon reasonable ground modify the conditions of any license if the central bank considers it necessary to achieve the object of this Act, or is in the public interest, taking into account the justified interests of Payment service providers, operators and the principles of fair competition and equality of treatment.

- (2) Before modifying any condition under sub section (1), the central bank shall give the payment service provider or operator notice of not less than sixty days, stating the reasons for the intended modification and giving the payment service provider or operator an opportunity to make any representation.

- (3) The central bank shall give a payment service provider or operator reasonable time within which to comply with the modifications of the licence.

CLAUSE 13. REVOCATION OR SUSPENSION OF LICENCE

- In sub clause (1)(a) substitute for “relevant law in force” the words “ any provision of this Act or regulations made under this Act

Justification.

The provision extends application of the law to other laws whose implementation or enforcement lies with other competent authorities and the central bank.

- **In sub clause (1) (h),**
Substitute for paragraph (h) the following;

“(h) is under liquidation

Justification.

Under the Insolvency Act 2011, insolvency proceedings include bankruptcy and arrangement for individuals, receivership, and administration in liquidation for corporate entities. For instance, administration being a corporate rescue mechanism means that the company still has a chance to survive the financial challenges and return to trading profitably. On the other hand, liquidation results in the company being dissolved and ceasing to trade.

- In sub clause (4), insert the words “ or suspension” immediately after the word “revocation,

Justification.

The notice of suspension of a licence should also be published for the information of the public.

- **Insert new sub clauses as follows**

- The central bank shall give the licensee at least 30 days notice in writing specifying the reason for the intended revocation of the licence
- The central bank shall before revoking a license consider any representations made in writing by the licensee opposing the revocation
- The central bank shall revoke the licence if within 30 days after issuing the notice, the operator does not oppose the revocation or the central bank is not satisfied by the representations made.

Justification

The provision in its current form may not pass the constitutional tenets on the right to a fair hearing.

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CLAUSE 15. ANNUAL FEES

- Substitute for sub clause (1) the following
“(1) A licensee shall pay a fee prescribed by the central bank.”
- Under sub cause (2), delete the word “annual”.

Justification

Uncertainty of fees every year breeds uncertainty, affects planning and growth of the sector.

CLAUSE 16. ESTABLISHMENT OF A REGULATORY SANDBOX FRAMEWORK

Substitute for “may” the word “shall”

Justification

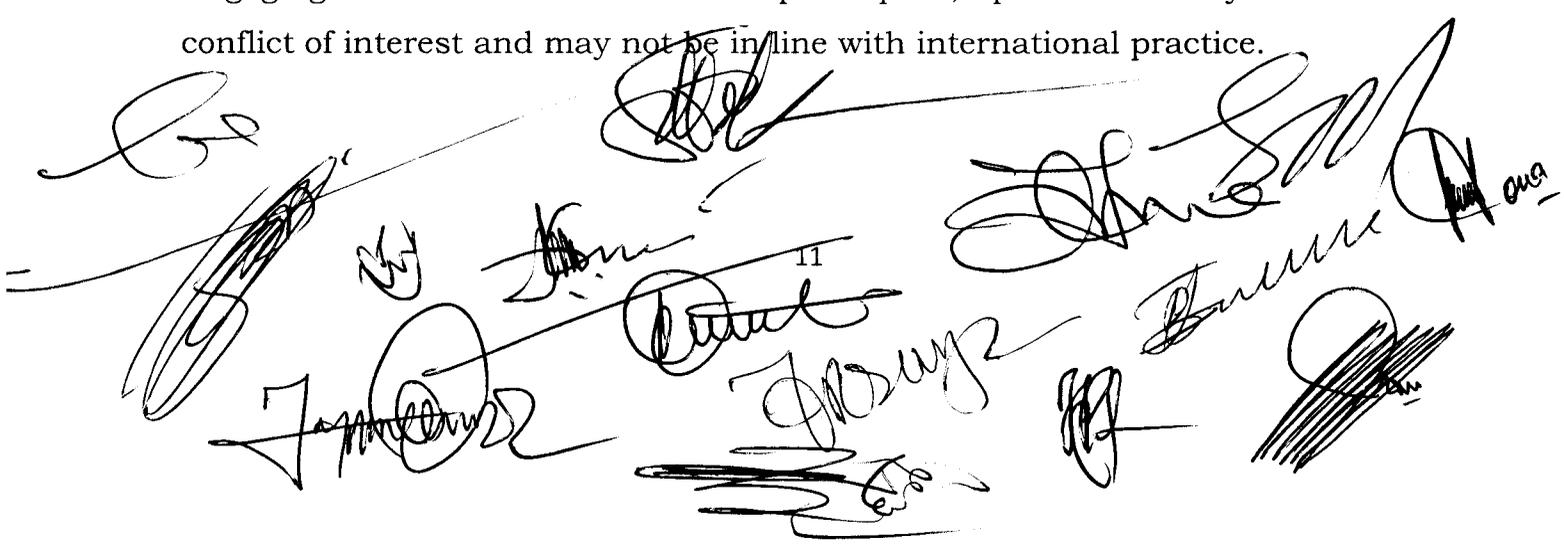
A regulatory framework is required to support the innovations under sand box system. The central bank needs to establish this to support innovation testing. This therefore should not be discretionary

