

Consultation Paper



Payment Instruments (Oversight) Regulations, 2017

Payments Unit
Research Department

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TABLE OF CONTENTS

STATEMENT OF PURPOSE	3
THE IMPORTANCE OF PAYMENT SYSTEMS AND PAYMENT INSTRUMENTS AND SERVICES.....	<u>4</u>
THE OBJECTIVES OF PAYMENTS SYSTEM OVERSIGHT.....	5
PROPOSED PAYMENT SERVICES PROVIDER REGULATIONS	5
PUBLIC SAFETY AND SOUNDNESS	6
CONSULTATION PERIOD.....	7
ANNEX I: PAYMENT INSTRUMENTS (OVERSIGHT) REGULATIONS, 2017	8
<u>ANNEX II: GENERAL INFORMATION AND APPLICATION GUIDELINES FOR PROVIDERS OF ELECTRONIC RETAIL INSTRUMENTS AND ELECTRONIC MONEY PRODUCTS (ELECTRONIC SERVICE PROVIDERS).....</u>	<u>36</u>
<u>ANNEX III: PAYMENTS OVERSIGHT POLICY FRAMEWORK.....</u>	<u>66</u>

Consultation Paper

Payment Instruments (Oversight) Regulations

1. Statement of Purpose

- 1.1 This Consultation Paper invites public comments on the Central Bank of the Bahamas' proposed *Payments Instrument (Oversight) Regulations, 2017*. It is a precursor to the Bank's process to license and oversee non-bank providers of electronic payment instruments and services. The Bank is taking an abbreviated approach of one month to this consultation in order to ensure that private interests which already exist in providing innovative payments solutions can be vetted for licensing and supervision within a transparent framework. Following the consultation process and any revisions to the proposed framework, the regulations will be promulgated. A further review of the regulations will occur within one year from now, to take constructive account of any initial experiences.
- 1.2 In addition to the proposed *Payment Instruments (Oversight) Regulations, 2017* at Annex I, this document also contains the Central Bank's *General Information and Application Guidelines for Providers of Electronic Retail Payment Instruments and Electronic Money Products (Payment Service Providers)* at Annex II, and a paper on the *Payments Oversight Policy Framework* at Annex III.
- 1.3 The role of the Central Bank in relation to payment systems and payment instruments is defined by the provisions of the Payments Systems Act (PSA) and the Central Bank of the Bahamas Act (CBA). The Bank is responsible for formulating, adopting and monitoring the implementation of a National Payment System Policy for The Bahamas and for overseeing payment systems and the issuance and functioning of payment instruments.
- 1.4 The amendments under the CBA, introduced in 2010 strengthened the legal underpinnings of the Central Bank in its role as overseer of payment systems. The CBA specifies that it shall be the duty of the Bank to ensure the stability of the financial system and to promote and ensure the establishment and oversight of a sound and efficient national payment system. Section 25 of that Act, specifically empowers the Bank in the exercise of its functions, to inter alia, regulate and oversee:
 - (i) any system for the clearing and settlement of payments and other arrangements for the making or exchange of payments;
 - (ii) any system for the clearing and settlement of securities and other arrangements for the exchange of securities; and

- (iii) any system to facilitate the clearing and settlement including other arrangements for the making or exchange of payments or the exchange of securities as well as links among systems; and
 - (iv) the issuance and functioning of payment instruments, including the provision of e-money or other forms of stored value.
- 1.5 The PSA empowers the Central Bank to determine general or individual standards and directives for all approved domestic payment systems and payment instruments; establish and perform control and audit procedures; and impose administrative sanctions. Furthermore, the PSA empowers the Bank to suspend the operation of any system or terminate the participation of any member in an approved system.
- 1.6 In pursuance of its policy objectives, the Bank is required under the PSA to facilitate the development of new methods and technologies for payments and the transfer of securities and the cooperation among all participants in the evolution of payment systems and the provision of money services. In this regard, the Bank intends to issue regulations and guidance regarding electronic retail payments.
- 1.7 It is proposed that all non-bank Payment Service Providers be licensed and supervised by the Central Bank, pursuant to the Central Bank of The Bahamas Act and the Payment System Act, 2012 and that the Bank regulate and supervise the use of electronic retail payments, including those involving electronic money products. The Central Bank has the duty to regulate and oversee the issuance, provision and functioning of payment instruments in keeping with section 4(1)(a) of the PSA.
- 1.8 Through the Payments Unit of the Research Department, the Bank, intends to monitor the compliance of payment service providers with the regulatory requirements for retail electronic payments.
- 1.9 The proposed regulations are intended to promote the use of electronic retail payment instruments within a safe, secure and competitive environment.

2. The Importance of Payment Systems and Payment Instrument and Services

- 2.1 Payment systems are an essential component of the financial infrastructure of a country. A safe and efficient infrastructure is critical to the effective and smooth functioning of the financial system. It also helps maintain and promote financial stability.
- 2.2 Innovative payment instruments such as mobile payments, stored-value cards and other forms of electronic money, and the features of the specific payment services being provided through these and other payment instruments are receiving

increased attention from central banks and other financial sector authorities worldwide. This has been driven by technological innovation and concerns about the safety and efficiency of such instruments and access channels; and the increasing entrance of non-banks into the payments services landscape.

3. The Objectives of Payments System Oversight

3.1 The Bank for International Settlement's Committee on Payments and Market Infrastructure (CPMI) in its 2005 report, on *Central Bank Oversight of Payments and Settlement Systems*, describes the oversight of payment and settlement systems as "a central bank function whereby the objectives of safety and efficiency are promoted by monitoring existing and planned systems, assessing them against these objectives and, where necessary, inducing change."

3.2 The Central Bank of The Bahamas pursues the widely accepted objectives of promoting the safety and efficiency of payment systems as one of its core functions under the CBA. In the exercise of its oversight function, the PSA provides that the following policy objectives shall be pursued by the Bank:

- i) Facilitating the overall stability of the financial system of The Bahamas.
- ii) Promoting the safety and efficiency of payment systems.
- iii) Controlling risk.
- iv) Contributing to the promotion of competition in the market for payment services.
- v) Contributing to the protection of payment systems users.
- vi) Enhancing other aspects of the public interest.

3.3 The Bank, in exercising its powers under the PSA, as it relates to the oversight of payment, clearing and settlement systems and payment instruments and services, must also take the interests of the public into account. In keeping with the Bank's oversight mandate, the Bank is authorized pursuant to section 4(1) of the PSA to determine general or individual standards and guidelines for payment instruments.

3.4 The proposed regulations are intended to foster the use of electronic retail payment instruments which take advantage of available technology, to provide more efficient payment services in a safe, secure and competitive environment.

4. Proposed Payment Service Providers Regulations

4.1 The draft Payment Oversight Regulations set out the regulatory requirements for licensing, minimum capital and reporting requirements of Payment Service Providers incorporated in The Bahamas.

- 4.2 Any Payment Service Provider desiring to offer payment services must first obtain approval from the Central Bank, submitting documents and information as prescribed by Section 5 of the Regulations.
- 4.3 Under section 28(1)(a) of the Payment System Act, the Central Bank reserves the right to impose on licensees such terms and conditions as it sees fit. The terms and conditions may include the extent and nature of operations, the payment instruments that may be offered, and limits on the monetary values that may be transferred or funded using the payment instrument. In addition, according to the Guidelines, any international (cross-border) transactions will require Exchange Control Approval. These stipulations are reinforced in the draft Regulations.
- 4.4 In keeping with the Central Bank's policy with respect to banks and trust companies, the Central Bank proposes that only companies incorporated under the Companies Act, 1992 will be licensed to provide Payment Services.
- 4.5 Under schedule 1 of the Regulations, a minimum capital of \$100,000 is proposed for Payment Service Providers licensed by the Central Bank.

5. Public Safety and Soundness

- 5.1 It is the Central Bank's view that safety and soundness measures, to protect the public and to deter individuals and companies with questionable solvency or business practices from entering the money transmission market, are critical components of the proposed regulatory regime. In pursuit of these objectives, the Central Bank will take into consideration, among other factors, the size of these businesses, the risks that may be associated with their operations, the potential impact on the profitability of the entity and balance these with the need to protect consumers and the best interests of the financial system in The Bahamas in the process of supervising these institutions.

6. **Consultation Period**

- 6.1 The Central Bank of the Bahamas invites comments on the proposals in the draft Regulations and policy framework. Comments should be forwarded to the Payments Unit, Research Department by June 9, 2017.

Comments may be submitted in writing to the following address:-

The Payments Unit
Research Department
The Central Bank of The Bahamas
Market Street
P.O. Box N-4868
Nassau, Bahamas
Email : payments_unit@centralbankbahamas.com

- 6.2 The draft Payment Instrument (Oversight) Regulation, 2017 may be found in the Annex I of this document :-

ANNEX I

DPAYMENT SYSTEMS ACT, 2012

DRAFT PAYMENT INSTRUMENTS (OVERSIGHT) REGULATIONS, 2017

The Central Bank of The Bahamas, in exercise of the powers conferred by Section 47 of the Payment Systems Act, 2012, makes the following Regulations -

PRELIMINARY

1. Citation.

- (1) These Regulations may be cited as the Payment Instruments (Oversight) Regulations, 2017.
- (2) These Regulations shall come into force on the 23rd of June, 2017.

2. Interpretation.

- (1) In these regulations---

“Agent” means a person that has been contracted by a Payment Service Provider to provide payment services on behalf of such institution in its name and on its behalf;

“Central Bank” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act, (*Ch.351*) and “the Bank” shall be construed accordingly.

“Credit Card” means a card that authorises the person named on it to obtain cash from, or to charge goods or services to, the account of an account holder on credit subject to repayment over a period of time;

“Custodian Account” means a special purpose trust account, where the issuer is the trustee and the

relevant customers are the beneficiaries, and where funds of such customers are pooled for the purpose of settlement and management of the payment services to which the customers are entitled;

“Debit Card” means a card or an access device by which money is automatically deducted from a banking account to pay for goods or services purchased;

“Electronic Money” or “e-money” means electronically 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 and which is accepted as a means of payment by persons other than the issuer, and includes monetary value stored magnetically or in any other tangible or intangible device (such as a SIM card or software);

“Electronic Money Issuer” means a person that is licensed pursuant to Regulation 6(5) to issue electronic money;

“Merchant” means any person that accepts payment instruments, as well as electronic money as payment for their goods and services;

“Minister” means the Minister of Finance;

“Money Transmission Business” means the business of accepting cash, cheques, other monetary instruments or other stores of value in one location and the payment of a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money transfer business belongs;

“Money transmission service provider” has the meaning provided under section 2 of the Banks and Trust Companies Regulation Act;

“Outsourcing” means a contractual arrangement under which a Payment Service Provider and another party agree that the other party shall perform one or more parts of a service normally carried out by the Payment Service Provider, but the Payment Service Provider retains responsibility for the provision of such services, but does not include any agency relationship where the agent acts in the name and on behalf of the principal;

“Payment Institution” means any entity licensed pursuant to these Regulations to provide Payment Services but for the purposes of these regulations, does not include--

- (a) a bank, a bank and trust company, a trust company, or a money transmission service provider licensed or registered pursuant to the Banks and Trust Companies Regulation Act (Ch. 316);
- (b) a co-operative credit union which is registered pursuant to The Bahamas Co-operative Credit Unions Act, 2015.

"Payment Card" means a card or other device, including a code or any other means of access to an account, that may be used from time to time to obtain money or to make payment, and includes a debit card, credit card and stored-value card;

“Payment Instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment or transfer money and includes, but is not limited to, cheques, funds transfers initiated by any paper or paperless device (such as automated teller machines, points of sale, internet, telephone, mobile phones), payment cards, including those involving storage of Electronic Money;

“Payment Services” means services enabling cash deposits and withdrawals, execution of payment transactions, the provision of money

transmission business, and any other services which are incidental to money transmission and shall include the issuance of Electronic Money and Electronic Money instruments;

“Payment Service Provider” means—

- (a) a Payment Institution licensed under these regulations;
- (b) a bank, a bank and trust company, a trust company, a money transmission service provider licensed or a money transmission agent registered, pursuant to the Banks and Trust Companies Regulation Act, or a co-operative credit union pursuant to The Bahamas Co-operative Credit Unions Act, 2015(Ch. 316); and
- (c) any other provider licensed to provide payment services under any other relevant law.

“Scheme” means the rules, standards and procedures governing the operational framework permitting the operation of the payment instrument and the linking of all stakeholders.

“the Act” means the Payment Systems Act, 2012.

“the regulatory laws” means the Banks and Trust Companies Regulation Act (Ch. 316) or The Bahamas Cooperative Credit Unions Act, 2015;

“User” means any person to whom Electronic Money has been issued or any person who uses a Payment Instrument and “Payment Services User” shall be construed accordingly.

3. For the purposes of these Regulations, payment services shall not include the provision of solely internet or telecommunication services or services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, including—

- (a) the processing and storage of data;

- (b) trust and privacy protection services;
- (c) data and entity authentication;
- (d) information technology;
- (e) communication network provision; and
- (f) the provision and maintenance of terminals and devices used for payment services.

PART I

PAYMENT INSTITUTIONS

4. **Licensing.**¹

- (1) No person other than a bank, a bank and trust company, a trust company, a co-operative credit union or a money transmission service provider licensed or registered under the regulatory laws may provide Payment Services unless such person is a company incorporated under the Companies Act and is duly licensed by the Central Bank of The Bahamas under the terms of these Regulations.
- (2) Any person desirous of providing a Payment Service under regulation (1) shall apply to the Central Bank by submitting the documents and information prescribed by regulation 5.
- (3) An applicant pursuant to paragraph (2) must satisfy the Central Bank that the applicant complies with the following minimum conditions:²
 - (a) that the applicant meets such capital requirements as the Central Bank may specify in writing.
 - (b) that the applicant has robust governance arrangements for its Payment Services business, which --
 - (i) include a clear organisational structure with well-defined, transparent and consistent lines of responsibility;

- (j) include effective procedures to identify manage, monitor and report the risks to which it is or might be exposed;
 - (k) include adequate internal control mechanisms, including sound administrative and accounting procedures;
 - (l) are comprehensive and proportionate to the nature, scale and complexity of the payment services to be provided by the applicant.
- (c) that the applicant has taken adequate measures for the purpose of safeguarding payment service users' funds in accordance with regulation 8.
 - (d) that the applicant has clear rules to resolve disputes associated with Payment Services.
 - (e) that the applicant has a safe and reliable information technology system and adequate interfaces to ensure interoperability, access and data protection, as well as robust contingency and disaster recovery procedures.
 - (f) that any persons having a qualifying holding of 5% or more of the voting rights and/or shares of the applicant are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a licensed payment institution;
 - (g) that the directors and persons responsible for the management of the applicant, and where relevant, the persons responsible for its payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;
 - (h) that the applicant has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly.

