

PAYMENT SYSTEM AND SERVICES BILL

[COUNTRY]

ACT NO. OF 2024

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PAYMENT SYSTEM AND SERVICES BILL

[COUNTRY]

ACT NO. OF 202[]

AN ACT to provide for the licensing and regulation of payment service providers, the oversight of the payment system and related matters.

BE IT ENACTED by the King’s Most Excellent Majesty, by and with the advice and consent of the [House of Assembly] [and the Senate] of [COUNTRY] and by the authority of the same as follows —

PRELIMINARY

Short title

1. This Act may be cited as the Payment System and Services Act, 202[].

Interpretation

2.—(1) In this Act —

“access” in relation to a payment system, means eligibility to be a participant in the payment system;

“agent” —

- (a) means a person authorized by the Central Bank to act on behalf of a payment service provider in providing payment services under section 35;
- (b) does not include a central bank digital currency intermediary;

“CARICOM Member State” means a country or territory specified under Article 3 of the Revised Treaty of Chaguaramas;

“cash” means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;

“Central Bank” means the Eastern Caribbean Central Bank established under Article 3 of the Eastern Caribbean Central Bank Agreement, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Agreement Act, [Cap. 19.07];

“central counterparty” means a person that acts as an intermediary between each counterparty involved in a contract traded in one or more financial markets, becoming

the buyer to each seller and the seller to each buyer and in a manner that guarantees the performance of an open contract;

“clearing” means the process of transmitting, reconciling and confirming funds transfer instructions prior to settlement;

“clearing system” means a system responsible for clearing;

“close-out netting” means a netting arrangement where -

- (a) following the occurrence of events specified by the parties to the arrangement, all or any of the transactions referred to in the arrangement may be terminated; and
- (b) the termination value becomes due and payable;

“consumer” means a person or the Government who accesses or utilises a payment system or payment service;

“Council” means the Eastern Caribbean Payments Council established under section 9;

“credit union” has the meaning assigned under the Co-operative Societies Act, Cap [];

“counterparty” means the opposite party to a financial transaction;

"Currency Union" refers collectively to the member countries and territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as the official currency;

“designated payment system” means a payment system that is designated by the Central Bank under Part IV;

“direct participant” means a participant in a system who is responsible for the settlement of its own payments, those of its consumers and those of other participants who are not entitled to settle through the system on their own behalf;

“e-float” means an account that is maintained at the Central Bank or other licensed financial institution where customer funds are deposited for the purpose of segregating customer funds from the operating funds of an electronic money issuer;

“electronic funds transfer” —

- (a) means any transfer of funds which is initiated by a person by way of instruction or authorization to a payment service provider to debit or credit an account through digital or electronic means; and

(b) includes —

- (i) point of sale transfers,
- (ii) automated teller machine transactions,
- (iii) direct deposits or withdrawal of funds,
- (iv) transfers initiated by mobile phone, internet or card, or
- (v) any other technological or electronic method or device to facilitate the electronic transfer of funds the Central Bank approves;

“electronic money issuer” means a person authorised to issue electronic money;

“electronic money” means monetary value, electronically or digitally stored that exists for the purpose of making payment transactions and which is accepted as a medium of payment by persons other than the issuer;

“external auditor” means a member of a professional body of accountants recognized by the Central Bank;

“foreign operator” means an operator that is incorporated outside the laws of a CARICOM member state;

“foreign payment service provider” means a payment service provider that is incorporated outside the laws of a CARICOM member state;

“insolvency proceedings”, in relation to a payment system, means a single or collective measure provided for in an enactment of a country or territory of the Currency Union to wind up a person or entity or to reorganize it where that measure involves its suspension, or imposing limitations on transfers or payments in the countries or territories of Currency Union;

“licence” means a licence issued by the Central Bank under section 17;

“licensee” means a person who holds a licence;

“licensed financial institution” has the meaning assigned under the Banking Act, [Chap.];

“Minister” means the Minister responsible for finance;

“netting” means the determination of the net payment obligations or the net termination value of settlement obligations between two or more participants;

“netting arrangement” —

- (a) means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation;
- (b) includes —
 - (i) bilateral netting;
 - (ii) multilateral netting;
 - (iii) netting by novation;
 - (iv) close-out netting;
 - (v) payments netting; or
 - (vi) a combination of subparagraphs (i), (ii), (iii) (iv) or (v);

“operator” means the Central Bank or a person licensed by the Central Bank to operate a system under section 17;

“outsourcing” means the contracting or sub-contracting of one or more activities, relating to the operation of a payment service provider, to an independent third party;

“participant” in relation to a system, means a party who is recognized in the rules of a system as eligible to exchange, clear or settle through the system with other participants as a direct participant or indirectly through the services of a direct participant;

“payment account” means an account maintained with a payment service provider;

“payment instruction” means an instruction by a participant in, or to an operator of, a payment system —

- (a) that is made in accordance with the rules of that settlement system; and
- (b) that results, or is intended to result, in one or more settlements being effected;

“payment instrument” means a medium in electronic or written form used for ordering transmission or payment of fiat money whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make a wholesale or retail payment or transfer fiat money;

“payment service” means a provision of a payment instrument or a payment channel, whether tangible or intangible, for payment of goods or services or transfer of funds or any other financial transaction;

“payment service provider” means a person licensed by the Central Bank to provide payment services under section 17;

“payment system” —

- (a) means a set of instruments, procedures, and rules for the transfer of funds between or among participants;

- (b) includes the participants and the entity operating an arrangement under paragraph (a).

"person" means an individual or a body corporate;

"Revised Treaty of Chaguaramas" means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, done on 5 July 2001, the text of which is set out in the Schedule to the [Caribbean Community] Act, [Cap.];

"settlement" means the act of discharging obligations by transferring funds between two or more parties;

"settlement account" means an account on the books of a person in charge of settlement used in holding money and to settle transfer orders between participants in a system;

"settlement agent" means an institution that manages the settlement process for transfer systems or other arrangements that require settlement.

"settlement bank" means a central bank or a commercial bank used to effect funds settlements;

"settlement risk" means the risk that a party will default on one or more settlement obligation to a counterparty or to a settlement agent;

"settlement rules" —

- (a) means the rules made by an operator, that provide the basis on which payment obligations are calculated, netted or settled;
- (b) includes rules for the taking of action in the event that a participant is unable or likely to become unable to meet its obligations to a payment system, clearing house, central counterparty or other participants;

"settlement system" means a system used to facilitate the settlement of transfers of funds or financial instruments;

"settling participant" means a participant who is eligible to exchange files and whose settlement account is debited or credited in order to discharge financial obligations on its own behalf or on behalf of another participant;

"stored-value card" means a payment instrument which stores electronic money equivalent to the monetary value of funds received from the cardholder;

"system" includes a payment system, a clearing system or a settlement system whether or not it operates wholly or partly in relation to persons or places outside the countries and territories of the Currency Union;

“systemic risk” means the possibility that a settlement system participant will be unable to meet its obligations resulting in a disruption to or a failure of a clearing system and settlement system that may cause —

- (a) other participants in the clearing system and settlement system to be unable to meet their obligations as they become due and payable;
- (b) financial institutions in other parts of the financial system to be unable to meet their obligations as they become due and payable;
- (c) the clearing system or settlement system’s clearing house, or the clearing house of another clearing system or settlement system within the financial system, to be unable to meet its obligations as they become due and payable; or
- (d) an adverse effect on the stability and integrity of the financial system.

