

**PAYMENT SYSTEMS (OVERSIGHT)
REGULATIONS, 2010**

Arrangement of Sections

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PAYMENT SYSTEMS ACT, 2010

NO. OF 2010

PAYMENT SYSTEMS (OVERSIGHT) REGULATIONS, 2010

The Central Bank of The Bahamas, in exercise of the powers conferred by section 47 of the Payment Systems Act, 2010, makes the following Regulations —

1. Citation.

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

2. Interpretation.

- (1) In these Regulations—
“the Act” means the Payment Systems Act, 2010 (*No. of 2010*);
- (2) Any term used in these Regulations without definitions, shall, unless the context indicates otherwise, have the same meaning ascribed to those terms in the Act.

3. Yearly financial statements and special returns.

- (1) Every clearing house of a designated system shall, within four months of the end of its financial year, submit to the Central Bank a true and full yearly statement of its accounts containing a certification by its auditor that the statement submitted is a true and correct view, as shown by its books, of the state of affairs of the clearing house.
- (2) The Bank may, if it sees fit, exempt any clearing house of a designated system from the requirement to submit a true, full and certified yearly statement of its accounts pursuant to paragraph (1).
- (3) A statement submitted pursuant to paragraph (1) shall —

- (a) be in such form and contain such particulars as the Bank may from time to time direct;
 - (b) be signed by the manager, or by such other person or officer of the clearing house as may from time to time be authorised to sign such statement, on behalf of the clearing house; and
 - (c) contain a declaration as to its correctness made in such manner and by such persons as the Bank may direct.
- (4) A clearing house of a designated system shall, at any time at the written request of the Bank and within the time period stated in such request, provide the Bank with a special return and such further information as the Bank may reasonably request.

4. Bank may impose penalties.

- (1) The Central Bank may impose by order, for every day of default, a penalty of two hundred and fifty dollars on any person or clearing house of a designated system which fails to comply with the requirements of —
 - (a) paragraph (1) of regulation 3 within a period of ten days after the Annual General Meeting of the clearing house or other relevant person, as the case may be, or within such extended period as may be allowed by the Bank;
 - (b) paragraph (4) of regulation 3 within a period of forty-two days of the date stated in a request or within such extended period as may be allowed by the Bank; or
 - (c) paragraph (2) of regulation 6 for thirty days after the date stated in the request or within such extended or shorter period as may be allowed by the Bank.”.
- (2) The Bank may extend the time for sending any information or documents required under regulation 3 for such further period not exceeding sixty days as the Bank deems expedient.
- (3) Subject to paragraph (4), any person who fails to comply with any provision of these Regulations for which no specific penalty is imposed shall be liable to pay a fine imposed by order of the Bank.
- (4) The Bank may impose by order a fine not exceeding fifty thousand dollars where any person fails to comply with any provision of these Regulations and, in the case of a continuing default, five hundred dollars for each day or part of a day during which the default continues.
- (5) An order imposed pursuant to this regulation —
 - (a) shall be in writing;
 - (b) shall state the default in respect of which the penalty or fine is imposed; and

- (c) may be executed by the Bank in the same manner as an order of the court.

5. Appointment, rights and duties of auditors.

- (1) A clearing house of a designated system shall appoint an auditor who is a certified public accountant or chartered accountant to audit its accounts and shall, where for any reason such auditor ceases to act, immediately appoint another auditor.
- (2) The appointment of the auditor of a clearing house of a designated system shall be notified to the Central Bank within fourteen days of the appointment.
- (3) Subject to paragraph (4), the Bank may at any time require the replacement of an auditor by notice in writing delivered to the usual place of business of the auditor and the clearing house of the auditor.
- (4) A notice under paragraph (3) shall —
 - (a) set out the grounds upon which the replacement of the auditor is being sought;
 - (b) state that the auditor or clearing house of the auditor affected by the notice given under paragraph (3) may, within such time not being less than seven days as may be specified in the notice, submit a written statement setting out the grounds of its objection to the proposed replacement; and
 - (c) state that the Bank shall, within seven days of receipt of a written statement of objection, advise the auditor and the clearing house of the auditor of its decision in writing.
- (5) An auditor of a clearing house shall give the Bank immediate written notification of the auditor's —
 - (a) intention to resign before the expiration of his term of office as auditor;
 - (b) intention not to seek to be re-appointed as auditor; and
 - (c) decision to include a modification of his report on the clearing house's financial statements and, in particular, a qualification or denial of his opinion or the statement of an adverse opinion.
- (6) An auditor or former auditor of a clearing house shall give written notice to the Bank of any fact or matter in relation to the clearing house of which he has or had become aware and which is likely to be of material significance for the discharge of the functions of the Bank under these Regulations.