5. Documents to be submitted

In order to comply with the conditions set forth in regulation 4(3), an applicant shall provide the following information:

- (a) a description of the nature and scope of the services to be offered and how these services fit in with its overall business strategy, together with a business plan;
- (b) a list of products and services to be provided;
- (c) a description of the legal structure of the scheme to provide the service, including the legal definition of any relationship with a bank or deposit taking institution which clearly describes how liabilities are shared and risks avoided or reduced;
- (d) the criteria used for the selection of agents and/or the outsourcing of parts of the services, where applicable, and a copy of any agency or outsourcing agreement, as the case may be, used by the applicant;
- (e) proof that the applicant has an adequate number of competent and trustworthy staff and management, adequately trained in respect of its business requirements, operational needs and risk management;
- (f) a signed document detailing the features and operational modalities of all information technology systems used or proposed to be used, including the operating systems, software and interfaces and explaining at a minimum the following:
 - (i) a description (including diagrams) of the configuration of any information technology and operating system used by the applicant and its capabilities showing--
 - (aa) how such system is linked to other host systems or the network infrastructure of the applicant;
 - (bb) how transactions and data flow through the network, a description of the settlement process and the maximum time in which the payment service will be executed ;
 - (cc) the types of telecommunication channels and remote access capabilities (for example,

direct modem dial-in, internet access, or both) that exist; and

- (dd) the security controls or measures installed.
- (ii) a list of software and hardware components used by the applicant and an indication of the purpose of the software and hardware in the infrastructure;
- (iii) a description of how data security and data integrity are maintained;
- (iv) a description of how the system is interoperable with other existing information technology and operating systems;
- (v) a description of how relevant international, national and industry level standards, guidelines and recommendations are applied wherever possible;
- (g) proof of the applicant's ability to comply with all applicable anti-money laundering and combating the financing of terrorism laws and policies;
- (h) a description of the consumer protection measures of the applicant, including out-of-court dispute resolution mechanisms, consumer recourse mechanisms and consumer awareness programs;
 - a. a description of the applicant's data protection policy;
- (j) the names of persons holding, whether, directly or indirectly, qualifying holdings of 5% or more of the voting rights and/or shares of the applicant at the time of application whether or not the shares of the applicant are publicly traded;³
- (k) for each existing or proposed shareholder referred to in sub-subparagraph (j), the following information:
 - (i) date and place of birth and nationality;
 - (ii) curriculum vitae incorporating: personal data; educational background; professional education and training; a list of previous professional activities and

scope of responsibilities, including details of the level and number of subordinates managed;

(iii) two character references in original form from sources satisfactory to the Central Bank; and

(iv) two financial references in original form from sources satisfactory to the Central Bank.

- (l) the names of directors and persons responsible for the management of the entity providing services, and, where relevant, the names of persons responsible for the management of the specific payment service activities to be undertaken by the applicant;
- (m) a certified copy of the applicant's Certificate of Good Standing, Memorandum and Articles of Association;
- (n) the name and address of the applicant's external auditors;
- (o) such further or additional information as the Central Bank may require for the purpose of assessing an application to be licensed as a Payment Institution.

6. Electronic Money Issuers.

All applicants to issue electronic money products must comply with the general requirements of regulation 4(2) and 4(3), and pursuant to section 26 of the Act,⁴ must also satisfy the Central Bank that the following conditions are met:

- (a) the applicant must:
 - (i) be constituted as a company limited by shares under the Companies Act and be either an independent company or a wholly-owned subsidiary of its parent company; and
 - (ii) have as its sole object, in its Memorandum of Association, the provision of electronic payment services;
 - (iii) submit the contract referred to in sub-sub-paragraph (c)(iii)(aa) to the Central Bank

together with the application for a licence to issue electronic money.

- (a) the provision of electronic money shall not include the provision of credit, nor be treated as deposits;
- (b) Electronic Money Issuers must—
 - (i) issue electronic money in exchange for the equivalent value in Bahamian Dollars;
 - (ii) redeem the monetary value of electronic money at par with the Bahamian Dollar, upon the request of the payment service user;
 - (iii) ensure that—
 - (aa) the management of the underlying float, the conditions for redemption of electronic money, including payment of any fees relating to redemption are clearly set out in the contract between the electronic money issuer and the Payment Services User; and
 - (bb) the payment service user is informed of those conditions before being bound by any contract.
 - (iv) disclose statistics on the value of electronic money loaded and redeemed in their periodic financial statements; and
 - (v) furnish any information on their operations, within such time and in such format as the Central Bank may require for its effective oversight of the payments system.
- (d) An Electronic Money Issuer must ensure that the clearing and settlement mechanisms which it uses to execute Electronic Money transactions facilitate provision of final settlement not more than twenty four hours after a payment instruction has been initiated in the banking system or within such other time as the Central Bank may specify.

- (e) Electronic Money shall not be insured individually and must be deposited in full (one hundred percent) in the banking system in a Custodian Account⁵.
- (f) Electronic Money deposited in accordance with sub-paragraph (e) shall remain the property of the Payment Service Users of the Electronic Money Issuer that deposited the electronic money who shall owe to such Users, in respect of such deposit, the fullest fiduciary duties recognized under any applicable laws of The Bahamas.

7. Licensing procedure.

- (1) After receipt of an application, the Central Bank shall assess whether the application is complete.
- (2) Within ten days of receipt of the completed application for a licence, the Central Bank shall either commence the process for determining the application under paragraph (3) or request that the applicant provide such additional information within such time as the Central Bank may reasonably require to enable it to determine the application.
- (3) If the Central Bank is satisfied that the application is complete, it shall evaluate whether the application complies with these Regulations or with any other requirements as may be prescribed by the Central Bank under any other law.
- (4) The Central Bank shall determine an application for licensing within thirty days beginning with the date on which it received the completed application.
- (5) The Central Bank may, after consideration of an application made pursuant to regulation 4(2), grant a licence subject to such terms and conditions as it thinks fit, where—
 - (a) the Bank is satisfied with respect to the matters in regulation 4(3), 5 and 6; and

- (b) the applicant has paid the fees prescribed in the First Schedule.
- (6) Where the Central Bank considers it to be in the public interest, the Central Bank may refuse to grant a licence.
- (7) The Central Bank shall in every case in which application is made pursuant to regulation 4(2) advise the Minister of its decision to either grant or refuse the grant of such licence.
- (8) A person obtaining a licence as a Payment Institution shall provide the services and execute the activities permitted in its license and do so from any location listed in its license.
- (9)
 - (a) Before obtaining a license, a Payment Institution must make a deposit in a trust account at an entity approved by the Central Bank.⁶
 - (b) The deposit made pursuant to subparagraph (a) shall be refunded if the Payment Institution subsequently closes its business and fulfills all the requirements for closing the business as may be specified by the Central Bank in writing within established timeframes.
 - (c) The Central Bank may, by Notice in writing, increase or decrease the amount of the deposit referred to in sub-paragraph (a).

8. Prohibition or limitation on activities of Payment Institutions.

- (1) In the absence of a separate license, registration or specific approval from the Central Bank or other relevant domestic regulatory authority, a licensed Payment Institution may not engage in any of the following activities:
 - a. acceptance of deposits;
 - b. foreign exchange transactions;

- c. granting of loans;
 - d. include in its name words such as “bank”, “trust”, “bank and trust company”, “trust company”, “trust corporation”, “savings” or “savings and loan”, “cooperative” or credit union” or any other word indicative of activities other than as a Payment Institution;
 - e. payment system operations.
- (2) A Payment Institution shall not issue a payment instrument valued in excess of \$15,000 Bahamian Dollars or allow such value to be transferred or funded using the payment instrument.
- (4) A Payment Institution shall—
- (a) not at any time commingle funds received from payment service users or through another payment service provider for the execution of payment transactions, with the funds of third parties; and
 - (b) protect the funds received from payment service users or through another payment service provider for the execution of payment transactions from the claims of other creditors of the Payment Institution, in particular, in the event of insolvency.
- (5) A Payment Institution shall not issue, transfer or dispose of its shares or any other securities without the prior written approval of the Central Bank.

9. Register.

- (1) The Central Bank shall maintain a public register of licensed Payment Institutions.
- (2) The register shall contain the following information relating to the Payment Institution, as relevant:
 - (a) the index number of the license issued by the Central Bank and date of issuance;
 - (b) the taxpayer identification number;

- (c) the name, registered office and head office of the Payment Institution;
 - (d) the names of the persons managing and representing the Payment Institution;
 - (e) the services/activities for which the Payment Institution was licensed;
 - (f) the location(s) of the Payment Institution and their contact details; and
 - (g) the date on which the Central Bank revoked the license of the Payment Institution or the date on which such Institution ceased to carry on business.
- (3) The Central Bank shall publish the register referred to in paragraph (1) online and shall update the register on a regular basis.

10. Revocation.⁷

1. If a Payment Institution--

- (a) contravenes any provisions of these Regulations;
- (b) does not comply with other general measures issued pursuant to these Regulations;
- (c) fails to comply with directions issued by the Central Bank;
- (d) provides services contrary to the terms and conditions specified in its licence;
- (e) becomes insolvent, wound up or dissolved;
- (f) was licensed on the basis of false or wrong information submitted by the applicant; or
- (g) has failed to commence operations within 12 months following the issuance of license,

the Central Bank may revoke its license.

- (2) No revocation shall be made under paragraph (1) of this regulation except after giving the applicant a reasonable opportunity of being heard.

⁷ This provision should in fact be extended to all Payment Service Providers. However, consider whether this would be compatible with current powers to revoke a licence of other relevant licensed entities. In all cases, no regulatory arbitrage should be created.

- (3) Nothing contained under paragraph (2) of this regulation shall apply to a case where the Central Bank considers it necessary to revoke the license in the interest of the monetary policy or financial stability of the country or for any other reasons connected to public interest.
- (4) The Central Bank may, in considering whether to prohibit any person from providing a Payment Service, inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions of the person.
- (5) The order of revocation issued under paragraph (1) of this regulation shall include necessary provisions to protect and safeguard the interests of persons affected by such order of revocation.
- (6) The decision to revoke the license shall be published by the Central Bank in a newspaper of wide circulation at the place where the head office of the applicant is situated.
- (7) The revocation of the license shall become effective on the date of its publication or on any further date as the Central Bank may specify.
- (8) The Payment Institution shall be prohibited from engaging in the provision of Payment Services starting from the effective date of the revocation.

PART II

TERMS AND CONDITIONS TO PROVIDE PAYMENT SERVICES

11. General requirements.

- (1) Payment Service Providers shall ensure that their activities and instruments always comply with relevant regulations and other either general or individual measures adopted by the Central Bank to ensure a secure and efficient payment system in The Bahamas.
- (2) Payment Service Providers shall comply with the Financial Transactions Reporting Act, (*Ch 368*) and all other applicable anti-money laundering and countering the financing of terrorism legislation.

- (3) A Payment Institution’s head office, registered office or place of residence, as the case may be, must be in The Bahamas.
- (4) A Payment Institution shall inform the Central Bank of any change in the location of its head office or registered office, within seven days of such change.

12. Rights and responsibilities of each Payment Service Provider.

A Payment Service Provider shall—

- (a) ensure that the rights and responsibilities of all stakeholders (including users and merchants) are clearly set out in the relevant contracts and any public communications;
- (b) take reasonable measure to ensure that the terms and conditions for the use of retail payment instruments are easily accessible and understood;
- (c) put in place a system to maintain accurate and complete records of transactions executed by the payment service users for a minimum of five years from the date of the transaction; and
- (d) develop and implement an adequate fraud and risk management framework.

13. Consumer protection, education and privacy.

- (1) A Payment Service Provider shall implement measures to address consumer protection, education and privacy.
- (2) A Payment Service Provider shall, pursuant to paragraph (1) ensure that:
 - a. it adopts general policies on safe operations, privacy of customers’ information, reliable and quality service, transparency of products and services, and prompt response to inquiries, complaints, refund demands and disputes;
 - b. it puts in place rapid dispute resolution mechanisms and retains records of complaints or disputes;

- c. it provides adequate warning statements to users and merchants on the risk of loss arising from failure or insolvency of the issuer, lost or stolen payment instruments or access devices,⁸ or fraudulent transactions.
- (3) A Payment Service Provider shall
- (a) make publicly available clear terms and conditions for use of the payment instruments and devices which it offers, which should, at a minimum include the following;
 - (i) type of payments that can be made;
 - (ii) applicable fees and charges;
 - (iii) availability of user's statement;
 - (iv) procedures for reporting lost or stolen instruments/devices and the procedure for lodging a complaint;
 - (v) the Payment Service Provider's refund policies;
 - (vi) rights and responsibilities of users and merchants;
 - (vii) termination rules; and
 - (viii) redemption procedures, when relevant.
 - (b) obtain the consent of its users and merchants to the terms and conditions for use of the payment instruments and devices which it offers and their acknowledgement that they have read and understood such terms and conditions prior to their participation in the scheme.

14. Outsourcing of activities.

- (1) Where a Payment Service Provider intends to outsource operational functions, it shall obtain the prior approval of the Central Bank to outsource such functions.
- (2) Outsourcing of important operational functions shall not be undertaken in such a way as to materially impair the quality of the Payment Service provider's internal controls or the ability of the Central Bank to monitor the Payment Service provider's compliance with these Regulations.
- (3) For the purposes of paragraph (2), an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a Payment Service Provider with the requirements of its license, its financial performance, or the soundness or the continuity of its services.
- (4) When a Payment Service Provider outsources important operational functions, it shall comply with the following conditions:
 - (a) the outsourcing shall not result in the delegation by senior management of the Payment Service provider's responsibility for complying with these Regulations;
 - (b) the relationship and obligations of the Payment Service provider towards the users of any relevant Payment Instrument shall not be altered;
 - (c) the conditions with which the Payment Service Provider is to comply in order to be licensed and remain so in accordance with these Regulations shall not be adversely affected; and
 - (d) none of the other conditions subject to which the Payment Service provider's license was granted shall be removed or modified.