(2) In this Act, a reference to “fit and proper”, in relation to an operator, a payment service provider or a participant, is a reference to the assessment of the Central Bank as to the suitability of a person to hold a particular position on account of —

- (a) the probity, competence and soundness of judgement of the person for purposes of fulfilling the responsibilities of the position;
- (b) being satisfied of the diligence with which that person fulfils or is likely to fulfil the responsibilities of the position;
- (c) whether the interest of electronic money users or potential electronic money users of the are threatened or likely to be threatened in any way by the person holding the position; and,
- (d) being satisfied of the integrity of the person;
- (e) the appropriateness of the qualifications and experience of the person for the position with regard to —
 - (i) the relevant business plan and activities in which the person serves, or is likely to serve,
 - (ii) the size, nature and complexity of the licensee or participant.

Purpose

3. The purpose of this Act is to establish a legal framework to enable a payment system that is safe, efficient, resilient, inclusive and competitive through the management of risks, the maintenance of financial stability and the protection of the interest of consumers.

PART I

ADMINISTRATION

Functions and powers of the Central Bank

Functions of the Central Bank

4.—(1) The Central Bank shall —

- (a) regulate, monitor and oversee the payment system in the public interest;
- (b) ensure the safe and effective operation of the payment system;
- (c) reduce inefficiencies and potential risks to the payment system;
- (d) facilitate co-operation among all participants in the development of the payment system in the Currency Union;
- (e) ensure the protection of the interests of consumers;
- (f) promote financial inclusion and financial innovation.

(2) Without limiting the generality of subsection (1), the Central Bank shall —

- (a) formulate policies for the continuous modernisation of the payment system;
- (b) establish or facilitate financial market infrastructures in the public interest;
- (c) license and designate payment service providers and operators in conformity with this Act ;
- (d) establish general or individual conditions, standards, rules or procedures in accordance with this Act that are applicable to a licensee or a person authorised under this Act;
- (e) oversee the clearing system and settlement system;
- (f) issue rules, directives, and guidelines for the operation of the payment system;
and
- (g) collect, compile, or disseminate monetary and financial statistics related to the payment system.

(3) The Central Bank may, in the discharge of its functions under subsections (1) and (2), take into account any international regulatory, oversight or supervisory standards.

General power of the Central Bank

5. The Central Bank shall have the power to do all things necessary or convenient for or in connection with the performance of its functions under this Act.

Operational role of the Central Bank

6. The Central Bank may support the operations and participants of a payment system by —

- (a) establishing, owning, operating and participating in the ownership or operation of a system;

- (b) acting as a central counter-party to participants;
- (c) opening and holding accounts for any operator or participant, that may be used for the clearing and settlement of transfers into a system;
- (d) holding securities on accounts for an operator or a participant, that may be used for the meeting of settlement requirements; or
- (e) extending credit, to entities that are participating in a system where it has been granted adequate collateral.

Central Bank may impose interoperability

7.—(1) The Central Bank may, by notice in writing, direct a payment service provider to enter into an arrangement with the operator of a payment system to achieve interoperability of the payment account with the payment system.

(2) In considering whether to direct interoperability of any payment account under subsection (1), the Central Bank shall have regard to —

- (a) whether the interoperability of the payment account with the payment system is in the public interest;
- (b) the interests of the current participants and operator of the payment system;
- (c) the interests of persons who may be required to be a participant in the payment system; and
- (d) such other matters as the Central Bank considers relevant.

Cooperation with other authorities

8.—(1) In carrying out its functions, the Central Bank may cooperate with —

- (a) other authorities engaged in the regulation and supervision of —
 - (i) financial institutions,
 - (ii) other entities directly or indirectly involved in payment services and the operation of payment services;
- (b) other monetary authorities and international organisations dealing with the oversight of a payment system;
- (c) any other authority the Central Bank considers necessary in the interest of financial stability.

(2) The Central Bank shall, for the purpose of co-operating with an authority under subsection (1), enter into a memorandum of understanding with that authority, subject to the terms and conditions of a non-disclosure agreement.

Eastern Caribbean Payment Council

Establishment of Eastern Caribbean Payment Council

9. The Central Bank may establish the Eastern Caribbean Payment Council to advise the Central Bank on the oversight of the payment system and other matters affecting the payment system, including, setting operational and technical standards.

Composition

10. (1) Subject to subsections (2) and (3), the Central Bank shall appoint members of the Eastern Caribbean Payment Council comprising —

- (a) the Deputy Governor of the Central Bank or his or her designate;
- (b) a representative from the Eastern Caribbean Securities Regulatory Commission;
- (c) a representative from the non-bank financial services regulator;
- (d) representatives of the Eastern Caribbean Currency Union Banking Association;
- (e) such number of representatives of licensed financial institutions as the Central Bank determines;
- (f) representatives of consumer advocacy groups and associations; and
- (g) other subject matter experts or representatives from institutions involved in payment systems or in the financial markets.

(2) The members of the Eastern Caribbean Payment Council appointed under subsection (1) shall not exceed fifteen.

(3) A member under subsection (1) (c), (d), (e), (f) or (g) shall be appointed on the recommendation of specific financial institutions, groups or associations or governmental bodies the Central Bank considers appropriate.

(4) The Chairperson of the Eastern Caribbean Payment Council shall be appointed by the Governor of the Central Bank.

Declaration of interest and exclusion from participation

11. (1) A member who has a pecuniary or other interest in a matter before the Council shall declare his or her interest to the Council.

(2) Where a member declares an interest under subsection (1), the Council shall in the absence of the member, determine whether the interest is sufficiently material as to constitute a conflict of interest.

(3) Where the Council determines that there is a conflict of interest under subsection (2), the member shall be excluded from being present at or participating in deliberations on the relevant matter.

Rules or Directives for the operations of the Council

12. The Central Bank may issue rules or directives in respect of —

- (a) the competencies, working procedures and timing of meetings of the Council; and
- (b) other matters relevant to the operations and functions of the Council.

PART II

LICENSING

Requirement for a licence

13.-(1) A person shall not operate a system or provide payment services unless that person is licensed for that purpose by the Central Bank.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment—

- (a) where the person is an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment; or

- (b) where the person is body corporate, to a fine not exceeding \$250,000.

(3) Notwithstanding subsection (2), where the offence continues after a conviction is obtained, the person commits a further offence and is liable to a fine not exceeding \$10,000 for each day or part of a day during which the offence continues.

(4) Where a body corporate commits an offence under subsection (2)(b), whether the body corporate has been convicted, a director or an officer of the body corporate who knowingly authorized, permitted or acquiesced in the act or omission that constituted the offence commits an offence and is liable on conviction on indictment to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment.

Classes of licences

14. (1) The Central Bank may specify different classes of licences in respect of an application under section 15 and a licence issued under section 17.

(2) A class of licence includes —

- (a) electronic funds transfer and settlement;
- (b) electronic money;
- (c) operator; or
- (d) any other class the Central Bank considers appropriate, after consultation with the Minister.

