



The Central Bank of The Bahamas

**CONSULTATION PAPER: Proposed Legislation
for the Regulation of Payment Systems in
The Bahamas**

24th November, 2009

I. INTRODUCTION

The Central Bank of The Bahamas has embarked on the modernization of the national payments system. This initiative includes the May 2004 implementation of the Bahamas' Inter-Bank Settlement System (the BISS), the real time gross settlement system operated by the Central Bank which allows the seven clearing banks in The Bahamas to electronically transmit and settle large value payments among each other, on a real time basis. The Central Bank is providing support to the Clearing Banks Association and the Bahamas Automated Clearing House (BACH), for the establishment of an Automated Clearing House (the ACH) which is a clearing and settlement system for small value payments (under \$150,000) between the clearing banks. The following draft Acts and regulations have been prepared to provide the legal framework for the Central Bank's supervision of payment systems in The Bahamas, the operation of those systems and the regulation of payment instruments:

- Payment Systems Act
- Payment Systems (Oversight) Regulations
- Payment Systems (National Payments Committee) Byelaws

The Central Bank has provided below responses to anticipated key questions about the proposed legislative framework. Additionally, a summary of the key provisions of the proposed legislation is set out in the Annex to this Consultation Paper.

II. KEY QUESTIONS ABOUT THE PROPOSED LEGISLATION

- **What is the objective of the Payment Systems Act?**

The draft Payment Systems Act and other related proposed legislation, once brought into force, will provide the legal framework for the Central Bank's oversight of payment systems and payment instruments. The proposed payment systems legislation, will also establish standards for the operation of payment systems in The Bahamas.

- **What is a payment system?**

A "payment system" is a set of instruments, procedures and rules for the transfer of funds among system participants and includes a clearing house, the settlement of payments relating to securities, or processing, clearing or settling of payment transactions or payment messages.

- **What is the role of the Central Bank in relation to payment systems?**

The Central Bank prepared draft amendments to the Central Bank of The Bahamas Act (“the CBBA Amendment Bill”) which seek to amend the Central Bank of The Bahamas Act, 2000. The proposed amendments were issued for public consultation in early 2009. The CBBA Amendment Bill provides that the Central Bank is under a duty to ensure the stability of the financial system and to promote and ensure a sound national payments system. The CBBA Amendment Bill, when enacted, will empower the Central Bank to regulate and oversee payment systems and to regulate the issuance and functioning of payment instruments including the provision of electronic money.

- **Why is there a need for oversight of payment systems by the Central Bank?**

Payment systems are an essential vehicle for transmitting money throughout the financial system. Disruptions in a system or the total failure of a system, therefore poses a threat to the stability of the currency and the financial system. Oversight aims at safeguarding the efficient transmission of money through these systems and enabling the Central Bank to carry out its regulatory duties vis-à-vis the payment system and to mitigate potential risks.

- **Who will be subject to the Central Bank’s oversight under the proposed legislation?**

Any person that operates or participates in a domestic payment, clearing or settlement system or who seeks to establish, operate or participate in such a system and issuers of electronic money (other than banks or trust companies), will all be subject to the Central Bank’s supervision. However, where the Central Bank designates a payment system as a “systemically important payment system” or a “SIP”, the proposed Payment Systems Act will require the participants, operators, clearing houses and settlement institutions of the designated system to adhere to enhanced regulatory requirements.

SIPS are defined by the Basel Committee as any payment system that is capable of “triggering disruptions or transmitting shocks across the financial system domestically or even internationally”. The Basel Committee on Payment and Settlement Systems (CPSS) is the international standard setter for SIPS. The CPSS has established Core Principles for Systemically Important Payment Systems which are the international standards that assist central banks around the world to identify and regulate SIPS. The draft Payment Systems Act seeks to incorporate the Basel Committee’s Core Principles for SIPS to ensure that payment systems in The Bahamas are regulated in accordance with these standards.