15. Use of agents.

- (1) When a Payment Service Provider intends to provide Payment Services to customers through an agent, it shall prior to engaging the agent, communicate the following information to the Central Bank in writing:

- (a) the name and address of each of its agent(s);
 - (b) a description of the internal control mechanisms that will be used by the agent(s) in order to comply with their anti-money laundering and countering the financing of terrorism obligations;
 - (c) the identity of directors and persons responsible for the management of the agents to be used in the provision of the services and evidence that they are fit and proper persons;
 - (d) evidence that—
 - (i) the agent is fit and proper to conduct payment services;
 - (ii) of the professional reputation and business experience of the agent;
 - (iii) that the agent, if an individual, is resident in The Bahamas or, if a company, is incorporated under the Companies Act; and
 - (e) such other information as the Central Bank may reasonably require.
- (2) A Payment Service Provider shall inform the Central Bank of any substantial change in its agency network, including changes in the rules relating to such network and or number or kinds of agents, within thirty days of such change.
- (3) A Payment Service Provider shall keep an updated list of all of its agents on its website.
- (4) A Payment Service Provider shall ensure that agents acting on its behalf inform customers that they are acting on behalf of the Payment Service Provider.
- (5) The Central Bank may at any time require a Payment Institution to replace an agent by notice in writing delivered to the usual place of business of the payment institution or the agent.

16. Liability.

- (1) When a Payment Service Provider relies on third parties for the performance of operational functions, it shall take reasonable steps to ensure that the requirements of these Regulations are complied with.
- (2) A Payment Service Provider shall remain fully liable for any acts of its employees, agents, branches or third party to which activities are outsourced.

17. Public Disclosure for Payment Service Providers.

- (1) A Payment Service Provider licensed by the Central Bank shall be required to publish annual reports with its audited financial statements, information on its operations, its risk management and information technology practices, including the opinion of its external auditors on the effectiveness of its risk management practices.
- (2) A Payment Service Provider's annual report must be made publicly available within four months from the close of its accounting year.
- (3) A Payment Institution shall provide the Central Bank with a copy of its annual audited financial statements together with the information referred to in paragraph (1) within four months from the close of its accounting year.
- (4) In addition to publishing its annual reports, a Payment Service Provider may be directed by the Central Bank to disclose such other information or data as the Bank deems necessary in the public interest.
- (5) The Central Bank may at any time require a payment institution to replace an auditor by notice in writing delivered to the usual place of business of the payment service provider or the auditor.
- (6) An auditor of a payment institution must give the Central Bank immediate written notification of the following matters –
 - (a) his intention to resign before the expiration of his term of office as auditor;
 - (b) his intention not to seek to be reappointed as auditor; and

- (c) a decision to include a modification of his report on the payment service provider's financial statements and, in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.
- (7) An auditor or former auditor of a payment institution shall give written notice to the Central Bank of any fact or matter
 - (a) of which he has or had become aware; and
 - (b) which is likely to be of material significance for the discharge, in relation to the payment institution, of the functions of the Central Bank under this Act.
- (8) Notice under paragraph (7) shall be given—
 - (a). in the case of an auditor, immediately after the auditor, becomes aware of the matters in respect of which notice is to be given to the Inspector; and
 - (b) in the case of a former auditor, as soon as reasonably practicable after this provision come into force.
- (9) An auditor or former auditor who fails to comply with this section commits an offence and shall be liable on summary conviction to a fine of twenty-five thousand dollars.
- (10) This regulation shall apply to any matter of which an auditor or former auditor of a payment institution has or had become aware in his capacity as auditor and which relates to the business or affairs of the payment institution.

PART III

OVERSIGHT

18. General Oversight Authority.

The Central Bank shall have oversight of the Payment Services provided pursuant to these Regulations, whether provided directly or through agents, as well as of any third parties to which part of services have been outsourced.

19. Publication of Information.

The Central Bank may prepare and publish consolidated statements aggregating any information provided under these Regulations for statistical purposes and other statements that relate to or are derived from any information provided under these Regulations.

20. Authority to Perform Inspections.

- (1) The Central Bank may at any reasonable time, enter and inspect the premises and the business activities of a Payment Service Provider as part of the licensing process.
- (2) The Central Bank may, at any reasonable time, enter and inspect the premises and the business activities of—
 - (a) a licensed Payment Service Provider;
 - (b) an Agent; or
 - (c) an entity to which a licensed Payment Service Provider has outsourced any of its business activities in order to satisfy itself that the provisions of these Regulations, the relevant anti-money laundering and countering the financing of terrorism laws or any other relevant law is being complied with and that the Payment Service Provider is in a sound financial position.
- (3) The Central Bank may require any person on the premises of a payment service provider to provide an explanation

of any document or to state where it may be found or to give such explanation as the Central Bank may reasonably require in the exercise of its functions under these Regulations.

- (4) The Central Bank may appoint an auditor or other party, at the expense of the Payment Service Provider, to conduct an examination pursuant to paragraph (1) and may require the auditor or other party to report to the Central Bank on their findings.
- (5) The Central Bank or a person appointed by the Bank pursuant to paragraph (4), may inspect and retain any books, accounts, records, vouchers, documents, cash, access devices, equipment, (or interview staff) or other items as the Central Bank may reasonably require for the purpose of enabling the Bank to perform its functions under these Regulations.

PART IV

INFRINGEMENTS, REMEDIAL MEASURES AND PENALTIES

21. Fines and late fees.

- (1) The Central Bank may assess administrative monetary penalties for non-compliance with the provisions of these Regulations as provided in the Second Schedule.
- (2) Administrative monetary penalties imposed against a payment institution shall be debited directly out of the payment institution's account referred to in regulation 9(a).
- (3) Subject to paragraph (4), section 24A(2), (3) and (4) and section 24F, 24G and 24H of the Banks and Trust Companies Regulation Act shall apply mutatis mutandis in any case where the Central Bank assesses an administrative monetary penalty under paragraph (1).
- (4) The provisions of section 24A(4) of the Banks and Trust Companies Regulation Act shall not apply in any case

where the Central Bank assesses a fixed penalty pursuant to paragraph (1).

- (5) Pursuant to paragraph (3) —
- (a) the breach by a person of a provision of the Act or of a regulation set out in the second and third columns of the *First Schedule* are designated contraventions of the Act or of the regulation respectively; and
 - (b) the non-compliance of a person with a direction issued or order made or any conditions and limitations imposed under a provision of the Act or a regulation set out in the second and third columns of the *First Schedule* are designated contraventions of the Act or of the regulation respectively.
- (6) A contravention set out in the *First Schedule* may be proceeded with under paragraph (1).
- (7) A contravention shall be classified as a minor, serious or very serious contravention, as indicated in the fourth column of the *First Schedule*.
- (8) (a) Subject to paragraph (5), the penalty in respect of a contravention that is classified as minor —
- (i) which consists of a late or erroneous filing; and
 - (ii) which is listed under items 13, 16 and 17 of the fourth column of the *First Schedule*, shall be two hundred and fifty dollars.
- (b) A minor contravention referred to in subparagraph (a) which is continued for more than one day shall, pursuant to subsection (3) of section 24(A) of the Banks and Trust Companies Regulation Act, be subject to —
- (i) a penalty of two hundred and fifty dollars for each day or part of a day during which the contravention continues; and

- (ii) an aggregate maximum penalty of ten thousand dollars.

22. Penalties for Payment Service Providers without a license.

Every person who contravenes the provisions of regulation 4(1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars and in the case of a continuing offence, to a fine not exceeding five hundred dollars for each day during which the offence continues.

First Schedule

(Regulation 7(5)(b))

Fees

The following shall be fees under these Regulations, that is to say —

Matters in respect of which fee is payable	Amount of fee \$
(a) Licensing as a Payment Institution	10,000
(b) Continuance in being on the first day of January in any year as a Payment Institution as mentioned in sub-paragraph (a) of this paragraph	10,000

SECOND SCHEDULE (Regulation 22)**ADMINISTRATIVE MONETARY PENALTIES**

No.	Description of Contravention	Act or Regulation	Classification
PAYMENT SYSTEMS ACT			
1	Failure of a person to provide any document or information required by the Central Bank, on time.	Section 31(2)	Minor, if the contravention relates to information required as part of periodic reports. Serious in any other case.
PAYMENT SYSTEMS (OVERSIGHT) REGULATIONS			
2	Carrying on business as a Payment Institution without being licensed by the Central Bank.	Regulation 4(1)	Very Serious
3	Failure of an Electronic Money Issuer to deposit electronic money in a custodian account	Regulation 6(k)	Serious
4	Engaging in any of the activities listed in regulation 8(1) without being licensed or registered by the Central Bank	Regulation 8(1)	Very Serious
5	Issuing a payment instrument in excess of B\$15,000 or allowing such value to be transferred or funded using a payment instrument	Regulation 8(3)	Serious
6	Commingling Payment Service Users' funds with the funds of third parties	Regulation 8(4)	Serious
7	Failure of a payment institution to have its head office and registered office located within The Bahamas	Regulation 11(3)	serious
8	Failure by a Payment Institution to notify the Central Bank in writing of any change in the location of its head office, on time.	Regulation 11(4)	Minor
9	Failure of a payment service provider to set out the rights and responsibilities of users in contracts	Regulation 12(1)(a)	Serious
10	Failure of a payment service provider to	Regulation	Serious

	maintain accurate and complete transaction records of its payment service users at all or for the time stipulated in regulation 12(2)	12(2)	
11	Failure by a payment system provider to implement or maintain an adequate fraud and risk management framework	Regulation 12(4)	Serious
12	Failure of a payment service provider to publish the terms and conditions for use of its payment instruments and devices	Regulation 13(3)	Serious
13	Failure of a payment service provider to provide the Central Bank with information on its agents, prescribed by Regulation 15(1).	Regulation 15(1)	Serious
14	Failure of a payment service provider to inform the Central Bank of substantial changes in its agency network, on time	Regulation 15(2)	minor
15	Failure of a payment service provider to keep a current list of agents on its website	Regulation 15(3)	minor
16	Failure of a payment service provider to ensure that its agents disclose that they are acting on the payment service provider's behalf.	Regulation 15(4)	minor
17	Failure of a payment institution to publish its audited financial statements and annual reports and other information required by regulation 17(1) and 17(3), on time	Regulation 17(1), (2) and (3).	Serious
18	Failure by a Payment Institution to replace an auditor on the request of the Central Bank.	Regulation 17(5)	Serious
19	Failure of an auditor or former auditor to give notice to the Inspector pursuant to regulation 17(6) and 17(7)	Regulation 17(6) and 17(7)	Very Serious

ANNEX II

DRAFT



**GENERAL INFORMATION AND APPLICATION GUIDELINES FOR
PROVIDERS OF ELECTRONIC RETAIL PAYMENT INSTRUMENTS AND
ELECTRONIC MONEY PRODUCTS
(PAYMENT SERVICE PROVIDERS)**

Issued: May, 2017

Please submit all required documents to:

The Research Department
The Central Bank of The Bahamas
Market Street
P.O. N-4868
Nassau, Bahamas

Tel: (242) 302-2801

Fax: (242) 356-4324

Applications are not considered complete until all supporting documents are received.

Disclaimer: These Guidelines do not constitute financial or other professional advice. You should consult your professional adviser if you require financial or other advice. These Guidelines are subject to periodic review and amendment by The Central Bank of The Bahamas.

TABLE OF CONTENTS

- I.** Introduction
- II.** Purpose
- III.** Definitions
- IV.** Limits
- V.** Objectives
- VI.** Regulatory Framework for Electronic Retail Payment Services

- VII.** Procedures and Documentation
- VIII.** Post Application Process
- IX.** Regulatory Requirements

- X.** Liquidity Requirements
- XI.** Insurance Coverage
- XII.** Prudent Management of Funds
- XIII.** Additional conditions for Electronic Money Issuers

I. INTRODUCTION

The Central Bank of The Bahamas (“the Central Bank”) is responsible for the licensing of entities providing payment services under the Payment Systems Act, 2012 and the Payment Instruments (Oversight) Regulations 2017, as well as for regulation and oversight of payment instruments, including electronic money products. The Central Bank has the duty to promote and maintain high standards of conduct and management in the provision of payment services.

The Central Bank’s regulatory and oversight objective is to establish and maintain a prudent regulatory regime for the provision of payment services and instruments in The Bahamas, to preserve the integrity and soundness of the financial system to ensure public safety and encourage the use of cash-less instruments. The Central Bank, through the Payments Unit of the Research Department (“the Unit”), monitors the compliance of payment instruments, including electronic money products and related services provided by all entities licensed for that purpose (“Payment Service Providers”).

Electronic retail payment instruments and services in particular require specific guidelines in order to ensure the trust of the population in cash-less instruments, financial inclusion and a more efficient provision of services by non-deposit taking institutions. Given that retail payment and electronic money services may also be vulnerable to misuse for money laundering and terrorist financing, a crucial objective of the Central Bank is to ensure that providers and their agents engage the proper internal systems, policies and controls to guard against perpetrators of money laundering and terrorist financing.

II. PURPOSE

These guidelines as contained in this document are intended to foster the design, development and implementation of electronic retail payment systems and instruments which take advantage of available technology, to provide more efficient payment services in a safe, secure and competitive environment. They outline the Central Bank’s policy with regard to the conduct of providers of retail payment instruments and electronic money products, and related services. These Guidelines also specify the major considerations of the Central Bank in assessing applications to become licensed service providers under the Payment Instruments (Oversight) Regulations, 2016, and the information that would normally be required in support of such applications. Further, these Guidelines set out the prudential, reporting and other regulatory requirements for providers incorporated in The Bahamas.

The information and guidance provided herein apply to all providers licensed under the Payments Act, 2012 and the Payment Instruments (Oversight) Regulations, 2016.

III. DEFINITIONS

Agent- means a person who is authorized to act (i.e. conduct transactions) in the name and on behalf of, and so representing one or more issuers of a retail payment instrument.

Custodian Account- is a special purpose trust account, where the issuer is the trustee, the relevant customers are the beneficiaries, and where funds of such customers are pooled for the purpose of settlement and management of the payment services to which the customers are entitled.

Electronic money- means monetary value represented by a claim on the issuer, which is:

- (a) stored electronically;
- (b) issued on receipt of funds for the purpose of making payment transactions but does not amount to a deposit under the regulatory laws; and
- (c) is accepted as a means of payment by persons other than the issuer.

Electronic retail payment services (or service)- means services based on tangible or intangible devices, and enabling cash deposits and withdrawals, execution of payment transactions, the provision of money transmission business, and any other services functional to money transmission. This shall also include the issuance of electronic money instruments. The term does not include the provision of solely online or telecommunication services or network access.

Fit and Proper- refers to an entity that is essentially of good character, proficient, honest, financially sound, reputable, and reliable and is likely to discharge its responsibilities fairly.

Issuer- means an entity authorized, individually or jointly, by the Central Bank to issue and manage retail payment instruments. In an instrument or similar scheme where e-money is stored, this is the entity which receives payment in exchange for value distributed in the scheme and which is obligated to pay or redeem transactions or balances presented to it. These shall include deposit taking institutions, and any other entity registered from time to time by the Central Bank.

Merchant- means any person that accepts retail payment instruments, as well as e-money as payment for their goods and services.

