



South African Reserve Bank

National Payment System Department

Consultation paper

Reforms of the regulatory model for the South African national payment system

**A review of the payment system management body model
and the role of the Payments Association of South Africa**

July 2018

1. Introduction

- 1.1 In terms of section 10(1) (c) of the South African Reserve Bank Act 90 of 1989, as amended (SARB Act), the South African Reserve Bank (SARB) is required to perform such functions, implement such rules and procedures and, in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment, clearing or settlement systems. Furthermore, the National Payment System Act 78 of 1998 (NPS Act) provides for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa, and to provide for connected matters.
- 1.2 Payment systems are a gateway to economic activity between consumers and businesses, and contribute to the societal well-being of South Africans. It is thus crucial that payment systems are sufficiently regulated to ensure their safety and efficiency, to better serve the interests of all South Africans, and to boost economic development and financial inclusion.
- 1.3 The SARB is the primary regulator and overseer of the national payment system (NPS). Section 3 of the NPS Act provides for a payment system management body (PSMB) model, similar to a delegated self-regulatory organisation (SRO) model, in terms of which a PSMB is recognised to regulate, manage and organise the participation of its members in the NPS. The recognition may be withdrawn as deemed necessary by the SARB after consideration of conditions specified in section 3 of the NPS Act and in consultation with the members of the PSMB.
- 1.4 The Payments Association of South Africa (PASA) was duly established in 1996 by the South African banking industry in conjunction with the SARB in terms of the Certificate of Establishment dated 15 August 1996, and recognised by the SARB as a PSMB. From 1996, banks were the dominant participants in the NPS and the driving force behind the development of the clearing and settlement networks. Since that time, self-regulation took more prominence, with banks directly involved in determining access criteria, rule-making, compliance monitoring and enforcement. During this period, the SARB relied on PASA to

execute these functions and adopted a delegated approach to the regulation and supervision of participants in the NPS.

- 1.5 While the PSMB model greatly contributed to the safety and efficiency of the NPS over the years, notable shortcomings emerged, prompting the need for a holistic assessment of its effectiveness and/or relevance to ensure the continued stability of the NPS. Further, the payment system environment has in the past decade seen rapid technological advancements and increased innovation, resulting in the emergence of new payment methods, products, services, participants, channels and functionalities. Regulators are thus also increasingly becoming directly involved in regulation, supervision and oversight, further intensifying the need for the review of regulatory models.
- 1.6 As a result, in 2015 the SARB, through the National Payment System Department (NPSD), initiated a review of PASA to assess its effectiveness in fulfilling its 'delegated' mandate and whether it still contributed to the safety and efficiency of the NPS while serving the needs of all South Africans. The review culminated in the publication of a report titled 'Review of the effectiveness of the Payments Association of South Africa' (PASA Review Final Report¹) in July 2016. The report recommended measures to be undertaken; the timelines and responsible organisation(s) to address the shortcomings identified in respect of PASA's governance, membership and mandate, and institutional, regulatory, compliance and enforcement frameworks; and for the broader review of the PSMB model to be conducted.
- 1.7 Following the publication of the PASA Review Final Report, the NPSD initiated the PASA review implementation project to initiate actions to address identified recommendations. A project manager was appointed to coordinate and successfully execute the project. The SARB also established various SARB-led structures to govern the implementation of the recommendations, such as a steering committee, core design team, working groups and coordination working group. All the relevant stakeholders were duly represented in these structures,

¹[http://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Documents/Oversight/PASA%20Report.pdf](http://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Documents/Oversight/PASA%20Report.pdf)

and received the opportunity to contribute to the SARB proposals underpinning the development of this consultation paper.

2. Purpose

2.1 This consultation paper aims to:

- a. propose the future regulatory model for the NPS, highlighting implications for the SARB, PASA, other stakeholders and the NPS; and
- b. solicit stakeholder inputs on the proposed model.

3. Current payment system management body model

3.1 **Recognition:** Section 3 of the NPS Act authorises the SARB to recognise a PSMB established with the objective of organising, managing and regulating the participation of its members in the payment system if the SARB is satisfied that:

- a. “the payment system management body, as constituted, fairly represents the interests of its members;
- b. the deed of establishment or constitution, as the case may be, and the rules of the payment system management body, including the rules relating to admission as members of that body, are fair, equitable and transparent; and
- c. the payment system management body will enable the Reserve Bank to adequately oversee the affairs of the payment system management body and its members and will assist the Reserve Bank in the discharge of the Reserve Bank's responsibilities, specified in section 10(1)(c)(i) of the South African Reserve Bank Act, regarding the monitoring, regulation and supervision of payment, clearing and settlement systems.”²

3.2 **Mandate:** The PSMB mandate, as provided in section 4(1) of the NPS Act, is to organise, manage and regulate its members; provide a platform for the

² [www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Legal/Pages/Legal-Home.aspx](http://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Legal/Pages/Legal-Home.aspx)

consideration of matters of policy and act as a medium of communication between its members and policymakers, regulatory bodies, and other specified public and private institutions; and to promote matters of interest to its members and foster cooperation between them.

3.3 Functions and powers: In addition, the PSMB is empowered in terms of the NPS Act to:

- a. admit, regulate and control members, and with the SARB's approval, to terminate membership;
- b. establish committees, forums or bodies comprising its members;
- c. recommend membership, and system operator (SO) and payment clearing house system operator (PCH SO) authorisation criteria for approval by the SARB;
- d. recommend clearing authorisation criteria for approval by the SARB; and
- e. authorise SOs and PCH SOs.
- f. register third party payment providers (TPPPs).

3.4 Membership: In terms of section 3(3) of the NPS Act, only a bank, a mutual bank, a cooperative bank or branch of a foreign institution, and a designated clearing system participant (including a non-bank) that complies with the entrance and other applicable requirements laid down in the rules of the PSMB can be a member of a PSMB.

3.5 Withdrawal of recognition: Where the SARB is no longer satisfied that the PSMB complies with the recognition conditions and after it has consulted with the members of the PSMB, the PSMB recognition may be withdrawn.

3.6 Benefits: Like any SRO model, the PSMB model generally offers considerable depth and expertise regarding market operations and practices, and in certain instances has the ability to respond more quickly than the regulatory authority to changing market conditions.

