

THE PAYMENT SYSTEMS ACT, 2010

THE PAYMENT SYSTEMS (OVERSIGHT) REGULATIONS, 2010

The Central Bank of The Bahamas in exercise of the powers conferred by section 41 of the Payment Systems Act, 2010 makes the following Regulations -

1. Citation.

These Regulations may be cited as the Payment Systems (Oversight) Regulations, 2010.

2. Interpretation.

(1) In these Regulations -

“the Act” means the Payment Systems Act;

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

3. Yearly statements to be provided to Central Bank.

(1) Every operator, clearing house or settlement institution of a designated system shall, within four months of the end of its financial year provide to the Central Bank a true and full yearly statement of its accounts and the auditor of the operator, clearing house or settlement institution, as the case may be, shall certify that such statement is properly drawn up so as to exhibit a true and correct view of the state of the operator’s affairs or the affairs of the clearing house or settlement institution as shown by the books of the operator, clearing house or settlement institution;

Provided that the Bank may, if it sees fit, exempt any operator, clearing house or settlement institution from the provisions of this regulation.

(2) Such statement shall be signed by the manager or by such other person or officer of the operator, clearing house or settlement institution as may

from time to time be authorised by the operator, clearing house or settlement institution to sign such statement on behalf of the operator, clearing house or settlement institution; and the correctness thereof shall be declared to in such manner and by such persons as the Bank may direct.

- (3) Such statements shall be in such form and shall contain such particulars as the Central Bank may from time to time direct.

4. Other Audits.

- (1) An operator, clearing house or settlement institution of a designated system shall from time to time, if required by the Bank, furnish to the Bank:
 - (a) a special return;
 - (b) a report on its operations; andsuch further information as the Bank may reasonably see fit to call for.
- (2) The Central Bank may, where it considers it necessary, require that an examination in relation to any matter under paragraph (1) be carried out on its behalf, in whole or in part by a person duly appointed by the Bank for that purpose, at the expense of the operator, participant, clearing house or settlement institution as the case may be, and such person shall submit their report to the Central Bank within such period as the Bank may determine.

5. Failure to comply with the requirements of regulations 3 and 4.

- (1) If any person or any operator, clearing house or settlement institution of a designated system -
 - (a) fails to comply with the requirements of paragraph (1) of regulation 3 within a period of four months of the end its financial year; or
 - (b) fails to comply with the requirements of regulation 4 for forty-two days after the date appointed by the Bank under regulation 4 for

so doing, the operator, clearing house or settlement institution or person so in default shall be liable to a penalty of two hundred and fifty dollars for every day of such default.

Provided that the Central Bank may extend the time for sending any information or documents required under this regulation for such further period not exceeding sixty days as the Bank deems expedient.

- (2) The Central Bank may where it is satisfied that a person or an operator, clearing house or settlement institution is in default of the requirements of paragraph (1) of regulation 3 or of regulation 4, order the person, operator, clearing house or settlement institution to pay the penalty prescribed in paragraph (1) for every day during which the failure to comply occurs.

6. Appointment, Rights and Duties of Auditors.

- (1) An operator, clearing house or a settlement institution of a designated system shall appoint an auditor to audit its accounts; and where, for any reason, that auditor ceases to act for such operator, clearing house or settlement institution, the operator, clearing house or settlement institution shall, as soon as practicable thereafter, appoint another auditor.
- (2) The Central Bank may, for the purpose of carrying out its functions under the Act, conduct audits and inspections of the operator, clearing house or the settlement institution, as the case may be, of a designated system.
- (3) The Central Bank may, where it considers it necessary, at the expense of an operator, clearing house or settlement institution of a designated system, as the case may be, require that audits and inspections under paragraph (1) shall be carried out on its behalf, in whole or in part, by qualified auditors, who shall submit their report to the Central Bank.
- (4) The Central Bank and every auditor appointed to carry out audits and inspections shall be entitled to have access to the books, accounts and records of the operator, clearing house or settlement institution of the designated system and shall be entitled to require from the operator,

clearing house or settlement institution as the case may be, such information and explanations as they reasonably consider necessary for the performance of their duties under these Regulations.

