



NATIONAL TREASURY & ECONOMIC PLANNING

**SUPPORTING ACCESS TO FINANCE AND ENTERPRISE RECOVERY
(SAFER)**

PROJECT IMPLEMENTATION UNIT

**COMPONENT 3: TECHNICAL ASSISTANCE AND PROJECT
MANAGEMENT**

BENEFICIARY – CENTRAL BANK OF KENYA (CBK)

TERMS OF REFERENCE

**CONSULTANCY TO DEVELOP A DIGITAL PAYMENTS CONSUMER
PROTECTION FRAMEWORK IN KENYA**

January 2024

1. INTRODUCTION

1.1 Project

Supporting Access to Finance and Enterprise Recovery (SAFER) project development objective is to increase access to financial services and support COVID-19 recovery of Micro, Small, and Medium Enterprises (MSMEs) in Kenya.

SAFER is a five-year \$100 million IDA Credit that effective in May 2022 that seeks to address market failures in access to finance by MSMEs that have been exacerbated by the negative impact of the COVID-19 pandemic.

1.2 Project Components

The SAFER Project comprises 3 components (with sub-components) as listed below:

- a) **Component 1 – Innovation and Liquidity support to MSMEs**
 - i. Liquidity support to microenterprises through digital channels
 - ii. Liquidity support to MSMEs through SACCOs and Micro Finance Banks (MFBs)
- b) **Component 2 – De-risking lending to MSMEs**
 - (i) De-risking through support to the Partial Credit Guarantee Scheme (CGS) and company (CGC)
- c) **Component 3 – Technical Assistance and Project Management**
 - (i) TA to the National Treasury to set up the Credit Guarantee Company (CGC)
 - (ii) TA to Participating Financial Institutions (PFIs)
 - (iii) TA to financial sector regulators
 - (iv) Project Management

Component 3 of the SAFER focuses on providing technical assistance to build the resilient capacity of the MSME finance ecosystem beyond the lifecycle of SAFER.

1.3 Overview

The Central Bank of Kenya (CBK) is established under Article 231 of the Constitution of Kenya (2010). Its mandate is set out the Central Bank of Kenya (CBK) Act. The core mandate of the CBK is to:

- a) Formulate and implement Monetary Policy directed to achieving and maintaining stability in the general level of prices.
- b) Foster the liquidity, solvency and proper functioning of a stable market-based financial system.
- c) Subject to (a) and (b), support the economic policy of the Government, including its objectives for growth and employment.
- d) Formulate and implement policies to promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems.
- e) Issue currency notes and coins.

Other mandates of the CBK include: formulating and implementing foreign exchange policy; effective management of the nation's foreign exchange reserves; licensing and supervising authorised dealers, digital credit providers and mortgage refinance companies; act as banker and advisor to, and fiscal agent of the Government. In 2003, the Central Bank of Kenya (CBK) Act was amended to introduce an explicit mandate relating to the National Payments System (NPS), namely: Section 4(A)(1)(d) to “formulate and implement such policies as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems.”

1.3.1 The National Payments System

The amendment also supported the modernisation of the NPS and to firmly anchor NPS policy, regulation and supervision on a clear legal basis. Following the enactment of Section 4(A)(1)(d), the National Payment System Act, 2011 was enacted followed by the National Payment System Regulations, 2014. To date, a number of Guidelines and Circulars have been issued to further operationalize and implement the NPS Act and Regulations. Together, the NPS Act, 2011 and NPS Regulations, 2014, guidelines, directives and circulars constitute the “NPS legal and regulatory framework.”

Since the emergence of the current NPS legal and regulatory framework, the payments sector has changed in significant ways both domestically and globally. These developments set the broader context to the review of the NPS framework. Additionally, following the launch of the National Payments Strategy 2022 - 2025 in February 2022, CBK committed to review the current NPS legal and regulatory framework, to update it in line with emerging developments in the domestic, regional and global payments arena.

