

PAYMENT SYSTEMS ACT, 2010

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DRAFT

NO. of 2010

AN ACT to make provisions for the regulation and oversight of payment systems and payment instruments and for matters connected therewith.

ENACTED BY THE PARLIAMENT OF THE BAHAMAS

Part I

PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Payment Systems Act, 2010.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice in the Gazette.

2. Obligations of Bank in addition to existing powers.

- (1) The obligations, requirements, powers and regulatory schemes established under the provisions of this Act, shall be in addition to the obligations, requirements, powers and regulatory schemes under any other written law, and the powers conferred on the Central Bank by this Act shall be in addition to those conferred on it by the Central Bank of the Bahamas Act, 2000, the Banks and Trust Companies Regulation Act, 2000 or any other written law for the time being in force.
- (2) The provisions of the Act shall be read and construed in conformity with the Central Bank of the Bahamas Act, 2000 and the Banks and Trust Companies Regulation Act, 2000.

3. Interpretation.

- (1) In this Act -

“Central Bank” means the Central Bank of the Bahamas, established under section 3 of the Central Bank of the Bahamas Act, 2000 and “Bank” shall be construed accordingly;

“central counter-party” means a company, corporation, association, partnership, agency or other entity in a payment or securities settlement system which is interposed between the participants and which acts as the exclusive counter-party of these institutions with regard to their transfer orders;

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

“financial collateral” means any of the following which is subject to an interest or a right, or that is subject to a title transfer securing payment or performance of an obligation in respect of a financial contract:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits;
- (b) securities, a securities account, a securities entitlement or a right to acquire securities; or
- (c) a future agreement or future account.

“Minister” means the Minister of Finance;

“netting” means the conversion into one net claim or one 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;

“operator” in relation to a payment or securities settlement system, means a person who operates and/or administers the system;

“overseas regulatory authority” means an authority which, in a country or territory outside The Bahamas, exercises functions corresponding to –

- (a) any functions of the Bank; or
- (b) any additional regulatory functions in relation to companies or financial services as the Bank may specify by order including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority;

"participant" means any person, excluding the Bank, who participates in an approved payment or securities settlement system and may include an indirect participant approved by the Bank;

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

Provided that the Bank may also, on a case-by-case basis, designate as a payment system under this Act such a formal arrangement between two participants where the Bank considers that this is warranted on grounds of systemic risk.

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

"payment transaction" means 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;

"regulatory laws" means the Banks and Trust Companies Regulation Act, 2000;

"settlement institution" means a person who provides facilities for –

- (a) the participants of a payment system to hold funds; and
- (b) the settling of transactions between the participants.

“securities” means transferable securities traded on a local stock exchange authorised under the Securities Industry Regulations;

“securities settlement system” means a formal arrangement between three or more participants, with common rules and standardised arrangements for the settlement of securities;

“settlement agent” shall mean an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes;

“settlement account” means an account at the Bank, settlement agent or a central counterparty, used to hold funds or securities and to settle transactions between participants in a system;

“system” means a payment or securities settlement system, as the case may be and includes a system that is administered or operated outside of The Bahamas.

“transfer order” means any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, settlement agent or the Bank, or any instruction which results in the assumption or discharge of a payment obligation, or any instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise.

Part II

FUNCTIONS AND POWERS OF THE CENTRAL BANK

4. Bank to exercise oversight.

- (1) The Central Bank, may in the exercise of its functions pursuant to section 5(1)(b) and (c) and section 25 of the Central Bank of The Bahamas Act, 2000 in relation to the oversight of payment systems, clearing and settlement systems and payment instruments:

- (a) determine general or individual standards and guidelines;
 - (b) establish and perform control and audit procedures; and
 - (c) impose administrative sanctions.
- (2) In the exercise of powers conferred on it under section 5(1)(b) and (c) and section 25 of the Central Bank of The Bahamas Act, 2000 and by this section, the Bank shall be guided by best international standards.

5. Bank to have regard to public interest.

- (1) In exercising its powers under this Act, the Central Bank shall have regard to the interests of the public, and in this respect, the Central Bank may take into consideration -
- (a) whether any system is, in the opinion of the Central Bank –
 - (i) financially safe for use by participants;
 - (ii) efficient;
 - (iii) competitive;
 - (iv) not materially causing or contributing to increased risk to the financial system of The Bahamas; and
 - (b) such other matters as the Central Bank may consider to be relevant.

Part III

NATIONAL PAYMENT SYSTEMS POLICY

6. Bank to oversee national payment systems policy.

- (1) The Central Bank shall have the power to formulate, adopt and monitor the implementation of a national payment systems policy for The Bahamas.
- (2) The Central Bank shall make public any policy referred to in subsection (1).

- (3) The national payment systems policy of the Bank shall primarily be designed to facilitate the overall stability of the financial system of The Bahamas, promote payment systems safety and efficiency and to control risk.
- (4) Subject to subsection (3), the national payment systems policy formulated or adopted by the Bank shall be designed to enhance other aspects of the public interest and particularly contribute to the promotion of competition in the market for payment services and the protection of payment and securities systems users.
- (5) In pursuance of the policy objectives set out in subsections (3) and (4), the Bank shall also facilitate:
 - (a) the interaction of its clearing and settlement systems and related arrangements with other systems or arrangements connected with the exchange, clearing or settlement, of payments or securities;
 - (b) the development of new methods and technologies for payments and the transfer of securities; and
 - (c) the cooperation among all participants in the evolution of payment systems and the provision of money services.
- (6) In promoting safety and efficiency of the national payments system, the Bank shall cooperate with central banks of other countries and with other relevant domestic authorities and to this end it shall be permitted to undertake commitments under memoranda of understanding and/or other instruments and, unless this is prohibited by law, adopt joint measures.