CLAUSE 21. AUDITS

- In sub clause (1), delete the words “or order an external auditor of a service provider”.

Justification

Engaging the external auditor of the participant, operator is likely to result in conflict of interest and may not be in line with international practice.



- Delete sub clause (2)

Justification.

Auditors are legally bound and professionally bound by the duty of secrecy. This duty can only be waived by the client. The provision breaches the international code of conduct for auditors.

- Delete sub clause (3)

Justification. The one who appoints the auditor should pay for the service.

CLAUSE 23. INFORMATION TO BE PROVIDED TO THE CENTRAL BANK

Substitute for the words “A payment service provider or a payment systems operator”, the words “A person licensed under this Act,”

Justification

This would include every person licensed under the Act including the participants

CLAUSE 28. EFFECT OF COMMENCEMENT OF INSOVENCY PROCEEDINGS

Substitute for references to “liquidator” and “receiver” the words “insolvency practitioners”

Justification

This is in line with the language used under the Insolvency Act

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CLAUSE 39. FINANCIAL COLLATERAL ARRANGEMENT.

- **Under sub clause (1)**, substitute for the word "hold", the word "reserve".
- **Under sub clause (2)**, substitute for the word "participant" with the words "collateral provider".

Justification. The word "hold" in this context is confusing because it is not clear whether "hold" means to possess collateral that has been received, or to reserve collateral that is to be provided to the payment systems.

CLAUSE 40. VALIDITY AND ENFORCEABILITY OF FINANCIAL COLLATERAL ARRANGEMENT.

