

PAYMENT SYSTEMS AND SERVICES ACT 2019; LICENSES AND RESULTANT REGULATORY ISSUES

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ABSTRACT

Years after its introduction, the adoption of electronic payment services in Ghana surged in 2014 with a record transaction volume of 7.17 million Ghana Cedis. In response to this growth and in a bid to create a fostering and up-to-date regulatory landscape, Parliament passed the Payment Systems and Services Act 2019 (Act 987). The Act's main aim is to amend and consolidate the laws relating to payment systems and services, regulate institutions which carry on payment service and electronic money business, and provide for related matters. Despite the passage of this Act, critical issues in the electronic payment industry remain unresolved, such as the regulation of cryptocurrency and the protection of customer funds under Act 987. This article aims to achieve a dual goal of analyzing the various licenses under the Payment Systems and Services Act 2019 in terms of their permissible activities, while simultaneously discussing the resultant regulatory issues attached to these individual licenses or arising from the Act in general. It will make reference to the regulatory regimes of other Sub-Saharan African countries and global trends in the electronic payments industry.

SECTION I

THE HISTORY OF DIGITAL FINANCIAL SERVICES IN GHANA

For most of humanity's history, the provision of financial services has been a mixture of face-to-face interactions coupled with paper and pen methods of accounting as well as the physical/object store of value (cowries, cash etc.). This generally changed when the provision of financial services was intermarried with the use of technology in the delivery of the former. This amalgamation is often referred to as fintech. Some factions refer to this as digital financial services (DFS). The author will henceforth adopt the term

digital financial services (DFS).¹

Thus, the earliest examples of digital financial services in the world can be traced back to the introduction of money transfers by Western Union in 1871 and the introduction of the automated teller machine (ATM) by Barclays Bank nearly a century later in 1967. Slowly, what could be regarded as the earliest forms of DFS spread around the globe and enjoyed worldwide adoption.

However, in modern times, when the average person refers to DFS or fintech, they are not typically thinking of wire transfers or the use of ATMs. Most often, they have in mind the use of their mobile devices to access financial services whether through traditional banks or non-bank financial service providers such as credit facilities and insurance service providers.

In this regard, the earliest form of DFS adopted in Ghana is Scancom PLC Ltd's Mobile Money (Momo) service which was rolled out in the year 2009 in collaboration with nine banks.² This was on the heels of the success enjoyed by Safaricom Ltd's M-Pesa in Kenya, when it launched in 2007 with the aim of solving the issue of delivery of internal remittances between urban and rural areas. Since then, this innovation has been widely adopted, with as many as 270 mobile money services active as at 2015.³

The innovative mobile money service was subsequently and quickly adopted by other mobile network operators in Ghana: Airtel in 2010, Tigo in 2012 and Vodafone in 2015.⁴ However, the adoption of mobile money by these operators did not see much positive reception from the general public until 2015. The subsequent mass adoption was facilitated by factors such as mobile network operators' already existent strong network, vast number of subscribers, ability to recruit agents, and the steps taken by the regulator to foster easy adoption.

Steps taken by the regulators to encourage mass patronage included the adoption of the Electronic Money Issuers Guidelines (EMIG) and the Agent Guidelines (AG), which saw the value of mobile money transactions rise from 3.78 million Ghana Cedis in 2012 to 7.17 million Ghana Cedis in 2014⁵. Additionally, the launch of an interoperability platform in 2018 allowed for the subscribers of the various mobile network operators to send and receive cash to one another without extra cost.

1 Whilst the author appreciates that the term "fintech" is more popular, the author would rather adopt the use of the term "digital financial services (DFS)" throughout the article as the latter term is more self-explanatory.

2 Cal Bank, Ecobank, Fidelity Bank, Guarantee Trust (GT) Bank, Intercontinental Bank, Merchant Bank, Universal Bank of Africa (UBA), Stanbic Bank, and Zenith Bank.

3 GSMA 2015 State of the Industry Report Mobile Money - Page 32

4 The first two, Airtel and Tigo, would later merge to be AitelTigo while Vodafone would become Telecel.

5 The Evolution of Bank of Ghana Policies on the Ghanaian Payment System – Page 4

SECTION II

THE LEGISLATIVE AND POLICY HISTORY OF THE REGULATION OF DIGITAL FINANCIAL SERVICES IN GHANA

The Bank of Ghana has oversight responsibilities over the general economic wellbeing of the nation. Pursuant to performing this role, it regulates all financial institutions in the country via its various sub-groups and existing regulatory legislation.

The regulation of DFS has a long history in Ghana. In 2003, the Payment Services Act (Act 662) was passed to provide for the digitalization of the interbank payment ecosystem. This Act achieved its aim, reducing clearing time and establishing the basis for customers to use debit and credit cards in retail settings.⁶

This was followed by the Branchless Banking Guidelines in 2008, which aimed to capitalize on the growing popularity of mobile phones to provide financial services to subscribers. The guidelines envisioned a collaborative environment where banks and mobile network operators worked together.

Unfortunately, this did not yield the expected results, as the policy did not encourage investment in the sector. A change in policy direction occurred with the introduction of the Electronic Money Issuers Guidelines (EMIG) in 2012 and Agent Guidelines (AG) in 2015. These guidelines successfully attracted investors and led to a significant increase in subscribers to DFS, particularly in the form of mobile money services.⁷

Ghana would subsequently join global initiatives in line with financial inclusion and developing digital financial services.⁸ Beginning in 2012, the state of Ghana signed the Maya Declaration; a global initiative aimed at promoting responsible and sustainable financial inclusion with the goals of reducing poverty and ensuring financial stability for all persons.

This would be followed in 2014 by Ghana's joining of the Better than Cash Alliance; a UN-based global partnership between states, companies, and international organizations aimed at accelerating the transition from cash to responsible digital payments.