7. Establishment of National Payments Committee.

- (1) The Bank shall also promote the establishment of a National Payments Committee as an advisory body to the Bank in its oversight functions.
- (2) The National Payments Committee shall support the achievement of sound and efficient payment and securities clearing and settlement systems in The Bahamas and serve as a forum for cooperation to maintain orderly conditions in regional and international systems.
- (3) The members of the National Payments Committee shall be:

- (a) the Bank, whose representative shall also act as Chairman of the Committee;
 - (b) other governmental bodies regulating or in any other way involved in payments activities and the financial markets;
 - (c) major financial institutions involved in payments activities or clearing and settlement of securities or their national associations; and
 - (d) persons involved in payments activities and the financial markets.
- (4) The Bank may issue Byelaws on the composition of the Committee, its competences, working procedures and timing of meetings and all other matters relevant to the operations and functions of the Committee.
- (5) The Bank shall serve as the secretariat of the National Payments Committee.

8. Approval required for domestic payment, clearing and settlement systems.

- (1) No person shall organise, establish, operate or participate in a domestic payment, clearing or settlement system unless such system is approved in writing by the Bank and notice of such approval is published in the Official Gazette.
- (2) Every person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand five hundred dollars for each day during which the offence continues.

9. Withdrawal of approval.

- (1) Where the Bank is of the view that a domestic payment, clearing or settlement system is being operated in a manner that is detrimental to-
- (a) the interests of the participants or customers of that system; or
 - (b) the financial system of The Bahamas,

the Bank may by Order withdraw any approval granted pursuant to subsection (1) of section 8 and such Order shall be published in the Official Gazette and shall take effect from such date as the Bank may determine.

- (2) The Central Bank shall, before withdrawing any approval pursuant to subsection (1), give the operator, clearing house or settlement institution, as the case may be, an opportunity to be heard.

Part IV
FINALITY OF PAYMENTS
AND PROTECTION OF SYSTEMS

10. Effect of system rules and Finality of Payments.

- (1) Notwithstanding anything in any statute or other law of The Bahamas -
 - (a) the settlement rules of an approved system are valid and are binding on the system, the participants, a central counter-party and the Bank and any action may be taken or payment made in accordance with the settlement rules;
 - (b) the obligation of a participant, a system or a central counter-party to make payment or transfer securities to a participant and the right of a participant, a system or a central counter-party to receive payment or securities from a participant, a system or a central counter-party shall be netted and a net settlement or close-out amount shall be determined in accordance with the settlement rules, if they so provide; and
 - (c) where the settlement rules of an approved system provide that the settlement of a payment obligation through an entry to or a payment out of an account of a participant, a system or a central counter-party at the Bank is final and irrevocable, the entry or payment shall not be required to be reversed, repaid or set aside.

- (2) An entry to or a payment out of the account of a participant, a system or a central counter-party at the Bank to settle a payment obligation in an approved system shall not be the subject of any provision or order that operates as a stay of that activity.
- (3) The rights and remedies of a participant, a system, a central counter-party or the Bank in respect of collateral granted to it as security for a payment or the performance of an obligation incurred in an approved system may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.
- (4) Notwithstanding that all or part of the administration or operation of an approved system is conducted outside The Bahamas or that its settlement rules are governed by the laws of a foreign jurisdiction, where in any judicial proceedings in The Bahamas a court determines that the rights and obligations of any person arising out of or in connection with the operation of the approved system are governed in whole or in part by Bahamian law, the provisions of this section shall be applied to the extent that Bahamian law applies in determining those rights and obligations.
- (5) Notwithstanding anything in any law relating to bankruptcy or insolvency or any order of a court made pursuant to a petition to wind up any company, or an administration of a reorganization, arrangement or receivership involving insolvency, including in any foreign law or order of a foreign court, where a financial institution or the Bank is a party to a netting agreement or to a close-out netting, the financial institution or the Bank may terminate the agreement and determine a net termination value or net settlement amount in accordance with the provisions of the agreement and the party entitled to the net termination value or settlement amount is to be a creditor of the party owing the net termination value or net settlement amount for that value or amount.
- (6) If a netting agreement referred to in subsection (5) is a financial contract defined as eligible by the Bank in relation to this Act, the financial institution or the Bank may also, in accordance with the provisions of that agreement, deal with financial collateral, including:
 - (a) selling, foreclosing or surrendering financial collateral; and

- (b) setting off or compensating financial collateral or applying the proceeds or value of financial collateral.
- (7) For the purposes of this Act “insolvency proceedings” shall mean any collective measures provided for in any applicable law, either to wind-up a participant or to re-organize it, whether voluntarily or involuntarily, or to suspend its business, where such measures involve the suspending of, or the imposing of limitations on, payment orders and payments.

11. Protection from insolvency proceedings.

- (1) Insolvency proceedings commenced against a participant shall not have retroactive effect on the rights and obligations of a participant which arose from, or in connection with, its participation in a system before the commencement of such insolvency proceedings.
- (2) For the purpose of this Act, the moment of commencement of insolvency proceedings against a participant of a system shall be the moment when the operator of this system is informed of the commencement of such insolvency proceedings.
- (3) The following are valid, enforceable, binding against liquidators and/or third parties, and shall not be challenged on any ground whatsoever:
 - (a) transfer orders and the payments and settlements resulting from such transfer orders, which have been entered into a system in accordance with its rules prior to the moment of the commencement of the insolvency proceedings, even if the payment or settlement took place after the moment of commencement of insolvency proceedings; and
 - (b) the netting of transfer orders and of the debts and obligations resulting from such transfer orders when the former have been entered into a system in accordance with its rules prior to the moment of the commencement of insolvency proceedings, even if

the netting took place after the moment of the commencement of insolvency proceedings.

- (4) Notwithstanding the commencement of insolvency proceedings against a participant in a system, and subject to subsection (1) , the system, its operator or the settlement agent may, if authorised under the applicable system rules or other relevant contractual provisions, make use of-
 - (a) money and financial collateral available on the settlement account of the participant in order to settle outstanding transfer orders and any net debit balance the participant may owe after netting to allow for final settlement of the system; and
 - (b) credit lines granted to the participant and realise any collateral provided for the purpose of securing such credit lines.
- (5) Where a court makes an order to wind-up one of the participants of a system, the court shall forthwith notify both the operator of the system and the Central Bank that such an order has been made.
- (6) Where a resolution to voluntarily wind-up a participant of a system has been passed, the participant shall forthwith notify both the operator of the system and the Central Bank that such a resolution has been passed.

