

CHAPTER

PAYMENT SYSTEMS

The Payment Systems (National Payments Committee
Bye-Laws) 2010

(Section 7)

1. Citation.

These Bye-laws may be cited as the Payment Systems (National Payments Committee) Bye-laws, 2010.

2. Interpretation.

(1) In these Bye-laws

“**the Act**” means the Payment Systems Act, 2010;

“**Bank**” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act;

“**Chairman**” means the individual for the time being appointed by the Bank to be the Chairman of the NPC;

“**company**” means any company or corporation incorporated and designated as such under the provisions of the Companies Act 1992 (as amended) from time to time;

“**Council**” means the governing body of the NPC constituted pursuant to paragraph (1) of bye-law 9;

“**Council Member**” means any individual who in accordance with these Bye-laws has been appointed, and has not ceased to be, a member of the Council;

“**Council Vote**” means a vote held by a Council member from time to time under the terms of paragraphs (2), (3) and (4) of bye-law 13;

“**general meeting**” means a general meeting of the Members convened and held in accordance with these Bye-laws;

“**in writing**” includes electronic transmissions;

"Interest Group" means any group of two or more persons with an interest in a system or systems or any other payment-related topic, which is not funded by the NPC Membership charges;

"Member" means:

- (a) the Central Bank of The Bahamas;
- (b) other governmental bodies regulating or in any other way involved in the payments and financial markets, as identified by the Central Bank of The Bahamas; or
- (c) any person which, in accordance with bye-law 4, has been admitted as, and has not ceased to be, a Member (and "Membership" shall be construed accordingly); "

"NPC" means The National Payments Committee;

"National Payment Systems Policy" means a statement of the Bank of the objectives to be achieved over a specified time period in support of the national payments system in pursuance of Section 6 of the Act.

"Objectives" means the objectives of the NPC set out in bye-law 3, as amended from time to time;

"system" has the same meaning as in the Payment Systems Act, 2010;

"person" means an individual, company, partnership, unincorporated body or any similar entity or organization;

"Participant" has the same meaning as in the Payment Systems Act, 2010;

"related party" includes –

- (a) in relation to another company, a company that directly or indirectly controls, is controlled by, or is under common control with, such other company; and hence is considered to be a member of the same group of companies; and
- (b) a subsidiary company at least 50% of whose outstanding voting shares of each class or series of shares are owned by another company, and a company shall be treated as being controlled by another if that other company is able to direct its

affairs and/or to control the composition of its board of directors or equivalent body.

“the Secretary” means the individual for the time being appointed by the Bank to be the Secretary to the Council.

- (2) Any terms used in these Bye-laws without definitions shall unless the context indicates otherwise, have the same meaning ascribed to those terms in the Act.

3. Objectives.

- (1) In its advisory functions to the Bank, the main objectives of the NPC shall be to-
- (a) advise the Bank on the implementation of the National Payment Systems Policy;
 - (b) be responsible for supporting the achievement and implementation of the National Payment Systems Policy established by the Bank, through inter alia collaboration with relevant stakeholders;
 - (c) advise the Bank on the appropriateness of documentation and models consistent with the National Payment Systems Policy which may be used as standards for relevant market participants;
 - (d) advise the Bank with respect to identifying the priority and the schedule of National Payment Systems Policy projects to be launched, financed and implemented;
 - (e) facilitate the necessary co-operation between all market participants in payments matters;
 - (f) be the responsible body for the standardization of procedures and systems in payment and securities settlement systems and services;
 - (g) promote common initiatives towards the implementation and ongoing modernization of the system infrastructure that shall not impede competition among market participants, especially for the provision of payment instruments and products;

- (h) facilitate the sharing of information on economic and business requirements of all parties impacted by the system;
- (i) help identify the impact of different options on stakeholders' business and daily operations and on end-user interests;
- (j) disseminate to the public information about systems and related issues and seek to do all things conducive to keeping the public and users of systems well informed about such systems and the objectives of the National Payment Systems Policy; and
- (k) promote cooperation among bodies that carry out functions similar to those of the NPC at the regional and international levels.