In 2018, the Ministry of Finance would develop a National Financial Inclusion and Development Strategy (NFIDs) (2018 - 2023) with the ultimate goal of increasing financial inclusion from fifty-eight percent (58%) to eighty-five percent (85%) through a series of actions with five major pillars. Pillars two and three are Access, Quality and Usage of Financial Services and Financial Infrastructure respectively. The former focuses on expanding digital financial services and implementation of the

6 Ibid

7 Ibid

8 The Ghana Demand Side Survey 2021 (Overview - Page III)

DFS policy (2018-2020) and the latter focuses on supporting innovation and efficient delivery of financial services, including strengthening payment systems oversight.

As at 2024, media reports suggest that Ghana has exceeded its ultimate objective in the NFIDs by driving financial inclusion up to ninety-six percent (96%).

In the same year as the launch of the NFIDs, there was the launch of an interoperability platform which allowed for the subscribers of the various mobile network operators to send and receive cash to one another without extra cost.

The latest attempt at providing an enabling regulatory environment has resulted in the main regulatory piece of legislation; the Payment Systems and Services Act, 2019. Passed and assented to in 2019, the Act aims to amend and consolidate the laws relating to payment systems and services, to regulate institutions that provide payment services and electronic money business, and provide for related matters.

The implementation and the compliance with this legislation, including the licensing of entities falling under it, are ensured by the Fintech and Innovation Office of the Bank of Ghana which was established in 2020.

To ensure consumer protection and facilitate the easy adoption of DFS, the Bank of Ghana launched a sandbox program in 2023. This program provides a controlled space for creators of innovative and disruptive DFS products and technologies to test them under regulation before being publicly rolled out. The latest cohort of companies accepted into the regulatory sandbox program consists of four companies, including ZeePAY, which is testing its outbound money transfer innovation.⁹

SECTION III

THE CURRENT LICENSE REGIME UNDER THE PAYMENT SYSTEMS AND SERVICES (PSS) ACT 2019

BROAD STROKES AND FINER DETAILS

The current licensing regime for the provision of digital financial services in Ghana is governed by the Payment Systems and Services Act 2019 (Act 987), which provides the broad foundation for the regulation of DFS. The Bank of Ghana, through the Fintech and Innovation Office, further regulates the ecosystem by issuing notices and directives that provide detailed guidance.

⁹ [Update on the Bank of Ghana Regulatory Sandbox](#)

The reasons for this choice of regulation strategy include the rapidly evolving nature of the DFS landscape and the need to keep pace with it. Notices and directives, which can be issued by the Fintech and Innovation Office as needed, are more effective for regulating such a dynamic landscape than statutes or subsidiary legislation. The latter are subject to debate and scrutiny by parliament before being passed and assented to by the President, or surviving 21 sitting days, respectively.

The legal basis for this approach to regulation is provided in section 101 of the Payment Systems and Services Act 2019, which allows the Bank of Ghana to use notices to make rules for various purposes, including the effective implementation of the Act. This approach to regulation is further backed by the Supreme Court ruling in the case of *Associated Finance Houses v. Bank of Ghana & Attorney General*.¹⁰

In this case, the Supreme Court held that the Bank of Ghana had the right to regulate the corporate governance of banks through notices and directives without requiring parliamentary approval. The Court reasoned that requiring parliamentary approval would “*undermine the independent nature of the 1st Defendant (Bank of Ghana) while placing unnecessary fetters on the efficiency with which the 1st Defendant (Bank of Ghana) can work and take steps to create an enabling financial and economic environment.*”

Thus, by virtue of this provision and the supporting case law, the Bank of Ghana is empowered to regulate the DFS sector through rules issued in notices. This approach allows it to keep pace with the rapid developments in the DFS world while maintaining its independence.

Licensing and Consequences

Corporate entities interested in providing payment services are licensed under the Payment Systems and Services Act, 2019 and are not required to acquire banking licenses from the Bank of Ghana. Treating DFS providers as mere corporations with stringent regulatory and compliance requirements has its benefits. It facilitates easier market entry, especially in the Sub-Sahara region, compared to treating DFS providers as banks. Therefore, for purposes of market penetration and financial inclusion, the non-bank approach may yield benefits more quickly.

However, a question to consider is whether deposit protection of customer funds is applicable to consumers of services offered by entities regulated under the Payments Systems and Services Act..

This is because the current deposit protection scheme in Ghana, as outlined in the Deposit Protection Act 2016 (Act 931), applies to only banks and specialized deposit-taking institutions. Once a bank or specialized deposit-taking institution acquires a banking license, it becomes a member of the

¹⁰ Writ No J1/04/2021 28th July 2021

scheme and is required to pay premiums on customer deposits, thereby guaranteeing deposits up to the maximum insured limit¹¹ in the event of an insured occurrence, such as the bank going into liquidation.

However, by virtue of section 46 of the Payment Systems and Services Act 2019 (Act 987), an electronic money holder is eligible for deposit protection under Act 931 if the balance of the account falls within the prescribed threshold. It is unclear whether this approach to deposit protection follows the pass-through approach or the direct approach¹², as Act 987 is silent on whether it requires the electronic money issuer to become a member of the deposit protection scheme.

Both the pass-through and direct approaches to deposit insurance recognize electronic money accounts as eligible for protection. The direct approach requires the Electronic Money Issuer (EMI) to join a deposit insurance scheme, whereas the pass-through approach does not. In the pass-through approach, deposit protection is provided through a float account held by a deposit-taking institution (DTI), which identifies individual electronic money account holders and caters to situations where the DTI holding the float money undergoes liquidation.¹³

Electronic money issuers under Act 987 are required to hold float accounts with deposit-taking institutions. In addition to being held in trust, customer funds are recognized as being owned by the customers. However, there is no explicit requirement for electronic money issuers to join the deposit protection scheme. The combination of these factors could support the argument that the regulator may prefer the pass-through approach for ensuring deposit protection.