Application for a licence

15. A person shall make an application to the Central Bank for a licence as a payment service provider or an operator in the prescribed form and accompanied by the prescribed documents and application fee.

Grant or refusal of an application for licence

16.—(1) The Central Bank shall, within 3 months after receipt of a completed application under section 15, consider the application and determine whether to grant or refuse the application for a licence.

(2) The Central Bank shall not grant an application for a licence unless the Central Bank determines that the person who made the application under section 15—

- (a) satisfies the requirements of the Act for the issue of a licence;
- (b) has paid the prescribed application fee;
- (c) is able to fulfil the obligation of a licensee.

(3) The Central Bank may request further information or documents from a person for the purpose of making a determination under subsection (1).

(4) The Central Bank shall notify the person who made the application under section 15, in writing, of —

- (a) the approval of the application for a licence and that the prescribed licence fee must be paid before the issuance of the licence;
- (b) the refusal of the application for a licence and the reasons for the refusal, unless to do so is not in the public interest.

Issue of a licence

17.—(1) Where the Central Bank grants an application for a licence under section 16, the person shall pay the prescribed licence fee.

(2) Where the Central Bank determines that person has paid the prescribed licence fee under subsection (1), the Central Bank shall —

(a) enter the name of the licensee and the class of licence issued in the register under section 67; and

(b) issue a licence in the prescribed form.

(3) Where the Central Bank issues a licence under subsection (2), notice of the issue of licence shall be published —

(a) in the Gazette;

(b) in a newspaper in general circulation in [territory or country]; and

(c) on the website of the Central Bank.

(4) Where the Central Bank issues a licence to a person to act as a payment service provider or an operator in another member country or territory in the Currency Union that licence shall have the same effect in [for e.g Saint Kitts] so that person may act as a payment service provider or operator in [for e.g Saint Kitts].

Licence non- transferable

18. A licence is not transferable.

General conditions of licence and amendments

19.—(1) The Central Bank may impose conditions on a licence.

(2) Without limiting the generality of subsection (1) —

(a) a licence shall be subject to —

(i) compliance with this Act, Regulations, rules, directives and guidelines made under this Act, and

(ii) any other conditions the Central Bank considers necessary;

(b) it shall be a condition of every licence that a person shall not, without the written authorisation of the Central Bank, act or continue to act as a director or officer of a licensee or as an agent acting on behalf of a licensee if that person is not a fit and proper person;

(c) the Central Bank may —

(i) impose terms and conditions on a licence with respect to the class of payment service or system to be operated, including —

- (A) initial paid up capital;
- (B) the capital adequacy levels required to be maintained;
- (C) the average value of payments;
- (D) the aggregate value of payments; or
- (E) any other relevant factor,

- (ii) based on a risk-based assessment, impose such conditions and restrictions on payment service providers, operators and the agents of payment service providers as it considers necessary, including —
 - (A) the extent and nature of operations;
 - (B) the payment instruments and services offered; and
 - (C) the thresholds on the monetary values on operations and transactions.

(3) The Central Bank may, amend a condition of a licence, by way of alteration, substitution, addition or other modification —

- (a) on the application of a licensee; or
- (b) of its own motion.

(4) The Central Bank may amend a condition of a licence under subsection (3)(a), if it considers the proposed amendment to be appropriate.

(5) Where the Central Bank seeks to amend the conditions of a licence under subsection (3)(b), the Central Bank shall serve notice on the licensee informing the licensee of the reasons for the proposed amendment and give the licensee fourteen days within which to make representations in writing on the proposed amendment.

(6) On receipt of any representations in writing under subsection (5), the Central Bank shall —

- (a) take the representations into consideration in confirming or modifying the proposed amendment; and
- (b) notify the licensee of its decision.

Conditions on licence for electronic money

20. In addition to the general conditions under section 19, a licensed financial institution or credit union issuing electronic money by means of stored-value cards or other devices shall, in relation to the issuance or management of a payment instrument, satisfy the following conditions —

- (a) the provision of electronic money shall not include the provision of credit;

- (b) clearing and settlement mechanisms shall facilitate rapid provision of final settlement after a payment instruction has been initiated in the system, according to time limits that the Central Bank may establish from time to time;
- (c) issuers shall be obliged to redeem electronic money value in central bank money, at par, on request and the management of the underlying float and redemption of electronic money value by the issuer to the user shall be clearly defined;
- (d) electronic money issuers shall provide —
 - (i) statistics on electronic money loaded and redeemed values in their periodic financial statements
 - (ii) sufficient and reliable information to the Central Bank to monitor and control the quantity and velocity of electronic money supply in the economy; and
 - (iii) evidence of an e-float.,
- (e) any other information or documents specified by the Central Bank.

Duration of licence

21. A licence shall be valid for a period of one year from the date of issuance unless revoked under section 23.

Renewal of licence

22. A licence shall be renewed annually on payment of the prescribed fee no later than the prescribed date.

Suspension or revocation of licence

23.—(1) The Central Bank may suspend or revoke a licence if —

- (a) the licensee breaches a condition of the licence;
- (b) the licensee fails to commence operation of the system within a prescribed period of time;
- (c) the licensee has ceased operation of the system for the prescribed period of time;
- (d) the licensee obtained the licence through the provision of incorrect, false or misleading information to the Central Bank or any other irregular means;

- (e) the licensee no longer meets the applicable criteria for the issue of a licence under this Act;
- (f) the operation of the system for which the licence was issued endangers the stability of the payment or financial system in the countries or territories of Currency Union;
- (g) the person that owns or operates the system enters into insolvency proceedings;
- (h) the foreign payment service provider is undergoing liquidation in its country of incorporation;
- (i) in the opinion of the Central Bank, the operation of the system is not in the public interest or the system does not represent the interest of the participants;
- (j) the licensee is convicted of a criminal offence, except where the offence —
 - (i) is a minor traffic offence, or
 - (ii) has been spent in accordance with the [Rehabilitation of Offenders Act, Cap.] [Criminal Code, Cap.] [Criminal Records (Rehabilitation of Offenders) Act, Cap.].

(2) The Central Bank shall, before suspending or revoking a licence under subsection (1), notify the licensee of the intention to suspend or revoke the licence and specify the reasons for so doing.

(3) Notwithstanding subsection (2), the Central Bank may suspend or revoke a licence without notice if it is in the public interest or to protect the interest of participants or consumers.

(4) Where a licence has been suspended or revoked under subsection (1), a licensee may, within the period of thirty days commencing from the day after which the notice was given under subsection (2) or the suspension or revocation took effect under subsection (3), make representations in writing to the Central Bank and the Central Bank shall take the representations into account in deciding whether to confirm or reverse its decision to suspend or revoke the licence.

Fees

24. The Minister may, on the recommendation of the Central Bank, prescribe fees including —

- (a) fees for each class of licence that the Central Bank issues under this Act;
- (b) a non-refundable application fee to cover the cost of processing the application under section 15;
- (c) a licence fee which shall be paid when the licence is initially issued; or,
- (d) an annual licence fee which shall be paid when a licence is renewed.

Display of licence

25. A licensee shall display a copy of the licence —

- (a) conspicuously at the primary location where the licensee conducts business and every location or branch of the licensee; and
- (b) on the website of the licensee.