- (5) The appointment of the auditors of the operator, clearing house or settlement institution of a designated system shall be notified to the Central Bank within fourteen days of the appointment.
- (6) The Central Bank may at any time, require the replacement of an auditor by notice in writing delivered to the usual place of business of the auditor and the operator, clearing house or settlement institution, as the case may be, of the auditor:

Provided however that the notice shall set out the grounds upon which the removal of the auditor is being sought and indicate that the auditor operator, clearing house or settlement institution of the auditor, as the case may be, may submit a written statement of objection to such action within such time as may be specified therein, not being less than seven days, and thereafter the Bank shall advise the auditor and the operator, clearing house or settlement institution of the auditor, as the case may be, of its decision.

- (7) An auditor of a system operator or of a clearing house or settlement institution shall 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 re-appointed as auditor; and
 - (c) a decision to include a modification of his report on the payment system operator's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.
- (8) An auditor or former auditor of a system operator, clearing house or settlement institution, shall give written notice to the Central Bank of any fact or matter of which he has or had become aware and which is

likely to be of material significance for the discharge, in relation to the payment system operator, clearing house or settlement institution, of the functions of the Central Bank under these Regulations.

- (9) An auditor or former auditor who fails to comply with this regulation shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.
- (10) This regulation shall apply to any matter of which an auditor or former auditor of a system operator, clearing house or settlement institution has or had become aware in his capacity as auditor and which relates to the business or affairs of the system operator, clearing house or settlement institution or any related company.
- (11) In this regulation "related company", in relation to a system operator, clearing house or settlement institution means –
 - (a) a parent, subsidiary or associate company of that system operator, clearing house or settlement institution;
 - (b) a subsidiary company of a parent company of that system operator, clearing house or settlement institution;
 - (c) a parent company of a subsidiary company of that system operator, clearing house or settlement institution; or
 - (d) a company, in the case of which a controlling shareholder of that system operator, clearing house or settlement institution either alone or with one or more associates, holds 10 per cent or more of the shares or is entitled to exercise, or to control the exercise of more than 10 per cent of the voting power at a general meeting.

7. Appointment of Directors and Officers.

- (1) No operator of a designated system shall appoint a person as its –
 - (a) chief executive officer in The Bahamas; or
 - (b) director in The Bahamas,unless the operator has obtained the approval of the Central Bank.

- (2) Subject to regulation 8, where an operator of a designated system has obtained the approval of the Central Bank to appoint a person as its chief executive officer or director under paragraph (1), the person may, upon the expiry of his term, be reappointed as chief executive officer or director, as the case may be, without the approval of the Central Bank.
- (3) An application for approval under paragraph (1) shall be made in such form and manner as the Central Bank may prescribe.
- (4) Without prejudice to any other matters that the Bank may consider relevant, the Central Bank may, in determining whether to grant its approval under paragraph (1), have regard to such criteria as the Bank may prescribe or specify in written directions.
- (5) Subject to paragraph (6), the Central Bank shall not refuse an application for approval under this regulation without giving the operator of the designated system an opportunity to be heard.
- (6) The Central Bank may refuse an application for approval under paragraph (1) on any of the following grounds without giving the operator of the designated system an opportunity to be heard:
 - (a) the person is an undischarged bankrupt, whether in The Bahamas or elsewhere;
 - (b) the person has been convicted, whether in The Bahamas or elsewhere, of an offence –
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.
- (7) Where the Central Bank refuses an application for approval under this regulation, the Central Bank need not give the person who was proposed to be appointed an opportunity to be heard.

- (8) The operator of a designated system shall, as soon as practicable, give written notice to the Central Bank of the resignation or removal of its chief executive officer or a director.
- (9) Any person who contravenes paragraph (1) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

8. Removal of chief executive officer and directors.

- (1) Where the Central Bank is satisfied that the chief executive officer or a director of an operator of a designated payment system –
 - (a) has wilfully contravened or wilfully caused that operator of the designated system to contravene these Regulations or the Act;
 - (b) has without reasonable justification or excuse failed to ensure compliance with these Regulations or with the Act;
 - (c) has failed to discharge the duties or functions of his office or employment;
 - (d) is an undischarged bankrupt, whether in The Bahamas or elsewhere;
 - (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
 - (f) has, whether in The Bahamas or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
 - (g) has been convicted, whether in The Bahamas or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

the Bank may, if it thinks it necessary in the interests of the public or a section of the public, by notice in writing direct the operator of the

designated system to remove the chief executive officer or director from his office or employment, and that operator shall comply with such notice.