- 3.7 **Challenges:** The main challenge of the PSMB model relates to conflict between two competing interests emanating from its dual mandate, which is ensuring fair representation of the interest of its members, including promoting cooperation between its members, and the regulation and management of participation of members in the payment system in the interest of the system as a whole. Other challenges include a lack of clarity in the NPS Act on the appropriate legal and governance structures; a lack of a clear definition of recognition requirements; restrictive membership; prescriptive mandate; and potential anti-competitive situations where the PSMB may act in an exclusionary, unfair or inequitable manner when governing access to the PSMB, or when taking action with respect to the enforcement or application or interpretation of PSMB rules and procedures in a way that is not fair and equitable to all members.

4. Payments Association of South Africa

- 4.1 **Recognition:** As stated in paragraph 1.4 above, PASA was established in 1996 and subsequently recognised in terms of the NPS Act.
- 4.2 **Mandate:** In the years following its recognition as a PSMB, PASA played a central role in managing, organising and regulating its members. Eighteen payment clearing houses (PCHs) with supportive structures, and clearing rules and agreements applicable to each PCH were created under PASA. The PCHs relate to the following payment streams: real-time line (RTL), code line clearing (CLC) (cheque), electronic funds transfer (EFT) credit and debit, Saswitch (automated teller machines (ATMs)), debit card, credit card, cash, American Express, Diners Club, fleet card, authenticated early debit order (AEDO), non-authenticated early debit order (NAEDO), authenticated collections (AC), real-time clearing (RTC), derivatives, equities, money market, and bonds.
- 4.3 **Functions and powers:** Some of the key functions and powers of PASA, mostly aligned to the NPS Act, include the following:
- a. admission of members, and authorisation of clearing participants, system operators and PCH SOs;

- b. registering TPPPs.
- c. development of participation criteria for members, PCH SOs and SOs for approval by the SARB;
- d. issuing PASA policies;
- e. raising funds through fees, subscriptions, levies, charges or by any other means from its members;
- f. imposing penalties and/or fines on members for any breach or contravention of the terms of its constitution or of any other obligation;
- g. taking all such actions as may be required or necessary to fully and effectively enforce all obligations of whatsoever nature and howsoever arising which may be owed to PASA by its members or former members;
- h. executing industry projects; and
- i. constituting, establishing or dissolving any PASA structure that has an impact on, interacts with, has access to, or makes use of payment, clearing or settlement systems or operations.

4.4 **Governance:** PASA is governed by the PASA Council which is composed of ten councillors, two of which are independent (including the Chairperson), plus the SARB and PASA Chief Executive Officer (CEO) as ex officio members.

4.5 **Membership:** PASA membership is aligned to the membership as provided for in the NPS Act. Currently, Postbank and Diners Club are the only two non-bank members of PASA as they are designated clearing participants.

4.6 **Successes:** Over the years, PASA has immensely assisted the SARB in developing the clearing and settlement rules (and regulatory framework), monitoring and enforcing compliance with the rules and regulatory framework, and led complex payment matters relating to new standards, payment streams, channels, payment instruments, functionalities, services and incident management.

Some of the notable successes of PASA include the following:

- a. Implementation of the Early Debit Order Project.

- b. Awareness and enforcement of payment card industry (PCI) data security standards (DSS).
- c. Addressing the growth of 'card not present' fraud (e.g. enforcement of 3D-Secure).
- d. Introduction of new payment systems (i.e. RTC).
- e. Capacity-building initiatives such as the PASA foundational course and UNISA module on payments.
- f. Development of a robust payment clearing house regulatory framework (PCH constructs, PCH rules, clearing agreements etc.).
- g. Development of an internationally accepted biometrics standard.

4.7 **Challenges/shortcomings:** As a member-based entity operating in a dynamic industry with divergent membership and stakeholders and commercial interests, PASA in its current form has not operated without challenges. Some of the key challenges are outlined below.

4.7.1 **PASA review 2015 survey:** In 2015 the SARB conducted a payment industry-wide survey on the effectiveness of PASA. The survey was aimed at gathering necessary information and identifying the shortcomings and areas of concern relating to PASA. Some of the key shortcomings highlighted by the survey include the following:

- a. **Mandate:** Restrictive and biased mandate in favour of banks; and conflicts of interest between regulatory and commercial interests and experience challenges when executing the regulatory mandate since banks were the rule-makers and compliance monitors, and were also involved in enforcement actions.
- b. **Governance:** Lack of independence, skills and adequate representation at the PASA Council.
- c. **Membership:** Non-bank exclusion from membership, non-bank views not adequately represented, inadequate representation and skills, and unfair representation between small and big banks.
- d. **Strategy:** Failure of the strategy function.

e. **Regulatory framework:** Unclear, outdated, inconsistently applied and lack of transparent regulatory and enforcement framework.

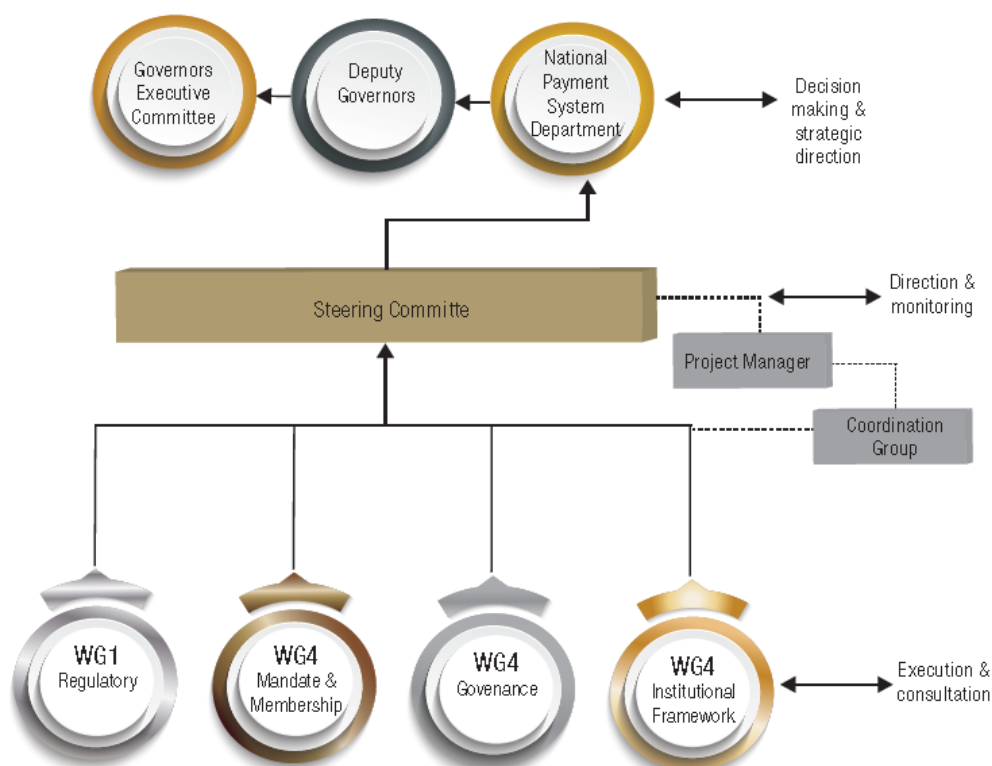
4.8 **Corrective measures:** Steps are already taken by PASA as required by the NPSD to address some of these shortcomings, particularly the independence of the PASA Council, and the separation and independence of the authorisation, rule-making, monitoring and enforcement functions.

