

**Amended 2021-02-23**

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This Bill would modernise the National Payment System and provide for its regulation, oversight and for related matters.

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*NATIONAL PAYMENT SYSTEM COUNCIL*





## **BARBADOS**

A Bill entitled

An Act to modernize the National Payment System and provide for its regulation and oversight and to provide for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *National Payment System Act, 2021*.

**Interpretation**

2. In this Act,

“administrative penalty” means a penalty payable to the Central Bank for breach of a term or condition of a licence or authorization granted under this Act;

“affiliate” has the meaning assigned to it under section 448 of the *Companies Act*, Cap. 308;

“agent” means a person who acts on the behalf of a payment service provider to provide payment services;

“authorized” means any authorisation granted under this Act to an entity that does not require a licence under section 11;

“bank” has the meaning assigned to it under section 2 of the *Financial Institutions Act*, Cap. 324A;

“book-entry” means the electronic transfer of securities and other financial assets which do not involve the physical movement of paper documents or certificates;

“Central Bank” has the meaning assigned to the term “Bank” under section 2 of the *Central Bank of Barbados Act* (Act 2020-30);

“central counter-party” means a financial institution that takes on counter-party credit risk and is interposed between parties to a transaction, becoming the buyer to every seller and the seller to every buyer and provides clearing and

settlement services for legal tender currency trades, securities, options and derivative contracts;

“central securities depository” includes an entity which enables

- (a) securities to be immobilized or dematerialized;
- (b) securities transactions to be processed by book-entry;
- (c) the provision of custodial and asset services; and
- (d) securities to be held either as an electronic record or in physical form;

“cheque”

- (a) has the meaning assigned to it under section 73 of the *Bills of Exchange Act*, Cap. 304; and
- (b) includes a cheque in electronic form;

“cheque image” means a digital representation of the front and back of a cheque;

“cheque in electronic form” means a cheque image which is generated, written and signed in a secure system ensuring such minimum safety standards as may be prescribed by the Central Bank;

“clearing” means the process of transmitting, reconciling or confirming funds or securities transfer instructions prior to settlement and includes the netting of instructions and the establishment of final positions for settlement;

“clearing house” means an entity that provides clearing or settlement services and includes the Central Bank;

“clearing system”

- (a) means a set of procedures whereby participants present and exchange information relating to the transfer of funds or securities to other participants through a centralized system or at a single location; and
- (b) includes mechanisms for the calculation of the position of participants on a bilateral or multilateral basis with a view to facilitating the settlement of their obligations;

“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;

“collateral” means any asset or third-party commitment that is accepted by the collateral taker to secure an obligation of the collateral provider regarding the collateral taker;

“consumer” means an individual who accesses, purchases or utilises financial products and services;

“Council” means the National Payment System Council established under section 7;

“counter-party” means a party on either side of a financial transaction;

“credit risk” means the risk that a counter-party to a financial transaction will not settle that obligation for full value either when due or at any time thereafter;

“debit card” means a card by which money is automatically deducted from an account at a deposit-taking financial institution to pay for goods or services;

“dematerialized” means the elimination of physical certificates or documents of title which represent ownership of securities so that securities exist only as accounting records in an electronic or book-entry format;

“derivative”

- (a) means a financial contract, the value of which depends on the value of one or more underlying reference assets, rates or indices on a measure of economic value or on factual events; and
- (b) includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign currency options or any other instrument as the Central Bank may approve;

“direct participant”

- (a) means a participant in a system that is responsible for the settlement of its own payments, those of its consumers and those of other participants which are not entitled to settle through the system on their own behalf; and
- (b) includes a financial institution and society;

“electronic funds transfer”

- (a) means a transfer of funds which is initiated by a person, so as to instruct, authorize or order a payment service provider to debit or credit an account through electronic means excluding the sale of postal money orders; and
- (b) includes
  - (i) point-of-sale transfers;
  - (ii) automated teller machine transactions;
  - (iii) transfers initiated by telephonic instruments including mobile phones;
  - (iv) internet and other communication channels;
  - (v) credit card and debit card transfers; or
  - (vi) any other technological or electronic method or device to facilitate the electronic transfer of funds as the Central Bank may approve;

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

“electronic presentment of a cheque” means presentment of a cheque in electronic form;

“financial institution” has the meaning assigned to it in section 2 of the *Financial Institutions Act*, Cap. 324A;

“intraday credit” means credit lasting less than a day given by a financial entity to a person;

“licence” means a licence issued by the Central Bank under this Act;

“licensee” means a person which has been issued with a licence under this Act;

“Minister” means the Minister responsible for Finance;

“National Payment System”

(a) means all the services associated with sending, receiving and the processing of orders of payment or transfer of money in domestic or foreign currencies; and

(b) includes

(i) issuance and management of payment instruments;

(ii) payment systems, clearing systems and settlement systems, including processing securities and other financial instruments, arrangements and procedures associated to those systems and services; and

(iii) payment service providers;

“net settlement” means a settlement procedure in which final settlement of transfer instructions occurs on a net basis at one or more pre-specified times during the processing day;

“net termination value” means the net amount obtained after setting off or otherwise netting the settlement obligations between the parties in accordance with settlement rules issued by the Central Bank or a netting arrangement entered into between the parties;

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

“netting arrangement” means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation and includes

- (a) bilateral netting;
- (b) multilateral netting;
- (c) netting by novation;
- (d) close-out netting;
- (e) payments netting; or
- (f) a combination of any of the above;

“netting by novation” means a netting arrangement between the parties to a series of transactions where an account of amounts due is kept and the rights and obligations of the parties in respect of the account are continuously extinguished and replaced by a new single amount payable by one party to the other;

“novation” means a process through which the original obligation between a buyer and a seller is discharged through the substitution of the central counter-party as seller to the buyer and buyer to the seller, creating two new contracts;

“operator” means

- (a) the Central Bank; or
- (b) any entity
  - (i) licensed; or
  - (ii) authorized,

by the Central Bank to operate a system under this Act;

“participant” means a party which is licensed or authorized to exchange, clear and settle through the payment system with other participants either as a direct participant or through the services of a direct participant;

“payment card”

(a) means a card, coupon book, or other device, including a code or any other means of access to an account that may be used from time to time to obtain money or to make payment; and

(b) includes a debit card, credit card and stored-value card;

“payments netting” means netting arrangement between two or more parties used to reduce settlement risk;

“payment instrument”

(a) means an instrument, 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 money; and

(b) includes

(i) a cheque; or

(ii) a fund transfer initiated by any paper or paperless device such as an automated teller machine, point of sale system, internet, telephone, mobile phone or payment cards;

“payment service” means a service which enables

(a) cash deposits and withdrawals;

(b) the execution of a payment transaction;

(c) the issue or acquisition of a payment instrument;

(d) the provision of a remittance service; and

(e) any other service functional to the transfer of money and includes the issue of electronic money instruments and an electronic funds transfer



but does not include the provision of a solely online or telecommunication service or network access;