Obligations of licensee, licensed financial institution or credit union

26.—(1) A licensee, a licensed financial institution or a credit union shall notify the Central Bank within two hours of the discovery of the occurrence, of any of the following events —

- (a) any civil or criminal proceedings instituted against the licensee, licensed financial institution or credit union, whether in or outside the Currency Union;
- (b) an irregularity in any operations of the licensee that materially impedes or impairs the operations of the licensee;
- (c) a licensee, licensed financial institution or credit union or its agent is becoming, or is likely to become, insolvent or unable to meet any of its financial, statutory, contractual or other obligations;
- (d) any disciplinary action taken against the licensee by any regulatory authority, whether in or outside the Currency Union;
- (e) any significant change to the regulatory requirements imposed on the licensee by any regulatory authority, whether in or outside the Currency Union; or
- (f) any other event that the Central Bank may specify in rules, directives or guidelines.

(2) A licensee, licensed financial institution or credit union shall give prior notice to the Central Bank of any material changes to products and services for which it is licensed.

(3) The Central Bank may, revise the prescribed minimum capital requirements based on the assessment of the risk profile of the licensee.

Operational requirements for the Central Bank, licensed financial institutions and credit unions

27. (1) Notwithstanding section 13, the Central Bank, a licensed financial institution or a credit union shall not be required to be licensed under this Part.

(2) The Central Bank, a licensed financial institution or a credit union which provides a payment service or operates a payment system shall -

- (a) comply with all other requirements of this Act and any regulations, made under this Act;

- (b) comply with such operational, reporting and disclosure requirements as may be set by the Central Bank; and
- (c) be subject to the oversight requirements for licensed entities under this Act.

PART III

OVERSIGHT

General and individual measures

28. (1) The Central Bank may issue rules, directives and guidelines to a licensee with respect to —

- (a) governance;
- (b) management;
- (c) operations;
- (d) fit and proper criteria;
- (e) relations with consumers;
- (f) relations with systems; and
- (g) any other matter for the efficient administration of this Act.

(2) The Central Bank may at any time adopt general standards and criteria for the conduct of payment services or the operation of systems, whether generally or by specific categories.

(3) The Central Bank shall, at least 14 days prior to the coming into operation of any rule under subsection (1), cause that rule to be published —

- (a) in the [Official] Gazette;
- (b) in a newspaper in general circulation in [territory / country] ; and
- (c) on the website of the Central Bank.

Financial innovation oversight

29. (1) Where a person proposes an innovative payment system or technology and is desirous of operating in the Currency Union, the person shall apply in the prescribed form and manner to the Central Bank for the innovative payment system and technology to be reviewed, tested and monitored.

(2) Where, after reviewing and monitoring an applicant, the Central Bank —

- (a) is of the opinion that the innovative payment system or technology is not likely to threaten the financial stability of the Currency Union, the Central Bank may notify

the applicant , that subject to any other legal or regulatory requirements, it may apply for a licence under section 15;

(b) is uncertain as to whether the innovative payment system or technology is likely to threaten the financial stability of the Currency Union, the Central Bank may, subject to enhanced monitoring, allow the innovative payment system or technology to continue to be tested for a specified period;

(c) has reasonable cause to believe that the operation of an innovative payment service or technology may be injurious to the financial system or to the financial stability of the Currency Union, the Central Bank shall notify the applicant of its decision and that it is not eligible to apply for a licence.

(3) An applicant who is aggrieved by a decision of the Central Bank under subsection (2)(c) may make representations in writing to the Central Bank within 30 days of receipt of the decision.

(4) On receipt of any representations in writing under subsection (3), the Central Bank shall —

(a) take the representations into consideration in confirming or changing its decision

(b) notify the applicant of its decision within 30 days of receipt under subsection (3).

(5) The Central Bank may issue guidelines specifying the method of assessing an application under subsection (1) and the mechanisms to review, test and monitor an innovative payment system or technology.

Access to information and disclosure

30. (1) The Central Bank shall have the power to request from a licensee or participant any information in relation to its business or the business of its affiliates.

(2) Notwithstanding any other enactment to the contrary a licensee or participant shall —

(a) provide any information requested by the Central Bank in relation to its business or the business of its affiliates;

(b) produce all books, minutes, accounts, cash instruments, securities, vouchers or documents, including information stored electronically, relating to its business or the business of its affiliates for the inspection by an examiner or external auditor appointed by the Central Bank at the time and in the manner as the Central Bank, examiner or external auditor specifies; and

(c) make staff available for interviews with the Central Bank or a person appointed by the Central Bank where necessary.

(3) A licensee or participant shall —

(a) comply with subsection (2); or

(b) not provide information or produce any document which is false or misleading in a material particular.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction on indictment—

(a) where the person is an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment; or

(b) where the person is body corporate, to a fine not exceeding \$250,000.

(5) Notwithstanding subsection (4), where the offence continues after a conviction is obtained, the person commits a further offence and is liable to a fine not exceeding \$10,000 for each day or part of the day during which the offence continues.

(6) Where a body corporate commits an offence under subsection (4)(b), whether the body corporate has been convicted, a director or an officer of the body corporate who knowingly authorized, permitted or acquiesced in the act or omission that constituted the offence commits an offence and is liable on conviction on indictment to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment.

Power to enter and search

31.—(1) Where the Central Bank has reasonable cause to believe that —

(a) a person operates a system or provides a payment service without a licence; and

(b) evidence of contravention of this Act is to be found in [country],

the Central Bank may make an application without notice to the High Court for an order that a named officer or officers of the Central Bank be authorized to enter and search the premises in the company of a police officer.

(2) Where an order is granted pursuant to an application under subsection (1), the order may provide the Central Bank or named officer in the order, with the power to —

(a) inspect and make copies of any information, book, account, minutes of meetings or any other document or record, including information stored electronically by a person referred to in subsection (1)(a);

(b) inspect any equipment, apparatus, machinery or any other item or record on the premises where the operation is being conducted contrary to this Act;

(c) interview the staff or critical service providers of a person referred to in subsection (1); and

(d) seize any item under paragraph (a) or (b) .

(3) In this section, "critical service provider" means a third party service provider that is essential to the person's operations.

Audit and submission of audited financial statements

32. (1) The Central Bank may conduct an audit or commission an external auditor to conduct an audit of the accounts, books, documents and other records including information stored electronically, of an operator, participant or payment service provider once per annum or when issues arise that are of regulatory concern.

(2) An operator, a participant or a payment service provider shall assist the Central Bank to any extent necessary for the purpose of enabling the Central Bank or its external auditor to carry out an audit.

(3) An operator, a participant or a payment service provider shall submit to the Central Bank copies of its audited financial statements prepared in accordance with international financial reporting standards within three months after the end of each financial year or at such time that the Central Bank determines, when an issue arises that is a regulatory concern.

Disclosure of information and duty of confidentiality

33. (1) The Central Bank shall not, directly or indirectly disclose to any person any information or any document obtained during the exercise of its functions under this Act, except —

(a) for the purpose of performing its functions under this Act;

(b) where it is necessary to protect the financial integrity, effectiveness or security of the payment system;

(c) where it is disclosed to a person who is lawfully authorized to receive the information;

- (d) where disclosure is ordered by a court of competent jurisdiction;
- (e) for statistical purposes;
- (f) where for preservation of transparency, it is required to be shared with all participants of the payment system at the request of one participant; or
- (g) on the request by [TERRITORY / COUNTRY] in order to satisfy an obligation under an international treaty, convention or an agreement to which [TERRITORY / COUNTRY] is a party.