5. SARB interventions

5.1 **PASA Review Final Report:** To address the issues associated with the PSMB model and PASA, the SARB published the PASA Review Final Report in July 2016.

5.2 **PASA review recommendation implementation process:** The implementation planning process commenced in November 2016. For this process, the SARB established various SARB-led structures to govern the planning of the implementation of the recommendations through a steering committee, core design team, working groups and coordination working group. The structures are illustrated in Figure 1.

Figure 1: PASA review governance and operational structures



- 5.3 During the implementation planning phase, the SARB expanded on the recommendations of the PASA Review Final Report and proposed specific measures that would enhance the effectiveness of PASA as a recognised PSMB. The governance and operational structures commented on the proposals, which comments were taken into account in developing this document.
- 5.4 In parallel, the SARB also conducted a broader review of the current regulatory model, which took into account the necessary aspects of the PASA review and final recommendations. The broader review is outlined in detail in paragraph 6 below.

6. Review of the current regulatory model and approach

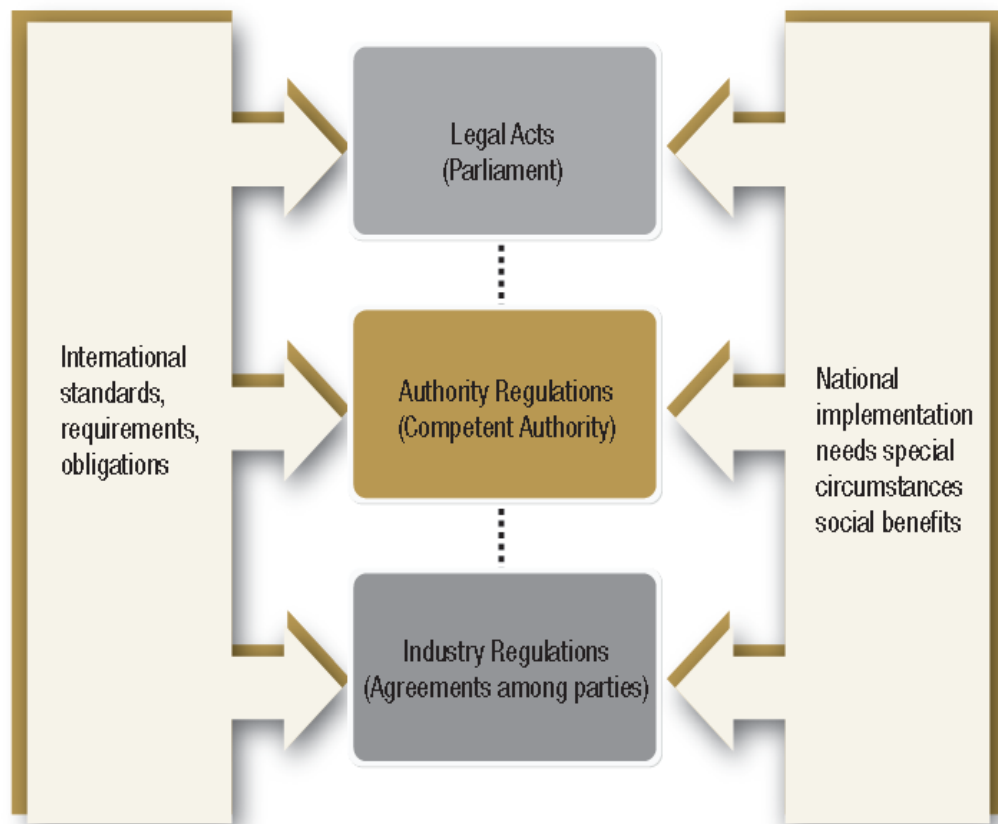
- 6.1 The payments landscape is experiencing major developments in the provision of payment services, and their regulation, supervision and oversight.** Payment services and systems are in a period of major re-engineering and restructuring due to three main factors: (i) information and communications technology (ICT) developments; (ii) globalisation; and (iii) customer services integration. This is likely to change and redesign the basic everyday payment services. Cross-border services will become common, and domestic and local solutions will need to align to international standards, systems and applications (apps). Customers, both payers and payees, will be able to integrate their devices, such as mobile devices and computers, directly to payment services. In the same way there are less technical differences between domestic and international telecommunication, the differences between domestic and international payments will disappear. These developments will most likely also impact payments related to securities and other traded assets and derivatives.
- 6.2 Current payment system developments may be compared to what was witnessed through the introduction of the Internet and mobile communication.** Although the development of payment services has been slower than general Internet developments, major payment developments are on the horizon. In the same way as any person can today send an email or SMS message in real time to anybody in the world, transacting parties will come to expect, with the same ease, to be able to send immediate payments to each other. Today, there are no technical barriers for this kind of development in payment services, which is evidenced by the fact that the international payment industry has for more than two decades enabled a worldwide ATM cash withdrawal network, in which customer accounts are debited and cash is dispensed in real-time anywhere and in any currency. Immediate payment services will in future affect the fundamental competition situation in payments, banking, in foreign exchange markets and all kinds of assets trading that may be settled immediately.

