



SOUTH AFRICAN RESERVE BANK

**Draft Directive for conduct within the national payment system
in respect of payroll deductions**

Directive No. X of 2024

1. Background and 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 for connected matters.
- 1.2 The national payment system (NPS) encompasses the entire payment process, from payer to beneficiary, and includes settlement between banks. The process includes all the tools, systems, instruments, mechanisms, institutions, agreements, procedures, rules or laws applied or utilised to effect payment. The NPS is a primary component of the country's monetary and financial system as it enables the circulation of money, assisting the transacting parties to make payments and exchange value.

- 1.3 A payroll deduction service that enables payments to be effected to beneficiaries is a 'payment system' as defined in the NPS Act. A payment system is defined in the NPS Act as 'a system that enables payments to be effected or facilitates the circulation of money, and includes any instrument and procedures that relate to the system'.
- 1.4 Section 6A of the NPS Act states that a person may not change, manipulate, maintain or apply a payment system in any manner that provides preferential treatment to a payment instruction over any other payment instruction in that system, unless such preferential treatment is prescribed by law.
- 1.5 The SARB became aware of service offers being made for payroll deductions related to the administration of payrolls, including, but not limited to, government payroll. These deductions are voluntary or discretionary, as they are not prescribed by law. These deductions are effected with prior agreement between employers and employees, and in certain instances requested or initiated by financial service intermediaries. The payroll deduction services provide preference to certain beneficiaries as their payments are processed and received before other creditors or service providers are allowed to collect on the available funds credited to the bank account of the account holder.
- 1.6 Payroll deductions may be advantageous to employees, for example when employers provide benefits such as savings (e.g. pension fund contributions or retirement annuities), unemployment insurance fund (UIF) contributions, medical scheme contributions and certain loans (e.g. mortgage, vehicle and emergency loans) to assist, attract, retain and motivate employees. Further, this fosters financial inclusion and wealth creation, and assists employees not to become a burden on the state in the future. However, the employer benefits provided to employees must adhere to applicable legislation, for example the provision of loans/credit is subject to the National Credit Act 34 of 2005 (NCA), which ensures that employees are not over-indebted.
- 1.7 The main concerns relating to voluntary or discretionary payroll deductions include the following:

- 1.7.1 *A negative impact on the NPS collection methods:* Payroll deduction is a closed-loop payment system that limits access and constrains competition where preferential treatment is given to the payment instructions included in that payroll system. Payroll deductions bypass the Authenticated Collections (AC) and other NPS collection methods such as electronic funds transfer (EFT) debits. The SARB is concerned that voluntary or discretionary payroll deductions will replace the NPS collection methods/systems in order to obtain preferential treatment of payment instructions. This would negatively impact on the progress made in the reform of the debit order systems.
- 1.7.2 *Undesirable practices in the collection of credit payments:* Lenders who cannot access payroll may resort to undesirable collection practices such as the retention of bank cards and personal identification numbers (PINs). (The SARB decided to curb such undesirable collection practices by establishing early debit order systems such as AC.) Furthermore, such practices would lessen the effectiveness of the established early debit order systems.
- 1.7.3 *Third parties offering employees products or services not suited for employees:* Access to payroll deductions for voluntary or discretionary deductions may lead to third parties taking advantage of and offering employees products or services which are not necessarily beneficial for the employees. Moreover, some employers may be highly incentivised by third parties (e.g. company executives may be offered a significant discount on specific products and services) to persuade the employees to accept a product or service.
- 1.7.4 *Administrative burden to employers:* Access to payroll deductions by third parties may lead to arrangements resulting in employers intermediating employees' third-party relationships and carrying the administrative burden to enable payroll deduction collections by third parties.
- 1.7.5 *Lack of regulation:* Besides section 34 of the Basic Conditions of Employment Act 75 of 1997 and the National Treasury regulations relating to government

employees, discretionary or voluntary payroll deduction systems in the private sector are not regulated. Clear protection measures are not afforded to employees and no principles are applied to ensure the safety, efficiency and integrity of payroll deduction systems from an NPS perspective.

1.7.6 *Indebtedness*: There is a risk that unscrupulous financial service providers may provide products without conducting the necessary suitability tests or that credit providers may over-extend credit or extend credit without the necessary affordability tests, which could lead to the over-indebtedness of employees. This may lead to employees being unable to satisfy, in a timely manner, all their debt obligations, resulting in employees struggling to make ends meet.

1.8 To address the risks posed to the NPS by voluntary or discretionary payroll deductions, the SARB has decided to issue this directive in terms of section 12 of the NPS Act, after consultation with the Payroll Deductions Steering Committee, which is comprised of representatives from the following entities:

- the SARB;
- National Treasury (the Financial Sector Policy Unit and the Office of the Accountant General);
- the Department of Employment and Labour;
- the Department of Trade, Industry and Competition;
- the National Credit Regulator (NCR);
- the Department of Public Service and Administration; and
- the Financial Sector Conduct Authority (FSCA).

1.9 Section 12(1) of the NPS Act allows the SARB, from time to time, and after consultation with the payment system management body (PSMB), to issue directives to any person regarding a payment system or the application of the provisions of the NPS Act. The considerations for issuing a directive take account of the integrity, effectiveness, efficiency and security of the NPS as well as national financial stability and any other matters that the SARB considers appropriate.

- 1.10 The issuing of a directive may require a person to cease or refrain from engaging in the act, omission or course of conduct or perform such other acts as are necessary to remedy the situation; or perform such acts as are necessary to comply with the directive or to effect the changes.