(2) Notwithstanding subsection (1), the Central Bank may disclose data or information obtained under this Act to an entity in [COUNTRY] or another country or territory of the Currency Union or a foreign operator or payment service provider which is charged with the oversight, regulation and supervision of financial markets, a payment system, an operator, a participant or a payment service provider where the —

- (a) purpose for which the data or information will be used is specified;
- (b) intended use of the data or information is for the supervision of financial markets or participants active in the financial markets;
- (c) supply of the data or information would be compatible with the laws of [TERRITORY / COUNTRY] or in the public interest; or
- (d) data or information is subject to an agreement for confidentiality and a memorandum of understanding on a reciprocal basis.

(3) The Central Bank shall, in relation to an investigation of the commission of an offence, disclose information if required —

- (a) by order of a court of competent jurisdiction; or
- (b) by an enactment.

Publication of data

34.—(1) Subject to subsection (2), the Central Bank may, without consent, publish consolidated statements or aggregated data of —

- (a) information provided under this Act; and
- (b) information related to or derived from information provided under this Act.

(2) Notwithstanding subsection (1) and section 32, the Central Bank may publish in whole or in part, any information or data obtained under this Act if the information published does not —

- (a) contravene the laws of [COUNTRY]
- (b) disclose confidential information of any person; or

- (c) disclose the confidential financial affairs of a person, other than a licensee or a participant, unless that person gives prior written consent to the publication.

Use of agents

35. (1) A person shall not carry out an activity as an agent prior to being authorised by the Central Bank for that purpose.

(2) Where a payment service provider intends to provide a payment service to a consumer through an agent, the payment service provider shall seek prior authorisation from the Central Bank by making an application in writing to the Central Bank providing the following information —

- (a) the name and address of the agent;
- (b) a description of the internal control mechanisms that will be used by the proposed agent in order to comply with its obligations pursuant to the [Proceeds of Crime Act, Cap 4.28] [Money Laundering (Prevention) Act, Cap.];
- (c) the identity of the directors and persons responsible for the management of the proposed agent to be used in the provision of the services and evidence that they are fit and proper persons; and,
- (d) any other information that the Central Bank requires.

(3) The Central Bank may, if it is satisfied with the information provided under subsection (2), grant an authorization in writing to a payment service provider to use an agent.

(4) An authorization granted under subsection (3) shall be subject to the conditions the Central Bank considers necessary and the Central Bank may, for the purposes of this Act, amend any condition of an authorization by way of alteration, substitution, addition, omission or other modification.

(5) The Central Bank may, take further action to verify the information and if after taking further action to verify the information, the Central Bank is not satisfied that the information provided pursuant to subsection (2) is correct, the Central Bank shall refuse to authorize the use of an agent.

(6) The Central Bank shall give to the payment service provider the reasons for the refusal to authorize the use of an agent, and the payment service provider shall have 30 days to make representations in writing to the Central Bank.

(7) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment—

(a) where the person is an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment; or

(b) where the person is body corporate, to a fine not exceeding \$250,000.

(8) Notwithstanding subsection (7), where the offence continues after a conviction is obtained, the person commits a further offence and is liable to a fine not exceeding \$10,000 for each day or part of the day during which the offence continues.

(9) Where a body corporate commits an offence under subsection (7)(b), whether the body corporate has been convicted, a director or an officer of the body corporate who knowingly authorized, permitted or acquiesced in the act or omission that constituted the offence commits an offence and is liable on conviction on indictment to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment.

Outsourcing of activities

36. (1) A licensee shall not outsource any of its important operational functions without the prior written approval of the Central Bank.

(2) A licensee shall provide the Central Bank with all relevant information in relation to the proposed outsourcing in a request for approval.

(3) The Central Bank may, on receipt of the information required under subsection (2), grant approval for the outsourcing of a function if the outsourcing would not impair —

(a) the quality of the licensee's internal control; or

(b) the ability of the Central Bank to monitor compliance of the licensee with its obligations under this Act

(4) Where a licensee outsources important operational functions, the Central Bank shall monitor for compliance to ensure that —

(a) the outsourcing does not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the issuer towards the users of any relevant payment instrument is not altered;

(c) the conditions of the licence are not undermined.

(5) For the purposes of subsections (1), (2), (3) and (4) an operational function shall be regarded as important if a defect or failure in its performance would materially impair the

continuing compliance of a licensee with the requirements of its licence, its financial performance, or the soundness or continuity of its services.

(6) A licensee who contravenes subsection (1) commits an offence and is liable on conviction on indictment –

(a) in the case of an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment; or

(b) In the case of a body corporate, to a fine not exceeding \$250,000.

(7) Notwithstanding subsection (6) where the offence continues after a conviction is obtained, the person commits a further offence and is liable to a fine not exceeding \$10,000 for each day or part of the day during which the offence continues.

(8) Where a body corporate commits an offence under subsection (6), whether the body corporate has been convicted, a director or an officer of the body corporate who knowingly authorized, permitted or acquiesced in the act or omission that constituted the offence commits an offence and is liable on conviction on indictment to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment.

Compliance with anti-money laundering and combatting the financing of terrorism and proliferation financing

37. A licensee shall comply with the requirements of the [Money Laundering (Prevention) Act, [Cap.], [Proceeds of Crime Act, [Cap. ... / Act. No. of 2014], and any guidelines, directives or rules issued or adopted by the Central Bank or other authorities with the responsibility for on-going monitoring of the fulfilment of all anti-money laundering and the prevention of terrorism obligations in [COUNTRY].

PART IV

DESIGNATION OF PAYMENT SYSTEMS

Designation

38. (1) The Central Bank may, by notice, designate a payment system as a designated payment system for enhanced oversight, if the Central Bank is satisfied that any of the following considerations apply –

(a) a disruption in the operations of the payment system could –

(i) trigger, cause or transmit further disruption to participants of the payment system,

- (ii) trigger, cause or transmit systemic disruption to the financial system of [COUNTRY] or any other country or territory in the Currency Union, or
 - (iii) affect public confidence in the payment system or the financial system of [COUNTRY] or any other country or territory in the Currency Union;
 - (b) the payment system is widely used in [COUNTRY] or other countries or territories of the Currency Union, or the operations of the payment system may have an impact on the operations of one or more other payment systems in the Currency Union;
 - (c) the designation is necessary to ensure efficiency or competitiveness in any of the services provided by the operator of the payment system under paragraph (b); or
 - (d) the designation is otherwise in the public interest.
- (2) A notice made under —
- (a) subsection (1)(a) or (1)(d) must identify the operator and the settlement bank of the designated payment system;
 - (b) subsection (1)(b) or (1)(c) must identify the operator of the designated payment system;
 - (c) subsection (1) must be published —
 - (i) in the Gazette [of .country or territory], and
 - (ii) on the website of the Central Bank.