- 6.3 **National payment systems need to integrate and adapt to these development trends and the national regulations need to be updated accordingly. National supervision and oversight functions and policies also need to be developed accordingly.** There seems to be a growing global trend of increased focus by regulatory authorities on payment services to address slow developments, insufficient competition and consumer protection needs in the payments market. Following the global financial crisis and other most recent sovereign and corporate failures, central banks and regulatory authorities are increasingly becoming 'hands on' and assuming more regulatory, supervisory and oversight responsibilities. Typical examples are the European Commission directives and regulations in Europe and the Australian Reserve Bank's involvement in payment developments in Australia. Central banks and financial supervisors have also cooperated within the Group of Ten /Committee on Payments and Market Infrastructures (G10/CPMI) and the International Organisation of Securities Commissions (IOSCO) Technical Committee to define global regulatory, oversight and supervisory standards for payment systems. The SARB thus took action to review aspects where some of its core regulatory and supervisory functions are 'delegated' to the PSMB/PASA.
- 6.4 **Past experiences of economic crises and a drop in consumer trust in payment systems and services have resulted in a social need of regulating and licensing payment services.** Market, system and service provider stability is required in order to maintain financial stability where payment systems play a major role. Licensing and regulations should support competition and therefore measures to promote development, competition and customer services are needed in the payment industry. The payment industry is a typical network industry, which requires cooperation among competitors in order to provide customer services across service providers. However, such cooperative services can also act as barrier for further developments, as new solutions need to be adopted coherently and coordinated across all service providers. As the common payment infrastructures have become more complex and more integrated, the legacy system pressure for maintaining the status quo situation tends to increase in order to avoid costly changes or at least to

postpone such to the future. This may result in a situation in which the industry participants' views on the benefits of certain developments differ from the social and public authority views.

- 6.5 **Regulations governing an industry consisting generally of a hierarchy of regulations and rules (see Figure 2).** The highest level of a hierarchy is generally Acts of Parliament. The Acts governing payments often contain mandates to government/regulatory authorities to provide more detailed regulations, directives or standards. The rules and principles in legal Acts as well as regulations/regulatory instruments issued by regulatory authorities have to be observed by all service providers, especially when the same acts and regulations limit service provision to licensed entities. Without the regulations issued by regulatory authorities, industry regulations and rules, including payment service provision, could be open to unfair competition. The third level of regulations is to a large extent used in the payment industry to coordinate technical implementations regarding both the content and timing. One recent typical example of very wide industry regulation is the change-over from magstripe to chip-based card and PIN-verification practices, which has been achieved in most countries without public regulations.

Figure 2: The regulatory hierarchy

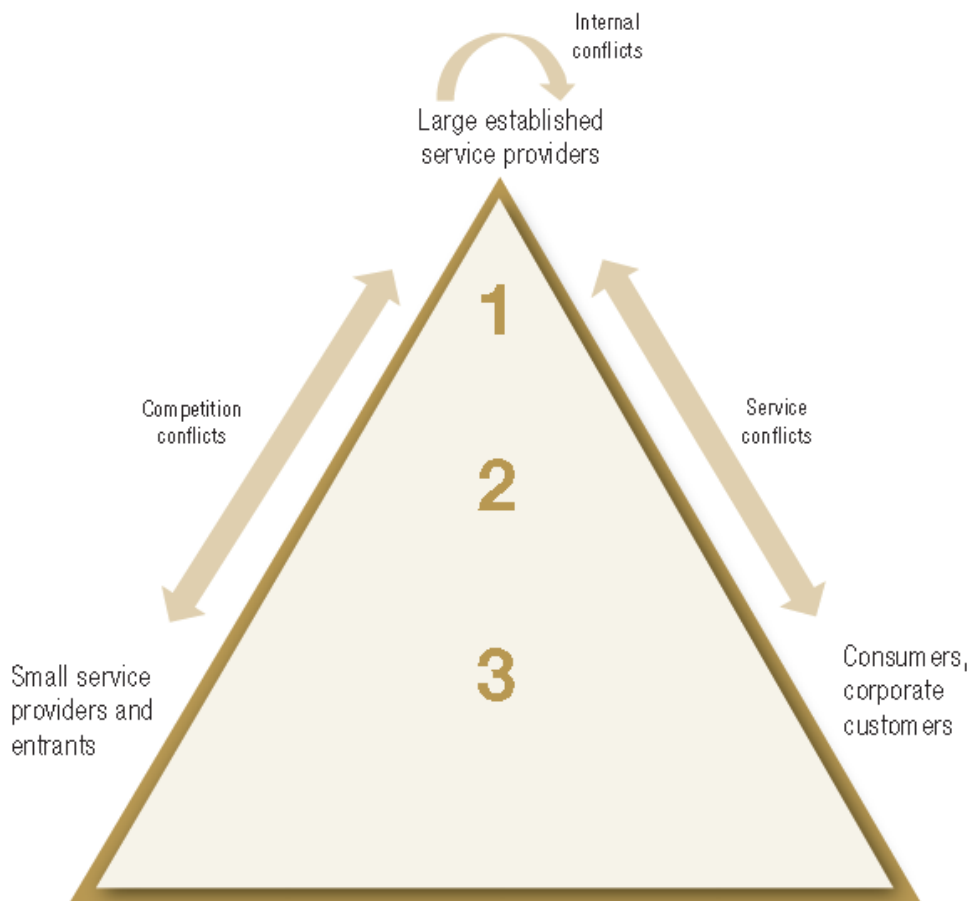


- 6.6 **These three levels of regulations should support each other - it is not a case of one or the other, but all should be used at the same time.** Although it may be difficult to point out which type of regulations should be in which group, one general rule is that when the industry regulations are set close to the social/public requirements, the need for public regulations is reduced. However, the opposite is also true, that is, if industry regulations are far from social/public needs and focused mainly on service provider benefits, then the pressure for public regulation increases. One typical example of the need for authorities to step in with incentive and technical regulations to ensure wide interoperability is the payment service directives and regulations in Europe governing the formation of the common payment area, known as the Single Euro Payments Area (SEPA).