Under the proposed legislation, the Central Bank will also regulate issuers of electronic money products (other than banks or trust companies) that may be accessed by the general public and which provide a multipurpose means of payment, that is, which can be used to purchase goods and services from third party merchants other than the issuer.

- **Are there any exemptions?**

The Central Bank does not intend to regulate single purpose prepaid card products such as gift cards that may be purchased from a single issuer and are redeemable only by that issuer; or prepaid cards that are used only, for example, to pay for bus fare.

Payment systems that are not regarded as being systemically important will not be designated by the Bank as such and may be subject to less extensive regulatory requirements than a SIP.

- **Does the proposed legislation define electronic money?**

In effect the definition of electronic money in the draft Payment Systems Act is 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.

- **Are multipurpose SVFs available in The Bahamas?**

In The Bahamas there are currently several multipurpose SVFs available to consumers such as the Mango card. Under the proposed legislation, non-bank issuers of multipurpose SVFs must be approved by the Central Bank and obtain a licence from the Bank to issue these products. Existing issuers of these products will be given a grace period within which they must be licensed by the Central Bank.

ANNEX

A SUMMARY OF KEY PROVISIONS OF THE PROPOSED LEGISLATION

A. The Draft Payment Systems Act

1. Establishment of National Payments Committee (Part III, section 7)

The proposed Act seeks to provide for the establishment of a National Payments Committee as an advisory body to the Central Bank in the Bank's role as the regulator of payment systems.

2. Approval of domestic payment, clearing and settlement systems (Part III, sections 8 & 9)

The proposed Act gives the Central Bank authority to approve any domestic payment, clearing and settlement system and to withdraw such approval.

3. Finality of Payments (Part IV, sections 10 and 11)

The proposed Act provides for the finality of payments cleared through a payment system and protects payments entered into the system from being unwound in the event of the insolvency of a system participant.

4. Electronic Presentment of Cheques (Part V, sections 13 and 14)

The proposed Act provides for the electronic presentment of cheques and limits the application of the Bills of Exchange Act in this regard.

5. Designation of Systems (Part VI, sections 15 and 17)

The proposed Act gives the Central Bank the power to designate payment systems that are considered important for financial stability and public confidence and to withdraw such designation at any time.

6. Notification Requirements for Designated Payment Systems (Part VII, section 23)

The clearing house of a designated payment system will be required to provide the Central Bank with prior notification of any significant changes to the operations, administration, rules and procedures of a designated payment system or other documentation in relation to any changes to the system.

7. Imposition of Access Regime (Part VII, section 19)

The Central Bank will have the power to impose an access regime so as to determine the rules for participation in a designated payment system. The Central Bank will consider the interests of the public, the operator, settlement institution and current participants of the designated payment system, and such persons as may require access to the designated payment system in the future before imposing an access regime.

8. Supervisory Powers of the Bank (Parts VI, VII & VIII)

The Central Bank will have supervisory powers over the operators, participants, clearing houses and settlement institutions of designated payment systems, including the power to inspect the books, conduct on-site examinations and off-site supervision, and to require the submission of periodic reports. The Bank will also be empowered to issue directions to or impose conditions or restrictions on the participants, operators or settlement institutions of designated payment systems.

9. Information gathering powers of the Bank (Parts VII, VIII & X)

The Central Bank will have the power to gather information from all relevant parties in connection with any payment system (whether designated or not) in The Bahamas, including the operators, clearing houses, participants and settlement institutions of a payment system. The Bank may call for information whenever it considers it necessary to enable it to carry out its functions and duties under the draft Act or the Banks and Trust Companies Regulation Act, 2000.

10. Approval of Stored Value Facilities (Part IX, section 28)

All persons other than licensed banks, bank and trust and trust companies will be required to obtain a licence from the Central Bank to issue electronic money. Pursuant to the definition of electronic money in the draft Act, issuers of those electronic money products which are redeemable only by the issuer, will be exempt from the licensing requirements of the proposed Act.