- (2) Without prejudice to any other matter that the Central Bank may consider relevant, the Bank may, in determining whether the chief executive officer or a director of an operator of a designated system has failed to discharge the duties or functions of his office or employment for the purposes of sub-paragraph (1) (c), have regard to such criteria as the Central Bank may prescribe or specify in written directions.
- (3) Subject to paragraph (4), the Central Bank shall not direct an operator of a designated system to remove from office or employment the chief executive officer or a director without giving that operator an opportunity to be heard.
- (4) The Central Bank may direct an operator of a designated system to remove the chief executive officer or a director from his office or employment under paragraph (1) on any of the following grounds without giving the operator an opportunity to be heard:
 - (a) the chief executive officer or director is an undischarged bankrupt, whether in The Bahamas or elsewhere;
 - (b) the chief executive officer or a director has been convicted, whether in The Bahamas or elsewhere, of an offence –
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) which is punishable with imprisonment for a term of 3 months or more.
- (5) Where the Central Bank directs an operator of a designated system to remove from his office or employment the chief executive officer or a director under paragraph (1), the Bank need not give that chief executive officer or director an opportunity to be heard.

- (6) Subject to paragraph (7), no criminal or civil liability shall be incurred by –
- (a) an operator of a designated system; or
 - (b) any person acting on behalf of an operator of a designated system, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this regulation.
- (7) Any operator of a designated system which, without reasonable excuse, contravenes a written direction issued under paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

9. Control of a substantial shareholding in operator.

- (1) No person shall enter into any agreement to acquire shares in an operator of a designated system by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the operator without first obtaining the approval of the Central Bank to enter into the agreement.
- (2) No person shall own, hold or exercise voting control over, whether alone or together with his associates, 20% or more of the paid up share capital of an operator of a designated system without first obtaining the approval of the Central Bank.
- (3) In this regulation –
- (a) a reference to the acquisition or voting control of a percentage of the paid up share capital in an operator of a designated system is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the operator of the designated system; and
 - (b) a person, A, is an associate of another person, B, if

- (i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of B;
- (ii) A is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B, or where B is a corporation, of the directors of B;
- (iii) B is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A, or where A is a corporation, of the directors of A;
- (iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;
- (vi) A is a related corporation of B;
- (vii) A is a corporation in which B, alone or together with other associates of B as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in A;
- (viii) B is a corporation in which A, alone or together with other associates of A as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in B;
or
- (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the operator of the designated system.

10. Approval of applications for substantial shareholding.

- (1) The Central Bank may grant its approval referred to in paragraph (1) or (2) of regulation 9 subject to such conditions or restrictions as the Bank may think fit.
- (2) Without prejudice to paragraph (1), the Central Bank may, for the purposes of securing compliance with paragraph (1) or (2) of regulation 9 or any condition or restriction imposed under paragraph (1), by notice in writing, direct the transfer or disposal of all or any of the shares of an operator of a designated system in which the substantial shareholder has an interest.
- (3) Until a person to whom a direction is issued under paragraph (2) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the

Companies Act or the memorandum or articles of association of the operator of the designated system –

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
 - (b) the operator of the designated system shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
 - (c) except in a liquidation of the operator of the designated system, the operator of the designated system shall not make any payment (whether by way of cash dividend, dividend in kind, or otherwise) in respect of the shares which are the subject of the direction.
- (4) Any offer or issue of shares by an operator of a designated system in contravention of sub-paragraph (3) (b) shall be deemed to be null and void, and a person to whom a direction has been issued under paragraph (2) shall immediately return those shares to the operator of the designated system, upon which the operator of the designated

system shall return to the person any payment received from him in respect of those shares.

- (5) Any payment made by an operator of a designated system in contravention of sub-paragraph (3) (c) shall be deemed to be null and void, and a person to whom a direction has been issued under paragraph (2) shall immediately return the payment he has received to the operator of the designated system.
- (6) The Central Bank may exempt –
 - (a) any person or class of persons; or
 - (b) any class or description of shares or interests in shares, from paragraphs (1) or (2) of regulation 9, subject to such conditions or restrictions as may be imposed by the Central Bank.

11. Contravention of regulations 9 and 10.

- (1) Any person who contravenes paragraphs (1) or (2) of regulation 9, or any condition or restriction imposed by the Central Bank under paragraph (1) of regulation 10, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.
- (2) Any person who contravenes sub-paragraph (3) (b) or (c), or paragraph (4) or (5) of regulation 10 or any direction issued by the Central Bank under paragraph (2) of regulation 10 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

12. Emergency powers of Bank.

- (1) Where the Central Bank has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public, the Bank may, by notice in writing, direct an

operator, clearing house or a settlement institution of a designated system to take such action as the Bank considers necessary to maintain or restore the safe and efficient operation of the designated system.