Outsourcing- means the entrusting, by way of agreement, to a third party to provide one or more parts of a service(s), yet keeping responsibility for such service(s) towards any third parties.

IV. LIMITS

Under Section 4(1)(a) of the Payment Systems Act, the Central Bank reserves the right to impose on licensees such terms and conditions as it sees fit. The terms and conditions

may include the extent and nature of operations, the payment instruments that may be offered, and limits on the monetary values that may be transferred or funded using the payment instrument. In addition, any international (cross-border) transactions will require Exchange Control Approval.

V. OBJECTIVES

The objectives of these Guidelines are to:

- Define the authorisation requirements by the Central Bank
- Outline the standards to be observed by payment service providers
- Foster and maintain public trust and confidence in electronic means of payment; and
- Promote financial inclusion

VI. REGULATORY FRAMEWORK FOR ELECTRONIC RETAIL PAYMENT INSTRUMENTS AND ELECTRONIC MONEY PRODUCTS

These Guidelines are issued in accordance with section 4(1) of the Payment Systems Act, 2012 under which the Central Bank is responsible for licensing all electronic retail payment service providers.

VII. PROCEDURES AND DOCUMENTATION REQUIREMENTS FOR LICENCE APPLICATIONS FROM ELECTRONIC RETAIL PAYMENT SERVICE PROVIDERS

The licence application review process involves scrutiny and analysis of all documentation submitted as part of an application. The Central Bank's licensing criteria include a "*fit and proper*" test, which assesses the probity and integrity as well as the experience level of shareholders, directors and senior executives. With respect to the soundness of the business plan, discussions are held with applicants and feasibility plans and business projections are reviewed in detail.

An applicant for licensing must apply in writing to the Governor of The Central Bank in the manner directed in the Regulations and as detailed in these Guidelines. In addition to the information requested in the Regulations and these Guidelines, the Central Bank may require the applicant to provide any other information as it considers necessary to facilitate a final determination on an application.

A. Pre-application Meeting

Prior to submitting an application for the Bank's formal approval, all applicants must to contact the Payments Unit of the Research Department to discuss their applications.

B. The Application Process

Upon receipt, the application will be reviewed for completeness. Any outstanding or additional information or requirements will be requested from the applicant. Only applications accompanied by **ALL** required supporting documents will be reviewed. The Central Bank will then advise the applicant of its decision and where approved, any applicable conditions of licensing.

C. Who May Issue and Manage an Electronic Retail Payment Instrument – Electronic Money Product in The Bahamas

As established under the Payment Instrument (Oversight) Regulations, 2017, only companies incorporated under the Companies Act, 1992, may apply for a licence to provide retail payments, including electronic money products in The Bahamas.

D. The Right to Reject an Application

The Central Bank has the power to evaluate whether a specific entity is eligible to apply for a grant of a license and in this regard, the Bank will take the following criteria into consideration:

- i. whether the applicant is a “*fit and proper*” company to carry on retail payment services;
- ii. the business record and experience of the applicant;
- iii. the nature and sufficiency of the financial resources of the applicant to provide continuing financial support for the retail payment - electronic money business;
- iv. the soundness and feasibility of the business plan;
- v. whether the applicant is incorporated under the Companies Act, 1992;
- vi. whether those who will operate the retail payment - electronic money business will do so responsibly and whether such persons have the character, competence and experience to operate a retail payment - electronic money business;
- vii. whether the applicant will have adequate insurance coverage to cover the risks inherent in the nature and scale of the retail payment - electronic money business operations; and
- viii. whether the proposal is in the best interests of the financial system of The Bahamas.

E. Documentation Requirements

In conformity with the Payment Instruments (Oversight) Regulations, the application for a licence to operate a retail payment – electronic money business, should be submitted in the appropriate format outlined in Appendix 1 and correspond to the contents stipulated there:-

i. the name of the company applicant, This should include the applicant's trading name (if it differs). ***Please note that the applicant's name should not resemble the name of existing or past licensees. It should not falsely describe the intended business or falsely suggest a national/government affiliation. Further, the use of the term 'bank' is not permitted.***

The applicant may offer one or several names for consideration, in order of preference. The acceptable name will be reserved with the Registrar of Companies with the restriction that the applicant is not to conduct any business under that name until approval has been given for the grant of a Retail Payment – Electronic Money Service Provider's licence.

ii. the address of the head or parent office of the company applicant including mailing address. ***Please give the complete mailing address of the company's head office, including the name and title of the relevant Senior Official. Please also provide the relevant telephone number(s), street address, postal address, email address(es) and website address of the head or parent company (where applicable).***

iii. the proposed name of the retail payment–electronic money business to be established, if different from the applicant.

iv. the address of the proposed retail payment - electronic money business in The Bahamas; ***The applicant is not expected to establish physical presence before approval has been granted. However, please provide details of the proposed physical address.***

- v. certificate of incorporation as a registered company under the Companies Act;
- vi. current business license inclusive of a three-year pro forma balance sheet and profit and loss statement.
- vii. history, activity, present structure and organisation of the company applicant.
- viii. evidence of taxpayer registration status from the Department of Inland Revenue, including Taxpayer Identification Number (TIN).
- ix. annual reports (including audited consolidated financial statements) of the company applicant or parent for the three consecutive financial years immediately preceding the date of application.
- x. un-audited consolidated financial statements of the applicant or parent as at the end of the most recent quarter prior to submission of the application, certified by a director or senior officer;
- xi. a detailed business plan.
- xii. a list of all direct or indirect shareholders of the applicant, including a chart showing the structure of direct and indirect shareholdings.

Note: Documentation requirements for group applicants are provided in the Appendix

F. Proposed Board of Directors and Senior Management

The Central Bank of The Bahamas has established guidelines for corporate governance to provide high-level principles, which require licensees to implement comprehensive governance and risk management frameworks appropriate to the nature of their business and operations. Further, these guidelines outline the duties and responsibilities of directors for the corporate governance of each licensee. In this regard, applicants are required to supply the following information in relation to the proposed licensee:

- i. particulars concerning the composition and organisation of the proposed board of directors and senior management;
- ii. for **EACH** proposed director or senior member of management, as the case may be, the following information is required:
 - a. full name, date of birth, nationality, and domicile;
 - b. curriculum vitae, incorporating: personal data, educational background; professional education and training, lists of previous professional activities (membership of professional organizations) and scope of responsibilities including details of the level and number of subordinates managed;
 - c. two character references in original form from sources satisfactory to the Governor;
 - d. one financial reference in original form from a financial institution acceptable to the Governor;
 - e. a police or other certificate in original form, satisfactory to the Governor, confirming that the person has not been convicted of a serious crime or any offence involving dishonesty; and
 - f. a certified Confidential Statement.

In its efforts to satisfy itself as to the fitness and propriety of senior management, the Central Bank may request additional information.

G. Money Laundering Reporting Officer and Compliance Officer

Pursuant to Section 5 of the Financial Intelligence (Transactions Reporting) Regulations, 2001, providers are required to appoint a Money Laundering Reporting Officer (“MLRO”) and a Compliance Officer and notify the Financial Intelligence Unit (FIU) and the Central Bank of the same. For small-scale operations, one of the Senior Officers may carry out the duties of the MLRO and/or the Compliance Officer. However, this individual must be appropriately trained to carry out these additional functions. The Bank reserves the right to require that different individuals carry out such duties.

H. Business Rules and Internal Organization

Applicants are required to supply the following information in relation to the proposed licensee:

- i. an organizational chart detailing reporting lines and responsibilities;
- ii. a detailed overview/summary of internal control procedures to be put in place, including but not limited to, particulars regarding staffing, logistics and information technology and management information systems. (Please note that all senior staff require the Bank's prior approval).
- iii. details regarding arrangements for internal audit including but not limited to reporting lines and scope of the function;
- iv. the compliance programme, including a copy of the Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Policies, which should include provisions for:-
 - (a) the internal systems of controls, policies and procedures;
 - (b) customer due diligence procedures;
 - (c) a risk based framework;
 - (d) a records management system;
 - (e) education and training of employees in recognising and reporting suspicious transactions; and
- v. copies of all other internal policies and guidelines.

I. Business Plan

Applicants are required to provide, in relation to the proposed licensee, a business plan for the first three years of operations. The plan must include but not be limited to the following details:

- i. a summary of the business proposal,
- ii. a description of planned business activities, and targeted customer base, including any plans to serve potentially underserved communities or remote geographic regions;
- iii. detailed financial projections for the first three (3) years of operations including projected capital expenditures, cash flows, income statements and balance sheets.;
- iv. projection of the volume of transactions and fees to be levied for transactions;
- v. foreign and domestic agency arrangements within the limits established in the Payment Instruments (Oversight) Regulations 2016;
- vi. arrangements for outsourcing of activities within the limits established in the Payment Instruments (Oversight) Regulations, 2016;

- vii. appropriate arrangements for the maintenance of records in The Bahamas;
and
- viii. arrangements for premises.

J. Exchange Control Approval

Applicants who intend to conduct international retail payment - electronic money services (i.e. cross border transactions) must obtain Exchange Control approval to deal in foreign currency and, where necessary, to operate a foreign currency account with a commercial bank.

- i. Cross border transactions include but need not be limited to:
 - a. Retail payments between a resident individual and non-resident individual (as defined for Exchange Control purposes) for the payment of goods and services by means of a portable electronic device.
 - b. Retail payments between a resident individual and non-resident business (as defined for Exchange Control purposes) for the payment of goods and services by means of a portable electronic device.
 - c. Small value “person-to-person” transfers conducted between resident and non-resident individuals.
- ii. Foreign currency transfers between residents (as defined for Exchange Control purposes) are not permitted without Exchange Control approval.

K. Exchange Control Application Process

The following documents, at a minimum, should be submitted at the time of application in order for the applicant to obtain such approvals:-

- a. a written outline of the complete flow of funds to all parties to the proposal, including the local and foreign commercial bank through which the applicant will operate foreign currency accounts and any charges so connected;
- b. a written confirmation from the local commercial bank confirming that the bank has no objection to the account being operated to facilitate retail payment (e-money) services;
- c. a copy of the draft agreement between the foreign service provider and local applicant;

- d. background information on the foreign service provider including evidence from the foreign service provider that it is licensed by the relevant supervisory/regulatory body in the country in which it is domiciled (e.g. a certificate of good standing); and
- e. projection of the anticipated foreign exchange requirement over the first quarter post launch of operations.

After the application is submitted, if the Central Bank determines that additional information is relevant for the purposes at hand, additional documentation may be requested before Exchange Control approval is granted.

L. External Auditors

Applicants are required to provide the full name and address of the applicant's proposed auditor(s).

M. Operational requirements

An issuer shall establish adequate operational arrangements, which shall include:

- a. rules and procedures setting out the rights, responsibilities and liabilities of the issuer, third parties providing parts of the activities in outsourcing, agents, merchants, users and any other relevant stakeholders;
- b. measures to ensure safety, security and operational liability of the product, including contingency arrangements and disaster control procedures, to be applied to all relevant systems, whether internal or outsourced, including systems and platforms;
- c. adequate interfaces to ensure interoperability, *i.e.*, that payment instruments belonging to a given scheme may be used in other systems installed by other schemes;
- d. segregation of records and accounts related to its retail payment instrument activities from its other records and accounts.

The Central Bank reserves the right to impose on issuers of retail payment instruments any relevant standards to ensure a safe and reliable issuance and management of an instrument. More specifically, the Central Bank reserves the right to impose on issuers such conditions and limits on the nature of e-money products that may be offered, the quantity of e-money products that may be issued

over a particular period and limits on the monetary values that may be transferred or funded to particular e-money products.

N. Risk management

An issuer shall establish an appropriate risk management infrastructure to mitigate financial risk and ensure safety and integrity of transfers. Likewise, it shall implement operational and security safeguards in proportion to the scale and complexity of the scheme.

An issuer shall ensure that they have resources and capacity in the form of expertise, hardware, software, and other operating capabilities to deliver consistently reliable service. Measures to ensure operational reliability shall include:

- a. appropriate system(s) with robust design, development, testing, implementation and monitoring;
- b. strong internal controls for systems and personnel administration;
- c. comprehensive and well documented operational and technical procedures to ensure operational reliability;
- d. system(s) designed with sufficient capacity, with regular monitoring and upgrades ahead of business changes;
- e. robust clearing and settlement arrangements, where relevant;
- f. robust business continuity, including a reliable back-up system;
- g. timely and accurate audit trail and the capability to provide statistical information and reports;
- h. adequate accounting systems and proper reconciliation processes.

VIII. POST APPLICATION PROCESS

- i. Once the Central Bank is satisfied that all of the documents have been submitted, it will require the applicant to conduct a pilot of the proposed service;
- ii. The pilot phase will be subject to system audit by an independent system auditor, whose results shall be submitted to the Central Bank
- iii. The Central Bank will not be responsible for any costs incurred in the application process, including that of the system audit.
- iv. Once the Central Bank is satisfied with the outcome of the post-application procedures, it shall issue a letter of no objection authorising the service provider to commence operations.

IX. REGULATORY REQUIREMENTS

Providers are required to adhere to prudential requirements and ongoing supervisory programmes, including periodic off and on-site examinations, and required regulatory reporting set out by the Central Bank. Providers and their agents are also expected to conduct their affairs in conformity with all other relevant Bahamian legal requirements.

The provider shall ensure that agents acting on its behalf inform customers of their authorisation to act as agents of the issuer.

Providers shall ensure compliance with all relevant agreements and remain fully liable for any act of their agents and any third parties to which they have outsourced activities.

Providers shall apply for authorization by the Central Bank in case of outsourcing of activities further to the obtainment of a license.

A. License, Registration and Location Fees

Providers are required to pay annual license and registration fees of \$5,000 and \$300 respectively. In addition, Providers are required to pay an annual fee of \$250 for each location at which they have a Retail Payment – Electronic Money Services Agent.

X. CAPITAL AND LIQUIDITY REQUIREMENTS

In addition to minimum capital as reported in Appendix I, issuers shall maintain the following minimum liquidity requirements:

- i. Liquid funds of not less than three times the average maximum daily value (computed over the previous six months) of amounts required to settle customer transactions;
- ii. Liquid funds of not less than six months gross operating expenses;
- iii. The Central Bank reserves the right to make changes to these requirements as is necessary to ensure the stability of the electronic retail payments environment.

XI. INSURANCE COVERAGE

Providers are required to maintain adequate insurance coverage to cover the risks inherent in the nature and scale of the retail payment - electronic money business. The Central Bank will review, in the course of its on-site examinations, *inter alia*, the adequacy of the insurance coverage.