- (7) Paragraph (6) shall apply to any matter of which an auditor or former auditor has or had become aware of in his capacity as auditor and which relates to the business or affairs of the clearing house or any related company.
- (8) An auditor or former auditor who fails to comply with paragraph (6) commits an offence and shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars.
- (9) For the purposes of this regulation, "related company" in relation to a clearing house includes —
 - (a) a parent, subsidiary or associate company of that clearing house;
 - (b) a subsidiary company of a parent company of that clearing house;
 - (c) a parent company of a subsidiary company of that clearing house;
or
 - (d) a company in which a controlling shareholder of that clearing house either alone or with one or more associates —
 - (i) holds 10 per cent or more of the shares of the company; or
 - (ii) is entitled to exercise, or to control the exercise of, more than 10 per cent of the voting power at a general meeting of the company.

6. System and operational audits and inspections.

- (1) The Central Bank may, for the purpose of carrying out its function under the Act, conduct audits and inspections of the systems and operations of the clearing house of a designated system.
- (2) The Central Bank may, where it considers it necessary, at the expense of a clearing house of a designated system, require that audits and inspections under paragraph (1) shall be carried out on its behalf in whole or in part by qualified auditors, or by a person appointed by the Bank for the purpose, who shall submit their report to the Central Bank.

7. Access to information and records.

The Central Bank, and every auditor or person appointed by the Bank pursuant to paragraph (2) of regulation 6, shall have the right of access at all times to such of the books, accounts, records and systems of the clearing house of a designated system, and shall be entitled to require from the clearing house such information and explanations, as they or each of them considers necessary for the performance of their respective duties under these Regulations.

8. Bank approval required for appointment of directors and officers.

- (1) The clearing house of a designated system shall obtain the prior approval of the Central Bank before appointing any person as its —
 - (a) chief executive officer in The Bahamas; or
 - (b) director in The Bahamas.
- (2) Subject to regulation 7, a person whose appointment has received the prior approval of the Bank pursuant to paragraph (1) may, upon the expiry of his term, be reappointed as chief executive officer or director, as the case may be, without the further approval of the Bank..
- (3) An application for approval under paragraph (1) shall be made in such form and manner as the Bank may specify.
- (4) Without prejudice to any other matters that the Bank may consider relevant, the Bank shall, in determining whether to grant its approval under paragraph (1), have regard to such criteria as the Bank may prescribe or specify in written directions.
- (5) Subject to paragraph (6), the Bank shall not refuse an application for approval under this regulation without giving the clearing house of the designated system an opportunity to be heard.
- (6) The Bank may refuse an application for approval under paragraph (1) without giving the clearing house of the designated system an opportunity to be heard in any case where —
 - (a) the applicant is an un-discharged bankrupt, whether in The Bahamas or elsewhere;
 - (b) the applicant has been convicted, whether in The Bahamas or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of three months or more.
- (7) The Bank shall, where it refuses an application for approval under this regulation, have no obligation to give the person who was proposed to be appointed an opportunity to be heard.
- (8) The clearing house of a designated system shall immediately give written notice to the Central Bank of the resignation or removal of its chief executive officer or a director.

9. Removal of chief executive officer and directors.

- (1) The Central Bank by notice in writing may, where it considers it necessary in the interests of the public or a section of the public, direct the clearing house of a designated system to remove the chief executive officer or a director from his office or employment in any case where the Bank is satisfied that the chief executive officer or the director has —
 - (a) wilfully contravened or wilfully caused the clearing house of that designated system to contravene these Regulations or the Act;
 - (b) without reasonable justification or excuse failed to ensure compliance with these Regulations or with the Act;
 - (c) failed to discharge the duties or functions of his office or employment;
 - (d) been adjudged by a court of law, whether in The Bahamas or elsewhere, a bankrupt and has remained un-discharged;
 - (e) had execution against him in respect of a judgement debt returned unsatisfied in whole or in part;
 - (f) whether in The Bahamas or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
 - (g) been convicted, whether in The Bahamas or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly.
- (2) Without prejudice to any other matter that the Central Bank may consider relevant, the Bank may, in determining whether the chief executive officer or a director of a clearing house of a designated system has failed to discharge the duties or functions of his office or employment, have regard to such criteria as the Bank may prescribe or specify in written directions.
- (3) Subject to paragraph (4), the Central Bank shall not direct a clearing house of a designated system to remove from office or employment the chief executive officer or a director without giving that clearing house an opportunity to be heard.
- (4) The Central Bank may direct a clearing house of a designated system to remove the chief executive officer or a director from his office or employment without giving the clearing house an opportunity to be heard in any case where —
 - (a) the chief executive officer or director is an un-discharged bankrupt, whether in The Bahamas or elsewhere;
 - (b) the chief executive officer or a director has been convicted, whether in The Bahamas or elsewhere, of an offence —