12. Non recognition of insolvency order of foreign court.

Notwithstanding any other written law or rule of law, a court shall not recognise or give effect to an order of a court exercising jurisdiction under the law of insolvency outside The Bahamas in so far as the making of that order would be inconsistent with or contrary to the provisions of this Act.

Part V
ELECTRONIC PROCESSING OF PAYMENTS

13. Truncation of cheques.

- (1) In order to facilitate electronic processing of payment instruments, in particular by way of multilateral clearing procedures, a cheque may be presented for payment to the banker on whom it is drawn by notification of the cheque's essential features by physical presentation of the cheque, electronic means or otherwise, including electronic transmission of the image of a cheque.
- (2) Essential features of a cheque are:
 - (a) the serial number of the cheque,
 - (b) the code which identifies the bank on whom the cheque is drawn,
 - (c) the account number of the drawer of the cheque,
 - (d) the amount for which the cheque is drawn as entered by the drawer of the cheque; and
 - (e) any other feature which the Bank may by Order prescribe from time to time.
- (3) For the purposes of this section, the image of a cheque which is presented electronically shall comprise the front view and the back view of the cheque.
- (4) If, before the close of business on the business day immediately following presentation of a cheque by electronic means or otherwise, the banker on whom the cheque is drawn requests the banker by whom the cheque was presented to present the cheque itself,
 - (a) the presentment by electronic means or otherwise shall be disregarded, and
 - (b) this section shall not apply to the subsequent presentment of the cheque.

- (5) A request under subsection (4) above for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.
- (6) Where presentment of a cheque is made by electronic means or otherwise, the banker who presented the cheque and the banker on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.
- (7) Section 52 (4) of the Bills of Exchange Act shall not apply –
 - (a) in relation to presenting a bill for payment, to presenting a cheque for payment by electronic means pursuant to subsection (1); and
 - (b) in relation to a bill which is paid, to a cheque which is paid following presentment by electronic means pursuant to subsection (1).
- (8) For the avoidance of doubt, any payment made upon presentment in accordance with this section shall not be taken to have been made outside of the ordinary course of business, in bad faith or negligently only because it is made by electronic means rather than by presentment of the cheque itself.

14. Image Return Documents.

- (1) Where a cheque presented for payment in accordance with section 13 (1) is dishonoured by non-payment, the banker to whom it was first presented by the holder (referred to in this section as the presenting banker) shall, unless the presenting banker returns the cheque itself or the holder requests the return of the cheque itself, issue to the holder an image return document.
- (2) Subject to subsection (4), an image return document may be presented for payment to the presenting banker by the holder to whom the image return document was issued as if that document were the cheque to which it relates.
- (3) An image return document shall be deemed to be the cheque to which it relates for the purpose of presentment under subsection (2).

- (4) An image return document may be presented under subsection (2) for payment by the holder only if –
 - (a) the presenting banker states in that document that it is valid for presentment; and
 - (b) the presentment is made within the period for its presentment stated in that document.
- (5) Where an image return document has been lost before the expiry of the period for its presentment stated therein, the person who was the holder of the document may apply to the drawer of the cheque to which the document relates, and the drawer may be compelled, to give him another cheque of the same tenor, subject to him giving security to indemnify the drawer (if required) against all claims arising in case the document alleged to have been lost is found again.
- (6) In this section, “image return document” means a document issued by a presenting banker containing such particulars as may be prescribed by the Bank under section 41(2)(a).

Part VI

DESIGNATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS

15. Power of Bank to designate systems.

- (1) The Central Bank may, by order published in the Gazette, designate a system as a designated system for the purposes of this Act.
- (2) The Central Bank shall take the following factors into account when considering whether to designate a system-
 - (a) 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;

- (b) whether a disruption in the operations of the system could affect public confidence in payment systems or the financial system of The Bahamas;
 - (c) the best interests of system participants and their customers; or
 - (d) the best interests of the financial system of The Bahamas.
- (3) Any order made under subsection (1) shall identify the operator and the settlement institution of the designated system, and shall continue to have effect until it is withdrawn by the Central Bank.
 - (4) Prior to the designation of a system, the Central Bank shall consult the operator, participants of the system, and the settlement institution of the system and may consult interested parties, with respect to the effects of such designation.
 - (5) The Central Bank shall notify the operator, participants or settlement institution of the designation of the system in such manner as the Central Bank considers appropriate.
 - (6) A designation made under subsection (1) shall be effective from the date specified in such notification.

16. Power of Bank to issue Directions.

- (1) The Central Bank may, where it is of the opinion that—
 - (a) it is necessary or expedient for ensuring the integrity or proper management of a designated system;
 - (b) it is necessary or expedient for the effective administration of the Act;
 - (c) it is otherwise in the interests of the public or a section of the public;
 - (d) a person is engaged in, or is about to engage in any unsafe, unsound or unfair practice in the operation of a system; or
 - (e) a person has contravened or failed to comply with, or is likely to contravene or fail to comply with the provisions of this Act, or any rule, regulation, instruction, direction or order given under this Act or any other written law which in the opinion of the Central

Bank relates to systems or any category thereof, issue written directions, either of a general or specific nature, to-

- (i) any participant or class of participants;
- (ii) any operator; or
- (iii) any settlement institution,

of a designated system, and that person or class of persons shall comply with such directions.

- (2) Without prejudice to the generality of subsection (1), any written direction issued under that subsection may relate to—
 - (a) the appropriate actions to be taken by the participant or class of participants, or the operator or the settlement institution, in relation to its business;
 - (b) the appointment of a person approved by the Central Bank to advise the participant or class of participants, or the operator or the settlement institution, on the proper conduct of its business;
 - (c) the conditions that will apply if any function of the operator or the settlement institution is outsourced; and
 - (d) such other matters as the Central Bank may consider necessary or expedient or in the interests of the public or a section of the public.
- (3) Any person who fails to comply with a written direction issued under subsection (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.