4. Joining the NPC as a Member.

- (1) Any person desiring to be a Member of the NPC shall make application following the procedures set out in the First Schedule.
- (2) To qualify as a Member of the NPC, an applicant must, at the time of its application and the date upon which it becomes a Member, be a Participant or user of a system which, in the view of the Council, is widely used or otherwise significant within The Bahamas.
- (3)
 - (a) Following the advice of the Bank, the Council shall prepare and maintain criteria by which it will determine whether a system is widely used or is otherwise significant within The Bahamas.
 - (b) The Council shall review the criteria referred to in paragraph (a) from time to time and no less often than biennially.
 - (c) In determining whether a system is widely used or otherwise significant, the Council shall have regard to the value and volume of payments handled by the system.
- (4) An applicant which meets the requirement set out in paragraph (2) of this bye-law shall be admitted to Membership. The Council shall establish a procedure for

determining whether an applicant meets the requirement.

- (5) An applicant who is refused Membership may invoke the Appeals Process referred to in bye-law 7 as if it were already a Member and, in that event, the decision of the 'Appeal Panel' referred to in paragraph (2) of bye-law 7 shall be final and binding on that applicant and on the Members.
- (6) National associations of persons may become Members and unless the Council otherwise determines, shall be represented by a member of the association who shall act for and on behalf of the association.
- (7) The NPC shall make public a list of its Members and such list may be published in such form and manner as the NPC shall determine.

5. Members.

- (1) Each Member shall:
 - (a) not act in a manner which is incompatible with the objectives of the NPC;
 - (b) not do anything which will prejudice the reputation of the NPC; and
 - (c) keep confidential within the Member all information which it has received from the NPC even following the date upon which it ceases to be a Member.
- (2) Paragraph 1 (c) of this bye-law shall not apply to information which:
 - (a) is already in the public domain when received by a Member;
 - (b) is subsequently brought into the public domain otherwise than by such Member;
 - (c) was already known to the Member at the time of receipt and was not acquired by the Member under any obligation of confidence;
 - (d) was independently developed by the Member without any use of confidential information provided by the NPC; or
 - (e) is expressly or impliedly permitted by the NPC to be disclosed.

- (3) Nothing contained in this bye-law shall prevent a Member from disclosing such confidential information to its accountants, auditors, legal or other professional advisers and to any other persons (including regulatory authorities) to whom it is required by law to disclose such information provided that it takes reasonable steps to procure that any such person maintains the confidentiality of that information.
- (4) Membership is personal and may not be transferred to another person.
- (5) If the ownership of a Member changes, so that the Member becomes part of a corporate group which includes another Member, paragraph (2) of bye-law 10 and paragraph (2) of bye-law 13 which apply in relation to the appointment of Council members and voting, shall apply with effect from the date which is six months following the date of the change of ownership.

6. Leaving the NPC.

- (1) A Member may resign its Membership of the NPC by giving not less than six months' notice to the Council. The Council may decide that a shorter period of notice is acceptable. During the period of notice, Membership charges shall be payable and paid by such Member on the usual basis but, if they are calculated by reference to periods, shall be pro-rated to the date of expiry of the notice. The Council may agree to reduce this requirement. The Council shall also be entitled to give notice to the resigning Member to pay a part of the cost of commitments calculated on a transparent and objective basis which were entered into by the NPC while the Member was a Member and the Member shall pay the amount requested on the day set out in such notice.
- (2) The Council shall 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:
 - (a) it is in breach of any one or more of its obligations under these 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) the presentation or filing of an application is made in respect of it 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;
 - (f) it is deemed by law or by a court to be unable to pay its debts as they fall due; or admits, whether in writing or otherwise, its inability to pay its debts as they fall due, or it becomes insolvent;
 - (g) it begins negotiations with a view to readjustment or rescheduling of any indebtedness by reason of, or with a view to avoiding, financial difficulties;
 - (h) there occurs in relation to it any event which, in the opinion of the Council, corresponds with any of the events mentioned in sub-paragraphs (c) to (g) of this paragraph; or
 - (i) it ceases or threatens to cease to carry on all or a substantial part of its business.
- (3) If the Council exercises its right to terminate the Membership of a Member pursuant to paragraph (2) of this bye-law, the Membership charges shall be payable and paid by such Member on the usual basis but, if they are calculated by reference to periods, shall be pro-rated to the date of expiry of the notice. In addition, the Council shall be entitled to give notice to such Member to pay a part of the cost of commitments calculated on a transparent and objective basis which were entered into by the NPC whilst the Member was a Member and the Member shall pay the amount requested on the day set out in such notice.