“payment service provider” means a licensee or an entity authorized under this Act to provide a payment service and includes operators, participants and any third party acting on the behalf of either of them as an agent or by way of outsourcing agreements, whether entirely or partially operating in Barbados;

“payment system”

- (a) means any system that consists of a set of instruments, procedures and rules for the transfer of funds between or among participants and includes consumers; and
- (b) includes any system or arrangement for the processing, clearing or settlement of funds;

“person” includes an individual and a body corporate, as the context requires;

“remittance service” means a service where cash, cheques or other monetary instruments are sent by electronic transmission from one location and a corresponding sum in cash or monetary instruments is received by a designated recipient in another location by means of a communication, a message, by transfer or through a clearing system in which the remittance service provider is a participant;

“security” has the meaning assigned to it under section 2 of the *Securities Act*, Cap. 318A;

“settlement” means the act of discharging obligations by transferring funds or securities or other financial instruments between two or more parties;

“settlement account” means an account at the Central Bank, a settlement agent or central counter-party that is used to hold funds or securities and to settle transactions between participants in the system;

“settlement agent” means a company providing accounts for participants to hold funds or securities and to settle transactions within a system;

“settlement risk” means the risk that a party will default on one or more settlement obligations to the opposite party or to a settlement agent;

“settlement rules”

- (a) mean the rules that provide the basis upon which payment obligations are calculated, netted or settled; and
- (b) include
  - (i) 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 counter-party or other participants; and
  - (ii) settlement of obligations from securities;

“settlement system” means

- (a) a system established and operated by the Central Bank for the discharge of payment and settlement obligations in relation to securities; or
- (b) any other system which is approved by the Central Bank for the purpose of settlement or payment;

“society” means a credit union or co-operative society registered under the *Co-operative Societies Act, Cap. 378A*;

“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, clearing system or settlement system but does not include an operator, any settlement agent, central counter-party or clearing house; and

“systemic risk” includes the risk that the failure of one participant in a system or in financial markets to meet its required obligations, will cause other participants or financial institutions to be unable to meet their obligations, including settlement obligations in a system when due, and which may cause

significant liquidity or credit problems and may threaten the stability of a financial market;

“Tribunal” means such tribunal as may be established by an Act for the purpose of determining disputes under this Act.

**Purpose**

3.(1) The purpose of this Act is to provide a payment system that is safe, efficient, resilient and competitive through the management of risks, the maintenance of financial stability and the protection of the interests of consumers.

(2) The Central Bank shall, in fulfilling the purpose of this Act, facilitate co-operation among all participants in the development of the National Payment System.

PART II

POWERS AND DUTIES OF THE CENTRAL BANK

**Oversight and administration of the National Payment System**

4.(1) The Central Bank shall

- (a) modernize, regulate, monitor and oversee the National Payment System in the public interest;
- (b) consider the interests of consumers;
- (c) ensure the safe and effective operation of the National Payment System; and
- (d) reduce any inefficiencies and potential risks to the National Payment System.

- (2) Subject to this Act, the Central Bank shall
- (a) formulate policies for the continuous modernization of the National Payment System;
  - (b) license and authorize payment service providers and operators in conformity with the provisions of this Act or any regulations made under this Act;
  - (c) establish general or individual conditions, standards, rules or procedures in accordance with this Act and any regulations made under this Act that are applicable to an entity licensed or authorized under this Act;
  - (d) ensure that the conditions, standards, rules and procedures referred to in paragraph (c) are applied;
  - (e) regulate, monitor and supervise the clearing systems and settlement systems;
  - (f) request any document from participants in the clearing systems and settlement system;
  - (g) inspect the books of participants in the clearing system and settlement system;
  - (h) issue directives, instructions and guidelines for the operation of the National Payment Systems; and
  - (i) perform such other duties relating to the National Payment System.

**Operational role of the Central Bank**

5.(1) The Central Bank may support the operations and participants of a payment service.

- (2) The Central Bank may, in the fulfilment of its role pursuant to subsection (1)
- (a) establish, own, operate and participate in the ownership or operation of a system;
  - (b) act as a central counter-party to participants;
  - (c) open and hold accounts for any operator or participant, which may be used for the clearing and settlement of transfers into a system;
  - (d) hold securities on accounts for any operator or participant, which may be used for the meeting of settlement requirements;
  - (e) extend intraday credit, to entities that are participating in a system where it has been granted adequate collateral; or
  - (f) act as a central securities depository for government securities issued in accordance with the *Central Bank of Barbados Act, 2020* (Act 2020-30), the *Local Loans Act*, Cap. 98 or any other enactment.
- (3) The Central Bank may, in the discharge of its regulatory, monitoring and supervisory functions under this Act, take into account any international oversight standards.

### **Co-operation with other authorities**

- 6.(1) The Central Bank may co-operate with
- (a) an entity directly or indirectly involved in payment services and their operation in Barbados as well as on the regulation, monitoring and supervision of capital markets in Barbados;
  - (b) a monetary authority or international organization dealing with regulation and oversight of a system.
- (2) The Central Bank may for the purpose of co-operating with an entity or authority referred to in subsection (1), enter into a memorandum of understanding with that entity or authority.

(3) Subsection (2) does not prohibit the Central Bank from co-operating with an authority or entity referred to in subsection (1) in the absence of a memorandum of understanding with that authority or entity.

### **Establishment of the National Payment System Council**

- 7.(1) There is established a National Payment System Council which shall
- (a) advise the Central Bank on
    - (i) the regulation and oversight of the National Payment System;
    - (ii) the setting of operational and technical standards;
    - (iii) the setting of fees; and
    - (iv) the development of new technologies; and
  - (b) submit such reports to the Central Bank as the Central Bank may request from time to time.
- (2) The *Schedule* shall have effect with respect to the constitution and procedure of the Council.

## PART III

### AUTHORISATION AND LICENSING

#### **Authority for the grant of authorization and issue of licences**

- 8.(1) The Central Bank shall be the authority which
- (a) authorizes a person; or
  - (b) issues a licence to a person,
- to act as a payment service provider or to operate a system.
- (2) No person shall provide a payment service or operate a system without authorization or a licence issued by the Central Bank.

**Application for a licence**

**9.(1)** A person shall apply to the Central Bank for a licence to provide a payment service or to operate a system and the application shall be in such form and contain such information as may be prescribed by the Central Bank.

(2) The application form shall be accompanied by the prescribed fee.

(3) For the purposes of subsection (1), the Central Bank may

(a) specify different classes and sub-classes of payment services or operators in respect of which a person is required to apply for a licence and for which a licence may be granted including

(i) a remittance service;

(ii) an electronic funds transfer;

(iii) electronic money; and

(iv) any other classifications the Central Bank considers appropriate; and

(b) prescribe the paid up capital or capital adequacy requirement.

