

PAYMENT SYSTEMS (NATIONAL PAYMENTS COMMITTEE) BYE-LAWS, 2010

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PAYMENT SYSTEMS ACT, 2010
(NO. OF 2010)

**PAYMENT SYSTEMS (NATIONAL PAYMENTS COMMITTEE) BYE-
LAWS, 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 Bye-laws

1. Citation.

These Bye-laws may be cited as the Payment Systems (National Payments Committee) Bye-Laws, 2010.

2. Interpretation.

(1) In these Bye-laws —

“**Act**” means the Payment Systems Act, 2010 (*No. of 2010*);

“**Appeals Panel**” means the panel established under an Appeals Process;

“**Appeals Process**” means the procedure for establishing an Appeals Panel and conducting appeals against relevant decisions set out in the Second Schedule;

“**Bank**” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act (*Ch. 351*);

“**Chairman**” means, in accordance with section 7 of the Act, the representative of the Bank on the Committee;

“**company**” means any company or corporation incorporated and designated as such under the provisions of the Companies Act (*Ch. 308*) as amended from time to time;

“**Committee**” means the National Payments Committee established as an advisory body to the Bank under section 7 of the Act;

“**Council**” means the governing body of the Committee constituted pursuant to paragraph (1) of bye-law 9;

- “Council member”** means any individual who has been appointed, and has not ceased to be, a member of the Council pursuant to these Bye-laws;
- “Council vote”** means a vote held by a Council member from time to time under the terms of sub-paragraphs (p), (s) and (t) of paragraph (3) of bye-law 11;
- “General Meeting”** means a general meeting of the Members convened and held in accordance with bye-law 13;
- “in writing”** includes electronic transmissions;
- “Interest Group”** means any group of two or more persons with an interest in a system or systems or any other payment-related topic, which is not funded by Committee membership charges;
- “Member”** means a member of the Committee and includes —
- (a) the Central Bank of The Bahamas;
 - (b) such other governmental bodies regulating or in any other way involved in payments activities and the financial markets as the Bank may determine;
 - (c) major financial institutions, or their national associations, that are participants in payment systems; or
 - (d) any eligible person admitted as a Member and in current good standing in accordance with bye-law 4;
- “National Payment System Policy”** means a statement of the Bank of the objectives to be achieved over a specified time period in support of the national payments system in accordance with section 6 of the Act.
- “person”** means an individual, company, partnership, unincorporated body or any similar entity or organization;
- “Policy”** means the National Payment System Policy;
- “related party”** includes —
- (a) in relation to another company, a company that directly or indirectly controls, is controlled by, or is under common control with, such other company; and hence is considered to be a member of the same group of companies; and
 - (b) a subsidiary company at least 10% of whose outstanding voting shares of each class or series of shares are owned by another company, and a company shall be treated as being controlled by another if that other company is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“**relevant decision**” means a decision of the Council or an Interest Group under bye-law 7;

“**Secretary**” means the individual for the time being appointed by the Bank to be the Secretary to the Council;

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

3. Committee objectives.

The main objectives of the Committee in its advisory functions to the Bank shall be to —

- (a) advise the Bank on the implementation of the National Payment System Policy;
- (b) support the achievement and implementation of the Policy established by the Bank, through collaboration with relevant stakeholders;
- (c) advise the Bank on the appropriateness of documentation and models consistent with the Policy which may be used as standards for relevant market participants;
- (d) advise the Bank with respect to identifying the priority and the schedule of Policy projects to be launched, financed and implemented;
- (e) facilitate the necessary co-operation between all market participants in payment matters;
- (f) advise the Bank on the standardization of procedures and systems in payment systems and services;
- (g) promote common initiatives towards the implementation and ongoing modernization of the system infrastructure that shall not impede competition among market participants, especially for the provision of payment instruments and products;
- (h) facilitate the sharing of information on economic and business requirements of all parties impacted by the system;
- (i) help identify the impact of different options on stakeholders' business and daily operations and on end-user interests;
- (j) disseminate to the public information about systems and related issues and seek to do all things conducive to keeping the public and users of systems well informed about such systems and the objectives of the Policy; and
- (k) promote cooperation among bodies that carry out functions similar to those of the Committee at the regional and international levels.