17. Withdrawal of designation of system.

- (1) The Central Bank may, by order published in the Gazette, withdraw the designation of any designated system at any time if the Central Bank is of the opinion that the considerations in section 15(2) are no longer valid or satisfied.

- (2) The Central Bank shall not on its own initiative withdraw the designation of any designated system without giving the operator and the settlement institution an opportunity to be heard.

18. Operator to forward system rules to Central Bank.

- (1) The operator of a designated system or, if there is no operator, the participants of the designated system and the settlement institution of the designated system shall forward to the Central Bank a copy of every system rule governing the designated system, within such periods as are hereinafter set out –
 - (i) where a system rule was made before the designation of the system, within thirty days of the date of such designation ; and
 - (ii) where a system rule was made after the designation of the system, within ten days of the date of the making of such rule.
- (2) A system rule, other than a system rule referred to in paragraph (i) of subsection (1) shall not come into operation before the thirtieth day after a copy of it is sent to the Central Bank under subsection (1):

Provided that, the Central Bank may declare the system rule to be in force at any time before the expiry of the aforementioned periods.
- (3) Where the Central Bank is of the opinion that an extension of the period specified in subsection (2) is required to permit adequate review of a system rule, the Central Bank may within ten days after its receipt, after giving written notice to the sender of the system rule, extend that period up to thirty days.
- (4) The Central Bank may disallow the whole or a part of a system rule governing a designated system, before or anytime after it comes into force or is in force.
- (5) A system rule that is disallowed pursuant to subsection (4) becomes ineffective from the moment the decision to disallow it is communicated in writing to the participants of a designated system, or at any time thereafter, as instructed by the Central Bank in its decision to disallow the system rule.

- (6) Where-
- (a) a system rule in force is disallowed in whole or in part by the Central Bank under subsection (4), giving rise to the need to amend or replace the system rule in order to facilitate the continued smooth operation of the designated system, the decision of the Central Bank to disallow it must be included in a direction, issued pursuant to section 16;
 - (b) the Central Bank issues a direction in relation to a decision to disallow a system rule in whole or in part, every such direction shall provide a text for a temporary system rule which shall be applicable until an amendment or replacement to the rule is adopted by the system;
 - (c) the Central Bank has issued a temporary system rule pursuant to paragraph (b), such rule becomes effective immediately upon the rule which is to be amended or replaced, becoming ineffective.
- (7) The Central Bank may exempt a designated system from the requirements of subsection (2).

PART VII

ACCESS REGIME

19. Power of Bank to issue Orders.

- (1) The Central Bank may impose by Order on the operator, participant or settlement institution of a designated System, such conditions or restrictions as the Bank may think fit and shall publish such Order in the Gazette.
- (2) The Central Bank may, at any time, vary by Order any condition or restriction imposed under subsection (1), as the Bank may think fit and shall publish such Order in the Official Gazette.

- (3) Without affecting the generality of subsection (1) or (2) the conditions or restrictions that the Central Bank may impose include conditions or restrictions relating to –
 - (a) the conditions to be met by any person in order to have access or to become a participant of the designated system;
 - (b) the operation of the designated system, including the clearing and settlement procedures to be followed;
 - (c) the interaction of the designated system with other systems;
 - (d) the relationship of the designated system with its participants; or
 - (e) the requirement for the operator or settlement institution of the designated system to operate as a company.
- (4) Any participant, operator or settlement institution of a designated system which fails to comply with any condition or restriction imposed under subsection (1) or (2) 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.
- (5) The Central Bank shall, prior to issuing any written direction under subsection (7), consult the person to whom it is directed, and may also consult any interested persons with respect to the content and the effect of the direction.
- (6) In considering whether to impose conditions or restrictions under subsection (1), the Central Bank shall have regard to the following:
 - (a) whether the imposition of the conditions or restrictions in respect of the designated system would be in the interests of the public;
 - (b) the interests of the current participants, operator and settlement institution of the designated system;
 - (c) the interests of persons who, in the future, may require or desire access to the designated system; and
 - (d) such other matters as the Bank may consider to be relevant.

- (7) The Central Bank may by a written direction specify that an operator, participant or settlement institution of a designated system shall, within such time as the Central Bank considers necessary –
- (a) cease or refrain from engaging in an act or course of conduct;
 - (b) perform such acts as in the opinion of the Central Bank are necessary in the public interest; or
 - (c) make, amend or repeal a payment system rule.
- (8) As soon as is practicable (but not more than thirty days) after implementing a direction and completing any actions required to be taken in connection with it, the person to whom it is given shall notify the Central Bank that the direction has been implemented and the action completed.
- (9) Every direction issued under this section-
- (a) shall be communicated to the person to whom it is directed;
 - (b) shall come into operation from the date of its issue; and
 - (c) is binding on the person to whom it is directed.

20. Variation of access regime.

The Central Bank shall in considering whether to vary a condition or restriction under subsection 19(2), have regard to-

- (a) whether the variation of the restrictions or conditions in respect of the designated system would be in the interests of the public;
- (b) the interests of the current participants, operator and settlement institution of the designated system;
- (c) the interests of persons who, in the future, may require or desire access to the designated system; and
- (d) such other matters as the Bank may consider to be relevant.

21. Cessation and revocation of access regime.

- (1) A condition or restriction in respect of a designated system shall cease to be in force if –

- (a) the order imposing or varying the condition or restriction under subsections (1) and (2) of section 19 provide for an expiry date and that date is reached;
 - (b) the Bank revokes the condition or restriction under subsection (2); or
 - (c) the payment system concerned ceases to exist or operate, or ceases to be a designated system.
- (2) The Central Bank may, by Order revoke a condition or restriction if the Bank considers it appropriate to do so and the Bank shall publish such Order in the Gazette.
- (3) In considering whether to revoke a restriction or condition under subsection (2), the Central Bank shall have regard to the following:
- (a) whether the revocation of the restriction or condition would be in the interests of the public;
 - (b) the interests of the current participants, operator and settlement institution of the designated system;
 - (c) the interests of persons who, in the future, may require or desire access to the designated system; and
 - (d) such other matters as the Bank may consider to be relevant.