Consumer protection under the Payment Systems and Services Act 2019 extends beyond deposit protection to include fund safeguarding. Fund safeguarding encompasses both fund segregation and ring-fencing. Fund segregation simply refers to the practice of not co-mingling customer funds with other assets while ring-fencing refers to protecting customer funds from creditors of the electronic money issuer in liquidation scenarios.

Fund segregation under Act 987 is addressed in section 36(3), which stipulates that an electronic money issuer's electronic float cash balances must be held separately from balances related to their other operations. For example, customer funds from mobile money should be held separately from balances from a Mobile Network Operator's (MNO) internet connectivity business.

Regarding ring-fencing, Section 45(4)(c) of Act 987 recognizes that funds

11 Six thousand two hundred and fifty Ghana Cedis (GHC 6,250.00) for bank depositors and one thousand two hundred and fifty Ghana Cedis (GHC 1,250.00) for specialized deposit-taking institution depositors (according to section 20(3)(a) & (b) of Act 931)

12 Izaguirre, Juan Carlos, Denise Dias, and Mehmet Kerse. 2019. "Deposit Insurance Treatment of E-Money: An Analysis of Policy Choices." Washington, D.C.: CGAP

13 Ibid

held by Payment Service Providers (PSPs) belong to the customer. Additionally, sections 23(b) and 36(2) of Act 987 require that customer funds remain unencumbered and they are held in trust for the customer. It remains uncertain whether this establishes a formal trust relationship between the Electronic Money Issuer (EMI) and its customers or necessitates customer funds being kept in trust accounts managed by third parties. However, trusts are a key method of ring-fencing customer funds in common law jurisdictions.¹⁴

Similarly, countries such as Nigeria, Brazil, Chad and the Philippines have explicit ring-fencing provisions for customer funds.

Types of DFS Licenses under PSS Act, 2019

There are generally three types of DFS licenses in Ghana:

1. Dedicated Electronic Money Issuer (DEMI) License
2. Payment Service Provider (PSP) License
3. Payment and Financial Technology Service Providers (PFTSP) License

Dedicated Electronic Money Issuer (DEMI) License

The Dedicated Electronic Money Issuer (DEMI) License is the highest license a DFS provider can acquire, considering the range of permissible activities and licensing fees. This distinction arises from the unique activity it permits: the issuance of electronic money to customers. This key permissible activity sets the DEMI license apart from the other types of DFS licenses.

Electronic money is defined in section 102 of the Payment Systems and Services Act 2019 as;

“Monetary value which is stored electronically or magnetically, and represented by a claim on the issuer which is issued on receipt of funds, redeemable against cash and may be accepted by a person”

Thus, electronic money refers to the electronic value that a subscriber's funds receive¹⁵ after being deposited with an agent of the electronic money issuer.¹⁶ This electronic value then comes with a bundle of rights,

¹⁴ Ibid

¹⁵ Perhaps represented by the SMS you receive after depositing your money and the account balance which is displayed any time a USSD code or an application is used to access one's account.

¹⁶ It is essential to not confuse electronic money with actual currency and thus arrive at the erroneous conclusion that issuance of e-money is a usurpation of the central bank's role under article 183(1) of the 1992 Constitution. While the central bank issues national currency, electronic money issuers only provide an electronically stored value of the currency issued by the central bank.

including the right to redeem it for cash at any place and time with an agent of the electronic money issuer, and the right to transfer it to another party, subject to the fees agreed upon in the contract.

One may also note the use of the words “*electronically or magnetically*” in the definition of electronic money. This is intended to highlight and encompass the various mediums through which money may be stored electronically. An electronic store of the value of money refers to the storage of money in digital formats, using devices such as mobile phones with SIM cards, or in broader contexts, storage devices such as hard disks with cryptocurrency tokens.

On the other hand, a magnetic store of value refers to the use of various card technologies that operate magnetically to store the value of money. Magnetic storage of value typically involves the use of some credit or debit (whether open loop or closed-loop) cards used in the payments industry.

Thus, under the Payment Systems and Services Act 2019, it is possible to conclude that electronic money is not limited to those on electronic storage mediums but also includes those on magnetic stripe cards. However, the explicit mention of “magnetic” to the exclusion of other card technologies (such as plain, smart-contact, contactless & dual interface cards) may raise questions about whether these other technologies will be considered electronic stores of value under the law. It is submitted that other card technologies, apart from the magnetic stripe technology, will still fall under the electronic arm of the definition of electronic money, provided they are issued by non-bank DFS providers.

For instance, on 29th February, 2024, MTN announced its collaboration with MasterCard to provide a prepaid companion virtual and physical MasterCard for every Momo account.¹⁷ Such a physical card, upon its introduction, will be regarded as storing electronic value of money, even if it uses a technology other than magnetic, since it is linked to an electronic money account.

Additionally, the definition of electronic money in Ghana’s Payment Systems and Services Act 2019, which closely mirrors that of the European Union,¹⁸ is notably broad compared to definitions in other jurisdictions. While this may initially seem like an oversight, it also presents an opportunity for the regulation of unforeseen and disruptive technologies that may later emerge in the Ghanaian regulatory landscape.

To illustrate the breadth of the definition and its potential to encompass

¹⁷ <https://www.mtn.com/mastercard-and-mtn-group-fintech-partner-to-drive-acceleration-of-mobile-money-ecosystem-in-africa-across-13-markets/>

¹⁸ Article 2.2 of DIRECTIVE 2009/110/EC “‘electronic money’ means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer;”

future disruptive technologies, consider cryptocurrency, which has recently gained prominence in the payments landscape and has puzzled regulatory agencies globally. An issue that may arise from the broad definition of electronic money is whether Ghanaian laws on payment systems provide for the regulation and adoption of cryptocurrency. The predominant perception has been that Ghana lacks clear regulation for cryptocurrency.