- 6.7 **Public regulation is typically mandated to the central bank and/or ministries.** The setup differs across countries and is steered by political framework and social objectives. Industry regulations, rules, conventions and agreements are created through cooperation among parties within the industry.
- 6.8 **The private cooperation, resulting in industry rules and/or standards, is typically based on agreements.** Stakeholders, typically with an important role played by the large service providers in the industry, decide on common rules and standards. A common industry body is mostly based on voluntary participation governed by some kind of multilateral or other type of joint agreement. However, market strategies, product emphasis and customer categories differ across heterogenous service providers. A typical private cooperation organisation has in the past been a national bankers' or payment service association. At the international level, SWIFT, VISA and MasterCard have been the major private cooperation organisations creating standards, rule books, and so on, for international payments, which have in many cases turned into official International Organization for Standardization (ISO) standards.
- 6.9 **Within a private sector payment industry regulation and development body, the inherent conflicting interests need to be resolved in a balanced way.** If the large service providers - which in most cases have the largest decision-making power - promote decisions, rules and standards according to their interest, the end-result will possibly favour the interests of these large service providers. This will probably reduce competition in the market, because different kinds of industry rules and standards will be difficult to fulfil by smaller players and entrants. In the same way, customers may become dissatisfied with service policies, which are not in line with their needs. For the steady state satisfaction and efficiency of the whole market and society, the entity(ies) coordinating the rule-making of the payment industry rules need to be able to incorporate the needs of the customers and provide a level playing field among all kinds of service providers. The triangle of conflicting interest can be resolved by broadening the membership in the governance body of the industry regulatory body. Different kinds of supplementary boards with customer representation can also be established. However, the critical issue is always to which extent the large service providers in the market are willing to take into

account the views of the other entities in the market. The more overreaching the objectives of the industry body, the more important and productive they will generally be on the market (see Figure 3).

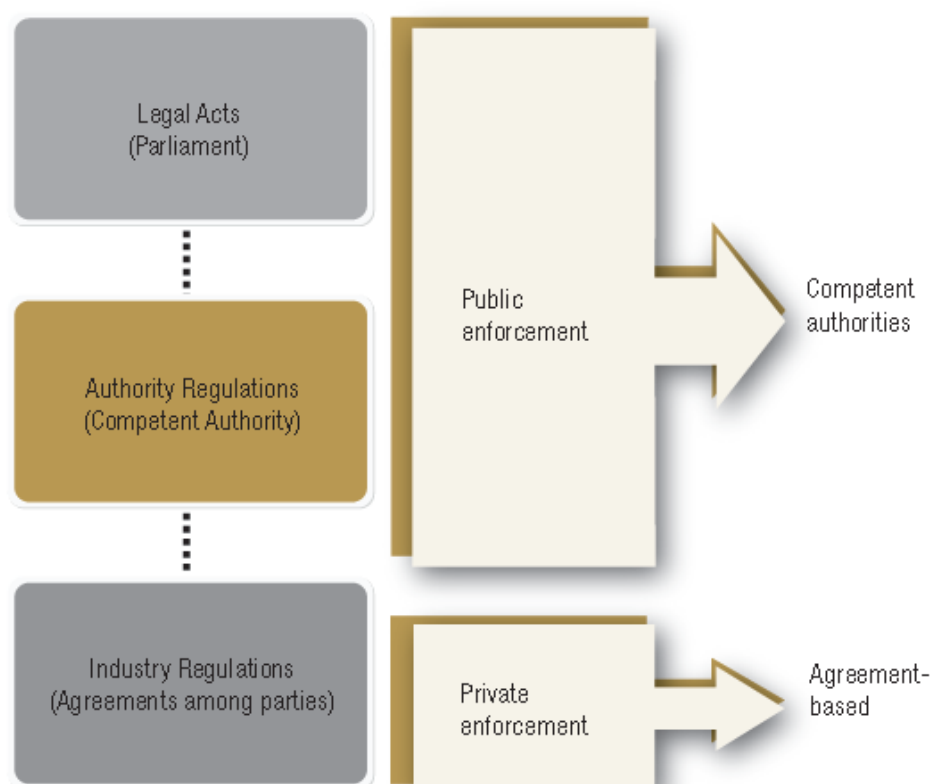
Figure 3: The triangle of conflicting interests



- 6.10 **A well-functioning industry body will require good cooperation and coordination among the largest market participants.** Large differences in opinions among the big players can halt every type of development project. The strength of an industry body is generally completely dependent on the cooperation interest among its largest members. Market developments that are focused on short-term profit, together with annual management bonus systems, have strongly reduced the interest in common far-reaching and resource-consuming payment system investments. These kinds of differences in priorities easily result in a development standstill in industry developments.

6.11 **The requirements in regulations need to be enforced and the enforcement has to be ensured on an ongoing basis.** The enforcing entity may be part of the regulatory body or be separated. Regarding Act-based enforcement, the enforcing tasks are generally delegated by the Act to one or several public entities. These enforcing agencies may then provide more detailed requirements in line with those in the Act and within the boundaries of their mandate. For example, the financial supervisory authorities enforce the direct requirement captured in the Financial Market Acts but also provide generally for more detailed institutional requirements. In order for the requirements in Acts to become functional, they will need an active enforcement agency. Enforcement may be divided between public and private enforcement entities, as depicted in Figure 4.

Figure 4: The enforcement patterns



6.12 **The border line between public and private rules and regulations versus public and private enforcement does not necessarily have to coincide.** Public enforcement bodies could also require market participants to enforce

industry regulations. However, the opposite is seldom used as private enforcement of authority regulations can easily result in a conflict of interest. Private enforcement is based on agreements among participants. If participants do not respect their mutual agreements, it is often difficult for any 'association' entity to muster the necessary enforcement power. Private industry enforcement is therefore mostly somewhat weaker than public authority enforcement. The actual usefulness of private regulations is determined by its successful implementation and enforcement. The individual competent enforcement authorities of payment regulations and their mandates vary across countries. Their mandates can overlap, and they usually cooperate in their activities. Generally, a financial supervision authority is in charge of ensuring that all entities in the financial market fulfil the required regulatory, prudential and license requirement on an ongoing basis. The oversight function of the central bank has the objective to ensure the payment and settlement systems as a whole, and the overall value chain in payments provides efficient and low-risk services for the society and individuals in line with best practices. A separate consumer agency often has the task to ensure that terms, conditions and service levels of provided payment services are in line with minimum consumer requirements. There may also be other agencies and boards involved in the enforcement of payment regulations, depending on the structure of national public agencies.