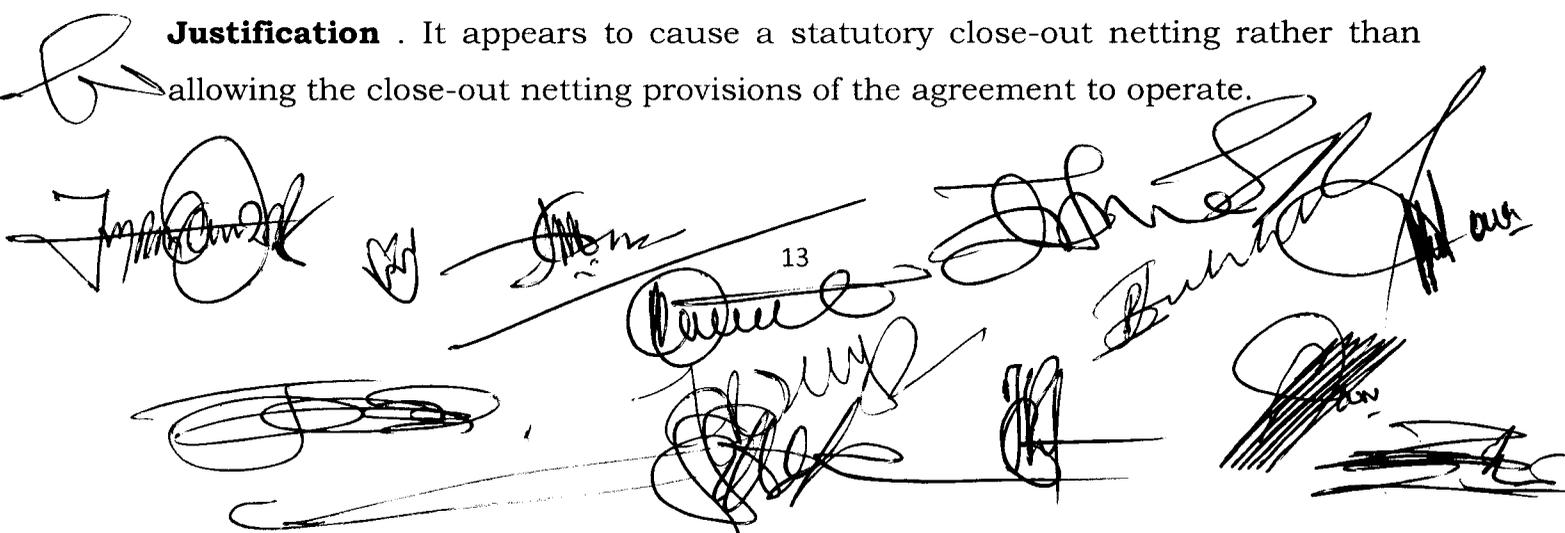
- Substitute for the word "transferred" wherever it appears in the section the word "granted".
- Under sub clause (2) (b), insert the words "for the purposes of holding collateral" after the word "opened".
- Under sub clause (3) (b) and (c), substitute for the word "creditor" the words "collateral provider."

Justification Since this clause is intended to refer to both title transfers and security interests

CLAUSE 41. ENFORCEMENT OF CLOSE -OUT NETTING PROVISION

- Delete the phrase "shall take effect immediately"
- Insert the words "the terms of" between the words "with" and "that" in the third line.
- Under paragraph (a), delete, the words "creditor" and "debtor"

Justification . It appears to cause a statutory close-out netting rather than allowing the close-out netting provisions of the agreement to operate.



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CLAUSE 42. ADDITION OR SUBSTITUTION OF COLLATERAL

In sub clause (1), delete the word “guaranteed”.

Justification.

No actual guarantee is required.

CLAUSE 43. REALIZATION OF SECURITY INTEREST ON FINANCIAL COLLATERAL

In sub clauses (1) and (2) insert the words “be entitled to” immediately after the word “shall”