XII. PRUDENT MANAGEMENT OF FUNDS

In accordance with the Payment Instruments (Oversight) Regulations 2017,

- i. An issuer shall ensure the timely refund of balances to customers and payment to merchant;
- ii. Funds collected from or on behalf of users, should be deposited and held separately from any other funds of the issuer and kept insulated against the claims of other creditors to the issuer; and
- iii. Funds collected from the customer should only be used in accordance with the payment instructions of the customer.

A. Transaction Limits

Retail payment services are designated to facilitate retail transactions of both the banked and un-banked population. In this regard, institutions shall observe the following transaction limits:

- i. Maximum transaction value of B\$500.00 per day for non-bank customers trading on electronic/mobile platforms;;
- ii. Maximum transaction value of B\$1,000.00 per day for banked customers trading on electronic/mobile platforms;
- iii. The limits are subject to review by the Central Bank periodically;
- iv. Upon the request of a service provider, the Central Bank may authorise transactions in excess of the prescribed limits to specific bodies and for specific purposes;

- v. No limits will be placed on Government transactions.

B. Settlement

Settlement of all transactions shall be conducted according to the following guidelines:

- i. Intra-scheme settlement shall be effected immediately
- ii. The service should provide appropriate settlement records for reconciliation of processed transactions
- iii. All settlement records should be retained for a minimum period of seven (7) years

C. Policy on Physical Presence

Providers are required to maintain adequate physical facilities in The Bahamas for all locations in which the business will operate. Providers are expected to demonstrate that they will secure facilities that at a minimum, meet the following requirements:-

- i. appropriate, dedicated and secure office space consistent with the needs of the business;
- ii. appropriate and secure facilities (e.g. filing cabinets, electronic storage facilities, etc.) for custody and storage of records;
- iii. appropriate communications facilities;
- iv. dedicated mechanical, and/or electronic facilities necessary to record and process the licensee's business activities;
- v. premises must bear appropriate exterior identification of the licensee's presence;
- vi. the licence issued must be prominently displayed on the premises; and
- vii. public access telephone and other numbers, mailing and street address must be listed for availability to the public.

The Central Bank or its representative must have the ability to communicate with and meet the management of the operations within The Bahamas.

D. Corporate Governance

Providers are required to implement comprehensive governance and risk management frameworks appropriate to the nature of their business and operations. The Central Bank's Corporate Governance Guidelines provide direction and basic principles from which directors and senior management can develop and implement a corporate governance process appropriate to the unique character of each provider's operations.

Providers must appoint a minimum of two senior officers to be responsible for the day-to-day operations of the business. These officers must be resident in The Bahamas and have the requisite knowledge, experience and integrity to perform their functions. These individuals must be approved by the Central Bank to hold these positions.

The agent(s) must provide the Central Bank with:

- i. the identity of the Directors and persons responsible for the management of the agent(s) and documents to assist the Central Bank in conducting fit and proper assessments of each officer; and
- ii. Copies of the agency agreement containing, at minimum, a clear indication of the duties and responsibilities of the agent(s), as well as compensation arrangements;

E. Corporate Governance Certificate

Annually, within 120 days of the end of each calendar year, the Board of Directors of each provider will be required to certify in writing to the Governor that, using the advice and assistance of management, it has assessed and documented whether the licensee's corporate governance process is effective and that it has successfully achieved its objectives. The Board must report any material deficiencies and problems identified within the licensee, along with action plans and timetables for their correction. Any deficiencies in respect of these Guidelines should be noted, and an Action Plan to remedy these deficiencies should be created and submitted to the Central Bank.

F. Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) / Know Your Customer Policies

In accordance with section 3(1)(j)(v) of the Financial Transactions Reporting Act, 2000 ("FTRA"), providers and their agents are covered by the definition of "financial institution". Consequently, providers and their agents are expected to adhere to all of the requirements of the FTRA, the Financial Transactions Reporting Regulations, 2000, ("FTRR"), the Financial Intelligence Unit Act, 2000 ("FIUA") and subsidiary legislation made thereunder. These laws and regulations, *inter alia*, set out the minimum mandatory requirements for customer identification, suspicious transaction reporting and retention of records systems that financial institutions are obligated to implement in relation to financial transactions.

All agents are expected to provide the Central Bank with a description of the internal control mechanisms that will be used by agents in order to comply with the obligations of the issuer in relation to anti-money laundering (AML) and countering the financing of terrorism (CFT).

G. Exchange Control Requirements

Providers and their agents must adhere to all requirements for foreign exchange transactions occurring through their retail payment network, including person-to-person transfers and extra-jurisdictional transmission. Providers must submit, to the Exchange Control Department, periodic (quarterly) reports on transactions conducted under delegated authority, in the format specified by the Exchange Control Department, for all of their operations and those of their agents.

In addition, should any changes occur in arrangements with foreign or domestic agents, the provider must submit current documentation on such arrangements, which at a minimum outline the payment chain and arrangements secured by the provider and copies of the agents' most recent audited financial statements, where appropriate.

H. Record Keeping/Retention

Providers are required to maintain all relevant information for a minimum of seven (7) years, with regard to all transactions carried out by providers and agents. In addition, providers and their agents are expected to adhere to the requirements set out in the Central Bank's *Guidance Note on Accounting and Other Records*, to the extent appropriate for their operations.

I. Reporting Requirements

1. Financial Reporting

- i. All providers are required to produce annual audited financial statements. Such statements are to be prepared in accordance with International Financial Reporting Standards (IFRS) and must be furnished to the Central Bank within three months of the end of the licensee's financial year.
- ii. The Central Bank may also consider a request to submit audited financial statements prepared in accordance with the reduced form International Financial Reporting Standards for Small and Medium Enterprises (IFRS for SMEs).
- iii. Every licensee must annually furnish a copy of the finalized management letter from the external auditor to the Central Bank within ten (10) days of its receipt by the licensee and not later than forty-five (45) days after the expiration of the deadline for the submission of the financial statements.
- iv. Further, all providers are required to submit quarterly un-audited financial statements within twenty-one days of quarter end.

2. Annual Statutory Filing

Providers are required to submit an Annual Statement, which is due within 10 days following the statutory deadline for filing with the Registrar General's Office. The Annual Statement should include:-

- i. a list of the board of directors and senior corporate executives;
- ii. a list of shareholders with any additions or deletions since last reporting date;
- iii. capital composition; and
- iv. a list of the names and addresses of all its retail payment services agents.

3. Statistical Reporting

Providers are required to submit a monthly statement to the Payments Unit, which is due within 15 business days following the end of each calendar month. The monthly statement should include:-

- i. the number of subscribers who transacted through the retail payment service;
- ii. the volume of payments made through the retail payment service;
- iii. the value of payments made through the retail payment service;
- iv. a list of any complaints received related to the service describing -
 - a. date and time of complaints;
 - b. steps taken to resolve the complaint;
 - c. reference to complaint resolution mechanism; and
 - d. details of actions taken to identify patterns of complaints that may point to general or systemic weakness.

4. Operational Reporting

Providers are required to notify the Payments Unit immediately in the event of:-

- i. any system security lapses
- ii. any loss of confidential data
- iii. any service breakdown including network outages; and failures of transactions including:
 - a. details of breakdown; and
 - b. reasons and remedial actions taken to prevent reoccurrence.
- iv. any losses incurred by the retail payment service provider or its customers

J. Regulated Activity

Providers are required to seek the approval of the Governor for the implementation of any material changes to the licensee's operations including, but not limited to:-

- i. new appointments of senior management or directors;
- ii. changes in shareholders or shareholdings;
- iii. new location(s), branch(es) or changes of existing location(s);
- iv. change of foreign service providers or agreements with such entities;
- v. modifications in scope of business activities undertaken; and
- vi. new appointment of Retail Payment Services Agent(s);
- vii. material outsourced functions.

Written notification should first be submitted to the Governor.

K. Cessation of Retail Payment Service

- i. Any institution wishing to exit from the retail payment system shall notify the Central Bank in writing regarding the intention for the discontinuation ninety (90) days before terminating its operations.
- ii. The Central Bank shall have powers to order the retail payment system provider to take appropriate actions prior to exiting from the retail financial payment service, to ensure that the integrity of the financial sector is maintained.

XIV. ADDITIONAL CONDITIONS FOR ELECTRONIC MONEY ISSUERS

In accordance with the Payment Instruments (Oversight) Regulations, 2016, Electronic Money Issuers are subject to additional conditions.

Electronic money must:

- i. be stored on an electronic device
- ii. be issued on receipt of funds for an amount exactly equal to the monetary value offered
- iii. be redeemed at par with the equivalent conventional money
- iv. shall never expire

When there is any unclaimed amount for which there has been no activity for seven (7) years and the payment provider has taken reasonable steps to contact the customer to advise that the facility will be classified as Dormant, the amount must be transferred to the Central Bank in full by the provider.

The Electronic Money Issuer shall open one or more Custodian Accounts at commercial banks and:

- i. Ensure that at a minimum, the balance on the Custodian Account used to effect retail transactions is equal to the total outstanding (un-claimed) balance of all holders of e-money under that service;
- ii. Undertake to ensure that no new or additional e-money is issued, other than in return for an equal amount in conventional money being paid and received by the payment provider from customers.

**APPLICATION FORM
FOR A RETAIL PAYMENT – ELECTRONIC MONEY SERVICE PROVIDERS
LICENCE**

Application Form Guidance Notes

1. A Senior Executive or other person responsible for the conduct of the business and having legal capacity to sign on behalf of the applicant should complete this form.
2. Be advised that all sections of this form including the Declaration in Appendix III and any additional information pages need to be filled out in full, insuring all documentation is correct and information supplied is accurate. The checklist in Appendix I and the insurance information set out in Appendix II must be filled out and returned to the Central Bank along with the rest of this application form.
3. Appendix I Form I or II is to be filled out by Retail Payment – Electronic Money Service Providers, as appropriate.
4. *Before completing this form, applicants should refer to the Payment Systems Act, 2012, the Payment Instruments (Oversight) Regulations, 2017, and any relevant Guidance Notes issued by the Central Bank of the Bahamas. Thereafter, successful applicants must conform to any relevant guidance issued by the Central Bank from time to time.*
5. The signatory should, on completion of the form, initial and date each page of the application and any supplementary sheets.
6. Completed applications with relevant supporting material should be sent to:-

Research Department
The Central Bank of The Bahamas
P.O. Box N-4868
Nassau, N.P., Bahamas

7. If you require further assistance or have any queries in connection with this application, please contact the Payments Unit of the Research Department by telephone (242) 302 2713, by fax (242) 356 4324. Additional information may also be found on our website at <http://www.centralbankbahamas.com>.

APPENDIX I

FORM I
APPLICATION FORM:
COMPANY APPLICANTS FOR A NON-BANK RETAIL PAYMENT
PROVIDER'S LICENCE

Pursuant to Part VIII Section 26 of the Payment Systems Act, 2012

PART I: DETAILS OF APPLICANT

Applicants are required to complete this page and submit all supporting documents outlined in the accompanying checklist.

1. Name of Company Applicant:		
2. Trading Name / Retail Payment Provider Name (if different from above)		10. Licence Provider <input type="checkbox"/> Company Operations <input type="checkbox"/> International and domestic transmission <input type="checkbox"/> Domestic transmission only
3. Address of Head / Parent Office of the Company	4. Location and Mailing Address of Proposed Place of Business	
5. Address of Other Places of Business Within The Bahamas	6. Address of Foreign Service Provider (If Applicable)	
7. Contact Name, Phone Number and Address	8. E-Mail address	For Official Use Only Application received by: _____ Date: _____ Application Reviewed by: _____ Date: _____
9. Name and Address of External Auditor:		

Checklist for Retail Payment Service Providers (Company Applicants)

To assist you further in filling out this application form it is our pleasure to provide you with a checklist. Please crosscheck all requested items with the items you are providing.

<i>The application must be accompanied by the following items (as applicable):-</i>	<i>Check box</i>
<p>1. Memorandum & Articles of Association: A copy of the Applicant’s Memorandum and Byelaws, and Certificate of Incorporation, as may be appropriate, verified by statutory declaration made by a Director or the Secretary duly authenticated and VAT certification.</p>	
<p>2. Un-audited consolidated financial statements: of the applicant or parent as at the end of the most recent quarter prior to submission of the application, certified by a director or senior officer.</p>	
<p>3. Annual reports: (including audited consolidated financial statements) of the applicant or parent company for three consecutive financial years immediately preceding the date of application.</p>	
<p>4. Detailed Business Plan: A statement setting out the nature and scale of the money service business which is to be carried out by the applicant, and particulars of the arrangement(s) proposed for the operation of that business including ownership and structure which includes all the information contained in Section VI (I) of the Guidelines.</p>	
<p>5. Exchange Control: specifically information pursuant to the requirements of Section VII (J) of the Guidelines.</p>	
<p>6. MLRO and Compliance Officer Requirements: specifically information pursuant to the requirements of Section VII (G) of the Guidelines.</p>	
<p>7. A list of and background information on all direct or indirect shareholders: pursuant to Section VII (E) (xii) of the Guidelines.</p>	

<p>8. Chart showing structure of the direct and indirect shareholdings along with the history of the organization: Pursuant to the requirements of Section VII (E) (xii) of the Guidelines.</p>	
<p>9. Capital Requirements: Evidence that the minimum of \$100,000 unimpaired capital asset requirement is met (Section X of the Guidelines).</p>	
<p>10. Liquidity Requirements: Evidence that the minimum liquidity currently available is three times higher than the projected average daily value (Section X).</p>	
<p>11. Certificate of Insurance (or proposed insurance coverage): Applicants must submit copy of insurance certificate and complete Appendix III. Please refer to Section XI of the Guidelines.</p>	
<p>12. Particulars concerning the composition and organization: of the proposed Board of Directors as outlined in Section VII (F) of the Guidelines.</p>	

APPENDIX I

**FORM II
APPLICATION FORM:
GROUP APPLICANTS FOR A NON-BANK RETAIL PAYMENT
PROVIDER'S LICENCE**

Pursuant to Part VIII Section 26 of the Payment Systems Act, 2012

PART I: DETAILS OF APPLICANT

Applicants are required to complete this page and submit all supporting documents outlined in the accompanying checklist.

<p>1. Name, Personal and Business Address of Each Applicant in the Group</p>	<p>7.</p> <p>Licence Provider</p> <p><input type="checkbox"/> Group</p> <p>Operations</p> <p><input type="checkbox"/> International and domestic transmission</p> <p><input type="checkbox"/> Domestic transmission only</p>
<p>2. Proposed Corporate Name(s) of the Retail Payment Business</p>	<p>For Official Use Only</p> <p>Application received by: _____ Date: _____</p> <p>Application Reviewed by: _____ Date: _____</p>
<p>3. Location and Mailing Address of Proposed Place of Business</p>	
<p>4. Name and Address of Foreign Service Provider (If Applicable)</p>	
<p>5. Contact Name, Address, Phone Number and Email Address</p>	

6. Name and Address of External Auditor:

Checklist for Retail Payment Service Providers (Group Applicants)

To assist you further in filling out this application form it is our pleasure to provide you with a checklist. Please crosscheck all requested items with the items you are providing.