4. Application for Committee membership.

- (1) Any person desiring to be a Member of the Committee shall make application in accordance with the procedures set out in the First Schedule.
- (2) An applicant shall be eligible for membership on the Committee if the applicant is a participant or user of a system which, in the view of the Council, is widely used or otherwise significant within The Bahamas at —
 - (a) the time the application for membership is made; and
 - (b) the date upon which the application is approved and membership granted.
- (3) An applicant meeting the requirements set out in paragraph (2) shall be granted and issued a certificate of membership upon payment of the fees as prescribed in the First Schedule.
- (4) An applicant who is refused Membership may invoke the Appeals Process as if it were already a Member and, in that event, the decision of the Appeals Panel shall be final and binding on that applicant and on the Members.
- (5) National associations of persons may become Members and shall, unless the Council otherwise determines, be represented by a member of the association who shall act for and on behalf of the association.
- (6) The Committee shall make public a list of its Members and such list may be published in such form and manner as the Committee shall determine.
- (7) Membership on the Committee is personal and may not be transferred to another person.
- (8) The deputy Chairman of the Committee shall, in the absence of the Chairman, have the authority to act as Chairman and shall be a member of the Council.

5. Duties of Members.

- (1) Each Member has a duty —
 - (a) not to act in a manner which is incompatible with the objectives of the Committee;
 - (b) not to do anything which will prejudice the reputation of the Committee; and
 - (c) to keep confidential within the Member during the period of membership as well as following the date upon which the Member ceases to be a Member all information which is received from the Committee.

- (2) For the purposes of sub-paragraph (c) of paragraph 1, confidential information shall not include information which —
 - (a) is already in the public domain when received by a Member;
 - (b) is subsequently brought into the public domain otherwise than by such Member;
 - (c) was already known to the Member at the time of receipt and was not acquired by the Member under any obligation of confidence;
 - (d) was independently developed by the Member without any use of confidential information provided by the Committee; or
 - (e) is expressly or impliedly permitted by the Committee to be disclosed.
- (3) Nothing contained in these Bye-laws shall prevent a Member who takes reasonable steps to procure that the receiver maintains the confidentiality of the information disclosed from disclosing confidential information —
 - (a) to its accountants, auditors, legal or other professional advisers; and
 - (b) to any other persons, including regulatory authorities, to whom the Member is required by law to disclose such information.

6. Resignation and termination of Members.

- (1) A Member may resign its membership of the Committee by giving to the Council not less than six months notice in writing or such shorter period of notice as the Council may decide.
- (2) The Council may at any time by notice in writing terminate the membership of a Member with effect from the date set out in such notice if —
 - (a) the Member —
 - (i) is in breach of any one or more of its obligations under these Bye-laws;
 - (ii) has ceased to be a participant or user of a system which is widely used or otherwise significant in The Bahamas;
 - (iii) stops or suspends the making of payments on all or any class of its debts, or threatens to do so, or a moratorium is declared in respect of any of its indebtedness;
 - (iv) is deemed by law or by a court to be unable to pay its debts as they fall due; or admits, whether in writing or otherwise, its inability to pay its debts as they fall due, or becomes insolvent;

- (v) begins negotiations with a view to readjustment or rescheduling of any indebtedness by reason of, or with a view to avoiding, financial difficulties;
 - (vi) ceases or threatens to cease to carry on all or a substantial part of its business.
- (b) an application is presented or filed in any court or before any agency alleging or petitioning for the Member's bankruptcy, winding up or liquidation, or any analogous proceeding, and the Member is unable to demonstrate within a period of time specified by the Council that the application is vexatious or otherwise unlikely to result in the bankruptcy, winding up or liquidation of the Member;
 - (c) any receiver, administrator, liquidator or trustee or analogous officer is appointed over all or any material part of the Member's property;
 - (d) there occurs in relation to the Member any event which, in the opinion of the Council, corresponds with any of the events mentioned in sub-sub-paragraphs (iii) to (v) of sub-paragraph (a) or in sub-paragraph (b) or (c);
- (3) Membership fees and charges shall, during the period of a notice referred to in paragraph (1) or paragraph (2), be payable and paid by such Member in the usual manner and, where they are calculated by reference to periods, shall be pro-rated to the date of expiry of the notice.
 - (4) A Member who resigns or who is terminated by the Council shall, upon receipt of a written notice from the Council, be liable to pay a part of the cost of commitments, calculated on a transparent and objective basis, entered into by the Committee while the Member was a Member and the Member shall pay the amount requested on the day set out in such notice.
 - (5) A Member whose membership ceases, whether by resignation, termination or any other process whatsoever, shall not be entitled to any share in the assets of the Committee or to any compensation in relation to such assets.
 - (6) This bye-law does not apply to the Bank or any other governmental bodies that are Members of the Committee.