Designation criteria

39. In considering whether to designate a payment system under section 38 the Central Bank shall have regard to the following —

- (a) the number and value of the transactions that the system presently processes or is likely to process in the future,
- (b) the safety, integrity, fairness, transparency, effectiveness and efficiency of the payment system;
- (c) the number and type of participants;
- (d) the markets served;
- (e) the market share controlled;
- (f) the nature of the transactions that the system processes;
- (g) whether the transactions or their equivalent could be handled by other payment systems;
- (h) the relationship between the system and other systems; and
- (i) any other matter the Central Bank considers necessary.

Revocation of a designation notice

40. The Central Bank may revoke a designation notice if the designated payment system does not meet the criteria in section 39.

PART V

RULES TO REGULATE SYSTEMS

Rules of systems

41. (1) An operator shall establish clear written rules for the governance, management and operations of the system which the operator is licensed to operate, including, at a minimum, rules for —

- (a) managing liquidity, credit risk and settlement risk;
- (b) determining the time when a payment instruction and a settlement is final;
- (c) corporate governance;
- (d) determining access to a payment service or system;
- (e) establishing contingency arrangements;
- (f) managing operational and cyber risks;
- (g) establishing the rights and liabilities of the operator, payment service provider and participants; and
- (h) protecting the rights of consumers, such as rules for the resolution of disputes with consumers.

(2) The rules established under subsection (1) must be —

- (a) submitted to the Central Bank for review prior to the start of the operation of a payment service or a system; and
- (b) in compliance with the requirements of this Act and rules, directives and guidelines issued by the Central Bank in relation to governance, management or the operation of a payment service or system.

Variation or invalidation of rules

42. (1) The Central Bank may by notice in writing vary or invalidate the rules of the operator established under section 41(1), where it considers appropriate to do so, having regard to—

- (a) the public interest;
- (b) the interests of the current participants in the system;
- (c) the interests of potential participants who, in the future, may desire access to the system;
- (d) the risk profile of the operator; and
- (e) any other matters the Central Bank considers relevant.

(2) An operator shall not amend a rule established under section 41(1) in a manner that would affect the structure, operation or administration of a system without the approval of the Central Bank.

(3) An operator shall give notice to the participants of the system of an amendment to a rule established under section 41(1) not more than 14 days after the approval of the Central Bank is given under subsection (2), and participants shall comply within 30 days of the notice.

(4) Notwithstanding subsection (3), the Central Bank may, in the interest of monetary policy, financial stability or the public interest, permit an operator to make changes to a system without giving notice under subsection (3).

Access to systems

43. (1) The rules established by the operator on access to a system must be objective, non-discriminatory and proportionate to the scale and risk profile of the participant.

(2) The rules must not inhibit access to more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the system.

PART VI

CONSUMER PROTECTION

Rules on transparency of fees, terms and conditions

44.—(1) The Central Bank may make rules to ensure transparency of fees and terms and conditions for payment services.

(2) The Central Bank shall publish the rules under subsection (1) to the general public on its website.

Notice of fees

45.—(1) A licensee, a participant or an agent who imposes a fee on a consumer for executing a payment service shall provide notice to the consumer, in accordance with subsections (2) and (3), stating the fee imposed and the amount of the fee.

(2) A licensee, a participant or an agent shall post the notice under subsection (1) on its website or in a prominent and conspicuous location at which the consumer initiates the payment order.

(3) A licensee, a participant or an agent shall not impose a fee for a payment instruction initiated by a consumer where the requirements of the notice under subsection (1) are not satisfied.

(4) The Central Bank, in consultation with a licensee, a participant or an agent, shall approve the maximum fee associated with a payment service.

Disclosure of terms and conditions

46.—(1) A licensee, a participant or an agent shall disclose to a consumer the terms and conditions of a payment service involving a consumer's account before the consumer contracts for the payment service.

(2) The terms and conditions to be disclosed under subsection (1) include —

- (a) the consumer's liability for an unauthorized payment service and notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, access code or other means of access;
- (b) the contact information of the person to be notified in the event that the consumer believes that an unauthorized payment service has been or may be effected;
- (c) the maximum time for a payment any kind to be executed;
- (d) the nature of the payment service which the consumer may initiate, such as any limitations on the frequency or amount of the payment service;
- (e) any fees for the payment service prior to the origination of the transaction;
- (f) the consumer's right to stop a payment and the procedure to initiate the stopping of a payment or obtain redress;
- (g) the consumer's right to receive information and the nature of that information;
- (h) a summary of any error resolution procedures and the related consumer's rights;
- (i) the liability of an operator, participant, payment service provider or agent to the consumer, such as liability for fraud;
- (j) the circumstances under which an operator, participant, payment service provider or agent may in the ordinary course of business disclose information concerning the customer's account to third parties;
- (k) a notice to the consumer that a fee may be imposed where the consumer initiates a transfer from an automated teller machine or other electronic terminal that is not operated by the issuer of the card or other means of access;
- (l) the consumer's right to know about the procedure for resolving disputes; and
- (m) any other term or condition the Central Bank determines necessary for the efficient functioning of this Act.

(3) The terms and conditions under subsection (2) must be written in clear and concise language.

(4) A licensee, participant or agent shall notify a consumer in writing, at least twenty-one days prior to the date, of a change in a term or condition of the consumer's account that is required to be disclosed.

(5) The period specified under subsection (4) does not apply if the change is immediately necessary to maintain or restore the security of a payment system or a consumer's account and the licensee, participant or agent shall as soon as practicable notify the consumer in writing.

Complaints

47.—(1) A consumer of a licensee, participant or agent who is aggrieved by any act or omission of the licensee, participant or agent may make a complaint in writing to the licensee, participant or agent for remedial action.

(2) Subject to subsection (3), a licensee, participant or agent shall provide a reply in writing to the complainant within seven days from the date the complaint was received.

(3) A licensee, participant or agent shall not consider a complaint where it is made more than seven years from the date of the act or omission giving rise to the complaint.

(4) Subject to subsection (6), where the complainant is dissatisfied with the reply, or does not receive a reply within the period specified under subsection (2), the complainant may refer the complaint to the Central Bank in writing.

(5) A complaint under subsection (4) must —

- (a) specify the nature of the complaint, the redress being sought and the reasons for the dissatisfaction; and
- (b) be accompanied by —
 - (i) a copy of the complaint made to the licensee, participant or agent;
 - (ii) a copy of the reply made by the licensee, participant or agent;
 - (iii) any other document or information, which may be of relevance to the complaint.

(6) The complainant shall refer a complaint to the Central Bank —

- (a) in the case of a reply, within two months from the date of receipt of the reply;
- (b) in the case of no reply, within two months from the end of the period specified under subsection (2).

(7) The Central Bank shall examine a complaint referred to it under subsection (4) and take such action that it considers appropriate, including —

- (a) instructing a licensee, participant or agent to remedy the situation;
- (b) directing a licensee, participant or agent to pay such compensation as is appropriate in the circumstances, to the complainant; and
- (c) conduct an inspection under section 30 if it is suspected that there is a breach of this Act.

(8) The Central Bank may direct the complainant or the licensee, participant or agent to provide such information as may be required for the purposes of subsection (6), within such time as may be specified in a directive, and the complainant, licensee, participant or agent shall comply with the directive.

(9) The Central Bank shall provide a reply in writing to the complainant within twenty-one days –

- (a) from the date of receipt of the complaint under subsection (6), or
- (b) from the date of receipt of the information under subsection (8).