In line with this perception, and in an effort to address it, the Bank of Ghana has previously issued notices warning the public against engaging in cryptocurrency-related activities or investments. These warnings cited the absence of regulatory oversight by relevant laws and authorities. Such notices were first issued in 2018 under the previous Payment Systems Act 2003 (Act 662), where the Bank of Ghana highlighted the lack of regulation and promised that the Payment Systems and Services Act 2019 (then a bill under consideration by Parliament) would address uncertainties regarding cryptocurrency.

Four years later, in 2022, after the Payments Systems and Services Act had been enacted, the bank of Ghana issued a similar notice against a rumored “Freedom Coin” and crypto currencies in general. In this notice, the Bank of Ghana reaffirmed its position that:

“Cryptocurrencies such as Bitcoin are not regulated under any laws in Ghana”¹⁹.

However, it is submitted that the broad definition of electronic money provided by the Payment Systems and Services Act 2019 implicitly permits the use and adoption of certain forms of cryptocurrency in Ghana. It must be noted that the Bank of Ghana issued draft regulations for cryptocurrencies and other digital assets in mid-August of 2024, aimed at regulating virtual asset service providers (VASPs) with a bid to protect consumers, ensure stability of the financial sector and guard against financial crimes among others. The draft guidelines hints that VASPs may be required to register with the Bank of Ghana or Securities and Exchange Commission. Nigeria also licensed its first 2 VASPs in the same month.

Cryptocurrencies are a digital store of monetary value that operate using decentralized ledger technology (DLT). They were designed to revolutionize the current financial system, which relies heavily on central banks to regulate the financial landscape and act as intermediaries in transactions.

As a result of this aim, transactions are carried out on the decentralized ledger and are managed by various nodes (computers) on the network. Once a transaction is successfully processed, the node responsible for it receives a token as a reward. This token is then transferable on the

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network, in a manner similar to the earlier transaction, with additional coins being generated as rewards for subsequent transactions and records of all transactions being centralized.

Unfortunately, this concept has not surpassed fiat currency and is primarily used for speculative purposes due to its volatile value, which is a result of incomplete acceptance and adoption by the general populace.

Adrian and Mancini-Griffoli²⁰ categorize cryptocurrency into 4 different types: unbacked assets, stable coins, utility tokens and security tokens. Of these categories, it is submitted that stablecoins are most likely to fit the broad definition of electronic money as regulated by the Payment Systems and Services 2019 Act in its current form. Thus, stablecoins could be considered regulated stores of value and potentially legal means of exchange.

According to Sections 102 and 29(2)(b) of the Payment Systems and Services Act 2019, electronic money must:

1. Store monetary value electronically or magnetically.
2. Represent a claim on the issuer.
3. Be redeemable for cash at par value by the subscriber, subject to agreed fees.
4. Be accepted as payment by at least one other legal person.

Thus, to determine whether any form of cryptocurrency, such as stablecoins, qualifies as electronic money under Ghanaian law and is therefore permissible, it must satisfy all four criteria outlined above.

Stablecoins are a type of cryptocurrency designed to maintain a stable value relative to a specific asset, such as a fiat currency (like the US dollar), a commodity (like gold), or another cryptocurrency. Unlike traditional cryptocurrencies, which often exhibit high price volatility, stablecoins aim to provide a more stable store of value.

Stablecoins primarily achieve this stability through;

- 1) Algorithms

Under this method, algorithms are used to control the redemption and issuance of coins to maintain a stable coin value at all times.

- 2) Legal Asset Backing

This method involves the issuer backing stablecoins with legal asset typically fiat currency or commodities. The asset value often exceeds the issued stablecoins value. This ensures stablecoins value remains

20 [The Rise of Digital Money](#)

consistent, even during redemptions or market downturns.

3) Crypto-currency backing

This third method is similar to the previously-mentioned one. Here, instead of using fiat currency or commodities, other cryptocurrencies are used for this purpose. Issuers of stablecoins may opt to back their coins with just one type of cryptocurrency or a variation of cryptocurrencies.

Having established the rudimentary nature of stablecoins, an attempt will be made to show a link between their nature and the key elements required in the Payment System and Services Act 2019 to be regarded as electronic money.

Firstly, electronic money is required by the Payment Systems and Services Act 2019 to be a store of monetary value either in the electronic form or magnetic form. By “monetary value” as used in the definition of electronic money, it can be presumed that the Act primarily refers to fiat currency or central bank currency. This assertion is supported by the fact that the Act requires electronic money accounts to be denominated in Ghana Cedis (which is fiat currency). Without much contention, stablecoins are clearly an electronic store of monetary value, as they are generally purchased with central bank currency on cryptocurrency exchanges and assigned an electronic value on the blockchain or other technological medium used.

Secondly, a claim must be imposed on the issuer in favour of the holder to qualify as electronic money. This means that the mere deposit of funds with an issuer in exchange for electronic form (stablecoins) must create a relationship where the holder of the electronic value has a right to demand initially deposited money back. This relationship clearly exists between a holder and an exchange from which he may acquire stablecoins, subject to contractual terms agreed upon and market conditions.

The third requirement is that the claim be redeemable against cash at par value, subject to any existing fees agreed upon between the parties under a contract. Clearly, holders of stablecoins are capable of redeeming their stablecoins held from the exchange for cash. The important aspect of being at par value is reinforced by the nature of stablecoins themselves, which are designed to provide a stable value for the cryptocurrency via the methods touched on earlier.

Finally, the electronic money must be accepted by another legal person. At first glance, this suggests that any transaction involving stablecoins between two willing parties would automatically classify it as electronic money. If that were the case, it would mean that stablecoins would constitute electronic money immediately it is used for its first transaction in Ghana by two willing parties.