<i>The application must be accompanied by the following items (as applicable):-</i>	<i>Check box</i>
1. Detailed Business Plan: A statement setting out the nature and scale of the money transmission business which is to be carried out by the applicant, and particulars of the arrangement(s) proposed for the operation of that business including ownership and structure which includes all the information contained in Section VI (I) of the Guidelines.	
2. Exchange Control: specifically information pursuant to the requirements of Section VII (J) of the Guidelines.	
3. MLRO and Compliance Officer Requirements: specifically information pursuant to the requirements of Section VII (G) of the Guidelines.	
4. Details of the proposed shareholding of each individual shareholder in the Group, including information specified Section VII (E) (xii) of the Guidelines.	
5. Details of dominant shareholders: Please provide all information requested under Section VII (E) (xii) of the Guidelines.	
6. Capital Requirements: Evidence that the minimum of \$100,000 unimpaired capital asset requirement is met (Section X of the Guidelines).	
7. Liquidity Requirements: Evidence that the minimum liquidity currently available is at a minimum three times higher than the	

<p>projected average daily value (Section X).</p>	
<p>8. Certificate of Insurance (or proposed insurance coverage): Applicants must submit a copy of the insurance certificate and complete Appendix III. Please refer to Section XI of the Guidelines.</p>	
<p>9. Particulars concerning the composition and organization: of the proposed Board of Directors as outlined in Section VII (F) of the Guidelines.</p>	

APPENDIX II

INSURANCE COVERAGE

Indicate below whether the Applicant has coverage in respect of the following:-

<i>Insurance</i>			<i>Limit</i>	<i>Deductible</i>	<i>Insurer</i>	<i>Broker</i>
Errors & Omissions	Yes	No				
Directors and Officers Liabilities	Yes	No				
Fidelity and Forgery	Yes	No				
Loss of Property	Yes	No				
Computer Crime	Yes	No				
Business Interruption	Yes	No				
Office Contents	Yes	No				

Has any application for insurance by the applicant or any predecessors in business ever been refused? Yes No

Reason for refusal, Name and Address of insurer

Name(s) and address(es) of insurer(s):

APPENDIX III

Declaration

This declaration must be completed by the Applicant in block capitals or typed and must be signed by the Applicant.

I, (full name and address) _____

of _____

confirm that I have read and understood the provisions of the Payment Systems Act, 2012 (“the Regulations”) and I declare that the business in respect of which this application is made will be conducted in accordance with the provisions of the Regulations and any other relevant legislation.

I declare that the particulars supplied in the application are true to the best of my knowledge and belief.

Name _____ **Position in undertaking** _____

Signature _____ **Date** _____

ANNEX III



PAYMENTS OVERSIGHT POLICY FRAMEWORK

MAY 2017

*THE CENTRAL BANK OF THE BAHAMAS
PAYMENTS OVERSIGHT POLICY FRAMEWORK*

1.0 INTRODUCTION

1.1 PURPOSE

The purpose of this policy framework document is to explain the general principles and procedures that shall enable the Central Bank of The Bahamas (“the Central Bank” or “the Bank”) to perform its functions in relation to the regulation and oversight of payment systems, payment instruments and payment services in The Bahamas, and ensure the Bank’s compliance with the *Principles for Financial Market Infrastructures* (PFMIs) published in 2012 by the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organization of Securities Commissions (IOSCO), as well as with other applicable standards and best practices¹.

1.2 THE IMPORTANCE OF PAYMENT SYSTEMS, AND PAYMENT INSTRUMENTS AND SERVICES

A payment system is a formal arrangement which enables the participants of that system to transmit funds throughout financial systems, thereby allowing individuals and companies to receive payments and pay for goods and services. Payment systems are therefore an essential component of a country’s financial infrastructure. A safe and efficient payment system is critical to the effective and smooth functioning of the financial system and helps maintain and promote financial stability. Disruptions in a system or the total failure of a system can pose a threat to the stability of the currency and the economy. The failure of the most significant payment systems, called ‘systemically important payment systems’ or ‘SIPS’, have the potential to transmit disturbances from one part of the financial system to another and trigger or spread systemic risk².

This potential for “systemic risk” has led to the safety and efficiency of payment systems becoming important public policy concerns and to central banks

¹ The PFMIs and the responsibilities of central banks, market regulators, and other relevant authorities with regard to financial market infrastructures are reproduced in Appendix 2.

² “Systemic risk” is defined in the PFMIs as “The risk that the inability of one or more participants to perform an expected will cause other participants to be unable to meet their obligations when due”.

worldwide, taking a keen interest in the operation and oversight of payment systems.

Retail payment systems are generally characterized by high volumes of transactions of relatively small individual value. Retail payment systems are also critical because of their importance for the overall efficiency of the national payments system, their potential impact on the public's confidence in the domestic currency itself, and for their relevance to achieve and sustain the objectives of financial inclusion and economic growth. Indeed, inefficiencies in a retail system and the payment services that derive from it can affect economic activity. An example of this is when a transaction does not take place because the needs of customers and merchants are not accommodated.

Central banks and other financial sector authorities worldwide are giving increased attention to innovative payment instruments such as mobile payments, stored-value cards, other forms of electronic money (e-money), and the features of the payment services being provided through these and other payment instruments. This has been driven by technological innovation and concerns about the safety and efficiency of such instruments and access channels, and the entrance of non-bank and even non-financial institutions into the payments market.

2.0 THE BAHAMAS' PAYMENTS SYSTEM MODERNIZATION INITIATIVE

In the late 1990s, the Central Bank of The Bahamas embarked on a comprehensive plan to modernize The Bahamas' national payments system when it commissioned a special study to identify the available options for the country and assist with the initial formulation of a strategy. Although the system was performing adequately, modernization was considered necessary to bring the domestic payments system up to international standards in terms of its design, operation, legal underpinnings, and to serve the development needs of all sectors of the economy.

In 1999, technical assistance from the World Bank further advanced this effort. This led, in 2002, to the selection of the UK-based consulting firm, Electronic Payments & Commerce Limited, to coordinate the implementation process for the Payments System Modernization Initiative (PSMI). Over time the Central Bank, in collaboration with the seven Clearing Banks in The Bahamas and other payments stakeholders, has continued this modernization initiative.

In May 2004, the Central Bank completed Phase 1 of the PSMI with the launch of BISS, the acronym for the Bahamas' Interbank Settlement System, a real time gross settlement system (RTGS). Owned and operated by the Central Bank, BISS is an electronic funds transfer system that allows the Clearing Banks to electronically transmit and settle large value, time critical payments among each other. The value of the payments currently settled in BISS are over B\$150,000.00. Through BISS, interbank payments are settled continuously on an individual basis, in the order in which they are transmitted across the settlement accounts of each of the seven Clearing Banks maintained with the Central Bank. Liquidity management tools exist to permit the Clearing Banks to obtain intra-day credit from the Central Bank to make large payments if balances are inadequate.

The successful launch of BISS provided The Bahamas with a modern and efficient interbank payments system where payments made across the system

are final and irrevocable, and the risks commonly associated with manual or delayed clearance and settlement of payments are virtually eliminated.

The second phase of the PSMI was completed with the establishment of an Automated Clearing House (ACH) in January 2010. The ACH is operated by the Bahamas Automated Clearing House Limited (BACH), and is jointly owned by the members of the Clearing Banks Association of The Bahamas. As the operator of the ACH, BACH is subject to the regulation of the Central Bank. The ACH is an electronic clearing and settlement system which processes small value payments of less than B\$150,000.00; it is being implemented on a phased basis in The Bahamas. The first installment of ACH services, electronic cheque clearing, was launched in January 2010 and replaced the manual system of cheque processing between the Clearing Banks. Instead of the physical presentation of cheques for payment among the Clearing Banks, the payment details of cheques are captured electronically and submitted to the ACH for processing in a safe and secure environment.

The ACH uses a multilateral net settlement arrangement which is more cost effective for clearing large numbers of payments of lower value. The electronic processing of cheques also facilitates a more timely settlement process. When making deposits, the ACH reduces the cheque clearing time from five days to the second business day after a cheque is deposited.

The second installment of ACH services, direct credits, was launched on September 8, 2010. Direct credits provide an electronic alternative to cheque payments, allowing customers of the participating Clearing Banks to transfer funds directly to the accounts of other customers at any other participating bank.

To provide the necessary focus to all issues related to the PSMI, a “National Payments Council” or “NPC”, was informally established in May 2003, with the objective of overseeing the development and maintenance of a national payment system strategy for The Bahamas. The Payment Systems Act, 2012 (“the PSA”) formally establishes the NPC (known as the ‘National Payments Committee’) to

act as an advisory body to the Central Bank on the implementation of the national payment system policy for The Bahamas.

Members of the NPC include:

- (a) the Bank, whose representative also acts as Chairman of the NPC;
- (b) the Clearing Banks;
- (c) governmental bodies which regulate or are in any other way involved in payments activities and the financial markets as the Bank may determine; and
- (d) major financial institutions, or their national associations, that are participants in payment systems.

Under the PSA, the Bank also serves as the Secretariat for the NPC. As the scope of payments activities broadens, membership in the NPC may also include other persons approved by the NPC that are involved in the clearing and settlement of payments and/or securities, or in the financial markets.

Through committees representing its members, interest groups and other stakeholders, the NPC will continue to support the achievement of sound and efficient payment systems in the country and to serve as a forum for cooperation among stakeholders.

3.0 THE ROLE OF THE CENTRAL BANK OF THE BAHAMAS

The role of the Central Bank in relation to payment systems and payment instruments is defined by the provisions of the PSA and the Central Bank of the Bahamas Act (CBA) pursuant to these areas.

In this context, the Central Bank is responsible for formulating, adopting and monitoring the implementation of a National Payment System Policy for The Bahamas and for overseeing payment systems and the issuance and functioning of payment instruments.

The amendments under the CBA strengthened the legal underpinnings of the Central Bank in its role as overseer of payment systems. The Central Bank's function in relation to payment systems and payment instruments is set out in section 5 of the CBA, which provides that it shall be the duty of the Bank to ensure the stability of the financial system and to promote and ensure the establishment and oversight of a sound and efficient national payment system. Section 25 of that Act, specifically empowers the Bank in the exercise of its functions, to *inter alia*, regulate and oversee:

- (i) any system for the clearing and settlement of payments and other arrangements for the making or exchange of payments;
- (ii) any system for the clearing and settlement of securities and other arrangements for the exchange of securities; and
- (iii) any system to facilitate clearing and settlement, including other arrangements for the making or exchange of payments, or the exchange of securities, as well as links among systems; and
- (iv) the issuance and functioning of payment instruments, including the provision of e-money or other forms of stored value.

The PSA empowers the Central Bank, in the exercise of its functions pursuant to sections 5 and 25 of the CBA in relation to the oversight of payment, clearing and settlement systems and payment instruments, to determine general or individual standards and directives for all domestic payment systems and payment

instruments approved by the Bank; establish and perform control and audit procedures; and impose administrative sanctions. Furthermore, the PSA empowers the Bank to suspend the operation of any system or terminate the participation of any member in an approved system.

Closely related to its' role as overseer, is the Bank's operational role as the provider of central bank money for settlement and as the ultimate provider of liquidity to the banking system. The Central Bank owns and operates the BISS, acts as the settlement institution and agent for both the BISS and the ACH, and is a user of both BISS and the ACH, although the Central Bank is not a participant in the ACH. In the case of payment systems such as BISS which are operated by the Central Bank, there is a clear separation between the Bank's operational function and its oversight function which is discharged by the Payments Unit.

In addition to its' oversight role, as already mentioned in section 2.0, the Bank is the Chairman of the NPC and acts as the Secretariat of that committee.

3.1 THE PAYMENTS POLICY AND OVERSIGHT UNIT

In June 2011, the Central Bank established the Payments Policy and Oversight Unit ("the Payments Unit") within the Research Department of the Bank to support the formulation of payment systems policy positions of the Bank.

The Bank's oversight responsibilities in relation to payment systems, payment instruments and the services that derive from usage of those instruments are also discharged by the Payments Unit. These responsibilities include:

- reviewing and processing applications from parties wishing to establish, operate or participate in payment systems in The Bahamas (including parties wishing to issue and operate/manage e-money products and other payment instruments); and
- analyzing the systemic properties of the critical payment system infrastructure (existing and proposed) for vulnerabilities to financial and

operational risks and for institutional risks to the efficient production, delivery and use of systemically important payment services.

4.0 THE OBJECTIVES OF OVERSIGHT

The CPMI 2005 report “Central bank oversight of payment and settlement systems” describes the oversight of payment and settlement systems as “a *central bank function whereby the objectives of safety and efficiency are promoted by monitoring existing and planned systems, assessing them against these objectives and, where necessary, inducing change.*”

The Central Bank pursues the widely accepted objectives of promoting the safety and efficiency of payment systems as one of its core functions under the CBA. In the exercise of its oversight function, the PSA provides that the following policy objectives shall be pursued by the Bank:

1. Facilitating the overall stability of the financial system of The Bahamas
2. Promoting the safety and efficiency of payment systems
3. Controlling risk
4. Contributing to the promotion of competition in the market for payment services
5. Contributing to the protection of payment systems users
6. Enhancing other aspects of the public interest

In exercising its powers under the PSA, the Bank, as it relates to the oversight of payment, clearing and settlement systems and payment instruments and services, shall have regard to the interests of the public.

Generally, in approving a payment system the Bank considers:

- (a) whether or not the system:
 - is financially safe for use by participants;
 - efficient;
 - competitive;
 - will materially cause or contribute to increased risk to the financial system of The Bahamas.

(b) Such other matters as the Central Bank may consider relevant to the application

In pursuing the objectives of safety and efficiency, a key focus of the Bank's oversight work is to identify potential risks posed by payment systems, to take steps to eliminate or control those risks, and to ensure that there are adequate risk mitigation or other risk management measures in their design and operation.

The Central Bank focuses on mitigating those risks listed in Box 1.

Box 1: Risks in Payment and Settlement Systems³

Credit risk is the risk that a party within the system is unable to fully settle its obligations within the system when due or at any time thereafter.

In order to ensure that credit risk does not arise, the Bank employs various tools to manage credit risk in designated systems⁴ including the following:

--Prompt and final irrevocable settlement: the Bank provides real-time irrevocable settlement through BISS, hereby eliminating credit risk to the receiving participant. Settlement of net positions from the ACH in BISS is also final and irrevocable.