Justification. For clarity

CLAUSE 49. TRUST ACCOUNTS

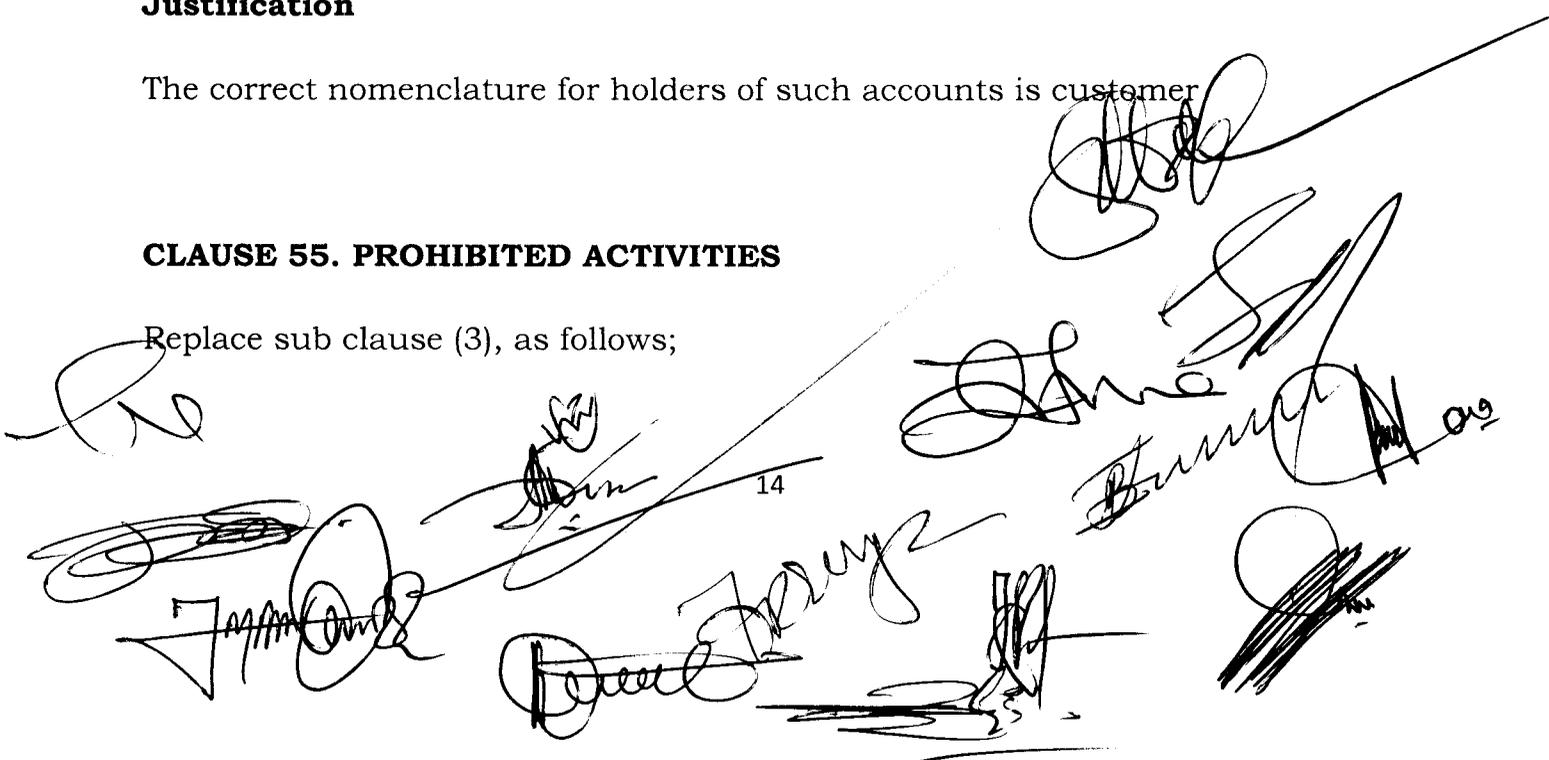
Replace in sub clause (6) the word “consumers” with the word “customers”

Justification

The correct nomenclature for holders of such accounts is customer

CLAUSE 55. PROHIBITED ACTIVITIES

Replace sub clause (3), as follows;

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“(3) An electronic money issuer who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding one thousand currency points.

Justification. Since most EMIs are not natural persons, it is important to increase the fine as the imprisonment sentence may not be applicable.

CLAUSE 56. ACCOUNT TYPES AND TRANSACTION LIMITS.

Delete clause 56

Justification. Determination of account types and Setting of transaction limits should be left to the operators but subject to approval by the central bank.

CLAUSE 61. PROHIBITIONS

Replace sub clause (4), as follows;

“(4) A person who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding one thousand currency points.

Justification. Since most EMIs are not natural persons, it is important to increase the fine as the imprisonment sentence may not be applicable.