**Grant of a licence**

**10.(1)** Where the Central Bank determines that an applicant satisfies the prescribed requirements for licensing, the Central Bank shall, within 3 months of receiving the application, and on the payment of the prescribed fee, grant a licence specifying the type of payment service or system to be operated.

(2) Notwithstanding subsection (1), the Central Bank may impose terms and conditions in a licence with respect to the type of system to be operated, including the following:

(a) the capital adequacy levels required to be maintained;

(b) the average value of payments;

- (c) the aggregate value of payments; and
  - (d) any other relevant factor.
- (3) Where the Central Bank grants a licence, notice of the grant of licence shall be published
- (a) in the *Official Gazette*;
  - (b) in a daily newspaper published and circulated in Barbados; and
  - (c) on the website of the Central Bank.
- (4) Where the Central Bank determines that an applicant does not satisfy the requirements for the grant of a licence, the Central Bank shall, no later than 3 months after receiving the application, inform the applicant in writing of its refusal to grant a licence together with the reasons for the refusal.

#### **Exemptions from licensing**

- 11.(1)** Notwithstanding sections 8 and 9, a financial institution or society shall not be required to obtain a licence and shall be deemed to be authorized to provide a payment service or to operate a system under this Act.
- (2) A bank or society which provides a payment service, remittance 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.
- (3) The Central Bank shall maintain a register of all persons authorized in accordance with this section.



**Display of licence and certificates**

**12.(1)** A licensee shall display the licence conspicuously at the primary location where the licensee conducts business and shall similarly display a copy of the licence at every other location or branch in Barbados.

(2) An agent of a payment service provider for the provision of a remittance service, shall obtain from the Central Bank, a certificate of agency in respect of each location and shall display the certificate conspicuously at the relevant location.

**Prohibition against the transfer of a licence**

**13.** No licence or any other right acquired under this Act shall be transferable, whether in whole or in part, except as may be prescribed by the Central Bank, and any transfer in contravention thereof shall be void.

**Renewal of licence**

**14.** A licence granted under this Part may be renewed in the manner and form prescribed by the Central Bank subject to payment of the prescribed fees.

**Conditions of licence**

**15.(1)** A licence granted under this Act shall be subject to the conditions the Central Bank considers necessary.

(2) The Central Bank may, for the purposes of this Act, amend any condition of a licence by way of alteration, substitution, addition, omission or other modification.

(3) The Central Bank may, on the application of a licensee, amend a condition where it considers the proposed amendment to be appropriate.

(4) Where the Central Bank directs any amendments in the conditions of a licence, it shall serve notice on the licensee informing the licensee of the reasons

for the proposed amendment, and give the licensee 14 days within which to provide comments on the proposed amendment.

(5) On receipt of any comments pursuant to subsection (4), the Central Bank shall

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

(6) Where a licensee intends to establish an agency or subsidiary outside of Barbados, the licensee shall seek the permission of the Central Bank prior to that establishment.

### **Suspension and revocation of licence**

**16.(1)** The Central Bank may suspend or revoke a licence granted under section 10 where

- (a) the licensee breaches a condition of the licence or fails to comply with this Act or any regulations made under this Act;
- (b) the licensee fails to commence operation of the system within 6 months of the grant of the licence;
- (c) the licensee has ceased operation of the system for any period of time that may be prescribed;
- (d) the licensee obtained the licence through misrepresentation to the Central Bank or by any other irregular means;
- (e) the licensee no longer meets the applicable criteria for the grant of a licence under section 10;
- (f) the operation of the system for which the licence was granted endangers the stability of the payment or financial system in Barbados;
- (g) the entity that owns or operates the system enters into insolvency proceedings;

- (h) in the opinion of the Central Bank, the operation of the system is no longer in the public interest or the system no longer represents the interest of the participants; or
  - (i) an infringement set out under Part XII occurs.
- (2) Subject to subsection (1), before suspending or revoking a licence granted under section 10, the Central Bank shall
  - (a) give to the licensee notice in writing of its intention to do so, specifying the grounds on which it proposes to suspend or revoke the licence; and
  - (b) require the licensee to submit to it, within a specified period, a written statement of objections to the suspension or revocation of the licence.
- (3) Where the licensee has submitted a written statement of objection in accordance with subsection (2), the Central Bank shall give the licensee written notice of its decision to suspend, revoke or continue the licence.
- (4) Notwithstanding subsection (2), where the Central Bank is of the opinion that
  - (a) the safety, soundness, reliability or efficiency of a licensee is or may be threatened; or
  - (b) the stability of the financial systems is endangered,the Central Bank may, without prior notice, suspend the licence of that payment service or system and require the licensee to show cause why the suspension should not continue.
- (5) Where the licensee fails to satisfy the Central Bank that the suspension should be discontinued, the Central Bank shall revoke the licence.
- (6) Where the Central Bank suspends or revokes a licence in accordance with subsection (4) or (5), the Central Bank shall immediately publish a notice of the suspension or revocation
  - (a) in the *Official Gazette*;

- (b) in a daily newspaper published and circulated in Barbados; and
- (c) on the website of the Central Bank,

stating the circumstances for the suspension or revocation.

(7) The Bank shall, within 7 days of a licensee ceasing to hold a licence, publish a notice of the cessation

- (a) in the *Official Gazette*;
- (b) in a daily newspaper published and circulated in Barbados; and
- (c) on the website of the Central Bank.

(8) Where the Central Bank suspends or revokes a licence, it may take such actions as it deems reasonable to ensure the continuity of the National Payment System.

#### **Application of sections and Parts to persons licensed or authorized**

**17.(1)** Sections 12 to 16 shall apply to persons that are exempt from the licensing process but are subject to authorisations in accordance with section 11, with such modifications and adaptations as are necessary.

(2) Parts IV, VI, VII, VIII, IX and X shall apply to persons licensed or authorized under this Act, with such modifications and adaptations as are necessary.

### **PART IV**

#### **ONGOING OVERSIGHT AND SUPERVISION**

##### **General and individual measures**

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

(2) The Central Bank may at any time issue directives to any payment service provider or operator, or generally to such providers or operators or categories thereof, with respect to

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

(3) The Central Bank shall, at least 14 days prior to the coming into operation of any general directive issued under subsection (2), publish that directive

- (a) in the *Official Gazette*;
- (b) in a newspaper published and circulated in Barbados; and
- (c) on the website of the Central Bank.

### **Financial innovation oversight**

**19.(1)** The Central Bank shall monitor emerging and innovative payment systems and technologies.

(2) Where a person

- (a) provides innovative payment system or technology; and
- (b) is desirous of operating in Barbados,

that person shall apply to the Central Bank for the innovative payment system and technology to be reviewed, tested and monitored.

(3) The Central Bank shall, in the absence of an enactment, issue guidelines prescribing the mechanisms to review, test and monitor an application for the provision of an innovative payment system or technology.