2. Definitions

- 2.1 In this directive, unless the context indicates otherwise, the words and expressions used shall have the same meaning as assigned to them in the NPS Act, and similar expressions shall have corresponding meanings.

2.1.1 *'Arbitration award deduction'* means a deduction made in terms of an arbitration awarded under the Labour Relations Act 66 of 1995.

2.1.2 *'Closed-loop system'* means a payment system that is not interoperable with other payment systems.

2.1.3 *'Collective agreements deduction'* means a deduction in terms of a written agreement concerning the terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade union, one or more employer, one or more registered employers' organisation, or a bargaining council and a statutory council.

2.1.4 *'Court order deduction'* means a judicial debt collection through the court system, including emolument attachment orders (commonly known as 'garnishee orders' and 'administration orders').

2.1.5 *'Employer and employee relationship deduction'* means a deduction in terms of a written employment agreement, an employer's policies or an employer's employee benefit scheme such as medical aid and pension fund, or after the written consent of the employee based on the employment contract. The deduction may be due to an employer directly or to a third party.

- 2.1.6 *'NPS collection systems'* means debit order payment systems which are AC (e.g. DebiCheck – an early debit order system) and EFT debits.
- 2.1.7 *'Payroll deduction'* means the withholding or withdrawal of an amount, by an employer or any person appointed or authorised by the employer, from the employee's salary/earnings, paid to a third party or to discharge an obligation to the employer. This happens immediately before the salary/earnings are paid into the employee's bank account.
- 2.1.8 *'Deduction required or permitted by law'* means deductions that are required or permitted in terms of applicable legislation.
- 2.1.9 *'Voluntary or discretionary deduction'* means any deduction that is not authorised by a law, court, collective agreement or arbitration award.

3. Purpose

- 3.1 The directive prescribes the requirements for payment instructions and collections effected through payroll deductions, and specifies the types of payroll deductions that are permissible in terms of the NPS Act and this directive. Deductions which are not permitted in this directive must be collected through the NPS collection systems.

4. The position of the South African Reserve Bank

- 4.1 The SARB confirms that payroll deduction systems are closed-loop payment systems.
- 4.2 The SARB supports the use of the NPS collection systems to collect funds from payers in South Africa.
- 4.3 When closed-loop payment systems are established, they must be operated in a manner that promotes the safety, efficiency and integrity of the NPS.

4.4 The SARB is not supportive of the closed-loop payment systems that are designed to bypass the NPS collection systems and contravene section 6A of the NPS Act in respect of the preferential treatment of payment instructions.

5. Directive

5.1 A person allowing payroll deductions is hereby directed to only process payment instructions in respect of the following payroll deductions:

- (i) deductions required or permitted by law;
- (ii) court-order deductions;
- (iii) collective-agreement deductions;
- (iv) arbitration-award deductions; and
- (v) deductions based on an employer and employee relationship.

5.2 Subject to paragraph 5.1 above, the employer or any person authorised or appointed by the employer (hereinafter referred to as 'a person') must effect all payroll deductions as prescribed by law, a court order, a collective agreement, an arbitration award and/or based on an employer and employee relationship.

5.3 A person who offers benefits in respect of/based on an employer and employee relationship that result in payroll deductions, must adhere to the applicable legislation relating to the benefits offered to employees, including loans, credit and saving products.

5.4 Employer and employee relationship deductions must comply with the following requirements:

5.4.1 The employer must obtain the employee's prior written consent for the payroll deduction.

- 5.4.2 The employer must demonstrate or satisfy itself, or compel and ensure, that its appointed third parties are able to demonstrate and satisfy the employer that employees will materially benefit from the payroll deduction, whether in the form of convenience or financial gain, or both.
- 5.4.3 The employer must implement measures to guarantee that payroll deductions are not exploitative or disadvantageous to the employees.
- 5.4.4 The employee should not be unduly influenced to agree to a payroll deduction under any circumstances, including the perceived advantage of a discounted premium or subscription.
- 5.5 A person may not, without the prior written approval of the SARB, and unless the deduction relates to a deduction listed in paragraph 5.1, allow third parties to deduct from payroll or conduct payroll deductions for payment to third parties. Such approval may only be provided by the SARB under exceptional circumstances, subject to any conditions that the SARB may impose.
- 5.6 Persons who effect payroll deductions as provided for under paragraph 5.1 must submit an annual report to the SARB, by no later than 30 November each year, describing the type(s) of payroll deductions, the third-party beneficiaries of the payroll deduction as well as the volume and values of the payroll deductions effected.
- 5.7 Persons who effect payroll deductions must provide any information relating to the payroll deductions as and when may be required by the SARB, as per section 10 of the NPS Act.
- 5.8 All employers, their appointed agents as well as third parties effecting payroll deductions in South Africa must comply with this directive.

6. Supervision

- 6.1 The SARB will monitor and supervise compliance with this directive.

7. Conclusion

- 7.1 This directive is not exhaustive and may be supplemented and/or amended from time to time.
- 7.2 All persons who effect payroll deductions in South Africa are obliged to act in accordance with this directive. Any contravention of this directive is an offence in terms of section 12 of the NPS Act.
- 7.3 This directive will become effective six (6) months after publication to allow for transitional arrangements.
- 7.4 Persons who are uncertain as to whether their current and/or future business practices are aligned with this directive should initiate discussions with the National Payment System Department (NPSD) of the SARB to clarify such uncertainty.

8. Contact details in case of enquiries

Any enquiries concerning this directive may be addressed to:

Head: National Payment System Department
South African Reserve Bank
P O Box 427
Pretoria
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The following email address can also be used: npsdirectives@resbank.co.za.