- (2) Without prejudice to the generality of paragraph (1), the actions which the Bank may direct an operator, clearing house or a settlement institution of a designated system to take include modifying or suspending any of the rules of the designated system.
- (3) Where an operator, clearing house or a settlement institution of a designated system fails to comply with a direction of the Bank under paragraph (1) within such time as is specified by the Bank, the Bank may –
 - (a) appoint a person to advise the operator, clearing house or settlement institution in the proper conduct of its operations;
 - (b) assume control of and carry on the operations of the operator, clearing house or settlement institution (or each of them) or direct some other person to do so on behalf of the Bank;
 - (c) require the operator to cease operation of the designated system;
 - (d) apply to the Supreme Court for an order that the operator, clearing house or settlement institution (or each of them) be forthwith wound up by the court in which case the provisions of the Companies Act relating to the winding up of a company by the court shall, *mutatis mutandis*, apply;
 - (e) in any case in which a person who has at any time been an operator, clearing house or settlement institution is being wound up voluntarily, the Bank may apply to the Supreme Court if it considers that the winding up is not being conducted in the best interests of the customers of the participants of the system or of the settlement institution of the system, or other creditors, and the court shall make such order as it shall consider appropriate in the winding up; or

- (f) take such other action, as the Bank thinks fit, to maintain or restore the safe and efficient operation of the designated system.
- (4) The Bank may modify or cancel any action taken by it under paragraph (1), and in so modifying or cancelling any such action, the Bank may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.
- (5) Where the Bank has assumed control of the operations of an operator, clearing house or a settlement institution of a designated system pursuant to sub-paragraph (3) (b), the Bank shall remain in control of, and continue to carry on, the operations in the name of the operator, clearing house or settlement institution, as the case may be, and on its behalf until such time as the Bank is satisfied that the reasons for which it assumed control have ceased to exist or that it is no longer necessary that the Bank should remain in control.
- (6) Where the Bank has assumed control of the operations of an operator, clearing house or a settlement institution of a designated system pursuant to sub-paragraph (3) (b) or ceased to control the operations of an operator, clearing house or a settlement institution of a designated system pursuant to paragraph (5), the Bank shall notify that fact in the Gazette.
- (7) Where the Bank has assumed control of the operations of an operator, clearing house or a settlement institution of a designated system pursuant to sub-paragraph (3) (b), the operator, clearing house or settlement institution shall submit its operations to the control of the Bank and shall provide the Bank with such facilities as the Bank may require to carry on its operations.
- (8) Any operator, clearing house or settlement institution which fails to comply with a direction issued under paragraph (1), or with paragraph (7) or with any requirement of the Central Bank under paragraph (7), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

- (9) The Central Bank may at any time (whether or not the appointment of the person has terminated) fix the remuneration and expenses to be paid by the operator, clearing house or settlement institution of the designated system to any person appointed by the Bank under sub-paragraph (3) (a) to advise the operator, clearing house or settlement institution in the proper conduct of its operations.
- (10) Where, under sub-paragraph (3) (b), the Bank has assumed control of the operations of an operator, clearing house or a settlement institution of a designated system or directed some other person to do so, the Bank may, at any time, whether or not the Bank or that other person has ceased to be in control of the operations of the operator, clearing house or settlement institution, fix the remuneration and expenses to be paid by the operator, clearing house or settlement institution to –
- (a) the Bank; and
 - (b) any person employed or authorised by it to assist the Bank in the control of, and the carrying on of the operations of the operator, clearing house or settlement institution.
- (11) An operator, clearing house or a settlement institution which is aggrieved by any action taken by the Bank under this regulation may, within 30 days after the person is notified of the action, appeal to the Supreme Court.
- (12) Notwithstanding the lodging of an appeal under paragraph (11), any action taken by the Bank under this regulation shall continue to have effect pending the judgment of the Court.
- (13) In this regulation, “emergency” means –
- (a) any situation which prevents a designated system from carrying out its functions;
 - (b) any situation in which, in the opinion of the Bank, a designated system is carrying on its operations in a manner likely to be detrimental to the interests of its participants; or

- (c) any undesirable situation or practice which, in the opinion of the Bank, constitutes an emergency.

13. Fines.

The Bank may impose a fine not exceeding \$50,000 where any person fails to comply with any of the provisions of these regulations and in the case of a continuing breach, \$500 for each day that the breach continues.

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