- (4) Where after reviewing and monitoring an innovative payment system or technology the Central Bank is
- (a) of the opinion that the innovative payment system or technology is not likely to threaten the financial stability of Barbados, the Central Bank may permit its use; or
  - (b) uncertain as to whether the innovative payment system or technology is likely to threaten the financial stability of Barbados, the Central Bank may, subject to enhanced monitoring, allow the innovative payment system or technology to continue to be tested for a specified period.
- (5) Where the Central Bank has permitted the operation of an innovative payment service or technology under subsection (4), the provider of that service or technology shall, subject to any other legal or regulatory requirements, be eligible to access payment services within Barbados.
- (6) Where after the review of the innovative payment system or technology the Central Bank 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 Barbados, the Central Bank may refuse to permit its operation in Barbados.

**Access to information and disclosure**

- 20.(1)** An operator, a participant or a payment service provider 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 any documents relating to its business or the business of its affiliates for the inspection by any examiner or auditor appointed by the Central Bank at the time and in the manner as the Central Bank, examiner or auditor specifies; or
  - (c) make staff available for interviews with the Central Bank or any person appointed by the Central Bank where necessary.

- (2) Where an operator, a participant or a payment service provider
- (a) fails to comply with any of the provisions of subsection (1); or
  - (b) provides information or produces any document pursuant to subsection (1) which is false or misleading in any material particular,

that operator, participant or payment service provider is guilty of an offence.

- (3) Where
- (a) the Central Bank is not the principal regulator of an operator, a participant or a payment service provider; and
  - (b) access to information or disclosure is required,

the Central Bank shall co-operate with the principal regulator of that operator, participant or payment service provider in order to access that information.

### **Power to inspect and examine**

**21.(1)** Subject to subsection (3) of section 20, the Central Bank, for the purposes of carrying out its functions under this Act, shall have the power, with or without prior notice, to enter and inspect the premises of an operator, a participant or a payment service provider and any third party acting on their behalf, either as an agent or by way of outsourcing agreements.

- (2) The Central Bank may by its officers or agents authorized in writing
- (a) enter and search the premises of a person that the Central Bank has reason to believe is providing a payment service or operating a system without a valid licence issued by the Bank;
  - (b) inspect, make copies of and retain any book, account, minutes of meetings or any other document or record, including information stored electronically by an operator, a participant or a payment service provider, or any third party acting on their behalf, either as an agent or by way of outsourcing agreements;

- (c) inspect and retain any equipment, apparatus, machinery or any other item or record on the premises where the operation is being conducted contrary to this Act;
  - (d) inspect any other information of an operator, a participant or a payment service provider; or
  - (e) interview the staff of an operator, a participant or a payment service provider.
- (3) Where the Central Bank is satisfied that the retention of the items or records is no longer necessary, it may return to the owners any apparatus, equipment, machinery, record or any other item that it retained under subsection (2).

#### **Audit and submission of audited financial statements**

**22.(1)** The Central Bank shall conduct an audit or commission an independent auditor to conduct an audit of the accounts, books, documents and other records of an operator, a participant or a payment service provider.

(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 independent auditor to carry out an audit.

(3) Subject to subsection (3) of section 20, an operator, a participant or a payment service provider shall forward to the Central Bank copies of its audited financial statements prepared in accordance with recognized accounting standards

- (a) at the end of each financial year; or
- (b) at such time that the Central Bank determines, when an issue arises in relation to a regulatory concern.



**Disclosure of information and duty of confidentiality**

**23.(1)** The Central Bank shall not directly or indirectly disclose to any person any information or 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 National Payment System;
- (c) where it is disclosed to a person who is lawfully authorized to receive the information;
- (d) when disclosure is ordered by a court of law;
- (e) for statistical purposes;
- (f) where for the preservation of transparency, it is required to be shared with all participants of the National Payment System at the request of one participant; or
- (g) where it is required for the purpose of satisfying an obligation under an international treaty, convention or an agreement to which Barbados is a party.

(2) Notwithstanding subsection (1), the Central Bank may, in accordance with section 6, disclose data or information obtained under this Act to an entity in Barbados or a foreign entity which is charged with the regulation and supervision of financial markets, a payment system, an operator, a participant, a payment service provider where

- (a) the purpose for which the data or information will be used is sufficiently specified;
- (b) the intended use of the data or information fits the framework of the supervision of financial markets or participants active in these markets;

- (c) the supply of the data or information would be compatible with the laws of Barbados or in the public interest;
  - (d) the confidentiality of the data or information is adequately guaranteed; or
  - (e) the supply of the data or information is or may come into conflict with the objects of this Act.
- (3) Where the request for disclosure is related to an investigation into the commission of an offence, it shall only be granted
- (a) with the permission of the Governor of the Central Bank;
  - (b) by order of a judge of the High Court; or
  - (c) in accordance with any other enactment.

#### **Publication of data**

- 24.** Notwithstanding section 23, the Central Bank may publish
- (a) in whole or in part, any information or data obtained under this Act if the information published does not
    - (i) contravene the laws of Barbados;
    - (ii) disclose sensitive information of any person; or
    - (iii) disclose the financial affairs of a person other than an operator, a payment service provider or a participant; or
  - (b) in whole or in part, any information or data obtained under this Act where a person referred to in sub-paragraph (iii) of paragraph (a) gives prior written consent to the publication; or
  - (c) without consent, consolidated statements or aggregated data of
    - (i) information provided under this Act; and
    - (ii) information related to or derived from information provided under this Act.

**Retention of records**

**25.(1)** An operator, a participant or a payment service provider shall retain all records obtained and produced by it in the course of its operations for a period of 7 years from the date the record was obtained or produced, and section 18 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act* (Act 2011-23) shall apply with such modifications and adaptations as are necessary.

(2) For the purpose of subsection (1), records may be retained electronically pursuant to section 6 of the *Electronic Transactions Act*, Cap. 308B.

**Compliance with anti-money laundering laws**

**26.(1)** An operator, a participant or a payment service provider shall comply with the obligations and requirements of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act* (Act 2011-23), and directives and guidelines issued by the Central Bank in relation to anti-money laundering and countering the financing of terrorism.

(2) An operator, a participant or a payment service provider shall also guarantee that an agent or any third party acting on their behalf shall comply with all requirements referred to in subsection (1).

**Fees**

**27.** The Central Bank may prescribe,

- (a) in respect of an operator, a participant or a payment service provider, a fee to defray the direct and indirect costs incurred to provide oversight and regulation pursuant to this Act;
- (b) a fee for the performance of its operational role and the provision of facilities pursuant to section 5;
- (c) any other fee for any service that is provided by the Central Bank under this Act.