Surely, the framers of the statute would not have sought to rest the legality of a novel technology on two random parties, even if they were malicious actors. Perhaps, the intention behind this requirement, if stablecoins are to be electronic money, is to gauge the level of acceptance and adoption. From that perspective, acceptance by another person may not necessarily mean another solitary person willing to transact in cryptocurrency but rather a general acceptance by a relevant class of the economy such as a subsection of the business community.

This issue of acceptance of electronic money arose when a local regulator in the European Union denied a credit institution a license because they believed that recipients in transactions must receive and hold electronic money itself. The credit institution posed a question to the European Banking Authority regarding the meaning of electronic money in Directive 2009/110/EC, which is in *pari materia* with Act 987's definition of electronic money.²¹

The credit institution argued that for the requirement of acceptance, there were a range of possible models. One model could be where the recipient in the transaction becomes the holder of the electronic money by accepting and holding it as a mean of payment. For instance, the popular Bitcoin transaction where a Florida pizza shop accepted payment in Bitcoin for two pizzas. Another possible model is that the recipient only accepts the claim that the holder of the electronic money has on their issuer, thus not accepting and holding the electronic money itself.

It appears that acceptance as found in the PSS Act 2019 deals with the latter model more as a close look at the defining provision reads as follows;

“...represented by a claim on the issuer which is issued on receipt of funds, redeemable against cash and may be accepted by a person.”

Therefore, the acceptance of stablecoins in Ghana may be via acceptance and holding of tokens or the redemption of claims against an issuer.

Thus, having regard to the definition of electronic money in the PSS Act 2019, the argument can be made that cryptocurrency in certain forms (such as stablecoins) is loosely regulated under Ghanaian law as part of the DEMI class of fintech licenses.

Also, compared to Kenya's definition of electronic money, which specifies that electronic money must be issued against Kenyan currency, Ghana's refusal to state the currency against which electronic money must be issued would appear to be, once again, a leeway for the regulation of multi-currency financial service providers such as cryptocurrency exchanges when the PSS Act 2019 is read in conjunction with the Foreign Exchange

21 Though submitted on 12/01/2022, the status of the question on the Authority's official website reads "Question under review"

Act, 2006 (Act 723).

Sections 29(1) and (3) of the Payment Systems and Services Act 2019, however, go ahead to address these lapses and point out the regulator's intentions:

"29. (1) Electronic money accounts and transactions shall be denominated in Ghana Cedis.

29. (3) Despite subsection (1), an electronic money account which is denominated in foreign currency shall be in compliance with the Foreign Exchange Act, 2006 (Act 723)."

A combined reading of these provisions suggests that while subsection (1) mandates Ghana Cedis as the currency for electronic money accounts and transactions, subsection (3) introduces an exception, potentially allowing for an electronic money ecosystem where foreign currencies can be used, subject to compliance with the Foreign Exchange Act, 2006 (Act 723).

Having clarified the unique permissible activity of issuing electronic money and its definition, the additional activities permitted for entities holding a Dedicated Electronic Money Issuer (DEMI) license under the Payment Systems and Services Act, 2019 will be examined.

The permissible activities of a Dedicated Electronic Money Issuers license in Ghana are detailed in Section 30 of the Payment Systems and Services Act, 2019. Generally, these permissible activities can be divided into two (2) categories.

The first category comprises permissible activities a DEMI can undertake independently, hereinafter known as "solo-permissible activities." These are operations a DEMI license holder can execute without a mandatory collaboration with any third party.

Solo-permissible activities outlined in Bank of Ghana notices include facilitating;

1. Domestic payments
2. Domestic money transfers (including transfers to and from bank accounts)
3. Bulk transactions
4. Cash-in and cash-out transactions, and
5. Over the counter transactions

The second category encompasses permissible activities that DEMI license holders must undertake in partnership with other financial institutions. These are termed "partnered-permissible activities" and typically involve collaborations with banks, insurance providers, and other relevant entities to deliver digital financial services. Partnered-permissible activities under

the DEMI license include;

1. Inward international remittances in partnership with banks
2. Savings products in partnership with a bank or specialized-deposit taking institution authorized by the Bank of Ghana
3. Credit products underwritten by a licensed bank or specialized deposit-taking institution
4. Insurance products under-written by a licensed insurer

The possible rationale behind partnered-permissible activities is that these services often mirror those exclusively reserved for banks under the Banks and Specialized Deposit-Taking Institutions Act 2016 (Act 930) and may involve significant risks. To mitigate these risks, regulations typically mandate partnerships with banks or require bank underwriting for such activities.

Another rationale for partnered-permissible activities is to expand financial inclusion beyond the basic services offered by DEMIs. By collaborating with traditional financial institutions, DEMIs can provide additional products and services, such as loans and insurance, to previously underserved populations. MTN's "*quikloan*" and AYO insurance services exemplify this approach, offering credit and insurance products to a customer base with limited access to traditional banking services.

In addition to issuing electronic money, DEMIs can open electronic money wallets for subscribers and recruit agents across geographic locations for the provision of its services. These capabilities, combined with the large customer base often associated with MNOs who dominate the DEMI landscape, have enabled DEMIs to achieve significant market penetration and drive financial inclusion more effectively than traditional banks.

The ability to issue electronic money, combined with the ability to engage in both solo and partnered-permissible activities, as well as ancillary operations such as wallet creation and agent recruitment, differentiates Electronic Money Issuers (EMIs) from other payment service providers under the Payment Systems and Services Act 2019.

Payment Service Providers (PSP) License

To the average person, the "Fintech", is synonymous with the visible company providing digital financial services. These companies often have strong brand recognition linked to their services, as exemplified by the association of USSD-based money transfers with telecommunication companies in Ghana.

However, behind these visible companies there are often backend service providers facilitating payment services through settlement, reconciliation,

software solutions and other critical functions. The operations of these entities do not easily come to the attention of consumers.

