**Terms of reference for performing due diligence review**

 **PAYMENT DISTRIBUTION AGENTS**

**Background**

In terms of the amendments to the Act, the Registration Department now has to register alternative dispute resolution agents (ADRAs) and Payment Distribution Agents (PDAs).

In terms of Regulation 10A of the Act, the NCR must not register a person as a PDA unless that person complies with the following requirements:

1. maintaining and imposing appropriate qualification requirements for its employees or contractors who will have the authority to represent it in any function of its business of collection and payment distribution;
2. successfully complete a payment distribution training programme approved by the NCR and provided by an accredited institution. The training programme must be completed within six (6) months of registration as a PDA;
3. has sufficient human, financial and operational resources to carry out the functions of a PDA efficiently and effectively;
4. has put in place adequate resources, systems and procedures to carry out the functions of payment distribution efficiently and effectively.
5. **Scope of work**

The appointed auditor will conduct the pre-selection criteria audits on new applicants for registration as PDAs and provide independent assurance to the NCR on whether or not the applicant met the following summarised minimum set criteria:

* PDA Management Framework requirements;
* payment system technical functionality requirements;
* transaction control processes requirements;
* the system functionality requirements of the management of received consumer funds;
* system requirements for the generation of consumer statements;
* system functionality requirements for payments or distribution management;
* relevant compliance requirements;
* governance, financial and risk management requirements;
* relevant industry experience;
* training programme requirements;
* resources and operational standards requirements.
1. **Execution of the pre-selection audit terms of reference**

Although not specifically mentioned, the appointed service provider will be required to:

* maintain a high quality assurance programme that covers all aspects of the scope described above;
* conduct the audits in accordance with internal auditing standards, code of ethics and relevant regulations and laws;
* maintain high levels of integrity, objectivity and confidentiality;
* properly supervise staff and audits to ensure timely completion of audits within agreed deadlines;
* provide regular feedback to the NCR on the audit progress;
* timely communicate independent objective audit results in writing to the NCR;
* identify opportunities of improvement.

**C. Detailed Scope of Work or Terms of Reference**

The table below shows the detailed scope of work or terms of reference

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| Area to be audited | Scope of work or terms of reference |
| Compliance with Companies Act 71 of 2008 and CIPC Incorporation | * Examine the applicant’s certificate of incorporation;
* Examine the Memorandum of Incorporation and Articles of Association;
* Determine the shareholders of the applicant.
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| Compliance with SARS, PASA and other relevant regulations | * Examine the Tax Clearance Certificate, PASA certificate of registration;
* Examine relevant documents for compliance with National Payment Systems (NPS) and other relevant regulations.
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| Applicant Management Framework | Review the applicant’s management framework(s) to determine whether:* basic elements for developing payment management system are