11. Power to Levy Fines (Part X, section 39)

The Central Bank will be empowered to impose fines on any person for offences committed against the proposed Act, non-compliance with a directive of the Bank and contravention of any regulations made pursuant to the proposed Act.

B. THE DRAFT PAYMENT SYSTEMS (OVERSIGHT) REGULATIONS

1. Central Bank's Approval for CEO, Directors and Significant Shareholders required (Regulations 7 and 9)

The operator of a designated payment system will be required under the proposed Regulations, to obtain the Central Bank's approval for the appointment of its chief executive officer or directors in The Bahamas, who are entrusted with the management of the

operator. As persons with a substantial shareholding in an operator can influence the management of the operator, a person who seeks to become a substantial shareholder of an operator of a designated payment system must obtain the approval of the Central Bank.

2. Emergency Powers (Regulation 12)

The draft Regulations provide the Central Bank with power to take certain actions in relation to a designated payment system in an emergency situation. These include the power to appoint a person to advise the operator, clearing house or the settlement institution of the designated payment system, on the proper conduct of its operations, for the Bank to assume control of and carry on the operations of the operator, clearing house or settlement institution, to require the operator to cease operation of the designated system, to petition for the winding up of the operator, clearing house or settlement institution, and to require the operator, clearing house or settlement institution to take any action as the Bank may consider necessary.

C. THE DRAFT PAYMENT SYSTEMS (NATIONAL PAYMENTS COMMITTEE) BYELAWS

1. Objectives of the National Payments Committee (“NPC”) (Byelaw 3)

The objective of the National Payments Committee is to act as an advisory body to the Central Bank with respect to the Central Bank’s oversight of payment systems.

2. Membership of the National Payments Committee (Byelaws 4 and 5)

The proposed Byelaws set out the qualifying criteria which must be met in order to become a member of the NPC. Applicants for membership in the NPC must be participants or users of a system which, in the view of the NPC’s Council, is widely used or otherwise significant within The Bahamas.

3. Resignation from the National Payments Committee (Byelaw 6)

Under the proposed Byelaws, Members of the NPC may resign their membership by giving not less than six months’ notice to the NPC’s Council. The Council may decide that a shorter period of notice is acceptable. The Council will also have the right at any time by notice in writing to terminate the membership of a Member with effect from the date set out in such notice if inter alia:

- (a) it is in breach of any one or more of its obligations under the Bye-laws;
- (b) it has ceased to be a Participant or user of a system which is widely used or otherwise significant in The Bahamas;
- (c) an application is filed in respect of the Member in any court or before any agency alleging, or for its bankruptcy, winding up or liquidation (or any analogous proceeding) unless it can be demonstrated by the Member to be vexatious or that it is

otherwise unlikely to result in the winding up or liquidation of the Member, in either case within a period of time to be specified by the Council;

- (d) any receiver, administrator, liquidator or trustee or analogous officer of it is appointed over all or any material part of its property;
- (e) it stops or suspends the making of payments on all or any class of its debts or threatens to do so, or a moratorium is declared in respect of any of its indebtedness; or
- (f) it ceases or threatens to cease to carry on all or a substantial part of its business.

4. Appeals Process (Byelaw 7)

Members of the NPC may invoke the 'Appeals Process' against Relevant Decisions of the NPC Council under the proposed Byelaws. A 'Relevant Decision' refers to a decision of the Council relating to inter alia refusal or termination of membership in defined circumstances such as for example, where the Member has ceased to be a Participant of a system which is widely used or otherwise significant in The Bahamas.

5. The Role of the NPC Council (Byelaw 9)

Under the proposed Byelaws, the NPC Council is authorised by the Members of the NPC to do all such acts and things as it may consider, at any time or from time to time, necessary or desirable in order to achieve the Objectives of the NPC. Members of the Council are elected by the NPC. The NPC Council is to be comprised of the Chief Executive Officers of the Members of the NPC in The Bahamas. Council members must have the capacity to commit Members to the decisions of the NPC.