- (4) A Member ceasing Membership by whatever process shall not be entitled to any share in the assets of the NPC nor to any compensation in respect thereof.
- (5) This bye-law does not apply to the Bank or any other governmental bodies that are Members of the NPC.

7. Appeals Process.

- (1) Each Member shall be entitled to invoke the Appeals Process, referred to in paragraph (2) of this bye-law, in respect of a Relevant Decision of the Council.
- (2) In these Bye-laws a reference to the 'Appeals Process' means the procedure for establishing an Appeals Panel and conducting appeals against Relevant Decisions set out in the Second Schedule.
- (3) In this bye-law a 'Relevant Decision' means a decision of the Council (or, where relevant, the governing body of an Interest Group) relating to one of the following:
 - (a) refusal of Membership under paragraph (5) of bye-law 4 or a refusal of membership of an Interest Group (as the case may be); or
 - (b) termination of membership under paragraph (2) of bye-law 6 or the termination of membership of a member of an Interest Group (as the case may be) on the ground that: -
 - (i) the Member (or the member of the Interest Group, as the case may be) is in breach of one or more of its obligations under these Bye-laws or the bye-laws of the Interest Group in respect of which it is a member; or
 - (ii) the Member has ceased to be a Participant of a system which is widely used or otherwise significant in The Bahamas.
- (4) The Council (or the governing body of the relevant Interest Group) shall provide within 14 days to the Member or prospective Member concerned (or member or prospective member of an Interest Group, as the case may be) written reasons for a Relevant Decision and shall give those reasons to the Appeal Panel should the

Member or prospective Member (or member or prospective member of an Interest Group, as the case may be) invoke the Appeals Process in respect of such Relevant Decision and otherwise co-operate in timely fashion with the Appeals Panel in relation to such Relevant Decision.

- (5) (a) The Council may from time to time revise the Appeals Process upon giving the Members not less than 28 days' prior notice of such revisions. Such revisions shall have no effect on any appeals proceedings which have already been commenced at the time such revisions are published, unless the parties involved in the proceedings otherwise agree.
- (b) Subject to any such agreement, any such procedures shall continue to be conducted pursuant to the Appeals Process in force at the time those proceedings were commenced.

8. Funding the NPC.

- (1) Each NPC Interest Group shall formulate its own budget for its own activities, and shall agree the formula by which the activities are funded from the members of the group or from other sources.
- (2) The budget of the NPC and the appropriate allocation of costs between Members and other sources shall be determined by the Council.
- (3) For the purpose of funding the NPC the Council may recover from any person the costs of specific services agreed in advance and delivered at the request of that person and allocate the remaining costs of the NPC (which shall be called 'Membership charges') to the Members on a fair and transparent basis.
- (4) The Membership charges referred to in paragraph (3) of this bye-law are payable within 30 calendar days of dispatch of the relevant notice.
- (5) This bye-law does not apply to the Bank or any other governmental bodies being Members.

9. The Role of the Council.

- (1) The Members shall constitute a Council, comprising appointees of the Members, in the manner described in the following paragraphs.
- (2) The Council is authorised by the Members 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.
- (3) In addition, and without prejudice to paragraph (2) of this bye-law, the Members shall delegate to the Council and the Council shall assume responsibility for:
 - (a) the management of the business of the NPC;
 - (b) the appointment of agents (including, without limitation, legal advisers and accountants) and other delegates, in each case on such terms as the Council deems appropriate;
 - (c) the creation or endorsement of Interest Groups, the approval of the bye-laws of such associations and of each amendment to such bye-laws, and the termination or dissolution of such associations; and
 - (d) the right to appoint and remove the following, in each case upon such terms as the Council deems appropriate:
 - (i) the Deputy Chairman, whose function shall be to deputise for the Chairman and who shall be a Council member. Provided that in the absence of the Chairman, the Deputy Chairman shall have the authority of the Chairman; and
 - (ii) other officers of the NPC.