## PART V

## RULES TO REGULATE SYSTEMS

**Establishment of rules**

**28.(1)** An operator shall establish written rules for the governance, management and operation of the system which the operator is licensed or authorized to operate, including, at a minimum, rules for

- (a) the management of 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 the payment service or payment system;
  - (e) establishing contingency arrangements;
  - (f) the management of operational and cyber risks;
  - (g) establishing the rights and liabilities of the operator, provider and participants; and
  - (h) the protection of the rights of consumers including rules for the resolution of disputes with consumers.
- (2) Rules made pursuant to subsection (1) shall
- (a) be subject to the approval of the Central Bank prior to the start of the operation of a payment service or a system; and
  - (b) comply with the requirements of this Act and any regulations, rules, orders, directives or guidelines issued by the Central Bank in relation to governance, management or the operation of a payment service or system.

**Amendment of rules**

**29.(1)** The Central Bank may vary or revoke any rule established under section 28(1) where it considers it appropriate to do so, having regard to

- (a) whether the variation or revocation would be in the public interest;
- (b) the interests of the current participants in the system;
- (c) the interests of persons who, in the future, may desire access to the system; and
- (d) any other matters the Central Bank considers relevant.

(2) No rule established under section 28(1) shall be amended in a manner that would affect the structure, operation or administration of a payment service or system without

- (a) the written approval of the Central Bank; and
- (b) giving at least 30 days notice of the amendment to the participants after the written approval of the Central Bank is obtained.

(3) Notwithstanding subsection (2), the Central Bank may, in the interest of monetary policy, financial stability or in the public interest,

- (a) as the operator of a payment service or system, make a change to the rules of that service or system;
- (b) permit any other operator to make a change to a rule that an operator has made under this Part,

without giving notice to the participants under paragraph (b) of subsection (2) or without giving more than 30 days notice of the change in rule.

**Access to systems**

- 30.** An operator shall
- (a) make rules on access to a system which are objective, non-discriminatory and proportionate; and
  - (b) not inhibit access to the system more than is necessary to safeguard against risks, including
    - (i) credit, liquidity, and systemic risks;
    - (ii) settlement risks;
    - (iii) money laundering risks and terrorist financing; and
    - (iv) the risk that deficiencies in information systems or internal controls could result in unexpected losses.

**Central Bank directives and guidance notes**

- 31.(1)** Notwithstanding any other provision of this Part, the Central Bank may issue directives or guidance notes in respect of all or any of the matters specified in this Part.
- (2) Any directives or guidance notes made by the Central Bank shall prevail in the event of a conflict between any rule, instruction, direction or agreement made by or involving an operator or payment service provider.

PART VI

CONSUMER PROTECTION

**Powers of Central Bank with respect to consumer protection**

- 32.** The Central Bank may establish rules to ensure transparency of conditions including fees and information requirements for payment services.

**Transparency of fees**

**33.(1)** The Central Bank shall require an operator, a participant, a payment service provider or an agent which imposes a fee on any consumer for providing a service under the National Payment System to provide notice of the imposition and the amount of the fee to the consumer in accordance with subsections (2) and (3).

(2) The notice referred to in subsection (1) for a payment with respect to any fee for a payment service shall be displayed prominently and conspicuously

- (a) at the location or premises where the consumer initiates the payment order;
- (b) where the operation is being conducted; and
- (c) on the website of the operator, participant, payment service provider and the agent.

(3) The notice referred to in subsection (1) shall be in the form approved by the Central Bank.

(4) An operator, a participant, a payment service provider or an agent shall not impose a fee in connection with any payment instruction initiated by a consumer where the notice required under subsection (1) has not been satisfied.

(5) An operator, a participant, a payment service provider or an agent shall deduct from the transaction amount any fee related to the processing of a transaction.

(6) An operator, a participant, a payment service provider or an agent shall at all times, charge separately to ensure transparency of any fee related to the processing of a transaction

**Disclosure of terms and conditions**

**34.(1)** An operator, a participant, a payment service provider or an agent shall, in accordance with the rules and guidelines of the Central Bank, disclose

the terms and conditions of a payment service involving a consumer's account, in a manner clearly understood by the consumer at the time 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 telephone number of the person to be notified in the event the consumer believes that an unauthorized payment service has been or may be effected;
  - (c) the procedures to verify that the consumer made the notification under paragraph (b) and when the notification was made;
  - (d) the maximum time for any kind of payment to be executed;
  - (e) the nature of the payment service which the consumer may initiate, including any limitations on the frequency or amount of the payment service;
  - (f) any fees for the payment service;
  - (g) the consumer's right to stop payment or obtain other redress of a pre-authorized payment service and the procedure to initiate a stop or obtain redress;
  - (h) the consumer's right to receive information and the nature of that information;
  - (i) a summary of the error resolution procedures and the consumer's rights thereunder;
  - (j) the liability of an operator, a participant, a payment service provider or an agent to the consumer including liability for fraud;
  - (k) the circumstances under which an operator, a participant, a payment service provider or an agent may in the ordinary course of business



disclose information concerning the consumer's account to third parties;

- (l) 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;
- (m) the consumer's right to know about the procedure for resolving disputes; and
- (n) any other term or condition the Central Bank may determine as necessary for the efficient functioning of this Act.

(3) The terms and conditions referred to in subsection (2) shall be written in clear concise language.

(4) An operator, a participant, a payment service provider or an agent shall notify a consumer in writing or by some other means approved by the Central Bank, at least 21 days prior to the effective date, of any change in any term or condition of the consumer's account that is required to be disclosed, unless the change is immediately necessary to maintain or restore the security of a payment system or a consumer's account.

### **Complaints procedure**

**35.(1)** A consumer who

- (a) is aggrieved by an act or omission of an operator, a participant, a payment service provider or an agent; or
- (b) considers that an operator, a participant, a payment service provider or an agent has not complied with the provisions of this Act,

may make a complaint in writing to the payment service provider for remedial action.

(2) A licensee or a person authorized to operate under this Act shall establish an effective complaints procedure for the

- (a) lodgement;
- (b) investigation;
- (c) resolution; and
- (d) referral to the Central Bank or the Tribunal

of any complaint by a consumer of matters covered by this Act.

(3) Where a consumer submits a complaint in accordance with subsection (1), the operator, participant, payment service provider or agent shall

- (a) send a reply in writing to the consumer; and
- (b) initiate its complaint resolution procedure and make a determination thereon,

no later than 21 days after the day of receiving the complaint.

(4) A consumer shall utilize a complaints procedure before the dispute is submitted to the Tribunal.

## PART VII

### OUTSOURCING AND USE OF AGENTS

#### **Outsourcing of activities**

**36.(1)** No operator, payment service provider or participant shall outsource any aspect of the operation of its system or the provision of its payment service without the prior written authorisation of the Central Bank.

(2) An operator or a payment service provider shall provide the Central Bank with all relevant information in relation to the proposed outsourcing in a request for authorisation.

(3) The Central Bank may, upon receipt of the request and information required under subsection (2), issue an authorisation for the outsourcing of a function if the function would not impair

- (a) the quality of the operator's or payment service provider's internal control; or
- (b) the ability of the Central Bank to monitor compliance of the operator or payment service provider with all obligations prescribed under this Act.