well described;* performance goals, outcomes and desired system functional capabilities are clearly set and defined;
* system functionality and information flow support to the NCR in carrying out its mandate as outlined in the Act and Section 44A (1) and (2) of the Act.
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| Technical System Functionality | Perform walk through tests to determine whether the applicant’s system is capable of:* recording, processing and reporting on high volume financial transactions;
* providing integrity and reliable financial and non-financial information;
* using standard procedures for installation, configuration and operations;
* querying, accessing and providing audit trails for performed transactions;
* providing timely, reliable and complete financial and non-financial information for decision making at all management levels and to the NCR;
* a detailed overview of the operational resources such as IT systems, policies and procedures etc.
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| Management of received consumer funds  | Review and evaluate the system’s capability to:* record, process, classify, and report on received consumer funds;
* record, process, and maintain consumer information such as name, identity number, contact, and address details;
* recognise the method of payment (debit orders or direct deposits).
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| Consumer statements | Review and evaluate the system’s capability to timely process and produce accurate consumer statements showing the following:* consumer name and identity number;
* statement date and reporting period;
* consumer debt re-arrangement plan date;
* consumer’s address and contact details;
* expected and actual consumer funds received;
* expected and actual amounts distributed to creditors;
* closing creditors balances.
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| Management of distributions | Review and evaluate the system’s capability to :* process and distribute consumer funds to creditors as per the debt re-arrangement and within applicable timelines;
* provide reliable and accurate distribution reports to creditors;
* classify and age undistributed consumer funds;
* provide creditors’ name, reference number, address and contact details;
* process and distribute the PDA distribution fee and debt counsellor’s fee charged as prescribed.
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| Governance, Financial and Risk Management | Review and evaluate the applicant’s:* governance, financial and risk management processes, policies and procedures;
* board of directors and committees’ composition;
* system for appointing and evaluating board members’ performance;
* organisational structure;
* financial position of the organisation to determine whether it has the minimum required cash resources;
* high level organogram of the organisation, including CEO and the 1st level of senior management;
* group/company organogram;
* operational organogram;
* information of the CEO and 1st level of senior management;
* name of employee;
* position in organisation;
* qualifications of employees and directors/members;
* experience of employees and directors/members (number of months, years in current role and similar role);
* shareholding information of the organisation;
* declaration of interests from shareholders;
* The auditor will also have to perform director searches in order to establish any conflict of interest;
* latest management accounts (if applicable);
* latest annual audited financial statements (if applicable).
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| Industry experience | * Review and evaluate the applicant’s experience in the financial services or consumer credit market.
1. **Education**
2. The PDA must maintain and impose appropriate qualification requirements for its employees or contractors who will have authority to represent it in any function of its business of collection and payment distribution;
3. Applicant’s commitment in respect of completion of a payment distribution training program approved by the NCR and provided by an accredited training institution. The training program must be completed within six (6) months after the PDA has been registered by the National Credit Regulator.

2. **Experience** 1. The PDA must have an executive director:-
2. responsible for the day to day operations, with five (5) years experience in dealing with the business of collecting, distributing payments, accounting or financial services;
3. who is a person with good record of managing the finances of the company.

3. **Competence** 1. A person applying to be registered as a PDA must :-
2. have sufficient human, financial and operational resources to carry out the functions of a PDA efficiently and effectively;
3. put in place adequate resources, systems and procedures to carry out the function of payment distribution efficiently and effectively;
4. comply with the Broad-base Black Economic Empowerment Act, 2003 (Act 53 of 2003) as amended;
5. be registered with the South African Revenue Services and have a valid tax clearance certificate;
6. be a company incorporated in terms of the Companies Act, 2008 (Act 71 of 2008) or Close corporations Act, 1984 (Act 69 of 1984) and Cooperatives Act, 2005 (Act 14 of 2005);
7. have a board of directors/members consisting of not less than three (3) non-executive directors, one of whom must be independent, with qualifications and experience of not less than two (2) years in the accounting, auditing, or legal profession;
8. applicant must have adequate mechanisms in place to keep all payment records for at least five (5) years after the payment event.

4. The applicant must have a minimum capital amount of R5 million for investment in the establishment and operation of a PDA and proof of this amount must be provided in the form of a bank guaranteed cheque to the National Credit Regulator at the time of the application.5. The applicant must have sufficient insurance cover in place which is equivalent to the aggregate amount collected for distribution and adequate indemnity cover to compensate consumers and credit providers for any loss or damages occasioned by the conduct of the PDA.6. The applicant who conducts a debt counselling business must demonstrate that the business of debt counselling and payment distribution will be operationally independent of each other and managed independently by different persons and that the payment distribution is not made in respect of consumers under debt review in their debt counselling business. |
| Other Policies and Procedures | * Copy of information security policy.
* Business continuity management plan.
* Copy of disaster recovery plan.
* Copy of the policy and procedures for handling questions, concerns and complaints of consumers, alternative dispute resolution agents, debt counsellors or credit providers.
* Fraud Prevention Policy.
* Human Resource policies.
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**NOTE:**

**The appointed auditor will conduct the audit reviews on new applicants for registration as credit bureau or payment distribution agent and provide independent assurance to the NCR on whether or not the applicants meet the above mentioned summarised minimum set requirement/criteria.**