22. Power of Bank to inspect.

- (1) The Central Bank may conduct on-site examinations and off-site supervision of the business of an operator, participant, clearing house or settlement institution of a designated system for the purpose of satisfying itself that this Act or any other relevant law is being complied with.
- (2) In the performance of its duties under this Act, the Bank shall be entitled at all reasonable times-
 - (a) to have access to such accounts, records, books and documents of any operator, participant, clearing house or settlement institution;
 - (b) to request from an operator, participant, clearing house or settlement institution or any of their managers or agents such information or explanation;

- (c) to call upon the, operator, participant, clearing house or settlement institution for such auditor's reports, working papers, information or explanation;
 - (d) to require that the auditor of an operator, participant, clearing house or settlement institution, as the case may be, report to the Bank on the extent of the procedures of the auditor in respect of any examination undertaken by them; and
 - (e) to require that the auditor make a particular examination relating to the adequacy of the procedures adopted by the operator, participant, clearing house or settlement institution as the case may be, for the safety of its creditors and shareholders, or any other examination as considered necessary by the Bank, as the Bank may reasonably require to perform its functions under this Act.
- (3) The Central Bank may, where it considers it necessary, require that examinations under subsection (1) shall 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.
- (4) Every participant shall be required to perform all the duties imposed under this section on an operator of a system.
- (5) If an operator of a system fails to perform the duties imposed on it under this section, the participants jointly and severally shall comply with those obligations and shall be liable for contravention of those obligations in the same manner and to the same extent as the operator.
- (6) Where any person -
- (a) fails to comply with any requirement made by the Bank pursuant to subsection (2), within the period determined by the Bank or within such further period as the Bank may determine, in the absence of satisfactory evidence being furnished by the Bank justifying such a failure to comply with such a requirement;

- (b) as an auditor of an operator, participant, clearing house or settlement institution, makes untrue statements in an audit report or omits essential facts or fails to request pertinent information from the operator, participant, clearing house or settlement institution or fails to report his findings to the Bank,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand dollars for each day during which the offence continues.

23. Obligation of Clearing house to notify Bank of certain events.

- (1) Every clearing house shall, with respect to its designated system, provide the Central Bank with thirty days notice in advance of any significant change intended to be made in relation to the designated system.
- (2) Without limiting the generality of subsection (1) the clearing house shall give notice with respect to any change affecting –
 - (a) any document including its Memorandum of Association, and the relevant resolutions, agreements, rules and procedures relating to the formation, establishment, constitution, governance, administration and operation of the designated system; or
 - (b) the operation of the designated system.
- (3) Every clearing house shall, forthwith after any other change is made in relation to the designated system, provide the Central Bank with written notice of the change, and, without limiting the generality of the foregoing, the notice shall provide information in respect of any change affecting –
 - (a) the composition of the Board of Directors whether by resignation or otherwise; or
 - (b) the appointed auditor of the system.

PART VIII

CLEARING AND SETTLEMENT SYSTEMS

24. Power of the Bank to enter agreement with clearing house.

- (1) The Central Bank may issue directions and may enter into any agreement with a clearing house or a participant of a designated clearing and settlement system, or both, in respect of the following matters : –
 - (a) netting arrangements;
 - (b) risk sharing and risk control mechanisms;
 - (c) certainty of settlement and finality of payment;
 - (d) the nature of financial arrangements among participants;
 - (e) the operational systems and financial soundness of the clearing house; and
 - (f) such other matters that in the view of the Central Bank pertain to a risk to the financial system of The Bahamas.
- (2) The Central Bank may make regulations in respect of all or any of the matters specified in paragraphs (a) to (f) of subsection (1) and in the event of a conflict between any rule, instruction, direction or agreement and any regulations made in that behalf under this Act, such regulation shall prevail.

25. Functions of the Bank in relation to clearing and settlement systems.

The Central Bank may perform all or any of the following functions in relation to a designated clearing and settlement system and its clearing house : –

- (a) the provision of a secured guarantee of settlement by participants;
- (b) the making of liquidity loans to the clearing house and the central counter-party; and
- (c) acting as the central counter-party to the participants.

26. Powers of the Central Bank in relation to clearing and settlement systems.

The Central Bank shall have the power to do all or any of the following things in relation to a designated clearing and settlement system and its clearing house:

- (a) be a participant, participate and act as central counter-party, including in a loss-sharing mechanism; and
- (b) act as a custodian of financial assets, or settlement agent, or both.

27. Powers of Central Bank to investigate existence of clearing and settlement systems.

- (1) The Central Bank may, where it has reasonable grounds to believe that a system or arrangement exists for the clearing and settlement of payment obligations, request a person who is a party to the system or arrangement to provide the Central Bank with further information, records and documents relating to the system or arrangement as the Central Bank may require, in order to make a determination on the existence of the clearing and settlement system.
- (2) Every person who is required under subsection (1) to provide information, records and documents shall comply with such request.
- (3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

PART IX**ELECTRONIC MONEY****28. Approval required.**

- (1) No person, other than a bank, bank and trust company or trust company licensed under the Banks and Trust Companies Regulation Act may issue electronic money without having obtained a license from the Central Bank.

- (2) For the purposes of this section-
- (a) “electronic money” means monetary value represented by a claim on the issuer, which is –
 - (i) stored electronically;
 - (ii) issued on receipt of funds for the purpose of making payment transactions; and
 - (iii) accepted as a means of payment by persons other than the issuer, so however that the funds referred to in (ii) above shall not be treated as a deposit under this Act.
- (3) The Central Bank may, by regulation, prescribe –
- (a) the category of persons, subject to subsection (1), which may issue electronic money; and
 - (b) the prudential and other requirements and criteria applicable to such persons.
- (4) The Central Bank may –
- (a) impose such terms and conditions as it sees fit on any person licensed to issue electronic money;
 - (b) issue directions, to persons licensed to issue electronic money as the Bank sees fit; or
 - (c) revoke a licence to issue electronic money if the person –
 - (i) fails to meet the prescribed category, requirements or criteria; or
 - (ii) is in breach of any terms and conditions imposed or directions including compliance directions issued by the Central Bank.
- (5) A person who –
- (a) issues electronic money without having obtained a license from the Central Bank;
 - (b) continues to so issue after his license is revoked; or

- (c) is in breach of any terms and conditions imposed by the Central Bank,
is guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding \$2,500 for each day during which the offence continues.
- (6) Notwithstanding any other provision in this Act, any person, other than a bank, bank and trust company or trust company licensed under the Banks and Trust Companies Regulation Act, who issued electronic money prior to the date on which this Act came into operation, shall pursuant to subsection (1), make application to the Central Bank for a licence to issue electronic money, within six months of the date of the coming into force of this Act.