The 2023 Budget Policy Statement published by the National Treasury and Economic Planning in February 2023 noted that: “To continue leveraging the potential of digital technologies, the Government will work with key agencies such as the Central Bank of Kenya to continue rolling out cost-effective and innovative payment services and protecting vulnerable Kenyans from risks that may arise from emerging technologies. Over the short-to medium-term, the Government will be forwarding and supporting proposals by the Central Bank of Kenya to update the national payments legal and regulatory framework, aimed at strengthening oversight, bolstering affordability and improve service delivery to Kenyans.” In the Budget Statement for the Financial Year 2023/2024, the National Treasury also noted that: “In the FY2023/24, the Central Bank together with other stakeholders will undertake a comprehensive review of the National Payment System Act, 2011 and National Payment System Regulations, 2014, to modernize Kenya’s payments legal and regulatory framework in line with emerging trends, innovations and enhance oversight for improved service delivery to Kenyans.”

In summary, the NPS legal and regulatory review will enable the CBK to accelerate delivery of wider reforms in the financial sector, develop a robust framework that is fit for purpose and fit for future, improve service delivery and achievement of Government’s current and future priorities.

1.3.2 Payment Service Providers (PSPs)

For slightly over three (3) decades, the Central Bank of Kenya (CBK) in conjunction with relevant stakeholders has been on a journey to modernize the Payments Systems in Kenya. The focus of this transformative process has been on both large value payment systems as well as the retail payment systems. The large value payments system developments are underpinned by the implementation of the Real Time Gross Settlement (RTGS) System known, in Kenya by the acronym – Kenya Electronic Payment and Settlement System (KEPSS) that was implemented in the year 2005. The retail payments system on the other hand has undergone tremendous growth spanning the Nairobi Automated Clearing House (NACH), the Payment Card Industry, the Internet Banking, and the Mobile Financial Services.

The convergence between traditional banking and Mobile Financial Services platforms powered by increased automation, emerging Fintechs and Innovations have given rise to several Payment Service Providers (PSPs) being licensed by the Central Bank of Kenya (CBK) to offer a wide variety of financial services including but not limited to wallet providers, mobile money transfers, and Gateway Services.

Even though the emergence of Mobile Financial Services was a disruptive innovation, largely these developments and outlined in the first framework and strategy policy documents that was issued by CBK in the year 2004 to guide payment systems developments for the period 2004 - 2008. This document focused on both the soft and hard components of the payment industry development aspects. In the year 2022, CBK issued the second Payment Systems policy document, the National Payments Strategy 2022 - 2025. This strategy is anchored on a vision of a “secure, fast, efficient, and

collaborative payments system that supports financial inclusion and innovations that benefit Kenyans” and its implementation is aimed at engendering five core principles in the National Payment System, that is: trust, security, usefulness, choice, and innovations.

The payments industry in Kenya has expanded over the years introducing new players into the market, new instruments, and new services and products. This expansion has extended to cover new customer segments into the payments ecosystem who have limited understanding and knowledge about inherent risks in payments. Similarly, as innovation has increased in pace and scope, this has introduced new risks in the digital payments’ ecosystem, hence the need to have a comprehensive framework that sets out the required protections and safeguards to protect customers. Finally, the framework will be expected to borrow and domestic experiences and lessons from other jurisdictions and markets, customized to Kenya’s context.

Thus, CBK has noted the need to develop a framework to guide regulation, supervision and oversight of PSPs while ensuring that customers are adequately protected, and their needs and interests upheld. Developing this type of consumer protection framework will require expertise and broad knowledge on consumer protection frameworks and a firm understanding of digital payment systems services provision.

2.0 SERVICES TO BE RENDERED

2.1 Objective

The primary objective of this assignment is the development of a comprehensive framework for consumer protection for the entire National Payments System (NPS) in Kenya. The framework’s key outcomes should be among others:

- a) Promoting fair and equitable payment services practices by setting minimum standards for Payment Service Providers (PSPs) in dealing with consumers;
- b) Increasing transparency to inform and empower consumers of financial services;
- c) Fostering confidence in the payment services sector; and
- d) Providing efficient and effective mechanisms for handling consumer complaints relating to the provision of payment products and services.