10. Council Members.

- (1) (a) A Member shall appoint as its Council Member the individual who acts as its Chief Executive Officer in the Bahamas and has the capacity to commit the Member to the decisions of the NPC.
- (b) It may change that appointment when it chooses.

- (c) The Member shall notify the Secretary of any such appointment or change.
- (2) If two or more Members are related parties, they may only appoint one Council member pursuant to paragraph (1) of this bye-law.
- (3) If a Member ceases to be a Member of the NPC, the Council member it appointed shall thereupon cease to be a member of the Council.
- (4) Unless the Council determines otherwise, a Council member shall not be paid by the NPC for his or her services nor shall his or her expenses be reimbursed.
- (5) A Council member shall attend all meetings of the Council.
- (6) (a) A Council member may nominate an individual to be his or her alternate and may revoke that appointment at any time.
 - (b) A nomination made under paragraph (a) shall lapse if a member making a nomination ceases to be a Council member.
 - (c) In the absence of his or her appointor, an alternate may represent his or her appointor and vote in his or her stead.
- (7) (a) The appointment of an alternate, and any revocation thereof, shall be notified to the Secretary.
 - (b) The Secretary shall arrange for an alternate nominated pursuant to paragraph (6)(a) of this bye-law to receive copies of the papers circulated to the Council member as soon as practicable.
- (8) Senior representatives of the following may from time to time be invited to attend meetings of the Council in an advisory capacity only and with the option to speak but not to vote:
 - (a) the Bahamas Automated Clearing House;
 - (b) the Bahamas Interbank Settlement System; and
 - (c) any operator of a system or other stakeholder whom the Council considers appropriate.

11. Calling a Council Meeting.

- (1) The Council shall meet quarterly or sooner if one or more Council members require it to meet.
- (2) A notice calling a Council meeting shall be sent in writing to every Council member and the Chairman and the notice shall specify any issues that are expected to be considered at the meeting.
- (3) A notice calling a Council meeting shall be circulated at least 48 hours in advance of the meeting, or such other longer period as the Chairman shall from time to time determine.

12. Proceeding at Council Meetings.

- (1) (a) The Chairman of the Council, or in his or her absence, the Deputy Chairman shall preside as Chairman at the meetings of the Council.

(b) In the absence of the Chairman of the Council and the Deputy Chairman such other person agreed upon by the Council members then present shall act as Chairman.
- (2) (a) The Council shall decide the times and venues of its meetings.

(b) A meeting of the Council is deemed valid where a quorum of Council members is in touch by telephone or other form of communication agreed by the Council.
- (3) (a) The quorum of Council members needed to transact business at a Council meeting shall be such number of Council members (including alternates and those voting by proxy) who hold at least 75% of the total number of Council Votes.

(b) Unless a quorum is present when a decision is reached, the decision shall not be valid.

- (4) The Council may invite any person to attend and speak at all or part of a Council meeting but the person invited shall have no vote at the meeting.
- (5) A Council member who is directly or indirectly interested in a contract or other transaction made or proposed to be made by the NPC, shall disclose the nature of his interest at the first meeting of the Council at which he is present after the relevant facts have come to his knowledge and any such disclosure shall be recorded in the minutes of the Council meeting and after the disclosure that Council member shall not take part in any deliberation or decision of the Council with respect to that contract or transaction.
- (6) (a) The way in which a Council meeting is run shall be determined by its Chairman.
- (b) Any objection or query regarding voting or the number of Council Votes cast shall be referred to the Chairman of the meeting, whose decision shall be final.
- (7) (a) Each Member shall procure that each Council member and each alternate shall in accordance with the provisions of byelaw 5 keep confidential all information received from the NPC, even following the date upon which he or she has ceased to be a Council member or alternate.
- (b) Nothing contained in these Bye-laws shall prevent a Council member or his or her alternate and the Member which appointed him or her from disclosing such confidential information to the Member which appointed him or her (in the case of the Council member or his or her alternate) or to his, her or its accountants, auditors, legal or other professional advisers and to any other person (including regulatory authorities) to whom he, she or it is required by law to disclose such information provided that he, she or it takes reasonable steps to procure that any such person maintains the confidentiality of that information.
- (8) (a) The Secretary shall ensure that minutes of Council meetings are taken and circulated to all Council members and the Chairman within seven working days of the meeting.