These background entities, primarily operate under the Payment System Providers (PSP) and Payment and Financial Technology Service Providers (PFTSP) licenses granted under the Payment Systems and Services Act 2019. They are therefore classified as payment service providers.

A payment service provider is defined by Section 102 of the Payment Systems and Services Act 2019 as;

“a body corporate licensed or authorized under this Act to provide payment service”

Payment service is further defined by the same section to mean;

“The provision of service to facilitate transfer of funds from a payer to a payee using various forms of payment instruments or electronic money”

While the Payment Systems and Services Act 2019 categorizes the Payment Service Provider (PSP) license as a single entity with permissible activities outlined in Section 7(2), the Bank of Ghana has introduced a tiered licensing system through its notices, classifying PSPs into four distinct levels based on the complexity and scope of their operations. These tiers of PSP licenses in descending order²² are;

1. PSP Scheme
2. PSP Enhanced
3. PSP Medium
4. PSP Standard

It is important to note that except for the PSP Scheme license, the remaining PSP licenses build on each other with regard to their permissible activities. The PSP Medium license includes all activities of the PSP Standard license plus additional ones, and the PSP Enhanced license encompasses all activities of the PSP Medium license with further additions.

Ultimately, a PSP Enhanced license holder can perform all activities permissible under the PSP license category, except those reserved for PSP Scheme licenses. Similarly, PSP Medium license holders can perform all activities except those for PSP Scheme and Enhanced licenses. Therefore, the choice of PSP license for a potential licensee hinges on the desired range of activities and available capital, as each license level requires specific financial and operational capabilities including having to connect with other PSPs, DEMIs, or even banks.

22 The order is based on the licensing fees and minimum capital requirements for the PSP category of licenses.

Meaning of “Connecting to”

DEMI license holders are not the only class of license holders required to form partnerships with other entities for specific permissible activities. PSP and PFTSP category license holders are similarly required to “connect” with other entities (mostly PSP Enhanced) to deliver permissible activities. For instance, PSP Standard and Medium must connect with PSP Enhanced license holders while PFTSP license holders can connect with DEMIs, PSPs, or banks. International card brand associations might connect with PSP Scheme or Enhanced licensed holders.

In simple terms, “connecting to” as used in the notices means establishing a partnership relationship between any of two or more entities holding a license under the Payment Systems and Services Act 2019, or between any licensee under Act 987 and another regulated financial institution, with approval from the Bank of Ghana.

This partnership relationship is often established via a partnership agreement.²³ Also, a service level agreement may need to be signed between the parties in order to provide for matters ancillary to the partnership such as setting benchmarks for expected service delivery and consequences in default. Other relevant documents showing capacity to perform the permissible activity being partnered for are also submitted to the Bank of Ghana for approval.

It appears that for most of the situations in which partnership is provided between PSPs, the type of partnership appears to be one of heavy dependence. By heavy dependence, the implication is that the PSP is unable to perform its permissible activities in the absence of this partnership.

This situation is likely to bring about certain operational risks as well as raise questions about the rationale for this arrangement. Starting off with operational risks, the chief concern is that any issues which may affect the partnership-providing PSP (usually the PSP Enhanced) may disrupt the business of the partnership-dependent PSP.

For instance, regulatory compliance issues faced by a partnership provider which may lead to revocation or suspension of their license is going to impact the operations of a partnership-dependent PSP in major ways, leading to consequences such as losing trust with customers. Similarly, technological failures or service delays from a partnership-providing PSP are likely to lead to undesired consequences.

It would be retrogressive to strictly view the above as problems in need of fixing. This is because the requirement of partnerships and the inherent risks serve a greater purpose of creating a payments ecosystem with

²³ It must be noted that this partnership is not a reference to partnership under the Incorporated Private Partnership Act as partnership under that Act by implication is reserved for natural persons only.

lower barriers of entry for certain PSPs (medium and standard licensees), encouraging local participation, and allowing for the leveraging of already-existing technologies.

A recommendation to forestall against the uncertainties associated with PSP partnerships would be to develop a framework with industry stakeholders for addressing these situations when they arise. One of these is developing a framework similar to the bandwidth sharing approach adopted by telecommunication networks in the 2024 internet outage across Ghana. A framework similar to this should have all PSP Enhanced licensees ready to provide a set of defined basic services to any partnership-dependent PSPs at a moment's notice. Seeing as the ratio of PSP Enhanced licensees (71% of all DFS licensees) to other PSPs (11% of all DFS licensees) is great, this framework is easily achievable.

One of the questions arising out of this arrangement is whether there exists any incentive for a partnership-providing PSP to connect with a partnership-dependent PSP if the former can perform all the permissible activities that the partnership-dependent PSP can perform. The response to this is same as above. Regardless of whether or not partnership-providing PSPs are incentivized to connect businesswise, connection is an imposition by the regulator and it exists to provide lower entry barriers, encourage local participation, and allow for leveraging already-existing technologies.

A final issue surrounding PSPs deals with the question what of regulators should do in situations where the roles or tasks of PSPs expand beyond the permissible activities for which they are licensed.

Firstly, it is suggested that the likelihood of this happening should be drastically reduced by virtue of the license application process and the sandbox programs run by the regulator. In the licensing process, applicants are required to submit business plans focusing on their products offered and market analysis. Applicants are also required to submit five-year financial projections including the assumptions influencing their projection.

These together with other documents submitted during the application stage or observations during the sandbox program, should help the regulator to determine the appropriate license for a prospective licensee in order to avoid these issues of having a PSP's roles expand beyond its permissible activities.

Should any potential for expansion not be captured in the license application or sandbox stage, the last resort would be the provision of a special dispensation by the regulator to enable the PSP become compliant while in operation, similar to what is currently being provided for Money Mobile Limited by the regulators. This special dispensation could

incorporate measures like a modification of the mentorship regime²⁴ where established PSPs are recruited in helping expanding PSPs become compliant.