(4) The Central Bank shall ensure that when an operator, a payment service provider or a participant outsources an important operational function it complies with the following conditions:

- (a) that the outsourcing shall not result in the delegation by senior management of the payment service provider or participant of its responsibility;
- (b) that the relationship and obligations of the payment service provider towards the consumers of any relevant payment instrument or payment service shall not be altered;
- (c) that the conditions with which the operator or payment service provider is to comply in order to be licensed or authorized and remain so licensed or authorized, as the case may be, in accordance with this Act shall not be undermined;
- (d) any other conditions as may be prescribed by the Central Bank; and
- (e) that none of the other conditions subject to which the licence or authorisation was granted shall be altered, contracted out or modified.

(5) For the purposes of subsections (1), (2) and (3), an operational function shall be regarded as important where a defect or failure in its performance would materially impair the continuing compliance of an operator or a payment service provider with the requirements of its licence, its financial performance or the soundness or the continuity of its services.

### **Use of agents**

**37.(1)** Where a payment service provider intends to provide a payment service to a consumer through an agent, the payment service provider

(a) shall notify the Central Bank of the following:

- (i) the name and address of the agent;
- (ii) a description of the internal control mechanisms that will be used by the agent in order to comply with its obligations pursuant to the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);
- (iii) the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons; and

(b) shall provide any other information that the Central Bank may require.

(2) The Central Bank may, where it considers that the information provided under subsection (1) is incorrect, take further action to verify the information.

(3) Where the Central Bank is not satisfied that the information provided pursuant to subsection (1) is correct, the Central Bank shall take any action it thinks necessary.

(4) The Central Bank shall maintain a register of agents which shall be available to the public.

(5) A payment service provider shall ensure that its agent informs consumers that it is acting as an agent of that payment service provider.

### **Liability**

**38.(1)** An operator or a payment service provider shall take reasonable steps to ensure that an agent or the person to which an operational function is outsourced complies with the requirements of this Act.

- (2) An operator or a payment service provider shall remain fully liable for all acts of its employees, agents, branches or persons to which an aspect of its operation or payment service is outsourced.

## PART VIII

### SETTLEMENT, NETTING AND FINALITY OF PAYMENT

#### **Settlement**

- 39.** The discharge of settlement obligations between participants is effected by means of the entries processed through the settlement system in accordance with procedures prescribed by the relevant settlement rules.

#### **Settlement accounts**

- 40.(1)** The Central Bank may require a participant
- (a) to open and maintain settlement accounts on such terms and conditions as may be specified, including the maintenance of minimum balances; or
  - (b) to appoint another participant which has opened a settlement account as a settlement agent, to settle all obligations due from the first-mentioned participant to any other participant arising out of the clearing for each day.
- (2) In the case where a participant appoints a settlement agent under paragraph (b) of subsection (1), the participant shall, before any obligation is settled by the settlement agent on behalf of the participant, give the operator notice in writing of the appointment, together with a written confirmation from the settlement agent of the appointment.
- (3) A participant which intends to terminate the appointment of a settlement agent shall notify the operator in writing not less than 14 days before the date of termination of the appointment.

### **Netting arrangements**

**41.(1)** A netting arrangement shall be valid and enforceable and an operator or a participant in a system shall do what is permitted or required under the netting arrangement in order to give effect to the netting arrangement.

(2) The obligation of a settling participant or central counter-party

- (a) to make payment to a settling participant or central counter-party; and
- (b) to receive payment from another settling participant or central counter-party,

may be netted and a net settlement or close-out netting amount determined, entered and cleared in accordance with the relevant settlement rules.

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

### **Finality of payment**

**42.(1)** An operator or a payment service provider shall adhere to the rules specified by the Central Bank to achieve finality in its operations in accordance with the provisions of this Act and as prescribed by any rules, regulations or directives issued by the Central Bank.

(2) The entry or payment that has been effected in terms of subsection (1) shall not be revoked, reversed or set aside, including, without limitation, by insolvency or bankruptcy proceedings or any other law similar in purpose and effect, and is not subject to any law or to any order of an administrative or judicial authority that operates as a stay of that payment.

### **Collateral for payment and settlement**

**43.(1)** The rights and remedies of the Central Bank, a participant, a clearing house, a central counter-party an operator or any other third party in the system 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 any other law similar in purpose and effect.

(2) The rights and remedies referred to in subsection (1) shall not be the subject of any stay or order of a court of law affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

## PART IX

### WINDING UP AND ADMINISTRATION OF AN OPERATOR, A PARTICIPANT OR A PAYMENT SYSTEM PROVIDER

#### **Central Bank to be notified of winding up**

**44.(1)** Where a payment service provider, participant or an operator in the National Payment System is wound up or placed in a scheme of administration, the operator, payment service provider or participant in relation to which the winding up or the administration order or the decision was issued, shall, without delay, lodge a copy of the order or decision with the Central Bank.

(2) No voluntary winding up proceedings shall commence until the Central Bank issues directions for the orderly progress and conclusion thereof.

#### **Prohibition**

**45.** An operator, a payment service provider or a participant against which a winding up application or scheme of administration has been lodged or decision for voluntary dissolution is made shall be prohibited from operating or participating in any system until the application or scheme is disposed of or finally determined.

**Winding up or administration of participant not to affect finality**

**46.** Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy

- (a) the winding up of; or
- (b) the opening of,

a scheme of administration in relation to a participant shall not affect the finality or irrevocability of any entry or payment which became final and irrevocable pursuant to section 42 before the copy of the relevant order or decision was lodged with the Central Bank.

**Rules of system to bind liquidator**

**47.(1)** Where an operator, participant or payment service provider is wound up or placed in administration or otherwise declared insolvent by a court, a liquidator or administrator shall be bound by

- (a) any provision contained in a written netting arrangement to which the operator, participant or payment service provider is a party; and
- (b) any provision of this Act or any regulations made under this Act.

applicable to the system in respect of any payment or settlement obligation which

- (i) has been determined through netting prior to the issue of the winding-up or arrangement order, as the case may be; and
- (ii) is to be discharged on or after the date of the winding-up or arrangement order or the discharge of which was overdue on the date of the winding-up or scheme of administration order, as the case may be.

(2) Subsection (1) shall apply notwithstanding anything to the contrary in any enactment in force in Barbados.



**Preservation of rights**

**48.** The provisions of this Part shall not restrict or preclude any person from enforcing his rights under the law in so far as it does not affect the finality of payment instruction or settlement or the validity and enforceability of a netting arrangement under this Part.

**Conflict of laws**

**49.(1)** In the event of insolvency of a foreign operator or a foreign participant, the rights and obligations of that foreign operator or foreign participant relating to settlement shall be governed and determined entirely and exclusively under the laws of Barbados.