PART X

MISCELLANEOUS

29. Information may be required from operator or settlement institution.

- (1) The Bank may by notice in writing require any payment system operator, participant or settlement institution to supply to the Bank in such form and within such time as the Bank may determine such information as the Bank considers necessary to enable the Bank to carry out its functions under this Act.
- (2) The Bank may at all reasonable times by notice in writing given-
- (a) to a person regulated under the regulatory laws;
 - (b) to a system operator;
 - (c) to a participant in a system;
 - (d) to a connected person; or
 - (e) to a person reasonably believed to have information relevant to an enquiry by the Bank, require him-

- (i) to provide specified information or information of a specified description; or
- (ii) to produce specified documents or documents of a specified description,

as it may reasonably require in connection with the exercise by the Bank of functions conferred on it by or under this Act or the regulatory laws.

- (3) Where, in accordance with subsection 34(4), the Bank is satisfied that assistance should be provided in response to a request by an overseas regulatory authority it may in writing direct-
 - (a) a person regulated under the regulatory laws;
 - (b) a system operator;
 - (c) a participant (whether direct or indirect) in a system;
 - (d) a connected person;
 - (e) a person that is engaging in an activity that is subject to regulation under the regulatory laws; or
 - (f) a person reasonably believed to have information relevant to enquiries to which the request relates,within a stated time, to-
 - (i) provide the Bank with specified information or information of a specified description with respect to any matter relevant to the inquiries to which the request relates;
 - (ii) produce specified documents or documents of a specified description relevant to those inquiries; or
 - (iii) give to the Bank such assistance in connection with those inquiries as the Bank may specify in writing.
- (4) Where a person fails to comply with a requirement under subsection (2) or a direction given under subsection (3) within three days from the date of the requirement or direction or such longer period as the Bank may permit, the Bank may apply to a Stipendiary and Circuit Magistrate for

an order requiring the person to comply with the requirement or direction.

- (5) Where, in connection with a requirement under subsection (2) or a direction given under subsection (3), the Bank considers it necessary to examine a person on oath, the Bank may apply to a Stipendiary and Circuit Magistrate to have that person examined by the court and to have the results of that examination sent to the Bank.
- (6) The court shall process an application under subsection (5) within seven days of its receipt and shall send the result of the examination to the Bank within fourteen days of the examination.
- (7) Where documents are produced pursuant to subsection (2) or (3), the Bank may take copies of them or extracts from them.
- (8) A person shall not be required under this section to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.
- (9) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.
- (10) In this section "document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible and intelligible form.
- (11) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him-
 - (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person-
 - (i) in contemplation of, or in connection with, legal proceedings; and

- (ii) for the purpose of those proceedings.
- (12) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (13) For the purposes of subsections (2) and (3) a person is connected with a person regulated under the regulatory laws ("the regulated person") if he is or has at any relevant time been-
- (i) a member of the regulated person's group;
 - (ii) a controller of the regulated person;
 - (iii) any other member of a partnership of which the regulated person is a member; or
 - (iv) a member, officer, manager, employee or agent of the regulated person.
- (14) A person who without reasonable cause-
- (a) fails to comply with a requirement of the Bank under subsection (2) or a direction of the Bank under subsection (3);
 - (b) with intent to avoid the provisions of subsections (2) or (3) destroys, mutilates, defaces, hides or removes a document; or
 - (c) wilfully obstructs an inquiry by the Bank made in accordance with the provisions of subsection (2) or (3),
- shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding one hundred thousand dollars and if the offence of which he is convicted is continued after conviction he commits a further offence and shall be liable to a fine of ten thousand dollars for every day on which the offence is continued.
- (15) Where-
- (a) an offence under this section, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any

such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly;

- (b) the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

30. Assistance in obtaining information.

- (1) The Bank may-
 - (a) seek the assistance of the Commissioner of Police in the exercise of its powers under this law; and
 - (b) authorise a competent person to exercise any of those powers.
- (2) No such assistance shall be sought or authority granted under subsection (1) except for the purpose of investigating-
 - (a) the affairs, or any aspect of the affairs, of a person specified by the Bank; or
 - (b) a subject matter specified by the Bank, being a person who, or a subject matter which, is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank.
- (3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.
- (4) Where the Bank seeks assistance or grants an authority under subsection (1), the assistance or authority shall be provided or executed in such manner as the Bank may determine; and where the Bank grants such an authority to a person, he shall make a report to the Bank in such manner as the Bank may require, on the exercise of that authority and the results of exercising it.

31. Supplying false Statement.

Any person who supplies or is concerned in supplying the Bank or any person authorised to assist the Bank any information pursuant to this Act for any

purpose for which such information is lawfully required thereunder, knowing the same to be misleading or false in a material particular, shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years and in the case of a continuing offence to a fine not exceeding two thousand dollars for each day during which the offence continues.

32. Power of search.

- (1) If a Magistrate is satisfied by information on oath given by a duly authorised officer of the Bank either-
 - (a) that there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information or in any vehicle, vessel or aircraft so specified; or
 - (b) that any books, accounts, records, documents or reports which ought to have been produced under section 22(2) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,he may grant a search warrant authorising the duly appointed representative of the Bank or any police officer together with any other person named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises or, as the case may be, the vehicle, vessel or aircraft.
- (2) The person authorised by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, computers, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be or contain evidence of the commission of any offence against this Act or any such books, records, vouchers, documents, computers, cash or securities found in the premises or in the

vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under section 22(2);

Provided that no female shall, in pursuance of any warrant issued under this subsection, be searched except by a female.