- (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonesty; and
 - (ii) which is punishable with imprisonment for a term of three months or more.
- (5) The Bank shall, where it directs a clearing house of a designated system to remove from his office or employment the chief executive officer or the director under paragraph (1), have no obligation to give that chief executive officer or director an opportunity to be heard.
- (6) Subject to paragraph (7), any clearing house of a designated system that, without reasonable excuse, contravenes a written direction issued by the Bank under paragraph (1) commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars and, in the case of a continuing offence, to a further fine not exceeding two thousand dollars for each day or part of a day during which the offence continues after conviction.
- (7) No criminal or civil liability shall be incurred by a clearing house of a designated system, or any person acting on behalf of a clearing house of a designated system, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of that clearing house's obligations under these Regulations.

10. Bank approval required for substantial shareholding in clearing house.

- (1) No person shall, without first obtaining the written approval of the Central Bank, enter into any agreement to acquire shares in a clearing house of a designated system by virtue of which such person would, if the agreement was carried out, become a substantial shareholder of the clearing house.
- (2) No person shall, without first obtaining the written approval of the Central Bank, either alone or together with his associates own, hold or exercise voting control over 20% or more of the paid up share capital of a clearing house of a designated system.
- (3) Application for the grant of an approval pursuant to paragraphs (1) and (2) shall be made to the Bank in writing in such form as the Bank may specify.
- (4) For the purposes of this regulation —
 - (a) a reference to the acquisition or voting control of a percentage of the paid up share capital in a clearing house of a designated system is a reference to the control, whether direct or indirect, of that

- percentage of the total number of votes that might be cast in a general meeting of the clearing house of the designated system; and
- (b) a person shall be deemed to be an associate of another person if —
- (i) he is the spouse, parent, remoter lineal ancestor or step-parent, son, daughter, remoter issue, step-son or step-daughter or brother or sister of the other person;
 - (ii) being a corporation, the directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other person or of the directors of the other person;
 - (iii) the other person is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with his directions, instructions or wishes or, if he is a corporation, with the directions, instructions or wishes of the directors of the corporation;
 - (iv) he is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other person;
 - (v) the other person is accustomed or under an obligation, whether formal or informal, to act in accordance with his directions, instructions or wishes;
 - (vi) it is a related corporation of the other person;
 - (vii) it is a corporation in which the other person, either alone or together with associates as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes;
 - (viii) the other person is a corporation in which the first person, either alone or together with associates as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes; or
 - (ix) he is a person with whom the other person has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the clearing house of the designated system.

11. Grant of approval.

- (1) The Central Bank may, where it grants approval of an application made pursuant to paragraph (3) of regulation 10, impose such conditions or restrictions as the Bank may think fit.

- (2) Without prejudice to paragraph (1), the Bank may, in order to secure compliance with paragraph (1) or (2) of regulation 10 or with any condition or restriction imposed under paragraph (1), by notice in writing direct the transfer or disposal of all or any of the shares of a clearing house of a designated system in which the substantial shareholder has an interest.
- (3) Where the Bank issues a direction under paragraph (2), the person to whom the direction is issued shall immediately comply with such direction.
- (4) Pending the transfer or disposal of shares which are the subject of a direction by the Bank under this regulation, and notwithstanding anything to the contrary in the Companies Act or the memorandum or articles of association of the clearing house of the designated system —
 - (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
 - (b) the clearing house of the designated system shall not offer or issue any shares, whether by way of rights, bonus, share dividend or otherwise, in respect of shares which are the subject of the direction; and
 - (c) except in a liquidation of the clearing house of the designated system, the clearing house of the designated system shall not make any payment, whether by way of cash dividend, dividend in kind, or otherwise, in respect of the shares.
- (5) Any offer or issue of shares by a clearing house of a designated system in contravention of sub-paragraph (b) of paragraph (4) shall be deemed to be null and void and a person to whom a direction has been issued shall immediately return those shares to the clearing house of the designated system which shall return to such person any payment received from him in respect of those shares.
- (6) Any payment made by a clearing house of a designated system in contravention of sub-paragraph (c) of paragraph (4) shall be deemed to be null and void and a person to whom a direction has been issued under paragraph (2) shall immediately return the payment he has received to the clearing house of the designated system.
- (7) The Central Bank may, subject to such conditions or restrictions as it thinks fit, exempt from the requirements of paragraphs (1) or (2) of regulation 10, —
 - (a) any person or class of persons; or
 - (b) any class or description of shares or interests in shares.