PSP Scheme

The PSP Scheme license is limited to two permissible activities; domestic card brand associations and switching & routing of payment transactions and instructions. These activities will be discussed below.

1. Card Brand Associations

Cards are indispensable in modern day payments, offering convenience and presenting complexities and risks such as fraud. To mitigate these challenges, rules governing verification, authorization of transactions and chargebacks must be established.

Card brand associations are instrumental in standardizing payment processes. By establishing uniform rules for verification, authorization, chargebacks, and other critical functions, they facilitate seamless transactions for various industry participants like banks and payment service providers. This centralized approach mitigates risks associated with card payments.

Some of the most recognized global card brands include Visa and MasterCard. However, the PSP Scheme license in Ghana is restricted to domestic card brand associations. This means any card brand established under the PSP Scheme license can only operate within Ghana and be utilized by entities operating domestically.

Gh-link is a prime illustration of a domestic card brand association in Ghana. This card allows for customers to make purchases online as well as withdraw from any ATM in Ghana. It was established by the Ghana Interbank Payment and Settlement Systems (GhIPSS) with the aim of reducing transaction time and cost as compared to when foreign card brand associations are used.

2. Switching and Routing of Payments

As stated earlier, background actors known as payment providers play a significant role in the processing of transactions in the payment industry. Switching and routing of payments are core functions that facilitate the completion of payments.

Switching of payments refers to transferring authorization

²⁴ Bank-Fintech Partnerships, Outsourcing Arrangements and the Case for a Mentorship Regime – Luca Enrique & Wolf-Georg Ringe

requests, approvals, and transaction information to the appropriate receiver via the routing centre.²⁵ Simply put, this involves the process by which a payment service provider confirms the authenticity of a transaction request, the merchant involved in the transaction, the acquiring bank and the payment service provider involved in the transaction. Once all of these are successfully completed, the next priority may then be the routing of the payment in question.

Routing, on the other hand, is defined as using metrics to determine the optimal path through which transaction information is sent.²⁶ This simply refers to ensuring that the transaction is completed through the easiest route available once the necessary transaction information has been acquired in the switching process.

There are several points through which a payment may be completed. However, payment routes may sometimes be congested, slowing down transaction processing due to traffic from multiple transactions being attempted simultaneously. When this happens, it becomes key for the payment service provider to ensure that other available routes for the completion of the transaction are utilized to avoid delays which may inconvenience the customer.

Thus, while limited to two activities, the PSP Scheme license is pivotal to enabling seamless digital financial services.

PSP Enhanced

As previously mentioned, the PSP Enhanced license has a wider range of permissible activities compared to the other tiers. This includes all activities permitted under the;

- a. PSP standard license,
- b. PSP medium license, and
- c. The exclusive permissible activities of the PSP Enhanced license.

The unique permissible activities of the PSP Enhanced license, not explained in the notices will be briefly outlined below.²⁷

1. Marketplace for Duly Regulated Financial Services
A PSP Enhanced license holder is allowed to provide a marketplace for financial services offered by duly regulated

²⁵ Bank of Ghana's Licensing Categories with Secretaries Comments 17 JULY 2020

²⁶ Ibid

²⁷ Same will be done for the PSP Medium and Standard licenses

financial service providers. A marketplace in this context refers to a platform that connects potential consumers to financial service providers regarding the various financial services which they offer. This allows for competition between the various financial service providers as the consumer is given ease of access to financial services as well as the ability to compare the costs of accessing services among various providers.

2. **Printing and Personalization of EMV Cards**
EMV is an acronym for three major card brand associations on the global payments stage. They are Europay, MasterCard and Visa Card. Essentially, the PSP Enhanced license allows the holder to print and personalize cards associated with these brands and issue them to its customers.
3. **Limited Use Closed Loop Virtual Cards**
Virtual Cards, unlike physical cards, enables consumers to make online purchases using a generated card number, simulating the experience of using a physical card. A closed-loop card differs from an open-loop card in that it can only be used within a specific, enclosed ecosystem. This means that the card is accepted only by designated recipients and not usable in the open market with any and all merchants. An example of a closed-loop card would be gift cards from stores such as Melcom, Amazon, or Starbucks. These virtual cards are only usable with their issuing entities and not accepted elsewhere. Thus, a limited-use closed-loop virtual card allows the cardholder to make purchases or enjoy promotional offers exclusively from a specific merchant, typically within a particular brand shop.

PSP Medium License

The PSP Medium license is arguably the second most front-facing of the licenses, as it focuses on the technologies that payment service users interact with when conducting transactions, rather than the back-end systems that facilitate the transaction processes.

The permissible activities for a PSP Medium license holder are;

1. **Mobile Payment Applications**
A holder of a PSP Medium License is permitted to engage in the development of payment applications for mobile platforms. This can include creating applications with interactive user interfaces for smart phones as well as utilizing USSD codes for transactions.

However, it is important to note that the PSP Medium license holder must “connect” to a PSP Enhanced license holder to

provide this service. In this arrangement, the PSP Enhanced License holder assumes liability for any chargeback losses that may occur during transaction processes, rather than the PSP Medium License holder.

In simple terms, the PSP Medium License holder is responsible solely for the creation of the app and related tasks, while the PSP Enhanced License holder manages the switching of payments. Since fraudulent transactions are typically the result of failures during the switching stage, the liability for chargeback losses falls on the PSP Enhanced License holder. The PSP Medium License holder, who only develops the mobile payment application, is not liable for such losses.