CLAUSE 68. DATA CENTRE

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Replace the words “a payment service provider or a payment system operator” with the words “An electronic money issuer”

Justification.

Only electronic money issuers hold customer accounts

CLAUSE 72. POWER TO MAKE REGULATION

- Substitute for sub clause (1) the following;

“(1) The Minister shall, in consultation with the central bank, by statutory instrument, make regulations for the better carrying into effect of this Act.

Justification.

The power of issuing regulations should be vested with the Minister.

- Insert a new paragraph (g) as follows;
“(g) prescribe anti-competitive practices

Justification. To encourage fair competition among payment service providers and operators

- Insert a new sub clause (4) as follows

“(4) The regulations made under this section shall be laid before Parliament for information.

Justification.

For the information of Parliament.

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CLAUSE 74. TRANSITIONAL PROVISION

Substitute for “five hundred currency points” the words”; one thousand currency points

Justification. The proposed fine is not deterrent enough.

CLAUSE 73. AMENDMENT OF SCHEDULE

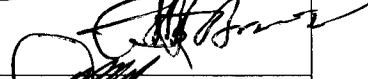
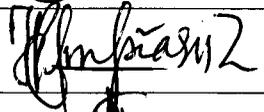
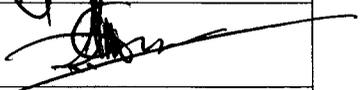
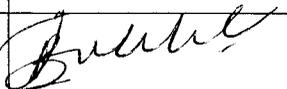
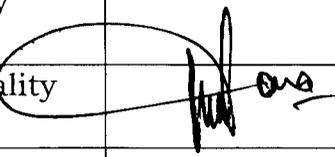
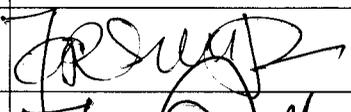
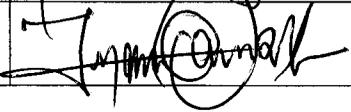
Substitute for “Parliament” the word “Cabinet”

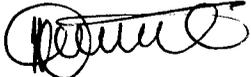
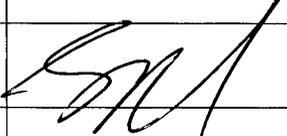
Justification.

For consistency with other Acts of Parliament, amendment of the currency point does not require Parliamentary approval

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**REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC
DEVELOPMENT ON THE NATIONAL PAYMENT SYSTEMS BILL, 2019**

No	NAME	CONSTITUENCY	SIGNATURE
1	Hon. Musasizi Henry, CP	Rubanda East	
2	Hon. Avur Jane Pacuto	DWR Pakwach	
3	Hon. Lugoloobi Amos	Ntenjeru North	
4	Hon. Asiku Elly Elias	Koboko North	
5	Hon. Bategeka Lawrence N	Hoima Municipality	
6	Hon. Abala David	Ngora County	
7	Hon. Katoto Hatwib	Katerera County	
8	Hon. Opolot Isiagi Patrick	Kachumbala County	
9	Hon. Tumuramyie Genensio	Kashongi County	
10	Hon. Stella Kiiza	Kyegegwa District	
11	Hon. Ilukor Charles	Kumi county	
12	Hon. Lokii John Baptist	Matheniko County	
13	Hon. Walyomu Muwanika Moses	Kagoma County	
14	Hon. Mulindwa Isaac Ssozi	Lugazi Municipality	
15	Hon. Odur Jack Lutanywa	Kibanda South	
16	Hon. Achia Remigio	Pian County	
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20	Hon. Nathan Nandala-Mafabi	Budadiri West	
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22	Hon. Mukoda Julie Zabwe	DWR Mayuge	
23	Hon. Luttamaguzi Semakula	Nakaseke South	
24	Hon. Akello Judith Franca	Agago District	
25	Hon. Ochan Patrick	Apac Municipality	