2.2 Scope of the Work

The framework developed through this consultancy shall be detailed enough and shall cover all aspects that will ensure fairness, reliability, and transparency during the provision of services to consumers by PSPs. The framework developed shall be accompanied by a monitoring framework/matrix that can effectively enable PSPs to track progress and CBK for the purposes of reporting, addressing non-compliance and enforcement action where warranted. The framework developed must also demonstrate that it has drawn from both domestic and global practise and theory from key institutions such as World Bank, CGAP, and others, who have extensive knowledge and have also developed similar frameworks in this area.

Key focus areas are legal and supervisory framework, disclosure and transparency, fair treatment and business conduct, data protection and privacy, dispute resolution mechanisms, and guarantee schemes and insolvency.

Overall, the framework should be geared towards the following outcomes from the point of view of the consumers: -

- a) Suitability and appropriateness – consumers have access to quality services that are affordable and appropriate to their preferences and situation. Consumers receive advice and guidance appropriate to their financial situation;

- b) Choice – consumers can make an informed choice among a range of products, services, and providers based on appropriate and sufficient information and advice that are provided in a transparent, no cost, and easy-to-understand way;
- c) Safety and security – consumers’ money and information are kept safe. The provider respects consumers’ privacy and gives consumers control over their data;
- d) Fairness and respect – consumers are treated with respect throughout their interactions with the provider, even when their situation changes, and they can count on the provider to pay due regard to their interests;
- e) Voice – consumers can communicate with the provider through a channel that they can easily access and have their problems quickly resolved with minimal cost to them;
- f) Meets purpose – By accessing and using products designed and delivered in accordance with these principles and by getting the services they need, they will be in a better position to increase control over their financial life, to manage a shock, or to attain other goals.

2.3 Expected Deliverables

The consultant shall provide the following deliverables:

- a) A current state analysis report on completion of the scoping exercise;
- b) A draft consumer protection framework for the NPS;
- c) A monitoring and evaluation framework;
- d) A final consumer protection framework;
- e) Presentations – make presentations and facilitate several workshops for the draft consumer protection framework. These workshops are to accord stakeholders an opportunity to provide input the framework.
- f) Training and capacity building – Knowledge transfers to stakeholder during workshops and meetings that will be organized by CBK and its partners.

2.4 Estimation of Effort

The assignment is expected to be carried out over a period of five (5) months.

2.5 Reporting Requirements

The Consultant will report to the Director, Banking and Payments Services Department and work closely with the Digital Payment Services Division (Policy Development and Data Analysis Section) for day-to-day guidance.

3.0 QUALIFICATIONS OF THE CONSULTANT

The consultancy will require the services of a firm or consortium that shall as a minimum, have a minimum of 10 years’ consultancy experience in consumer protection issues. The firm should have provided previous related assignments within the payments industry and/or financial services sector for regulatory or similar institutions.

The firm should have a team possessing expertise in the following areas: -

1. Legal Expert with vast experience in payment systems;
2. Payments System Specialist with vast knowledge in consumer protection issues and frameworks; and

3. Payments System Analyst with extensive knowledge of payment services and products.

Role Description	Qualifications
Team Leader	<ul style="list-style-type: none"> • Minimum of a master’s degree in Law • Experience in the Legal Department or Divisions of Central Banks, Multilateral Institutions, and or State Law offices will be an advantage • The person should have vast knowledge in Consumer Protection (CP) frameworks. • The person should have undertaken at least 2 similar assignments as consultant in the development of a CP framework and related legal instruments for other jurisdictions • Wide experience in payment systems and related products and services
Payment Systems Specialist	<ul style="list-style-type: none"> • Master’s in Business Administration or equivalent • Minimum eight (8) years’ experience in Payment Systems and should demonstrate good knowledge of payment systems landscape, and how different players interrelate in ensuring that payment systems are safe, efficient, and effective. • Should have good knowledge of payment system risks and how such risks affect consumers. • Should also have good knowledge of consumer protection frameworks
Payments System Analyst	<ul style="list-style-type: none"> • A degree in Business Administration or Information Technology or equivalent • Experience in payment systems analytical work and must demonstrate knowledge of challenges that consumers experience as consumers of digital services • Experience in the region i.e., in Kenya and outside; or similar conditions • Minimum 5 years of relevant experience