- 6.13 **PASA has served the NPS of the country for several years.** As stated in paragraph 3 above, according to the current NPS Act, the SARB can recognise entities such as PSMBs, which may organise, manage and regulate the participation of its members in the payment system. PASA has been recognised as a PSMB and is the only PSMB that operates in South Africa.
- 6.14 **PASA has been able to satisfactorily fulfil its role as a PSMB. However, the changing conditions of provision and regulation of payment, clearing and settlement services in South Africa and internationally have led the authorities and the industry to open a debate on the current validity of the PSMB model.** These discussions have identified some shortcomings, in particular regarding PASA's perceived focus on mainly the interest of larger members, enforcement problems and the outdated governance structure as

contained in the PASA Review Final Report. The needs of non-members and customers might not have been addressed appropriately. Moreover, PASA has not been able to fully resolve some internal, competition or service conflicts issues, notwithstanding important efforts by its executive office, council and members to review operations in recent years. In this situation, there is a risk that the South African NPS, for years known for its safety, efficiency and cooperative nature, might not keep up with the developments and opportunities facing the payment system industry.

- 6.15 **PASA has to date had a dual mandate, partly set by its members and partly by delegation by the SARB. This may result in a conflict situation within PASA, where PASA needs to balance between membership views and delegated 'regulatory' responsibilities.** This may affect both functions and result in the PASA executive office becoming partly independent of its members, and also being the supervisor of its members. The executive office would thus be responsible for two different directions that have conflicting interests. In this regard, there would be a lack of transparency and accountability regarding the delegated role, which would be key in reducing the conflict of interest. This kind of model may result in amplified conflicts if PASA tried to 'monopolistically' enforce its regulatory scheme on new entrants or on small service providers operating in separate infrastructures and/or on niche products for which PASA regulations are not yet developed or suitable. Although the current legislation enables parallel PSMBs, this kind of setup could result in clashes if it becomes unclear which regulations to follow if two or more PSMBs create regulations for similar kinds of payment business transactions.
- 6.16 **Internationally, this kind of construction with dual mandates seems to be rare.** Bankers' and payment industry associations tend only to be based on membership mandates, and therefore only responsible for creating industry rules and standards, for example NACHA in the United States (US), and Association for Payment Clearing Services (APACS) and its successors in the United Kingdom (UK). Different kinds of payment boards, as used in some countries, are mostly set up as independent entities, mostly for analysing and defining payment service development needs and not for creating regulations. Participation in such development boards or councils is mostly based on broad

market stakeholder representation and private expertise and know-how. These kinds of payment boards or councils have been found to be useful in several jurisdictions when payment systems face important development needs, as there is generally a need to define the development objectives, policies and routes before establishing the necessary regulations. **Box 1 provides a summary of the various payments associations in other jurisdictions and their mandates.**

Box 1: Comparative analysis of payments associations in other jurisdictions and their mandates

Australia

The payments association in Australia is known as the Australian Payments Network (previously the Australian Payments Clearing Association or APCA). Its objects are: (i) to enable competition and innovation, promote efficiency, and control and manage risk in the Australian payment system, and to generate and collate ideas and information to support that objective; and (ii) to facilitate industry collaboration, self-regulation and system-wide standards, and to coordinate the operation of effective payment systems. The association is a non-statutory voluntary association not recognised in law.

Canada

The Canadian Payments Association (Payments Canada) is a not-for-profit statutory organisation established in terms of an Act of Parliament in 1980 under the Canadian Payments Association Act (CPA). Membership in Payments Canada includes the Bank of Canada, Canadian domestic banks and authorised foreign banks, other deposit-taking institutions (credit union centrals, trust and loan companies, and provincial savings offices), life insurance companies, securities dealers, and money market mutual funds. Payments Canada is governed by a 13-person Board of Directors, composed of 7 independent directors, 3 directors from Payments Canada members who are direct participants in Payments Canada systems, 2 directors from other Payments Canada members, and the President of Payments Canada.

The objectives of Payments Canada as provided for in the CPA are to: (i) establish and operate national systems for the clearing and settlement of payments and other arrangements for the making or exchange of payments; (ii) facilitate the interaction of its clearing and settlement systems and related arrangements with other systems or arrangements involved in the exchange, clearing or settlement of payments; and (iii) facilitate the development of new payment methods and technologies.

In terms of section 5(2) of the CPA, the duty of Payments Canada is to promote the efficiency, safety and soundness of its clearing and settlement systems and take into account the interest of users. Section 16 (1) stated that the directors of the CPA act honestly and in good faith with a view to the best interests of the Association. Payments Canada issues by-laws and rules for participation in those systems. The Minister of Finance has authority over

Payments Canada, while the Bank of Canada (BoC) oversees the system operated by Payments Canada.

United Kingdom

The UK Payments Administration (Payments UK) was integrated into UK Finance (with the exception of the Design team and the Delivery and Standards team) on 1 July 2017. As of this date, UK Finance has been the new trade association representing the finance and banking industry operating in the UK. Its objectives relate to policy, advocacy and delivering expertise to its members - the mandate previously executed by Payments UK. UK Finance is not recognised in law and is neither regulated nor overseen by the Bank of England (BoE) or the Payment Systems Regulator (PSR). During the benchmarking visit to the UK, the BoE highlighted that Payments UK was previously a quasi-regulatory body responsible for the promotion of innovation and competition in the UK payment system. However, the role was recently transferred to the PSR, a subsidiary of the Financial Conduct Authority (FCA) after the association was unsuccessful in advancing competition and innovation in the payment system.

Netherlands

The Dutch Payments Association is a voluntary trade association responsible for the collective tasks that are important for the smooth functioning of payment transactions in the Netherlands. These common tasks relate to the infrastructure, standards, regulations and joint product characteristics of payment traffic. The Dutch Payments Association operates in the interest of all its members and stakeholders. It works closely with its members and periodically consults with them on developments and activities. It also consults proactively with representatives of end users.