(10) For the purposes of this section, “complainant” means a consumer who makes a complaint under subsection (1).

PART VII

SETTLEMENT, NETTING AND FINALITY OF PAYMENT

Settlements

48. The discharge of settlement obligations between participants shall be effected by means of the entries processed through the settlement system in accordance with procedures specified by the settlement rules.

Settlement of accounts

49.—(1) The Central Bank may require a participant to —

- (a) open and maintain settlement accounts in the books of the settlement bank, including the maintenance of minimum balances, on such terms and conditions as the Central Bank specifies; or
- (b) appoint another participant which has opened a settlement account as a settling participant, to settle all obligations on the first participant’s behalf.

(2) Where a participant appoints a settling participant under subsection (1)(b), the participant shall, before any obligation is settled by the settling participant on its behalf, give the operator notice in writing of the appointment, accompanied by a written confirmation from the settling participant of such appointment.

(3) A participant who intends to terminate the appointment of its settling participant, shall notify the operator in writing not less than fifteen business days before the date of termination of the appointment of the settling participant.

Netting arrangements

50.—(1) A netting arrangement shall be valid and enforceable and an operator and a participant in a system shall comply with the netting arrangement.

(2) The obligation of a settling participant or central counterparty may be netted and a net settlement amount or close-out netting amount determined, entered and cleared in accordance with the relevant settlement rules to –

- (a) make payment to a settling participant or central counterparty; and
- (b) receive payment from another settling participant or central counterparty.

(3) Transfer orders and the netting of transfer orders shall be legally enforceable within [COUNTRY] and binding on third parties.

Finality of payment

51.—(1) An operator or a payment service provider shall specify the rules to achieve payment finality in its operations, in accordance with this Act and any rules, directives or guidelines issued by the Central Bank.

(2) The rules under subsection (1) must include irrevocability of the entry or payment that has been accepted into the system and the accounts have been debited and credited, unless special conditions apply.

(3) An entry or payment that has been effected in accordance with the terms of subsection (1) shall not –

- (a) be revoked, reversed, or set aside, including, by insolvency or bankruptcy proceedings or any other written law similar in purpose and effect;
- (b) be subject to any provision of law or order of an administrative or judicial authority that operates as a stay of that payment.

Collateral for payment and settlement

52.—(1) The rights and remedies of a licensee, participant, a clearing system or a central counterparty or any other party in the system and the Central Bank with respect to

collateral granted to it as security for a payment or the performance of an obligation incurred in a system shall not be affected by insolvency or bankruptcy proceedings or law.

(2) The rights and remedies under subsection (1) are not subject to any stay of proceedings or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

PART VIII

WINDING-UP AND ADMINISTRATION OF AN OPERATOR, A PARTICIPANT OR A PAYMENT SERVICE PROVIDER

Requirement to notify in the event of insolvency

53.—(1) An operator shall immediately notify the participants where that operator —

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to be unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors.

(2) A participant shall immediately notify the operator and the operator shall immediately notify the other participants where the participant —

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to be unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors.

Duty to notify of winding-up

54.—(1) A licensee or participant shall notify the Central Bank in writing of any winding up proceedings prior to or at the commencement of the proceedings.

(2) A licensee or participant shall submit to the Central Bank-

- (a) a copy of the application for winding-up, when it is made; and
- (b) the winding-up order at the point in time when it is granted or no later than the next business day.

(3) The winding -up order under subsection (2)(b) must record the minute, hour and day that the order is made.

(4) On receipt of the application for winding-up under subsection (2)(a) or the winding-up order under subsection (2)(b) the Central Bank shall notify a settlement agent, settling

participant, domestic operator and foreign operators of the application for winding-up or winding-up order.

(5) A domestic operator and foreign operator under subsection (4) shall, immediately on being notified by the Central Bank of the submission of the winding-up order under subsection (2), take the appropriate measures to facilitate compliance with the winding-up order.

(6) Where licensee or participant is voluntarily wound up, with the approval of the Central Bank, that operator, payment service provider or participant shall inform all other participants of the winding-up resolution within 24 hours of the winding-up resolution taking effect.

(7) The Central Bank shall notify domestic operators and foreign operators and participants of the voluntary winding-up of a participant as soon as practicable , and in any case, no later than the start of the next business day of the winding-up resolution taking effect.

(8) In this section, “domestic operator” means an operator that is incorporated under the laws of a CARICOM Member State.

Prohibition

55.—(1) A licensee or participant who has submitted an application for winding up under section 54 shall not operate or participate in a system.

(2) A licensee or participant who contravenes subsection (1) commits an offence and is liable –

- (a) on conviction on indictment, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding four years or to both such fine and imprisonment;
- (b) where the offence continues after a conviction is obtained to, an additional fine not exceeding \$10,000 for each day or part of a day during which the offence continues.

Winding-up not to affect finality of payment

56. Notwithstanding anything to the contrary in any law relating to insolvency or bankruptcy, the winding-up of an operator, payment service provider or participant, does not affect the finality or irrevocability of any entry or payment, which became final and irrevocable under section 51, before the copy of the application for winding up or winding up order was submitted with the Central Bank under section 54.

Netting arrangement and netting rules to bind liquidators

57.—(1) Where a participant is wound up or placed in administration or otherwise declared insolvent by a court, a liquidator or administrator shall be bound by any provision contained in a netting arrangement to which the participant is a party or any netting rules term and practices applicable to the system of the participant concerned in respect of any payment or settlement obligation that —

(a) has been determined through netting prior to the issue of the winding-up order or arrangement order, as the case may be; and

(b) is to be discharged on or after the date of the winding-up or arrangement order or discharge of which was overdue on the date of the winding-up order.

(2) Subsection (1) shall apply notwithstanding anything to the contrary in any other enactment in force in [COUNTRY] relating to the winding up or administration of the participant.

Preservation of rights

58. This Part shall not be construed as restricting or precluding a person from enforcing a right under the law insofar as it does not affect the finality of a payment instruction or settlement or the validity and enforceability of a netting arrangement under this Part.

Governing laws

59.—(1) In the event of insolvency of a foreign participant the rights and obligations of the foreign participant relating to settlement shall be governed by the laws of [COUNTRY].

(2) The rights and obligations of a [COUNTRY] participant in a foreign payment system, foreign clearing system or foreign settlement system shall be governed by the law governing that foreign payment system, foreign clearing system or foreign settlement system.

(3) In this section, “foreign participant” means a participant operating in [COUNTRY] or another Caricom Member State but whose base of origin by incorporation, is outside the CARICOM Member States.

PART IX

ADMINISTRATIVE MEASURES AND PENALTIES

Power with respect to directions, warnings, written agreements and orders

60.—(1) The Central Bank has, in carrying out its oversight responsibilities under section 4(1), in relation to a licensee, a participant, its directors, or officers, the power to —

(a) give a direction;

- (b) issue a warning;
- (c) conclude a written agreement; or
- (d) give an order.

(2) The Central Bank may exercise a power under subsection (1) –

(a) where the licensee or participant fails to comply with the sections 13, 30, 35, 36 or 55, or

(b) where the Central Bank is satisfied that a director, manager, officer or an individual who manages or controls the licensee or participant, is not a fit and proper person.

(3) A direction, warning, written agreement or an order under subsection (1) must specify the activity, behaviour or practice that must be terminated or remedied and the date by which it must be terminated or remedied.