12. Emergency powers of Bank.

- (1) The Central Bank may at any time by notice in writing direct a clearing house of a designated system to take such action, within such time period as may be specified by the Bank, as the Bank considers necessary to maintain or restore the safe and efficient operation of the designated system if the Bank —
 - (a) has reason to believe that an emergency exists; or
 - (b) thinks it is necessary or expedient in the interests of the public or a section of the public.
- (2) Without prejudice to the generality of paragraph (1), the actions which the Bank may direct a clearing house of a designated system to take shall include the modification or suspension of any of the rules of the designated system.
- (3) The Bank may, where a clearing house of a designated system fails to comply with a direction under paragraph (1) —
 - (a) appoint a person to advise the clearing house in the proper conduct of its operations;
 - (b) assume control of and carry on the operations of the clearing house or direct some other person to do so on behalf of the Bank;
 - (c) require the clearing house to cease operation of the designated system;
 - (d) apply to the Supreme Court for an order that the clearing house be forthwith wound up by the court and that the provisions of the Companies Act (*Ch. 308*) relating to the winding up of a company by the court shall, *mutatis mutandis*, apply; or
 - (e) take such other action, as the Bank thinks fit, to maintain or restore the safe and efficient operation of the designated system.
- (4) The Bank may in any case in which a clearing house is being wound up voluntarily apply to the Supreme Court for such order as the court may deem appropriate if the Bank considers that the winding up is not being conducted in the best interests of the customers of the participants of the system or of other creditors.
- (5) The Bank may at any time modify or cancel any action taken by it under paragraph (1) and may impose such conditions as it thinks fit subject to which the modification or cancellation shall have effect.
- (6) The Bank shall, where it has assumed control of the operations of a clearing house of a designated system under sub-paragraph (b) of paragraph (3) —

- (a) remain in control of and continue to carry on the operations in the name and on behalf of the clearing house until such time as the Bank is satisfied that the reasons for which it assumed control have ceased to exist or it is no longer necessary that the Bank should remain in control; and
 - (b) notify that fact in the Gazette.
- (7) The Bank shall where it has ceased to control the operations of a clearing house of a designated system notify that fact in the Gazette.
- (8) The clearing house of a designated system shall, where the Bank has assumed control of its operations under sub-paragraph (b) of paragraph (3), submit its operations to the control of the Bank and shall provide the Bank with such facilities as the Bank may require to carry on its operations.
- (9) Any clearing house which fails to comply with paragraph (8), or with any direction or requirement of the Bank under paragraph (1) or paragraph (8), commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further fine not exceeding five hundred dollars for every day or part of a day during which the offence continues after conviction.
- (10) The Bank may at any time fix —
 - (a) whether or not the appointment of the person has terminated, the remuneration and expenses to be paid by the clearing house of a designated system to any person appointed by the Bank under sub-paragraph (a) of paragraph (3);
 - (b) where it has exercised its power under sub-paragraph (b) of paragraph (3) and whether or not the Bank or some other person has ceased to be in control of operations, the remuneration and expenses to be paid by the clearing house to —
 - (i) the Bank; and
 - (ii) any person employed or authorised to assist the Bank in the control and conduct of the operations of the clearing house.
- (11) A clearing house which is aggrieved by any action taken by the Bank under this regulation may, within 30 days after notification by the Bank of the action taken, appeal to the Supreme Court.
- (12) Notwithstanding the lodging of an appeal under paragraph (11), any action taken by the Bank under this regulation shall continue to have effect pending the judgement of the Court.
- (13) In this regulation, “emergency” means —
 - (a) any situation which prevents a designated system from carrying out its functions;

- (b) any situation in which, in the opinion of the Bank, a designated system is carrying on its operations in a manner likely to be detrimental to the interests of its participants; or
- (c) any undesirable situation or practice which, in the opinion of the Bank, constitutes an emergency.

Made this ----day of -----A.D., 2010

Minister responsible for Finance