7. Appeals process.

- (1) Each Member shall be entitled to invoke the Appeals Process in respect of a relevant decision of the Council or of the governing body of an Interest Group.
- (2) For the purposes of these Bye-laws, relevant decisions of the Council or of the governing body of an Interest Group are decisions —

- (a) refusing an application for membership of the Committee or of an Interest Group, as the case may be; or
- (b) terminating the membership of a Member of the Committee or of a member of an Interest Group, as the case may be, on the ground that:—
 - (i) the Member or member, as the case may be, is in breach of one or more of its obligations under these Bye-laws or the bye-laws of the Interest Group in respect of which it is a member; or
 - (ii) the Member or member, as the case may be, has ceased to be a participant of a system which is widely used or otherwise significant in The Bahamas.
- (3) The Council or the governing body of the relevant Interest Group shall, within 14 days of the date of a relevant decision, provide the applicant for membership or Member of the Committee, or the member or prospective member of the relevant Interest Group, as the case may be, with written reasons for the relevant decision.
- (4) The Council or the governing body of the relevant Interest Group shall, where the Appeals Process is invoked in respect of a relevant decision, provide the Appeals Panel with the written reasons for the decision and co-operate with the Appeals Panel in relation to the Appeals Process.
- (5) The Council may, upon giving the Members and Interest Groups a minimum of 28 days prior notice, from time to time revise the Appeals Process but such revisions, unless the parties involved in the proceedings otherwise agree, shall have no effect on any appeals proceedings which have already been commenced at the time such revisions are published.
- (6) The Appeals Process, in the absence of an agreement between the parties to apply procedures under a revised Appeals Process, shall continue to be conducted pursuant to the procedures in force at the time appeals proceedings were commenced.

8. Financial provisions.

- (1) The Council shall determine the budget of the Committee and the appropriate allocation of costs between Members and other sources.
- (2) The Council may, for the purpose of funding the Committee, —
 - (a) recover from any person the costs of specific services performed by the Committee, agreed in advance and delivered at the request of that person; and

- (b) allocate the balance of costs of the Committee to the Members on a fair and transparent basis in the form of membership fees and charges.
- (3) Membership fees and charges shall be payable within 30 calendar days of the date of dispatch of the relevant notice.
- (4) Each Interest Group of the Committee shall formulate its own budget for its own activities and shall agree the formula by which the activities are funded from the members of the group or from other sources.
- (5) This bye-law shall not apply to the Bank or any other governmental bodies that are Members of the Committee.

9. Duties and powers of the Council.

- (1) Subject to bye-law 10, the Members shall constitute a Council to act as the governing body of the Committee.
- (2) The Council shall have authorisation and power to do all such acts and things as it may consider, at any time or from time to time, necessary or desirable in order to achieve the objectives of the Committee.
- (3) Without prejudice to the generality of paragraph (2), the Members shall be deemed to have delegated to the Council the following duties and powers —
 - (a) to manage the business of the Committee;
 - (b) to appoint agents and other delegates, including, without limitation, legal advisers and accountants, in each case on such terms and conditions as the Council deems appropriate;
 - (c) to create or endorse Interest Groups and to approve the bye-laws of such associations, amendments to such bye-laws, and the termination or dissolution of such associations;
 - (d) to prepare and maintain criteria, having regard to the First Schedule and subject to the approval of the Bank, by which it may be determined whether a system is widely used or is otherwise significant within The Bahamas;
 - (e) to review at a minimum of every six months the criteria referred to in sub-paragraph (d);
 - (f) to establish procedures for applying the relevant criteria and so determining whether an applicant meets the requirements of a system which is widely used or is otherwise significant within The Bahamas;
 - (g) to appoint and remove, in each case upon such terms as the Council deems appropriate —

- (i) the deputy Chairman of the Committee; and
 - (ii) other officers of the Committee.
- (4) The Council shall have regard to the value and volume of payments handled by the system in determining whether a system is widely used or otherwise significant.