- (3) Where by virtue of this section a person has any power to enter any premises he may use such force as is reasonably necessary for the purpose of exercising that power.
- (4) Every person who shall obstruct the Bank's duly appointed representative or any other person in the exercise of any powers conferred on him by virtue of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

33. Attorney General's fiat.

- (1) No prosecution in respect of any offence under this Act shall be instituted except by or with the consent of the Attorney-General.
- (2) Notwithstanding any provision in any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence committed under this Act may be commenced at any time within the period of three months from the date on which evidence sufficient, in the opinion of the Attorney General, to justify a prosecution for the offence comes to his knowledge or within the period of twelve months after the commission of the offence, whichever period last expires; and for the purposes of this section a certificate purporting to be signed by the Attorney General as to the date on which such evidence as aforesaid comes to his knowledge shall be conclusive evidence thereof.
- (3) Any penalty incurred under this Act shall be paid to the Central Bank.

34. Confidentiality.

- (1) Subject to subsections (2) and (3), whoever is a director, officer, employee, agent or adviser of the Bank and who discloses any information relating to -
 - (a) the affairs of the Bank;

- (b) the affairs of a payment system operator, clearing house or settlement institution;
- (c) any application for any approval or designation made to the Bank under this Act;
- (d) the affairs of a participant (whether direct or indirect); or
- (e) the affairs of a customer of a participant or indirect participant of a payments system,

that he has acquired in the course of his duties or in the exercise of the Bank's functions under this or any other law, is guilty of an offence, and shall be liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for three years.

- (2) Subsection (1) shall not apply to a disclosure-
 - (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) for the purpose of assisting the Bank to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;
 - (c) in respect of the affairs of a system operator, participant, clearing house or settlement institution, a customer of a participant of a system, as the case may be, with the authority of the system operator, participant, clearing house or settlement institution or customer of a participant, which consent has been voluntarily given;
 - (d) if the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is in a manner that does not enable the identity of any system operator, participant, clearing house or settlement institution, customer of a participant of a system, to which the information relates to be ascertained;
 - (f) to a person with a view to the institution of, or for the purpose of-
 - (i) criminal proceedings;

- (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties; or
 - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Bank of his duties; or
- (g) for the purposes of any legal proceedings in connection with-
 - (i) the winding-up or dissolution of a system operator, clearing house, participant or settlement institution; or
 - (ii) the appointment or duties of a receiver of a system operator, a participant, clearing house or settlement institution.
- (3) The Bank, through any of its directors, officers, employees, agents or advisors may cooperate with, including, by sharing information that has been acquired in the course of exercising any functions under this or any other law, any other regulatory authority in The Bahamas where it is considered by the Bank that such cooperation or information may be relevant to the functions of such other regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.
- (4) Subject to subsection (8), the Bank may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.
- (5) In deciding whether or not to exercise its power under subsection (4), the Bank may take into account-
 - (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and

- (b) the seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in The Bahamas.
- (6) The Bank may decline to exercise its powers under subsection (4) unless the overseas regulatory authority undertakes to make such contribution towards the costs of the exercise as the Bank considers appropriate.
- (7) In subsection (5)(a) "relevant country or territory" means the country or territory from which the request for assistance is made.
- (8) Nothing in subsection (4) authorises a disclosure by the Bank unless-
 - (a) the Bank has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of a written undertaking of confidentiality; or
 - (b) the Bank has been given a written undertaking by the recipient authority not to disclose the information provided without the consent of the Bank; and
 - (c) the Bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and
 - (d) the Bank is satisfied that information provided following the exercise of its powers under subsection (3) will not be used in criminal proceedings against the person providing the information.
- (9) Where in the opinion of the Bank it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in the manner contemplated by subsections (4) and (5) of section 29, the Bank shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in

The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

35. Publication of certain information.

The Central Bank may, from time to time, prepare and publish-

- (a) consolidated statements aggregating any information provided under this Act; or
- (b) for statistical purposes, statements that relate to or are derived from any information provided under this Act in respect of a payment system or a stored value facility, being the only payment system or stored value facility in its class.

36. Appeal.

(1) An appeal shall lie to the Supreme Court from any decision of the Bank-

- (a) revoking any approval under subsection 9(2);
- (b) requiring a participant, an operator of a system, a settlement institution or a clearing house, as the case may be, to take certain steps which the Bank may specify under section 16(1), 19(1), 19(2), and 19(7);
- (c) requiring the replacement of an auditor under any regulation issued pursuant to this Act.

(2) An appeal against the decision of the Bank shall be on motion and the appellant within twenty-one days after the day on which the Bank has given his decision shall serve on the Attorney-General a notice in writing signed by the appellant or his counsel and attorney of his intention to appeal and of the general ground for his appeal:

Provided that any person aggrieved by the decision of the Bank may upon notice to the Attorney-General apply to the Supreme Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Supreme Court upon the hearing of such application may extend the time prescribed in this section as it deems fit.

- (3) The Attorney-General shall upon receiving the notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Bank's decision and all papers relating to the appeal:

Provided that the Attorney-General shall not be compelled to disclose any information if he considers that the public interest would suffer by such disclosure.

- (4) The Registrar shall set the appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the Supreme Court may direct.
- (5) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Supreme Court, go into any matters not raised by such statement.
- (6) The Supreme Court may adjourn the hearing of the appeal and may upon the hearing thereof confirm, reverse, vary or modify the decision of the Bank or remit the matter with the opinion of the Supreme Court thereon to the Governor.
- (7) An appeal against a decision of the Bank shall not have the effect of suspending the execution of such decision.

37. Offences by officers.

- (1) Any person, being an employee, agent or consultant of –
- (a) a participant, an operator, clearing house or a settlement institution of a payment system; or
 - (b) a person licensed to issue electronic money, who fails to take all reasonable steps to secure –
 - (i) compliance by the participant, operator, clearing house, settlement institution, or person licensed to issue electronic money, as the case may be, with any provision of this Act; or
 - (ii) the accuracy and correctness of any information provided by the participant, operator, clearing house, settlement institution, or person licensed to issue electronic money, as the case may be, to the Bank under this Act, shall be guilty of

an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

- (2) In any proceedings against a person under subsection (1), it shall be a defence for the defendant to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that the information was accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.
- (3) An employee, agent or consultant shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court trying the offence, he committed the offence wilfully.