Penalties

61.—(1) A licensee or participant that fails to comply with sections 13, 30, 35, 36, 55 or 60 is liable —

- (a) to a penalty not exceeding ten thousand dollars; and
- (b) to a penalty not exceeding one thousand dollars, in the case of a continuous failure to comply, for each day or part of a day that the failure continues, from the date immediately following the period specified under subsection (4)(c).

(2) A penalty for which a licensee or participant is liable under subsection (1)(b) must not apply in respect of a period of more than thirty days.

(3) The Central Bank shall serve a written notice to a licensee or participant before the penalty under subsection (1) is imposed.

(4) A notice under subsection (3) must state –

(a) the section specified under subsection (1) with which the licensee or participant has failed to comply;

(b) the amount of the penalty for which the licensee or participant is liable under subsection (1)(a) or (1)(b);

(c) subject to subsection (2), the period within which the penalty under paragraph (b) must be paid;

(d) that the penalty is payable to the Central Bank;

(e) that the licensee or participant may, in writing, accept or decline liability for the payment of the penalty under paragraph (b); and

(f) that failure to pay the penalty under paragraph (b) may result in prosecution.

(5) On being served with a notice under subsection (3) and within the period specified under subsection (4)(c), a licensee or participant may, in writing, accept or decline liability for the payment of the penalty under subsection (4)(e).

(6) A licensee or participant that accepts liability for the payment of a penalty under subsection (5) may pay the amount of the penalty stated in the notice.

(7) If a licensee or participant declines liability for the payment of a penalty under subsection (5), proceedings shall be brought against the licensee or participant for the failure specified in the notice under subsection (4)(a).

(8) The Central Bank may, whether or not the penalty has been paid, withdraw a notice under subsection (3).

(9) Where a notice is withdrawn under subsection (8) and the penalty has been paid under subsection (6), the amount of the penalty must be refunded to the licensee or participant.

(10) Proceedings shall not be brought against a licensee or participant where the licensee or participant —

(a) has paid the penalty specified in the notice under subsection (4)(b) in the period specified under subsection (4)(c); or

(b) has been found liable and is penalized by a court for the failure specified in the notice under subsection (3).

Arbitration

62. Any dispute between participants concerning a matter arising under this Act shall be submitted to arbitration in accordance with the Arbitration Act, CAP [].

Data protection

63.—(1) A licensee or participant shall process personal data through a system in a manner that facilitates the prevention, detection and investigation of payment fraud.

(2) A licensee or participant shall process personal data in accordance with [the Data Protection Act, Cap.] [any law governing data protection] and any other applicable law

and provide the required information to a consumer in relation to the processing of personal data.

(3) A licensee or participant shall not without the express consent of a consumer access, process or retain personal data that is not required for the provision of a payment service.

Admissibility of electronic and optical evidence and archives

64.—(1) Payment instruments already paid or introduced into a system, or their archives held in writing, in an electronic or in durable medium, or optical evidence of original documents such as cheques or other payment instruments, securities, certificates of deposits and account ledgers shall be admissible as evidence in all legal matters.

(2) For the purposes of this section, “optical evidence” includes photographic images such as film, microfilm, microfiche or computer images.

Retention of records

65.—(1) Notwithstanding anything to the contrary in any law relating to the retention of records, licensee and participants must retain all records obtained during the operation and administration of the system for a period of not less than seven years from the date the record was obtained or produced.

(2) The Minister, on the recommendation of the Central Bank may, by Order published in the Gazette, specify a longer period for the retention of records under subsection (1).

PART X

MISCELLANEOUS

Enforceability of electronic funds transfers

66. (1) An electronic funds transfer and a record of an electronic funds transfer is enforceable and has evidentiary value in accordance with the law relating to electronic fund transfers.

(2) The Central Bank may, make or issue rules, directives and guidelines with respect specific issues on payment orders and money transfers executed by electronic messages, including, the protection of consumers of electronic payment instruments.

Register

67. The Central Bank shall maintain and publish on its website a register of —

(a) licences issued under section 17; and

(b) authorizations granted under section 35.

Rules, directives and guidelines

68. (1) The Central Bank may make rules, directives and guidelines, for the purpose of giving effect to the any international standard or a matter required by this Act.

(2) Without prejudice to the generality of subsection (1), the Central Bank may make rules, directives and guidelines providing for –

- (a) the effective and efficient supervision of established and designated payment systems;
- (b) collateral in all its forms, nature, effectiveness and means of realization;
- (c) finality of payment and settlement, netting and loss allocation;
- (d) operations of a clearing house and other retail payment products or channels;
- (e) policies, practices and procedures for evaluating financial soundness of operators and participants;
- (f) policies, procedures for identifying, monitoring and controlling country risk, institutional risk, market risk, liquidity risk, operational risk and such other risks the Central Bank considers relevant;
- (g) auditors;
- (h) corporate governance;
- (i) liquidity requirements;
- (j) matters relating to payment orders and money transfers executed by electronic messages;
- (k) cyber security;
- (l) anti-money laundering and combatting the financing of terrorism matters; and
- (m) any other matter required for the implementation and efficient administration of this Act.

69. Regulations

(1) The Minister may, on the recommendation of the Central Bank, make Regulations for the purpose of giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Regulations may provide for –

- (a) the payment of fees and charges under this Act;
- (b) licensing, regulation and oversight of payment service providers and operators of payment systems;
- (c) consumer protection and the protection of users of payment instruments;
- (d) operations of electronic payment channels;
- (e) fintech and financial innovations related matters;
- (f) minimum criteria for fit and proper persons;
- (g) disciplinary procedures for participants
- (h) reports or other information to be supplied by a licensee and any other matter associated with the use of a licence;
- (i) records to be kept, returns to be made to the Central Bank by persons who are appointed as auditors under this Act;
- (k) for the effective implementation and administration of this Act.

70. Indemnity of Central Bank officials and other officials

Any act, matter or thing done by any officer or person employed by the Central Bank or by any other person in the exercise or performance or purported exercise or performance, in good faith, of any power or function under this Act, shall not give rise to any action, claim, liability, suit or demand against the officer or person concerned.

71. Repeal and savings

(1) The Payment System Act, [Cap.] [No. --- of 2008] is repealed.

(2) Notwithstanding subsection (1) —

- (a) any subsidiary legislation made under the repealed Act, shall, if in force at the commencement of this Act, continue in force until revoked or replaced by any subsidiary legislation made under this Act;
- (b) any rules, directives or guidelines issued by the Central Bank under the repealed Act shall, if in force at the commencement of this Act, continue in force until revoked or replaced by any rules, directives or guidelines made under this Act; and
- (c) any act, decision or other matter carried out under the repealed Act shall be deemed to have been carried out under this Act.

(3) In this section, "repealed Act" means the Payment System Act [Cap.] [No. --- of 2008].

72. Transitional

A licensee, participant or any of its officers who conducts business relating to the provision of a payment service or operation of a system shall comply with the requirements of this Act within twelve months from the coming into force of this Act.

Passed in the House of Assembly this [] day of [], 202[]
.....1.....
”
Speaker of the House of [Assembly.]

Passed in the Senate this [] day of [], 202[]
.....,
President of the Senate.