--Collateralization and minimum balance: the Bank requires that participants of systems provide acceptable collateral and imposes minimum balance requirements for participants as a means to mitigate credit risk.

Liquidity risk is the risk that a counterparty, whether a participant or other entity, will have insufficient funds to meet its financial obligations as and when expected, although it may be able to do so in the future.

As per the above definition, liquidity risk does not imply that a party or participant is insolvent since it may be able to settle the required debit obligations at some unspecified time thereafter. The Central Bank provides intra-day credit to participants of a system, fully secured by collateral such as Government bonds and, by definition, repayable by the close of the business day.

Legal risk is the risk of the unexpected application of a law or regulation, usually resulting in a loss.

The Central Bank has adopted the following tools to mitigate legal risks in payment systems:

--Legislation: The Bank requires payment systems stakeholders including participants and clearing houses, to comply with the provisions of the PSA and all other relevant payments legislation in force from time to time.

³ Source for all definitions: CPMI-IOSCO (2012), Principles for Financial Market Infrastructures, Bank for International Settlements, Basel.

⁴ The Bank is empowered to designate payment and settlement systems by section 16 of the PSA.

--Contractual arrangements: The Bank also requires participants and other key payment systems stakeholders to comply with the various service level agreements, system rules and procedures and Memoranda of Understanding which govern the relationship of these parties and which supplement the payments legislation.

Operational risk is the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by an FMI.

As overseer of payment systems, the Central Bank is concerned with the accuracy and integrity of the BISS and the ACH and that high standards of security, operational resilience and business continuity are continuously met. Consequently, the Bank employs various means and tools to mitigate operational risk.

--The Bank requires participants of systems to ensure that formal business continuity arrangements and operational and technical procedures are in place and documented for both the BISS and the ACH.

--There are also general reporting requirements under the PSA for designated systems such as the ACH and the BISS, which include reports to the Central Bank of any operational outages and system problems and delays.

--In addition, participants of BISS are required to perform periodic self-assessments of the integrity and resilience of their own internal arrangements. The self-assessments are submitted to the Central Bank and cover such issues as physical site security; system problems and downtime; occurrences of fraud; and adequacy of contingency arrangements and facilities.

Systemic risk is the risk that the inability of one or more participants to perform as expected will cause other participants to be unable to meet their obligations when due.

Such a failure could cause widespread liquidity or credit problems and, as a result, could threaten the stability of the system or of financial markets. The Bank monitors developments in designated systems and in related service markets to help identify and evaluate the potential for systemic risk arising from changes in the design and operation of the systems or conduct of operators and participants in the associated service markets. As a lender of last resort, the Bank can inject additional liquidity into the system in order to enable settlement to take place and avoid systemic risk.

The Bank also intends to achieve the objectives of safety and efficiency, on the one hand, by ensuring that there are clear and transparent rules that are known to all participants and on the other, by ensuring that the systems in place provide assurance of the delivery of the payment services.

The Bank has ensured that payment systems are governed by a well-founded legal basis, through the enactment of a comprehensive PSA and Regulations under that Act and amendments to the CBA. The PSA reduces systemic risk and enhances the safety of designated systems by providing for the finality of payments cleared through those systems and ensuring that payments entered

into these systems are protected from being unwound in the event of the insolvency of a system participant.

Efficiency also relates to the manner in which payments are processed and delivered to users, giving due regard to timeliness and relative cost effectiveness. While it is recognized that the appropriate framework which maximizes efficiency varies from country to country, there appears to be a number of pre-requisites such as: (i) a judicious use of available technology; (ii) a sound legal framework; (iii) appropriate allocation of costs of services to users; and, (iv) arrangements for the on-going review and assessment of payment systems and services.

In pursuance of its policy objectives, the Bank is required under the PSA to facilitate the development of new methods and technologies for payments and the transfer of securities and the cooperation among all participants in the evolution of payment systems and the provision of money services.

An example of an initiative that has led to increased efficiency in The Bahamas is cheque truncation under the ACH, which allows for the electronic presentment of cheques, thereby eliminating the need for the exchange of physical cheques to facilitate settlement of funds.

Another objective of the Bank, which is closely related to the objective of efficiency, is that of competition. The Bank intends to promote competition in the market for payment services as mandated under the PSA, thereby fostering a level playing field between participants and fair access conditions. Moreover, as a part of its mandate the NPC promotes common initiatives towards the implementation and ongoing modernization of payment and settlement infrastructures and accompanying services that shall not impede competition among market participants. The establishment of the NPC is also intended to ensure that improvements and innovations in payment systems are introduced in a timely, relevant and coordinated manner. Where necessary, the Bank will take a more active role in payment related matters acting as a catalyst for change.

With regard to its policy objective of contributing to the protection of payment system and services users, the Bank pursues the following general principles:

1. Ease of use – providers should afford consumers with easy-to-use payment mechanisms.
2. Robust Risk Management – providers should implement security measures that are commensurate with payment-related risks, including those resulting from unauthorised access or use of personal data, fraud and identity theft.
3. Dispute Resolution and Redress – users of payment systems should have access to clear, publicly available, easy-to-use, transparent and effective mechanisms to resolve disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden.
4. Education, Awareness and Digital Competence - relevant stakeholders should work together to educate consumers, government officials and businesses about modern payment instruments and services to promote informed decision making.
5. Oversight and monitoring – the Central Bank may monitor elements such as the quality of service, minimum service levels, pricing of services to final consumers, and consumer protection, among others. Also, to ensure the integrity and proper management of the system, or if it is otherwise in the interests of the public (or a section of the public), the Central Bank may issue applicable written directions.

5.0 THE SCOPE OF CENTRAL BANK'S OVERSIGHT

The scope of the Central Bank's oversight function includes all domestic payment systems, as well as payment instruments and the payment services that stem from the usage of such instruments and systems.

5.1 PAYMENT SYSTEMS

5.1.1 Designated systems

Pursuant to the PSA, the Central Bank's approval is required to organise, establish, operate or participate in any proposed or existing domestic payment system. However, the Bank's oversight with regard to payment systems shall mainly focus on payment systems which are identified as SIPS. In this regard, the Bank has adopted the CPMI-IOSCO PFMLs as the standards for SIPS in The Bahamas.

In this regard, the Bank will first and foremost identify those systems which are considered systemically important as a result of their potential to trigger or transmit systemic disruption or create systemic risk. The PFMLs Report considers systemic importance to be determined largely by the size or nature of the individual payments or their aggregate value. Systems handling specifically large-value payments would normally be considered systemically important. A systemically important system does not necessarily handle only high-value payments, but can relate to payments of various values which can also trigger or transmit systemic disruption by virtue of certain segments of its traffic.

The PSA provides that the Bank shall take the following factors into account when considering whether or not to designate a system as a SIPS:

- whether a disruption in the operations of the system could trigger, cause or transmit further disruption to participants or systemic disruption to the financial system of The Bahamas;
- whether a disruption in the operations of the system could affect public confidence in payment systems or the financial system of The Bahamas;

- the best interests of system participants and their customers; or
- the best interests of the financial system of The Bahamas.

Once the Central Bank determines that a system is of systemic importance, the Bank may by order published in the Gazette, designate a system as a SIPS.

A system that is designated as a SIPS by the Bank will be subject to the enhanced oversight of the Central Bank as provided under the PSA. The Bank's enhanced oversight powers include issuing directives of a general or specific nature to any participant or class of participants, or clearing house of a designated system, and imposing on such parties, such conditions or restrictions as the Bank thinks fit including in relation to the operation of a designated system and the conditions to be met by any person in order to have access to, or to become a participant of a designated system. The Central Bank will also conduct, via a third party, an annual on-site examination of the operations of designated payment systems.

The Bank has identified the BISS and the ACH as the only systemically important payment systems currently operating in The Bahamas. The Bank has therefore designated both the ACH and BISS as SIPS.

5.1.2 Other payment and settlement systems

The Bank will continue to oversee other payment and settlement systems in The Bahamas, including but not limited to payment card systems and the securities depository and securities settlement system of The Bahamas Stock Exchange.

According to the PFMI, central securities depositories and securities settlement systems will normally be considered systemically important.

Due to their own nature, payment card systems process large volumes of transactions of relatively small individual value, and are rarely considered systemically important. However, these and other systems can still bear significant importance to the real sector of the economy. In some countries, payment card systems and other retail systems have been subject to a "special"

designation. For example, the European System of Central Bank defines three types of retail payment systems subject to oversight by the relevant authorities based on degree of disruption that malfunctioning of these systems could cause to economy: SIRPS (Systemically Important Retail Payment Systems), PIRPS (Prominently Important Retail Payment Systems) and other retail payment systems as “prominently important” payment systems. In a similar vein, the Reserve Bank of India uses the concept “System-Wide Important Payment System” (SWIPS).

Focus of the Bank’s oversight will be on the system itself and on the operator of these systems (i.e. the clearing house, as per the Payment Systems Oversight Regulations of 2012).

In the future, these and other payment and settlement systems may also be designated, and therefore subject to the enhanced oversight of the Central Bank as provided under the PSA.

5.2 PAYMENT INSTRUMENTS AND SERVICES

The oversight of payment instruments and of the provision of payment services are becoming increasingly important for central banks, in particular the innovative payment instruments and the emergence of non-bank payment service providers.

The Central Bank will also oversee payment service providers with regard to the issuance of payment instruments and the related payment services they provide to individuals and businesses.

According to the Payment Instruments (Oversight) Regulations of 2016:

- “Payment Institution” means any entity providing payment services that does not already possess, to this end, a licence as a bank, a bank and trust company, a trust company, a credit union or a money transmission service provider, and which is licensed under the terms of the captioned Regulations.

- “Payment Service Provider” means any entity providing payment services, including Payment Institutions licensed under these Regulations, banks, bank and trust companies, trust companies, credit unions, money transmission service providers, and any other provider licensed to this end under relevant regulations.

5.2.1 E-money instruments and payment services

For electronic money issuers (other than banks and trust companies licensed by the Central Bank), there is a separate regulatory regime under the PSA. “Electronic Money” is defined in the PSA as essentially a stored value facility (SVF) in which a record of the funds or value available to the consumer for multipurpose use is stored on an electronic device in the consumer’s possession. Under the provisions of the PSA, non-bank issuers of multi-purpose SVFs must be licensed by the Central Bank.

In addition to licensing, the Central Bank’s oversight of e-money issuers and e-money service providers will cover their ongoing activities.

With regard to the latter, the oversight function of the Central Bank will focus on elements such as the quality of service, the minimum service levels, pricing of services to final consumers, and consumer protection, among others. Moreover, under the PSA, e-money issuers and e-money service providers are subject to the information-gathering powers of the Bank.

5.2.2 Money transmission services (remittances)

The Central Bank is responsible for the licensing, regulation and supervision of non-bank money transmission businesses operating in and from within The Bahamas pursuant to the Banks and Trust Companies Regulation Act, 2000 (“BTCRA”) as amended. To this end, the Central Bank has issued regulations (“Money Transmission Business Regulations” of 2008 and amendment of 2011)

for the licensing of non-bank money transmission service providers and the registration of money transmission agents.

In addition to licensing and registration, the Central Bank's oversight of money transmission services will cover the ongoing activities of non-bank money transmission service providers and their agents, as well as cross-border money transfer activities of banks.

Money transmission businesses may be vulnerable to misuse for money laundering and terrorist financing. Hence, a crucial objective of the Central Bank's oversight of this service will be to ensure that money transmission service providers (MTSPs) and their agents engage the proper internal systems, policies and controls to guard against perpetrators of money laundering and terrorist financing.

The oversight function of the Central Bank with regard to the ongoing activities of money transmission services provided by all types of PSPs will focus on elements such as the quality of service, minimum service levels, pricing of services to final consumers, and consumer protection, among others.

5.2.3 Payment card service providers

In addition to the operators of payment card systems, which will be overseen in the context of payment systems/payment system operators, entities that provide payment services through payment cards (other than prepaid cards, which are covered under 5.2.1.), will be overseen with regard to the payment services they provide to individuals and businesses.

In addition to banks, this category includes non-bank issuers and operators of credit cards and so-called "charge cards" (e.g. AMEX, Diners).

Non-banks issuers and servicers of payment cards will be licensed by the Central Bank.

The oversight function of the Central Bank with regard to the ongoing activities of payment card service providers will focus on elements such as the quality of service, minimum service levels, pricing of services to final consumers, and consumer protection, among others.

5.2.4 Third-party payment providers

The scope of the Central Bank’s oversight will also include third-party payment providers (TPPPs), defined as entities that are involved in payments to third persons. TPPPs generally provide payment services through back-office processes (a key distinction from “agents”, which interact directly with the general public). In recent years, entities other than banks have ventured into this domain.

TPPPs include:

- “Beneficiary service providers”: TPPPs that accept money or the proceeds of payment instructions, as a regular feature of their business, from multiple payers on behalf of a beneficiary;
- “Payer service provider”: TPPPs that accept money or the proceeds of payment instructions, as a regular feature of their business, from a payer to make payment on behalf of that payer to multiple beneficiaries.

The Central Bank will aim to ensure that the services provided by TPPPs, including the systems they use, are safe and efficient so as not to introduce undue risks, including reputational risk, into the NPS. TPPPs who provide payment services to third persons and who process payment instructions, including the delivery to and/or receipt of payment instructions from a bank and/or another payment systems operator on their own behalf, rather than using the services of an independent system operator, will be required to meet the same level of compliance with operational and technical requirements as required of retail payment system operators (see 5.1.2).

5.2.5 Other entities

The Central Bank reserves the right to oversee other entities that fall under the definitions for Payment Institution or Payment Service Provider under the Payment Instruments (Oversight) Regulations 2016. This includes the determination that new or novel technologies or payment methods are subject to Central Bank oversight.

If a new entity or technological innovation that falls under the regulatory purview of the Central Bank is identified, or may become domestically available, this Payments Oversight Policy Framework will be updated accordingly.

6.0 OVERSIGHT STANDARDS TO BE USED BY THE CENTRAL BANK OF THE BAHAMAS

6.1 SYSTEMICALLY IMPORTANT PAYMENT AND OTHER SETTLEMENT SYSTEMS

The CPMI-IOSCO PFMI have been internationally accepted as the international standards in relation to SIPS and other financial market infrastructures. Their intention is to assist the central banks worldwide, to identify and regulate SIPS, while encouraging the safe design and operation of payment systems. The Central Bank of The Bahamas has adopted the PFMI as the basic standards governing its oversight of designated systems.

In ensuring that designated systems comply with the PFMI, the Bank has also adopted the central bank responsibilities set out in the PFMI Report⁵.