- (b) The minutes shall be endorsed by the Council and then signed by the Chairman and shall then be taken as a statement of the facts therein.

13. Decision Taking at Council Meetings.

- (1) (a) A decision at Council meetings shall be made by consensus when, in the opinion of the Chairman, it is possible to achieve consensus; otherwise, a decision shall be made by voting.
 - (b) If a Council member or alternate present requests that a vote be held on any matter, it shall be held on that matter, irrespective of the Chairman's views on the possibility of achieving consensus.
- (2) A Council member (including Council member of the Bank) shall have one Council Vote.
- (3) (a) Proxy votes are permitted if written notification has been received by the Secretary prior to the relevant meeting.
 - (b) Postal or emailed votes are not permitted.
 - (c) If a Council member is also acting as a proxy for another Council member, the proxy vote of the absent Member shall be added to the Council Vote(s) of the Council member present.
- (4) A resolution put to the Council shall be carried if at least 75% of the total number of Council Votes held by the Council members who are present (including by proxy or by votes of alternates present) are cast in favour of it.

14. Committees.

- (1) (a) The Council may set up committees to undertake responsibilities delegated to them or to assist the Council in progressing the Objectives.
 - (b) The terms of reference of each such committee shall be agreed by the Council, and any changes shall be agreed by the Council.
 - (c) The Council may in relation to a committee established under paragraph (1) (a) -

- (i) appoint a or change a chairman of such;
 - (ii) determine the composition, procedures and any budget of such committee.
- (2) Any committee may elect a deputy chairman to act for the chairman when he is unavailable.
- (3) Unless otherwise determined by the Council, NPC committees shall be open to all Members at all times.
- (4) Where the Council agrees that the work of a committee is of general benefit to Members, it shall be funded as a routine NPC expense.
- (5) (a) The work of a committee which is deemed to be significant and only of benefit to some Members, shall be funded by the Members benefiting from such work.
 - (b) Any decisions to be made pursuant to this subparagraph shall be made by the Council.
- (6) (a) A decision of a committee shall be by consensus as far as possible but a voting system shall be agreed in advance, in case consensus is not possible.
 - (b) Meetings may be attended in person, by telephone conference or video conference, or other method, as decided by the committee chairman.
- (7) The Chairman-
 - (a) shall receive all the committee papers for every NPC committee;
 - (b) or his nominee has the right to attend and speak at every NPC committee meeting but not to vote.
- (8) The Council may vary the membership or funding arrangements for any NPC committee.

15. General Meetings.

- (1) The Council may, at any time and from time to time, convene a General Meeting for such purposes as it sees fit.

- (2) A Member may, by notice to the Secretary, request that a General Meeting be convened for the purpose of amending these Bye-laws or for considering such other matters as may be referred to in the request.
- (3) The Secretary shall, within 21 days of the date of receipt of a request by the Council or a Member—
 - (a) dispatch to all the Members a notice of a General Meeting; and
 - (b) dispatch a copy of the notice to all Council members and the Chairman.
- (4) The General Meeting shall not be held earlier than 14 days from the date of a notice under paragraph (3)(a).
- (5) Unless the Secretary is notified to the contrary, a Member's representative at any General Meeting shall be its Council member.
- (6) A notice of General Meeting shall specify the time and place of the General Meeting and the general nature of the business to be transacted.
- (7)
 - (a) The Chairman or, in his absence, the Deputy Chairman, shall be the Chairman of the General Meeting.
 - (b) In the absence from the General Meeting of the Chairman and the Deputy Chairman, the chairman shall be the representative of such other Members as may be agreed upon by the Members then present at the General Meeting.
- (8)
 - (a) The quorum needed to transact business at a General Meeting shall be Members whose Council members hold Council Votes, including any proxy votes held for the General Meeting, which constitute at least 75% of total Council Votes.
 - (b) Unless a quorum is present when a resolution is passed, that resolution shall not be valid.
- (9)
 - (a) Proxy votes are permitted if written notification (in a form satisfactory to the Secretary) has been received by the Secretary prior to the relevant General Meeting.