Analysis of the jurisdictional comparative analysis:

- a. With the exception of Canada, none of the other jurisdictions provide for the legal recognition of payments association in law. In most jurisdictions, payments associations are voluntary or trade associations that organise the activities and set the code of conduct for their respective members. These associations do not exercise regulatory functions although they influence the regulatory reforms.
- b. In some jurisdictions, the payments associations were also operators of technical infrastructures or had outsourced the infrastructure to an infrastructure provider.
- c. Payments regulation was either split between the central bank (i.e. authority regulations) and the payment association (i.e. industry rules/agreements) or between the central bank and the conduct or another regulatory authority.
- d. The payment associations recognised in law had a regulatory, operator and catalyst mandate, as opposed to member interest/mandate.
- b. Collaboration challenges hampering competition and innovation in the payment system resulted in a payment association being divested of its regulatory mandate and transferred to a primary regulatory authority (See the paragraph on the UK).

6.17 **Protection of legacy systems of the long-standing financial services providers negatively impacts the operational efficiency and effectiveness of PASA and its members, slows down regulatory reforms, stifles innovation and introduces inefficiencies in the NPS.** Most regulatory measures requiring implementation to enhance the safety and efficiency of the NPS are seen as disrupting the legacy systems maintained by long-standing

providers. Members tend to be reluctant to effect regulatory changes that require extensive modification of their systems, thereby reinforcing their dominant positions, creating barriers to entry and stifling innovation. This conduct became more prominent in the ongoing modernisation project which has been dragging on for years. The Authenticated Collections (DebiCheck) Project, which is running behind schedule due to the initial non-committal approach from some of the participants, and stalled system enhancements to ensure compliance with Financial Action Task Force (FATF) Recommendation 16 for cross-border and domestic EFTs are examples.

- 6.18 Lack of collaboration and cooperation between payment services providers may prove to be a huge impediment to interoperable systems and innovation. This has necessitated the SARB's intervention through legally binding directives and sanctions to ensure (or coerce) collaboration and cooperation.** A typical example is the implementation of the Authenticated Collections (DebiCheck) Project, where a directive was issued to ensure complete industry commitment and migration to DebiCheck by October 2019. Payment service providers also tend to innovate within their closed systems, citing possible accusations of collusion as motivation. This negatively impacts the safety and efficiency of the NPS.
- 6.19 There is, however, a possibility of confusion regarding the distinction between the terms 'delegation' and 'outsourcing'.** In this report 'delegation' refers to the current mode in South Africa in which some regulatory responsibilities may be delegated to another regulatory authority or non-core regulatory responsibilities to a third-party. The 'outsourcing' of regulatory tasks is defined in this report as a possibility for the overseer and regulator to contract a suitable organisation to perform non-core, time-based market or system-related development tasks.

7. Proposed future regulatory model

7.1 **Legal certainty:** The future legislative framework of the NPS will provide legal certainty in relation to the model for the regulation, oversight and supervision of the NPS. The NPS encompasses the entire payment process, from payer to beneficiary, and includes settlement between participants. The process includes all the tools, systems, mechanisms, institutions, agreements, procedures, rules or laws applied or utilised to effect payment. The regulatory model, in particular, will explicitly provide for the SARB as the primary regulator, supervisor and overseer of the NPS. As a result, the revised NPS Act will no longer prescribe a PSMB or SRO type of regulatory model. This will be in line with international best practice.

7.2 **Mandate and functions:** The revised NPS Act will clearly stipulate the mandate of the SARB as the primary regulator, overseer and supervisor of the NPS. The powers and functions of the SARB in executing this mandate will also be specified in law. Of importance to note is the distinction between core functions (which will be prescribed in the NPS Act) and non-core functions which may or may not be made explicit in the NPS Act.

7.2.1 Core functions include, but are not limited to:

a) ***Regulation of the NPS***

- i. Setting of NPS regulations and frameworks, including the issuing of regulatory instruments such as the NPS Act, directives, standards, notices, guidance notes, information papers and position papers, and frameworks such as regulatory, licensing, governance frameworks, etc., in collaboration with the FSCA where required.
- ii. Licensing, authorisation and registration authority within the entire NPS, in collaboration with the FSCA where required.
- iii. Setting general entry and participation criteria for participation in the NPS.
- iv. Setting entry and participation criteria (including rules) for settlement systems and their participants.

b) ***Oversight of the entire NPS***

- i. Continuous monitoring of open, interoperable, closed and stand-alone payment systems to ensure compliance with the NPS Act and regulatory instruments.
- ii. Development of processes to identify, manage and mitigate risks in the payment system.
- iii. Management of systemic crisis in the payment system.

c) ***Supervision of the entire NPS***

- i. Supervise compliance with NPS Act and relevant regulatory instruments and frameworks.
- ii. Enforcement of compliance to NPS Act and other regulatory instruments (such as standards, directives, etc.)

7.2.2 The non-core or supporting functions include, but are not limited to, the development of the NPS infrastructure, approval of industry rules that establish legal certainty and monitoring enforcement thereof, financial education, enhancing collaboration, competition, and commissioning and monitoring of implementation of industry projects and innovation.

7.3 **Power to delegate:** In addition, the revised NPS Act will empower the SARB to delegate its powers and functions relating to its mandate, where necessary. The SARB will have the power to delegate some of its core functions to another regulatory authority such as the FSCA or the Prudential Authority (PA). Delegation to another regulatory authority would be useful in coordinating regulatory responsibilities under the FSR Act, the proposed Conduct of Financial Institutions Act (CoFI Act) and the NPS Act amongst the SARB, FSCA and/or PA. Non-core functions may be delegated to a third party such as an industry body or an operator of a payment system. This will be the case where the SARB may wish to leverage off existing industry capacity and skills, and where the SARB is experiencing capacity constraints to develop and enforce system standards, and promote ongoing innovation, competition and cooperation within the industry.

7.4 Responsibility of the SARB in respect of delegated functions:

7.4.1 Depending on the delegated functions, the third-party may be required to meet appropriate governance, financial, transparency, coordination, human resources, and fit and proper requirements. These may be set out in the general standard or in the delegation document.