(2) The rights and obligations of a domestic operator or domestic participant operating in a foreign system shall be governed by the law governing that foreign payment system.

(3) In this section “foreign operator” or foreign participant” means an operator or a participant operating in Barbados but whose base of origin, whether by incorporation, registration, licensing, ownership, citizenship, nationality or otherwise, is outside Barbados.

## PART X

## PROVISIONS AFFECTING CHEQUES

**Presentment of cheque for payment**

**50.(1)** Subject to Part III of the *Bills of Exchange Act*, Cap. 304, a bank may present a cheque for payment to the bank on which it is drawn by notifying that bank of the essential features of the cheque by physical or electronic presentment of a cheque.

- (2) For the purposes of this section, the essential features of a cheque are
- (a) the serial number of the cheque;
  - (b) the code which identifies the bank at which the cheque is drawn;
  - (c) the account number of the drawer of the cheque;
  - (d) the amount of the cheque as entered by the drawer of the cheque;
  - (e) the signature of the drawer of the cheque; and
  - (f) any other feature which the Central Bank prescribes from time to time.
- (3) Notwithstanding subsections (1) and (2), the Central Bank may determine and indicate in guidelines, the form in which a cheque is to be presented for the purpose of a clearing house and any standards for the imaging of cheques.
- (4) Electronic presentment of a cheque and a cheque image in conformity with this section are admissible as evidence in legal proceedings.

#### **Electronic presentment of cheque**

- 51.(1)** Where a cheque is presented in an electronic form pursuant to section 50 (1), the cheque
- (a) shall be treated as valid and as binding as a physical cheque; and
  - (b) shall not be taken to have been made outside of the ordinary course of business, in bad faith or negligently because it is made by electronic means rather than by presentment of the physical cheque.
- (2) Where, following the electronic presentment of a cheque and prior to its settlement, the bank on which the cheque is drawn requests the bank which presented the cheque to present the physical cheque
- (a) the electronic presentment of a cheque under this section shall be disregarded; and
  - (b) this section shall not apply in relation to the subsequent presentment of the cheque.

- (3) A request under subsection (2) for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.
- (4) Where presentment of a cheque is made under this section, the bank that presents the cheque and the bank at which 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.
- (5) A bank shall make satisfactory provision, in an electronic format, for the safe custody, storage and retrieval of signatures and cheque images.

## PART XI

### ELECTRONIC FUNDS TRANSFER AND ELECTRONIC MONEY

#### **Electronic fund transfers**

**52.(1)** An electronic funds transfer and a record of an electronic funds transfer is enforceable and has evidentiary value in accordance with the *Electronic Transactions Act*, Cap. 308B.

(2) The Central Bank shall, in the discharge of its functions under this Act, make or issue regulations, instructions or other relevant measures within its powers to cover specific issues on payment orders and remittance services executed by electronic messages, including, when relevant, protection of consumers of electronic payment instruments.

#### **Issuance of electronic money**

**53.(1)** In addition to the requirements for obtaining a licence or an authorisation under Part III, an applicant which intends to issue electronic money or provide a payment service shall satisfy the Central Bank that

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



## PART XII

## ADMINISTRATIVE MEASURES AND PENALTIES

**Administrative measures**

**54.(1)** Where a person breaches a term or condition of an authorisation or a licence, guideline or directive under this Act, which does not constitute an offence under section 57, that person commits an infringement of the Act and is liable to an administrative measure.

(2) The Central Bank may take one or more of the following administrative measures in respect of a person which commits an infringement, namely

- (a) issue a written warning;
- (b) issue a written order to cease and desist from an infringement and to undertake remedial action;
- (c) issue a written order to perform the acts as are necessary for compliance;
- (d) impose an administrative penalty of up to \$250 000 for the infringement;
- (e) impose a fine not exceeding \$25 000 for each day that the infringement continues;
- (f) impose a restriction on participation or provision of a payment service;
- (g) direct an operator or a payment service provide to suspend an officer or manager; and
- (h) suspend or revoke the licence or authorisation.

(3) In determining an administrative measure to be taken, the Central Bank shall consider

- (a) the seriousness of the infringement;

- (b) whether the actual or potential effect of the infringement promotes or may result in a systemic risk;
  - (c) the stage at which the infringement was detected;
  - (d) whether the infringement was voluntarily reported by the person which committed the infringement; and
  - (e) the measure that is appropriate to remedy or terminate the infringement.
- (4) A person which fails to comply with an administrative measure is guilty of an offence and is liable on summary conviction to a fine or imprisonment.

**Procedure for administrative measures and penalties**

**55.(1)** Where the Central Bank intends to take an administrative measure under section 54, the Central Bank shall

- (a) notify the concerned operator, participant or payment service provider of the administrative measure it intends to take or impose and shall give reasons therefor; and
  - (b) provide an opportunity to the concerned operator, participant or payment service provider to make representations to the Central Bank in relation to the matter within 10 days or such longer period as the Central Bank indicates in the notice.
- (2) A person may appeal to the Tribunal from a decision of the Central Bank.

**Payment of administrative penalty**

**56.(1)** An administrative penalty payable to the Central Bank shall be due within one month from the date on which the notice under section 55(1)(a) was given.

- (2) The Central Bank may prescribe that a payment due pursuant to subsection (1), that is outstanding by the date it is due, shall be subject to interest from the date due.

(3) The Central Bank shall not impose an administrative penalty on an operator or a payment service provider where the Central Bank revokes the licence or authorisation of that operator or payment service provider.

### **Offences and penalties**

**57.(1)** Where a person contravenes section 8(2), 9, 13, 19, 26, 36 and 54(4) that person is guilty of an offence and is liable on summary conviction

- (a) in the case of an individual, to a fine of \$50 000 or to imprisonment for a term of 5 years or to both; or
- (b) in the case of a body corporate, to a fine of \$250 000.

(2) Notwithstanding subsection (1), where the offence continues after a conviction is obtained, an additional fine of \$25 000 shall be imposed for every day or part of a day during which the offence continues.

(3) A director, manager or employee of an operator or a participant who

- (a) obstructs the proper performance of inspection by
  - (i) an auditor in accordance with this Act; or
  - (ii) an examiner appointed by the Central Bank;
- (b) damages, destroys, alters, falsifies accounts, books or records of an operator or a participant; or
- (c) with intent to deceive, makes false entries or fails to enter material items in the accounts of a licensee or an authorized person,

is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 5 years or to both.

(4) Where a person contravenes any provision of this Act other than a provision specified in subsection (1) or any regulations, orders or notices made under this Act, that person is guilty of an offence and

- (a) in the case of an individual, is liable on summary conviction to a fine of \$50 000 or to imprisonment for 5 years or to both; and

(b) in the case of a body corporate, is liable on conviction on indictment to a fine of \$250 000.

(5) Where an offence under this Act, 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 officer, director, manager or employee of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable on summary conviction to the fine specified in subsection (1).