38. General penalty.

Any person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$50,000.

39. Fines.

- (1) The Central Bank may, where it is satisfied that a person-
 - (a) has committed an offence against this Act, order the person to pay a fine not exceeding two thousand dollars;
 - (b) has failed to comply with any directive issued pursuant to any of the provisions of this Act, order the payment of such fine as may be prescribed by regulation made pursuant to this Act; or
 - (c) has contravened any regulations made under this Act order the payment of such fine as may be prescribed by the relevant regulation.
- (2) Where the Central Bank makes an order under this section -
 - (a) the order shall be put in writing;
 - (b) the order shall specify the nature of the default or offence which the person committed and the penalty or fine imposed by the Central Bank;

- (c) a copy of the order shall be given to the person; and
- (d) the order may be enforced in the same manner as an order of the court.

40. Exemption.

- (1) The Central Bank may, by regulations, either permanently or for such period as the Bank may think fit, exempt any person or class of persons, any system or class of systems, any issuers of electronic money, from all or any of the provisions of this Act subject to such conditions or restrictions as may be prescribed.
- (2) The Central Bank may, on the application of any person, by notice in writing exempt the person from all or any of the provisions of this Act or the requirements specified in any written direction made by the Central Bank under this Act if the Bank considers it appropriate to do so in the circumstances of the case.
- (3) An exemption granted under subsection (2) –
 - (a) may be granted subject to such conditions or restrictions as the Bank may specify by notice in writing;
 - (b) need not be published in the Gazette; and
 - (c) may be withdrawn at any time by the Central Bank.
- (4) Any person who contravenes any condition or restriction imposed under subsection (1) or (3) (a) shall be guilty of an offence.

41. Regulations.

- (1) The Central Bank may make regulations for carrying out the purposes and provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Central Bank may make regulations for or with respect to designated systems, including but not limited to the following matters:

- (a) such matters as may be necessary or expedient for giving effect to the provisions of this Act in respect of any matter or thing relating to cheque truncation;
- (b) the information which is to be disclosed to the Central Bank, a participant, operator of a system, or settlement institution on the commencement of insolvency proceedings against a participant or operator;
- (c) the imposition, variation or revocation of an access regime, and such transitional or savings provisions as the Bank may consider necessary or expedient;
- (d) the standards to be maintained by a participant, an operator or a settlement institution;
- (e) the responsibilities and duties of the chief executive officer and directors of an operator;
- (f) the preparation and publication of reports on the performance of a designated system;
- (g) the acquisition or holding of shares or any other interest in an operator;
- (h) the acquisition or holding of shares or any other interest by an operator in any other person;
- (i) different requirements for the audit of accounts in relation to different designated systems;
- (j) the responsibilities of an operator or a settlement institution relating to the audit of its accounts;
- (k) the responsibilities of the auditor for the accounts of an operator or a settlement institution;
- (l) the procedures applicable in the event of a default in payment obligations, including the suspension and re-admission of participants;

- (m) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including the refund and remission whether in whole or in part of such fees; and
 - (n) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (3) Without prejudice to the generality of subsection (1), the Bank may make regulations for or with respect to electronic money including but not limited to the following matters:
- (a) all matters necessary and expedient to ensure that an issuer of electronic money is fully liable to the users of such money;
 - (b) the standards to be maintained by an issuer in respect of electronic money; and
 - (c) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (4) Except as otherwise expressly provided in this Act, the regulations –
- (a) may be of general or specific application;
 - (b) may provide that any contravention of any specified provision thereof shall be an offence; and
 - (c) may provide for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence, and in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

42. Opportunity to be heard.

Where this Act provides for a person to be given an opportunity to be heard by the Central Bank, the Bank may prescribe the manner in which the person shall be given an opportunity to be heard.

43. Directions and notices not subsidiary legislation.

Any written direction or notice in writing given by the Central Bank under this Act shall be deemed not to be subsidiary legislation.

44. Codes guidelines etc., by Bank.

- (1) The Central Bank may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements and practice notes as it considers appropriate for providing guidance –
 - (a) in furtherance of its regulatory objectives;
 - (b) in relation to any matter relating to any of the functions of the Bank under any of the provisions of this Act; or
 - (c) in relation to the operation of any of the provisions of this Act.
- (2) The Central Bank may publish any such code, guideline, policy statement or practice note, and in such manner as it thinks fit.
- (3) The Central Bank may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement or practice note issued under this section in such manner as it thinks fit.
- (4) Where amendments are made under subsection (3) -
 - (a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement and practice note; and
 - (b) any reference in this Act or any other written law to the code, guideline, policy statement or practice note however expressed shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement or practice note as so amended.
- (5) Any person who fails to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to

establish or to negate any liability which is in question in the proceedings.

- (6) Any code, guideline, policy statement or practice note issued under this section –
 - (a) may be of general or specific application; and
 - (b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.
- (7) For the avoidance of doubt, any code, guideline, policy statement or practice note issued under this section shall be deemed not to be subsidiary legislation.

45. Memoranda of Understanding.

- (1) The Central Bank may enter into memoranda of understanding with an operator, clearing house, or settlement institution of a system for the purpose of facilitating the discharge of their respective functions under this or any other relevant legislation.
- (2) No memorandum of understanding entered into pursuant to subsection (1) may call for assistance beyond that which is provided for by this Act, or relieve the Central Bank of any of its functions or duties under this Act.

46. Offences.

Every offence against this Act shall be tried summarily.

47. No liability.

No civil or criminal liability shall attach to the Central Bank or any officer, employee, director of the Bank, or any person acting under the direction of the Bank, for anything lawfully done or omitted to be done in good faith in the exercise of or the performance of any powers, duties or functions under this Act.

48. Indemnity.

The Board of Directors of the Central Bank may indemnify any person duly authorised by the Bank to act under this Act against the cost of defending their actions while so discharging their functions.

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