- (b) If a Member is also acting as a proxy for another Member the proxy votes of the absent Member shall be added to the vote(s) of the Member present.
 - (c) Postal or emailed votes are not permitted.
- (10) (a) At a General Meeting, each Member shall be entitled to cast the same number of votes as its Council member would, at that time, be entitled to cast at a Council meeting.
- (b) A resolution shall be passed if approved by Members present at the General Meeting (including by proxy) holding at least 50% of the votes held by the Members who are present, including any proxy votes held for the General Meeting.
- (11) A written resolution signed on behalf of Members whose Council members hold at least 75% of the total Council Votes, shall be as valid and effectual as if it had been proposed and passed at a General Meeting duly convened and held provided such resolution was sent (prior to its being signed on behalf of any Member) to all Members, all Council members and the Chairman.

16. Notices.

Any notice or other document which is required or authorized by or under these Bye-laws to be given to or served upon any person shall be in writing and may be given or served in any way or using any mechanism endorsed by the Chairman.

17. Indemnity.

Every Council Member, properly appointed agent of the Council and other NPC officer for the time being shall be indemnified out of the NPC's assets against all liabilities incurred by him or her as such Council Member, agent or other NPC officer insofar as he or she is acting in pursuit of the Objectives.

FIRST SCHEDULE (Bye-law 4(1))

PROCEDURES FOR ADMISSION TO THE NPC AS A MEMBER

1. Any person who wishes to be a Member of the NPC shall make application in writing to the Chairman.
2. An applicant which meets the criteria set out in paragraph (2) of bye-law 4 shall be admitted to Membership.
3. The Chairman shall confirm that the applicant meets the Membership criteria. The applicant shall provide additional information if requested by the Chairman.
4. Within thirty calendar days of receiving an application and any additional information requested, the Chairman shall recommend to the Council (or a sub-committee designated by the Council to determine Membership applications) whether the application should be approved.
5. Within thirty calendar days, the Council (or its designated sub-committee) will decide whether the application should be approved. The Secretary shall notify the applicant in writing of the decision within seven calendar days.
6. If the application is unsuccessful, the Secretary shall within 14 days notify the applicant of the Council's reasons for rejecting the application. He/she shall brief the applicant on the Appeals Process set out in the Second Schedule.

SECOND SCHEDULE (Bye-law 7(2))

THE APPEALS PROCESS

1. Within 30 days after the Council (or the governing body of the relevant Interest Group, as the case may be) has notified its decision, the Member ("Appellant") may give written notice ("Notice of Appeal") to the Chairman of its wish to appeal against the decision (Relevant Decision).
2. Within 7 working days following receipt of Notice of Appeal, the Chairman shall by written notice nominate an Appeal Panel to hear and determine the Appeal.
3. The Appeal Panel shall consist of three individuals who in the opinion of the Chairman are members of or professional advisers to the banking and/or financial services community in The Bahamas, of appropriate qualification and experience, independent of the Appellant and the NPC. The Chairman may, but shall not be obliged to, consult the Appellant and the NPC before making his/her nominations.
4. Within 14 days following their nomination and confirmation of their willingness to serve, the members of the Appeal Panel shall appoint one of their number to preside over the Appeal ("The Chair").
5. The Appeal shall be a re-hearing of the original determination of the NPC and shall be conducted in accordance with such process as the Chair shall consider appropriate to fulfill the requirements of natural justice.
6. The Appeal Panel shall arrive at its decision by majority vote. The Appeal Panel's decision shall be final and binding on the Appellant and the NPC and may include a ruling as to how the costs of the Appeal (including the remuneration of members of the Appeal Panel) shall be borne as between the Appellant and the NPC.