10. Council members.

- (1) Subject to paragraph (4), each Member of the Committee shall be entitled to appoint in writing one representative to serve as a Council member.
- (2) A Council member appointed pursuant to paragraph (1) shall —
 - (a) be the individual who acts as the Chief Executive Officer of the Member in The Bahamas; and
 - (b) have the capacity to commit the Member to the decisions of the Committee.
- (3) A Member may, at any time upon notice in writing to the Secretary —
 - (a) revoke its appointment of a Council member; and
 - (b) make a new appointment to the Council.
- (4) If two or more Members are or become related parties, they shall be entitled among them to appoint one representative only to serve as Council member pursuant to paragraph (1).
- (5) Paragraph (4) shall, where the ownership of a Member changes so that the Member becomes a related party of one or more other Members, apply with effect from the date which is six months following the date of the relevant change of ownership.
- (6) A Council member shall not, unless the Council determines otherwise, be paid or reimbursed by the Committee for the member's services or expenses.
- (7) A Council member —
 - (a) shall attend all meetings of the Council;
 - (b) may appoint by notification in writing to the Secretary an individual approved by the Council to be the member's alternate and, in the member's absence, to represent the member at Council meetings and vote in the member's stead;
 - (c) may at any time revoke, by notification in writing to the Secretary, the appointment of an alternate;
 - (d) shall, upon the Member which appointed him ceasing to be a Member of the Committee, cease to be a member of the Council.

- (8) The appointment of an alternate shall lapse upon the member making the appointment ceasing to be a Council member.
- (9) The Secretary shall ensure that an alternate appointed by a Council member receives copies of the papers circulated to the Council member as soon as practicable.
- (10) The Council may from time to time invite persons in the financial services industry to attend meetings of the Council in an advisory capacity only and such persons may comprise senior representatives of —
 - (a) the Bahamas Automated Clearing House Limited;
 - (b) the Bahamas Interbank Settlement System; and
 - (c) a clearing house of a designated system or other stakeholder whom the Council considers appropriate.

11. Council meetings and procedures.

- (1) The Council shall meet a minimum of four times a year on a quarterly basis or at such sooner period if one or more Council members request in writing a special meeting.
- (2) The Secretary shall circulate, a minimum of 48 hours in advance of the meeting or such longer period as the Chairman may from time to time determine, a written notice to every Council member and the Chairman calling a Council meeting and specifying the issues to be considered.
- (3) The conduct of Council meetings shall be subject to the following rules and procedures —
 - (a) the Chairman, and in the absence of the Chairman the deputy Chairman, shall preside at meetings of the Council and, subject to this paragraph, determine the manner in which the meeting is conducted;
 - (b) in the absence of the Chairman and the deputy Chairman, such other person as may be agreed upon by the Council members then present shall act as Chairman;
 - (c) subject to paragraph (1), the Council shall decide the times and venues of its meetings;
 - (d) a quorum shall be such number of Council members, including alternates and those voting by proxy, who hold at least 75% of the total number of Council votes;
 - (e) a meeting of a quorum of Council members, whether present by telephone or some other form of electronic communication agreed by the Council, shall be valid;