2. Printing of non-cash payment instruments
Non-cash payment instruments allow for a customer to make payments for goods and services whether online or in-person without the use of physical cash. Non-cash payment instruments fall into three categories;
 - a) Paper-based
 - b) Card-based
 - c) Electronic money

Some non-cash payment instruments include credit and debit cards, cheques, payment applications etc. Given that PSP Enhanced License holders are authorized to print EMV cards, it raises the question of whether PSP Standard License holders, who are also involved with non-cash payment instruments, might have been implicitly granted similar rights to print such cards due to the broad categorization of non-cash payment instruments.

It is submitted that, since the notice specifically mentions the printing of non-cash payment instruments, PSP Medium license holders are likely limited to printing paper-based non-cash payment instruments.

This is because the only instruments which are printed among the categories are paper-based and the card-based types. Since the right to print card-based non-cash payment instruments is granted exclusively to PSP Enhanced license holders and electronic money methods do not involve physical printing, PSP Medium license holders are left with the printing of paper-based non-cash payment instruments. This includes instruments like cheques, which fall within the narrower subset of the industry of security printing.

Another argument is that since the PSP Enhanced is a license holder only allowed the printing of EMV cards, then any other card may thus be printed by the PSP Medium license holder. In response to this, it is submitted that there are by implication two types of card brand associations in Ghana; domestic card brand associations and global card brand associations (such as EMV).

The printing of domestic card brands like Gh-link is limited to holders of the PSP Scheme license holders whilst global card brands, specifically EMV cards, are limited to PSP Enhanced license holders. Thus, a PSP Standard license holder cannot print any duly-regulated card-based non-cash payment instrument in Ghana.

PSP Standard License

The PSP Standard License has one permissible activity, which is the creation of mobile payment apps. This license places a liability shift on PSP Enhanced licensees to which a PSP standard licensee is required to connect to. The same reasoning as explained above in relation to the PSP Medium licensee for liability shift onto the PSP Enhanced licensee is applicable here.

The PSP Act 2019 in section 8(4) makes provision for at least 30% equity ownership of PSPs by Ghanaians in the following words;

“An applicant shall have at least thirty percent equity participation of a Ghanaian”

However, the “Licensing Requirements for Dedicated Electronic Money Issuers, Payment Service Providers and Payment & Financial Technology Service Providers”²⁸ states at page 15 to the contrary that the PSP Standard license is “reserved for Ghanaians and wholly-owned Ghanaian entities.”

The issue then becomes whether the statement in the notice is an affront to recognition of the hierarchy of laws as espoused in the Association of Finance Houses case because it seeks to change the statutory provision of thirty percent (30%) Ghanaian equity participation in PSP without an amendment to the Payment Systems and Services 2019 Act by parliament?

Payment and Financial Technology Service Provider (PFTSP) License

The Payment and Financial Technology Service Provider (Hereinafter referred to as “PFTSP”) license was a recent new addition to the licenses available under the Payment Systems and Services Act 2019 as it was not

part of the initial set of licenses which could be issued by the Bank of Ghana under the Payment System and Services Act 2019.

The PFTSP license was only introduced in 2020 after the Bank of Ghana had come to the conclusion that certain players in the DFS industry were critical service providers and thus needed to be regulated. The establishment of the PFTSP license was done through the issuance of Notice No. BG/GOV/SEC/2020/14 by the Bank of Ghana.

Among the reasons for the widening of the regulatory net, according to the above notice, were that potential PFTSP license holders had basically become extensions of licensed bodies performing roles reserved for supervised bodies, that they provided critical services to the financial industry, they controlled important financial sector data (such as data on DFS subscribers patronizing their products) and thus had become key in determining the direction and growth of the market.

Consequently, the permissible activities of PFTSP license holders are the following;

- Digital product development, delivery and support services (for payment, savings, insurance, investment and loyalty schemes)
- Credit scoring predictive analytics
- Anti-money laundering/ Countering the finance of terrorism centralized platform
- Fraud management services
- Know Your Customer (KYC) and Customer Due Diligence (CDD) authentication services

The introduction of this new category of license raises several issues in need of resolution but which will only be raised here. Firstly, does the Bank of Ghana have the power to create new licenses under Act 987? Its notice introducing the PFTSP license cites Notice No. BG/GOV/SEC/2020/07 which states that updates to licensing requires form part of a broader measure to operationalize the Act. It thus appears to be acting under its powers to ensure the general implementation of the Act under section 101 of Act 987

Again, compared to the PSP Standard license, the PFTSP license appears to be a case of encouraging the creation of local competition gone wrong. One of the key permissible activities of a PFTSP licensee is digital product development, delivery and support system. All the PSP licensees (except PSP Scheme) have the capacity to develop mobile payment apps which are themselves digital products.

It appears PFTSP licensees are unrestricted in the digital products they can choose to create while the PSP licensees (especially those providing for

whole Ghanaian ownership) are restricted to digital payment products. However, it is possible to argue that the omission of a provision on liability shift requirements implies that the regulator did not envisage PFTSPs to be engaged in providing digital products for payments.

Having regard to the sensitive nature of consumer information available to PFTSPs and which is deployed in delivering their permissible activities such as credit scoring and AML platforms it would have been much preferable to entrust such sensitive information in the hands of wholly-owned Ghanaian companies.

Also, while a PSP Standard licensee can only connect to a PSP Enhanced licensee, a PFTSP licensee can connect to a wider range of entities including DEMIs, PSPs, banks, and other financial institutions.

CONCLUSION

In conclusion, this article has explored the evolution of digital financial services (DFS) in Ghana, highlighting the significant role played by regulators in fostering a robust ecosystem that has achieved widespread adoption, particularly among the unbanked population. It has provided an overview of the various licenses under the Payment Systems and Services Act 2019 and discussed emerging issues related to the statute, such as the regulation of cryptocurrency, deposit protection for customer funds, partnership requirements for PSP licensees, and the overall regulation of the payments industry. This article aims to serve as an introductory resource for those interested in the regulation of Ghana's fintech sector and to stimulate a critical examination of the regulatory framework by experts in the field.