Responsibilities A and B are reflected in the CBA and the PSA which empower the Central Bank to regulate and oversee any domestic payment system and in the exercise of these powers, to be guided by best international standards.

Responsibility C is fulfilled by disclosing the Bank's role and policies with respect to payment systems operating in The Bahamas and payment instruments through this Payments Oversight Policy Framework. The provisions of the CBA (Amendment) Act, 2010 and the PSA require the Bank to make public the national payment system policy which it has adopted.

The Central Bank's oversight policy equally applies to systems owned and operated by the Bank, as well as to those operated by third parties, as required by Responsibility D.

The PSA also permits the Central Bank to undertake commitments with other central banks and with other relevant domestic authorities under memoranda of understanding for example, which facilitates closer cooperation between them, as required by Responsibility E.

⁵ See CPMI-IOSCO (2015), pp 126-137.

6.2 OTHER APPROVED PAYMENT SYSTEMS

With regard to other (i.e. non-designated) approved payment systems, including their operators, the Central Bank will also apply the PFMI, the PSA and the Payment Systems (Oversight) Regulations, and other relevant applicable laws or international best practices.

In the medium-term the Central Bank may decide to apply only certain principles of the PFMI to non-designated payment systems in the country.

6.3 PAYMENT INSTRUMENTS AND PAYMENT SERVICES

As discussed under Section 5 on the Scope of Oversight, the Central Bank will also oversee payment instruments and the service provided through the usage of these instruments by payment service providers, including payment institutions.

For PSPs, including but not limited to MTSPs and e-money issuers, the applicable standards include the Payment Instruments (Oversight) Regulations of 2016 and the General Information and Application Guidelines for Providers of Payment Instruments and Electronic Money Products of 2016.

The licensing requirements will also be used as the starting point for the on-going oversight of a PSP's financial soundness, fit and proper governance, risk management and internal controls.

PSPs will have to comply on a continuous basis with the requirements set forth in Part II "Terms and Conditions to Provide Payment Services by all Payment Service Providers" of the Payment Instruments (Oversight) Regulations of 2016, which include minimum standards with regard to the following topics:

- Rights and responsibilities of PSPs, their customers and other stakeholders
- Consumer protection, education and privacy
- Outsourcing of activities
- Use of agents

- Liability of PSPs even in the case of relying on third parties to support their provision of payment services
- Public disclosures of information by PSPs

PSPs will also be required to comply with any other regulations or guidelines that may be issued under the PSA and with other relevant applicable laws or international best practices.

With regard to payment instruments, the Central Bank may define minimum efficiency and security standards for traditional payment instruments including cheques, credit transfers, debit transfers and card payments, as well as for innovative payment schemes (e.g. issuance and management of electronic money, the provision of mobile wallets, etc.).

7.0 CURRENT FOCUS AND GRADUAL EXPANSION OF CENTRAL BANK'S OVERSIGHT

The current focus of the Bank's oversight activities is principally on: (i) surveillance of developments in designated systems; (ii) the assessment of changes for their material effect on specified oversight objectives around the safety and efficiency of the operational activities of the designated systems and of closely related payment service markets; (iii) efforts to catalyze resolution of significant deviations in system operations or participant conduct that threaten the achievement of oversight objectives; and, (iv) the development and communication of its oversight policy framework and actions with relevant stakeholders in the designated systems.

The implementation of the payments oversight function is nevertheless a dynamic process that evolves according to the changes in the systems, the applicable international standards and best practices, and the rapid changes in processes and technology that affect the way in which payment services are delivered to individuals, businesses and government entities. As a result, the Bank may decide at any time in the future to increase the intensity with which it will oversee other aspects or components of The Bahamas national payments system.

A major challenge in conducting effective payments oversight which the Bank will continue to face, is ensuring that it has adequate resources and suitably qualified personnel to remain technologically adept.

In any case, the Bank will continue to work with market participants in a collaborative manner to keep informed of current issues and to promote the continued relevance of payment systems, payment instruments and services.

8.0 APPROACH TO OVERSIGHT BY THE CENTRAL BANK

One of the key objectives of the Central Bank's approach to oversight, is to provide an effective process to monitor and assess, on a continuing basis, compliance with the standards and guidelines imposed for approved systems, designated systems and payment instruments and services. The Bank intends to take a risk-based approach to this process, focusing on designated systems, and utilizing a variety of methods and tools as described in section 9.0 of this framework.

The Central Bank intends further that its regulatory requirements in the form of its mandatory oversight standards and regulations for designated systems and the system-specific directives it may impose, will be proportional to the risks to system-wide safety or efficiency associated with the systemic importance of the designated systems. Moreover, the Central Bank intends to be consistent in the application of its oversight policies across systems of similar systemic importance.

As the Central Bank has the duty to undertake its oversight activities, in terms of its policy framework and actions, in a manner that is transparent, the Bank is committed to consulting with key stakeholders in the formulation of assessments of participants and systems and in the resolution of policy and oversight issues that may arise. Revisions to the oversight framework which may be required from time to time will be conducted on a transparent basis.

Finally, to achieve the necessary level of transparency and cooperation that will ensure that it is held publicly accountable, through this Payments Oversight Policy Framework document the Bank has stated publicly the framework for its oversight activities and its statutory mandate and authority under the PSA and the CBA.

Going forward, the primary reporting on the Bank's payment systems policies and oversight activities as well as developments in the payments industry in The Bahamas will be provided by means of oversight reports published on the Bank's

website and in the Bank's Annual Report, and through any other mechanisms deemed to be relevant by the Bank.

9.0 INSTRUMENTS AND TOOLS OF OVERSIGHT OF THE CENTRAL BANK

The Bank shall adopt, but not be limited to the following instruments and tools in performing its payments oversight responsibilities:

1. Monitoring of the compliance of payment systems, payment instruments and systems with the applicable oversight standards;
2. Assessing systems, instruments and services against its policy objectives; and,
3. Effecting changes where necessary.

9.1 MONITORING

To enable the Bank to assess the risks and efficiency of the systems, they are monitored on a continuous basis. The information acquired through monitoring will assist the Bank to formulate and develop its payments system oversight policies.

With respect to designated systems, the Bank will primarily monitor and evaluate:

- a) Developments in the systems and in related service markets to help identify and evaluate the potential for systemic risk arising from changes in the design and operation of the systems or conduct of operators and participants in the associated service markets;
- b) The responsiveness of the operators to risk concerns raised by their participants as well as their responsiveness to any required revision and enforcement of the system's operating rules and procedures;
- c) The governance arrangements and their impact on the management of the various risks faced by the system
- d) The effective transparency (availability, accessibility, precision of content) of the rules and procedures, access and participation criteria and conditions, service level agreements, pricing schemes and governance arrangements to current and potential participants and to other interested stakeholders.

- e) The acceptable levels of operational and service efficiency for participants, including but not limited to:
 - (i) the reliability, the consistency, and predictability of service delivery to users;
 - (ii) the innovation and efficiency of the production and delivery of the core payments services;
 - (iii) the cost of services to users, in relation to the system's operational and development costs
 - (iv) effective access

The Central Bank will also periodically review non-designated systems and/or related payment instruments and service markets to ascertain if their importance to the financial or commercial sectors may have changed significantly enough to warrant designation under the PSA or if issues critical to the efficient and safe provision or use of payment services are identified.

The Central Bank's monitoring is carried out through the following means:

1. Off-site analysis and supervision through the collection and analysis of data and other information
2. On-site examinations
3. Meetings and discussions with system operators, system participants, issuers of payment instruments and other PSPs, as well as any other relevant regulators.

9.2 ASSESSMENT

As previously mentioned, the Bank will continuously assess compliance of designated systems with the PFMI and other standards and best practices adopted by the Bank as well as with any other policies formulated by the Bank.

The information obtained through the monitoring process is used to evaluate the systems against these standards and to formulate appropriate oversight policies.

9.3 CHANGE MANAGEMENT

The Central Bank will induce necessary changes through a combination of mandatory regulation and informal tools.

As mentioned in Section 3 of this document, when it comes to designated systems, the legal framework provides the Bank with the necessary authority to determine general or individual standards and directives, and impose administrative sanctions, including suspending the operation of a system or terminating the participation of any member in an approved system.

The Bank may also use informal non-regulatory tools such as moral suasion implemented through:

- (i) cooperative arrangements with the participants and clearing houses of designated systems and other regulatory agencies used as information-gathering, discussion and advisory mechanisms for the formulation of payments system policies and the resolution of policy or oversight issues; and,
- (ii) the creation of comprehensive discussion papers on specific payments policy and oversight issues.

ACRONYMS AND ABBREVIATIONS

ACH	Automated Clearing House
BACH	Bahamas Automated Clearing House Limited
BISS	Bahamas Interbank Settlement System
BTCRA	Banks and Trust Companies Regulation Act
CBA	Central Bank Act
CPMI	Committee on Payments and Market Infrastructures
IOSCO	International Organization of Securities Commissions
FMI	Financial Market Infrastructure
MTSP	Money Transmission Service Provider
NPC	National Payments Committee
NPS	National payments system
PFMIs	Principles for Financial Market Infrastructures
PIRPS	Prominently Important Retail Payment System
PSA	Payment System Act
PSP	Payment Service Provider
PSMI	Payment System Modernization Initiative
RTGS	Real Time Gross Settlement
SIPS	Systemically Important Payment System
SIRPS	Systemically Important Retail Payment System
SVF	Stored Value Facility
SWIP	System-Wide Important Payment System
TPPP	Third Party Payment Provider

CPMI-IOSCO Principles for Financial Market Infrastructures (FMI)

Principle 1: Legal basis

An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

Principle 2: Governance

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

Principle 3: Framework for the comprehensive management of risks

An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

Principle 4: Credit risk

An FMI should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions.

Principle 5: Collateral

An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.

Principle 6: Margin

A CCP should cover its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

Principle 7: Liquidity risk

An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited

to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible market conditions.

Principle 8: Settlement finality

An FMI should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.

Principle 9: Money settlements

An FMI should conduct its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money.

Principle 10: Physical deliveries

An FMI should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries.

Principle 11: Central securities depositories

A CSD should have appropriate rules and procedures to help ensure the integrity of securities issues and minimise and manage the risks associated with the safekeeping and transfer of securities. A CSD should maintain securities in an immobilised or dematerialised form for their transfer by book entry.

Principle 12: Exchange-of-value settlement systems

If an FMI settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

Principle 13: Participant-default rules and procedures

An FMI should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the FMI can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

Principle 14: Segregation and portability

A CCP should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCP with respect to those positions.

Principle 15: General business risk

An FMI should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.

Principle 16: Custody and investment risks

An FMI should safeguard its own and its participants' assets and minimise the risk of loss on and delay in access to these assets. An FMI's investments should be in instruments with minimal credit, market, and liquidity risks.

Principle 17: Operational risk

An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

Principle 18: Access and participation requirements

An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

Principle 19: Tiered participation arrangements

An FMI should identify, monitor, and manage the material risks to the FMI arising from tiered participation arrangements.

Principle 20: FMI links

An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.

Principle 21: Efficiency and effectiveness

An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

Principle 22: Communication procedures and standards

An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.

Principle 23: Disclosure of rules, key procedures, and market data

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

Principle 24: Disclosure of market data by trade repositories

A TR should provide timely and accurate data to relevant authorities and the public in line with their respective needs.

Responsibilities of central banks, market regulators, and other relevant authorities for financial market infrastructures

Responsibility A: Regulation, supervision, and oversight of FMIs

FMIs should be subject to appropriate and effective regulation, supervision, and oversight by a central bank, market regulator, or other relevant authority.

Responsibility B: Regulatory, supervisory, and oversight powers and resources

Central banks, market regulators, and other relevant authorities should have the powers and resources to carry out effectively their responsibilities in regulating, supervising, and overseeing FMIs.

Responsibility C: Disclosure of policies with respect to FMIs

Central banks, market regulators, and other relevant authorities should clearly define and disclose their regulatory, supervisory, and oversight policies with respect to FMIs.

Responsibility D: Application of the principles for FMIs

Central banks, market regulators, and other relevant authorities should adopt the CPSS-IOSCO *Principles for financial market infrastructures* and apply them consistently.

Responsibility E: Cooperation with other authorities

Central banks, market regulators, and other relevant authorities should cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of FMIs.

GLOSSARY

Terms defined in this glossary reflect the definitions provided in the PSA of 2012

“Central Bank” and “Bank” respectively means the Central Bank of The Bahamas, established under section 3 of the Central Bank of The Bahamas Act, 2000;

“clearing” is the process of transmitting, reconciling and, in some cases, confirming transfer orders or security transfer instructions prior to settlement and may include the netting of instructions and the establishment of final positions for settlement;

“clearing house” is a company, corporation, association, partnership, agency, organization or other entity or person that provides clearing or settlement services for a payment system, but does not include the Central Bank;

“designated system” is any domestic payment system liable to pose a risk of systemic disruption or adversely affect the public interest and designated by the Bank pursuant to section 16 of the PSA;

“national payment system” is the system referred to in section 5(1)(c) of the Central Bank of The Bahamas Act comprising the rules and procedures governing the establishment and operation of payment systems within The Bahamas and their oversight by the Central Bank and the oversight of payment instruments by the Central Bank;

“netting” is the conversion into one net claim or net obligation of claims and obligations resulting from transfer orders which a participant either issues to, or

receives from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

"participant" is any person, excluding the Bank, who is recognised in the rules of a payment system as being eligible to settle payments through the system with other participants but does not include a user or customer of a participant who instructs or receives payment over the system;

"payment instrument" is any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise execute payment transactions;

"payment system" is a formal arrangement with common rules and standardised arrangements, for the execution of transfer orders between participants, including a clearing house, the settlement of payments relating to securities, or for the processing, clearing or settling of payment transactions or payment messages between –

- (a) three or more participants; or
- (b) two or more participants provided such a formal arrangement is designated by the Bank as a payment system pursuant of section 16 of the PSA;

"payment transaction" is any act, initiated by the payer or the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee and includes payment messages;

"securities" means transferable securities traded on a local stock exchange authorised under the Securities Industry Act and or Regulations;

"settlement" means an act that discharges obligations in respect of funds or securities transfers between two or more parties;

“settlement institution” is an institution, excluding the Central Bank, that provides to participants and or a central counter-party participating in one or more systems

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- (a) settlement accounts through which transfer order within such system or systems are settled; and
- (b) credit, as may be required, for settlement purposes;

“system” means an individual payment system;

“transfer order” is any instruction by a participant –

- (a) to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a participant, settlement institution or the Bank;
- (b) which results in the assumption or discharge of a payment obligation; or
- (c) to transfer the title to, or interest in, a security or securities by means of a book entry on a register or otherwise.