7.4.2 Delegation of functions by the SARB will not amount to abdication of its responsibilities in relation to the delegated functions. The SARB will remain accountable for and oversee the overall execution of the delegated functions.

7.4.3 Delegation of functions will further not result in complete transfer of delegated functions and the SARB may elect to also execute an element of the delegated function.

7.4.4 Moreover, the SARB will have the power to amend, suspend, cancel or withdraw the delegation within a reasonable time period, in the interest of the NPS.

7.5 **Outsourcing:** In addition to the power to delegate, the SARB will have the power to outsource specific, non-core and time-based NPS development, innovation and interoperability tasks to a third-party with sufficient knowledge and experience of the development of payment ecosystem and rules, for example in the areas of payment modernisation, remittances or e-money. Paragraphs 7.4.1 to 7.4.4 above also apply with regards to outsourcing of functions by the SARB.

7.6 Role of the NPS industry participants:

7.6.1 This model has a clear separation of industry rules/standards and authority standards and regulatory instruments, which implies abolishing the application of dual mandates. The SARB would be responsible for the regulatory mandate, while the PSMB (i.e. PASA) would become a pure industry organisation, which sets and enforces industry rules and standards, based on member mandates.

7.6.2 The industry, which includes PASA and other industry participants not falling under the ambit of PASA e.g. non-banks, operators, etc., will be required to align their goals to the SARB's public policy objectives and strategy (including Vision 2025 goals) of the NPS. In essence, the role of the industry in supporting the SARB's objectives will include the following:

- a) Collaborate and cooperate to achieve SARB's objectives and strategy of the NPS.
- b) Collaborate and cooperate to develop shared interoperable systems/infrastructures and ensure the benefit of the network effect.
- c) Cooperate and collaborate to develop industry rules and enforcement measures that establish legal certainty to support the SARB's objectives and strategy of the NPS, including interoperability.
- d) Collaborate and cooperate to implement industry projects.
- e) Contribute towards an inclusive, innovative and competitive payment landscape that will also contribute to the enhanced access and financial inclusion.
- f) Capacity building and payment system education.
- g) Drive consumer financial education.
- h) Contribute to the development of and assist with the implementation of NPS Strategy.

7.7 Implications for the SARB, PASA, other stakeholders and the NPS

7.7.1 Discontinuation of the PSMB model: The PSMB model will cease to exist and the PSMB's regulatory functions would be transferred to the SARB, relevant authority or delegated to a third-party, where necessary. The PSMB model will no longer be recognised in the NPS Act, in line with international practice. PASA may become an industry body with a member mandate only responsible for member rules and the enforcement of such rules.

7.7.2 Full regulatory responsibility lies with the authority (ies): The SARB (and other relevant regulatory authorities such as the FSCA and PA) will assume full regulatory, supervisory, oversight and enforcement responsibility, with the SARB

having the discretion to delegate or outsource non-core functions to a third-party, which may include PASA. The regulation, supervision and oversight of SOs, PCH SOs, and TPPPs will also fall within the remit of the SARB (and, where applicable the FSCA and/or the PA).

7.7.3 Authorisation, licensing and access criteria: The SARB (and other regulatory authorities such as the FSCA) will become the licensing authority(ies) and develop access, licensing and authorisation criteria for all payment providers/participants in the NPS. The current PSMB responsibility for access or authorisation criteria, and the authorisation of SOs and PCH SOs will thus be transferred to the SARB (or FSCA). The SARB (and/or FSCA) will also develop authorisation criteria for TPPPs.

7.7.4 Establishment of the Payments Council: The Payments Council will be established by the SARB in 2018 to consult and collaborate with the various stakeholders in developing the strategy and vision for the NPS, and monitor the implementation of strategic action plans. The Payments Council will replace the current National Payment System Strategy Body and will be representative of all NPS stakeholders.

7.7.5 Establishment of the Payments Policy and Regulatory Forum: This forum will be established to consult and collaborate with the various stakeholders in developing policy, legislation and regulation for the NPS, and to engage the stakeholders on other policy, legislative or regulatory reforms and developments impacting the NPS.

7.7.6 Split of authority regulations/standards, industry/member rules and operator rules: Any authority rules or regulations that are currently with the PSMB will be transferred to the SARB. The SARB (and FSCA) will set overarching payment services, clearing and settlement standards. Member-based or industry rules (excluding settlement rules) may be developed and enforced by industry bodies or third party delegated by the SARB. Operator-participant rules will become the responsibility of the respective operators, for example the South African Multiple

Options Settlement (SAMOS) system will set settlement rules for approval by the SARB, while the other operators will set the rules for their respective systems also subject to the SARB's approval. The industry or operator rules will require alignment with the payment, clearing and settlement standards set by the authorities.

7.7.7 Amendments to the NPS Act: The new payment system regulatory, supervisory and oversight responsibility and model will emerge after the review of the NPS Act. The required amendments will be effected to the NPS Act to incorporate the proposed model. The SARB is currently driving the process for the review of the NPS Act.

7.7.8 Organisational implications: Enhanced capacity would be required and capability would need to be built in the SARB (and FSCA) to execute some of the new responsibilities. Rule-making and enforcement capacity would also be required at the operator level, where necessary.

8. The way forward

The planned process and timelines going forward are as follows:

- 8.1 Comments on this consultation paper should be received by 13 August 2018.
- 8.2 An industry workshop will be arranged during July/August 2018.

9. Comments and contact details

Stakeholders are invited to forward their comments on this consultation paper by **13 August 2018**. Any comments may be addressed to: npsdirectives@resbank.co.za.

Abbreviations

ATM	automated teller machine
EFT	electronic funds transfer
FSCA	Financial Sector Conduct Authority
NPS Act	National Payment System Act 78 of 1998
NPS	national payment system
NPSD	National Payment System Department
PA	Prudential Authority
PASA	Payments Association of South Africa
PCH	payment clearing house
PSMB	payment system management body
RTC	real-time clearing
SARB Act	South African Reserve Bank Act 90 of 1989, as amended
SARB	South African Reserve Bank
SO	system operator
SRO	self-regulatory organisation
TPPP	third-party payment provider
UK	United Kingdom
US	United States