

Attention : Ms J Fubbs

Companies Amendment Bill

Date : 26 November 2010



Ms J Fubbs

Chairperson: PC on Trade and Industry

Attention: Mr A Hermans

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26 November 2010

Dear sir

COMPANIES AMENDMENT BILL

1 INTRODUCTION

PAYMENTS ASSOCIATION OF SOUTH AFRICA

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1.1 The Payments Association of South Africa (PASA) is the national payment system (NPS) management body recognised by the SA Reserve Bank in terms of the National Payment System Act, 78 of 1998, (the NPS Act). PASA has the responsibility to organise, manage and regulate its member banks in the NPS. PASA has considered the Companies Amendment Bill [B40 - 2010] ("**CAB**") and has identified some concerns which will have an impact on banks, operators and their participation in the NPS.

1.2 The concerns are discussed as set out in paragraph 2 below.

2 THE IMPACT OF THE COMPANIES AMENDMENT ACT

3

3.1 **Business Rescue Practitioner**

Although the purpose and spirit of the CPB is supported, it is submitted that the clauses dealing with business rescue may have unintended negative consequences for the NPS.

Clause 136 deals with the issue of a business rescue practitioner having the right to cancel or suspend an agreement to which a company (including a bank) was a party.

The PASA Member banks have all entered into agreements with each other, as well as with the South African Reserve Bank, PCH system operators and system operators, with regards to clearing and settlement.

The NPS Act (section 8) makes provision for the appointment of a curator or similar official, but states that the curator or similar official is bound by the rules and agreements to which any bank involved in clearing and settlement, is a party. It is suggested that business rescue practitioners should similarly be bound to the rules and agreements. However, the Companies Act does not provide for a scenario where a provision of the CAB is in conflict with the NPS Act.

Although the NPS Act states that the provisions pertaining to curatorship will apply despite anything to the contrary in the Companies Act, no recognition is given to this position in the CAB.



It is our view that there is an inconsistency between the provisions of the NPS Act and the provisions of the Companies Act (and the CAB), to the extent that it is not possible to apply and comply with one of the inconsistent provisions without contravening the second.

3.2 **Criteria for names of companies**

Section 10 (See also clause clause 6 of the CAB) of the Companies Act allows company names to comprise words of any language together with any letters, numbers or punctuation marks, as well as the following symbols: +, &, #, %, + and ".

This entitles bank customers to the use of their registered company names comprising such language, letters, numbers, punctuation marks and symbols, inter alia to require banks to reflect such on their bank statements.

The Act does not place any obligation on banks directly, but indirectly through banks' customers, banks may have to oblige.

Section 10 of the Act thus forces banks to consider the impact from:

1. A bank-customer perspective; and an
2. Interbank clearing and settlement perspective.

Banks have been clearing and settling transactions between each other for years and have been able to deal with unrecognized letters, marks and symbols not allowed by their systems. However, the impact of the right to use words of any language together with any letters, numbers or punctuation marks, as well as the following symbols: +, &, #, %, + and ", on banks, consumers, operators, the SARB and the NPS, is not clearly understood at this stage. This issue may have to be revisited in future by the industry, which could involve major changes to systems at huge cost.



More empirical evidence is required to justify any change at this point in time, however.

3.3

4 RECOMMENDATION

4.1 Based on that set forth above, we are of the view that the CAB be amended by adding reference to the NPS Act as a new clause 7(4)(hh) to address the potential inconsistency between the two pieces of legislation.

Your kind consideration of the above comments would be appreciated.

Yours sincerely,

A handwritten signature in cursive script that reads "Coetzee".

Pierre Coetzee

Executive: payments Regulation