### PART XIII

#### MISCELLANEOUS PROVISIONS

##### **Determination of disputes**

**58.** Any dispute arising under this Act shall be determined by the Tribunal.

##### **Immunity**

**59.** The Minister, the Governor of the Central Bank, a director, officer or employee of the Central Bank, auditor or any examiner appointed by the Central Bank, shall not be liable to any person for anything done or omitted in the discharge or purported discharge of their functions under this Act, unless it is shown that the act or omission was done in bad faith.

##### **Transitional provisions**

**60.(1)** An operator, a payment service provider, a participant or any of its officers who conducts business relating to the provision of a payment service or operation of a system on the commencement of this Act shall take all necessary measures to have its

- (a) organization;
- (b) administration; and



(c) operation,

comply with the requirements of this Act within 6 months from the commencement of this Act, and shall, within 3 months from the commencement of this Act, submit to the Central Bank, a programme for becoming fully compliant by the end of the six-month period.

(2) A person, entity or its officers whose

(a) organization;

(b) administration; and

(c) operation,

does not comply in one or more material respects with the requirements of any directive issued by the Central Bank pursuant to this Act, shall comply with the requirements of the directive within the time period that is specified by the directive.

#### **Amendment of Schedule**

**61.** The Minister may by Order amend the *Schedule*.

#### **Regulations, orders, directives, etc.**

**62.(1)** The Central Bank may, after consultation with the Minister, for the purposes of this Act, make such regulations as it thinks fit.

(2) Any regulations made under subsection (1) may provide for

(a) the authorisation, licensing, regulation, supervision and oversight of payment service providers and operators of payment systems;

(b) the form and manner in relation to applying for an authorisation to operate a payment system and for a licence to act as a payment service provider;

(c) the manner in which an authorisation or a licence may be suspended or revoked;

- (d) the application process for the review, testing and monitoring of innovative payment systems or technologies including terms and fees;
  - (e) any matter relating to payment orders and remittance services executed by electronic messages;
  - (f) the protection of users of payment instruments;
  - (g) the imposition of fees; and
  - (h) any matter which may be prescribed under this Act.
- (3) The Central Bank may make orders and issue any directives, guidelines or notices as may be required from time to time for carrying into effect the provisions of this Act.

**Commencement**

- 63.** This Act comes into operation on a day to be fixed by Proclamation.

**SCHEDULE***(Section 7)**NATIONAL PAYMENT SYSTEM COUNCIL***Appointment of members**

- 1.(1) The Council shall comprise 10 members as follows:
- (a) three persons appointed by the Minister by instrument in writing in accordance with sub-paragraph (2);
  - (b) two members on the recommendation of the Central Bank;
  - (c) one member on the recommendation of the Financial Services Commission;
  - (d) one member on the recommendation of the Barbados Co-operative Credit Unions Limited;
  - (e) one member on the recommendation of the Barbados Bankers Association;
  - (f) one member who shall have recognised experience in business, finance, economics or law; and
  - (g) one member who shall represent the interests of consumers.
- (2) The Minister shall appoint as members 3 persons who appear to the Minister to be qualified, experienced and broadly represent the diversity of the National Payment System including consumers and payment service providers.
- (3) A member shall, subject to the provisions of this *Schedule*,
- (a) hold office for a term not exceeding 3 years; and
  - (b) be eligible for reappointment.

### **Chairman and Deputy Chairman**

2. The Governor of the Central Bank shall appoint a member to be Chairman, and another to be Deputy Chairman of the Council.

### **Resignation**

3.(1) The Chairman may resign his office by instrument in writing addressed to the Minister.

(2) A member, other than the Chairman, may resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister.

(3) A resignation takes effect from the date on which the Minister receives the instrument.

### **Temporary leave of absence and appointments**

4.(1) The Minister may, in writing, grant leave of absence to a member.

(2) Where the Minister has granted leave of absence to a member, the Minister may appoint a person to temporarily act in the place of that member.

(3) A person who is appointed to temporarily act pursuant to sub-paragraph (2), shall hold office only for the unexpired portion of the term of the former member.

### **Revocation of appointment**

5. The Minister shall revoke the appointment of a member who

- (a) fails to carry out any of his functions under this Act;
- (b) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (c) is convicted of an offence involving fraud or dishonesty or, in the case of any other offence, is sentenced to a term of imprisonment;

- (d) is guilty of serious misconduct in relation to his functions;
- (e) is bankrupt; or
- (f) fails to declare his interest in a matter before the Council.

**Members to declare interest**

- 6.(1) A member who is in any way, whether directly or indirectly, interested in a matter before the Council shall declare his interest to the Council.
- (2) The Council, excluding the director whose interest was declared, shall determine whether the interest is sufficiently material as to constitute a conflict of interest.
- (3) Where the Council determines that the interest is such as to constitute a conflict of interest, the member shall not
- (a) participate in deliberations on the matter concerned; and
  - (b) be present during the deliberations.

**Vacancies**

- 7.(1) A vacancy in the membership of the Council arises on
- (a) the death or resignation of a member;
  - (b) the revocation of the appointment of a member; or
  - (c) the absence of a member from 4 consecutive meetings of the Council without the approval of the Minister.
- (2) A person who is appointed to fill a vacancy referred to in sub-paragraph (1) shall hold office only for the unexpired portion of the term of the former member concerned.

**Publication**

8. The appointment, resignation, death or removal from office of a member shall be published in the *Official Gazette*.

**Meetings**

**9.(1)** The Council shall meet as often as may be necessary or expedient for the transaction of its business; and such meetings shall be held at such places and times and on such days as the Council may determine.

(2) The Chairman, or in the event of his absence from Barbados or inability to act as such, the Deputy Chairman, may at any time call a special meeting of the Council and shall call such a meeting within 7 days of the receipt by him of a request for the purpose addressed to him in writing and signed by not less than 2 members.

(3) The Chairman, or in his absence, the Deputy Chairman, shall preside at all meetings of the Council.

(4) Where the Chairman and the Deputy Chairman are absent from a meeting, the members present shall elect a member from among their number to preside at the meeting.

(5) A majority of the membership shall constitute a quorum.

(6) The decisions of the Council shall be by a majority of votes and in a case where the voting is equal, the Chairman or other person presiding at the meeting shall, in addition to an original vote, have a casting vote.

(7) Minutes of each meeting shall be kept by the person performing the functions of secretary to the Council or by such other officer as the Council appoints for the purpose and shall be confirmed by the Council and signed by the Chairman or Deputy Chairman at the next meeting of the Council.

**Attendance of non-members at meetings**

**10.** The Council may invite any person to attend any of its meetings to assist or advise it with respect to any matter under its consideration, but a person so invited does not have a right to vote.

**Council to regulate its proceedings**

**11.** Subject to the provisions of this *Schedule*, the Council may regulate its own proceedings.

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2021.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
, 2021.

**President**