- (f) unless a quorum is present when a decision is reached, the decision shall not be valid;
- (g) the Council may invite any person to attend and speak at all or part of a Council meeting but invitees shall have no vote at the meeting;
- (h) a Council member directly or indirectly interested in a contract or other transaction made or proposed to be made by the Committee shall disclose the nature of his interest at the first meeting of the Council at which he is present after the relevant facts have come to his knowledge; and any such disclosure shall be recorded in the minutes of the Council meeting and after the disclosure that Council member shall not take part in any deliberation or decision of the Council with respect to that contract or transaction;
- (i) the Chairman's decision shall be final in relation to any objection or query regarding voting or the number of Council votes cast;
- (j) each Council member and each alternate shall keep confidential all information received from the Council during his membership or term as well as following the date upon which he ceases to be a Council member or alternate;
- (k) paragraphs (2) and (3) of bye-law 5 in respect of confidential information shall apply to the Council, a member and an alternate to the same extent as they apply to the Committee and a Member;
- (l) the Secretary shall take and circulate, within seven working days of the meeting, minutes of each Council meeting to all Council members and the Chairman;
- (m) the minutes of each meeting shall be endorsed by the Council and signed by the Chairman and upon endorsement and signature such minutes shall be taken as a statement of the facts therein;
- (n) subject to sub-paragraph (o), decisions at Council meetings shall be made by consensus unless, in the opinion of the Chairman, it is not possible to achieve consensus whereupon decisions shall be made by voting;
- (o) notwithstanding the Chairman's opinion on the possibility or not of achieving consensus, if a Council member or alternate present requests that a vote be held on any matter, that matter shall be put to a vote;
- (p) each Council member, including the Council member appointed by the Bank, shall have one Council vote;
- (q) a vote by proxy shall be valid if written notification of such vote has been received by the Secretary prior to the relevant meeting;
- (r) a vote sent by post or email shall be invalid;

- (s) if a Council member acts as a proxy for another Council member, the proxy vote of the absent member shall be added to the Council vote(s) of the Council member present; and
- (t) a resolution put to the Council shall be carried if at least 75% of the total number of votes held by the Council members who are present, including by their proxies or alternates, are cast in favour of it.

12. Council may set up committees.

- (1) The Council —
 - (a) may set up committees to assist the Council in progressing the objectives of the Committee;
 - (b) may delegate in writing specific responsibilities to be undertaken by a committee;
 - (c) shall agree and issue to each committee its terms of reference as well as any changes made to its terms of reference;
 - (d) may in relation to a committee —
 - (i) appoint or replace a chairman;
 - (ii) determine the composition, procedures and budget of such committee;
- (2) A committee may, in the absence of the chairman, elect a deputy chairman to act as chairman.
- (3) All Members shall, unless otherwise determined by the Council, be eligible at all times to serve on committees set up by the Council.
- (4) The work of a committee shall, where the Council agrees that it is of general benefit to Members, be funded as a routine Committee expense.
- (5) The work of a committee which, in the opinion of the Council, is significant but of benefit to some Members only shall be funded by the Members benefiting from such work.
- (6) A committee set up pursuant to this bye-law shall —
 - (a) as far as possible, reach decisions by consensus;
 - (b) agree in advance a voting system for cases where consensus is impossible;
 - (c) appoint from among its members a secretary for each meeting of the committee.
- (7) Meetings may, subject to the consent of the committee chairman, be attended in person, by telephone or video conference, or by other electronic method.

- (8) The chairman of a committee shall ensure that all the committee papers are forwarded to and received by the Chairman;
- (9) The Chairman, or his nominee, shall have the right to attend and speak at every committee meeting but shall not cast a vote.
- (10) The Council may vary at any time the membership or funding arrangements for a committee.

13. General Meetings.

- (1) The Council may, at any time and from time to time, convene a General Meeting for such purposes as it sees fit.
- (2) A Member may, by notice to the Secretary, request that a General Meeting be convened for the purpose of amending these Bye-laws or for considering such other matters as may be stated in the request.
- (3) The Secretary shall, within 21 days of the date of receipt of a request by the Council or a Member —
 - (a) dispatch to all the Members a notice of a General Meeting; and
 - (b) dispatch a copy of the notice to all Council members and the Chairman.
- (4) The General Meeting shall not be held earlier than 14 days from the date of dispatch of a notice to the Members.
- (5) A Member's representative at a General Meeting shall, unless the Secretary is notified to the contrary, be its Council member.
- (6) A notice of General Meeting shall specify the time and place of the General Meeting and the general nature of the business to be transacted.
- (7) The Chairman or, in his absence, the deputy Chairman, shall preside as chairman of the General Meeting.
- (8) The chairman of the General Meeting shall, in the absence of the Chairman and the deputy Chairman, be the representative of such other Members as may be agreed upon by the Members then present at the General Meeting.
- (9) The quorum of a General Meeting shall be Members whose Council members hold Council votes, inclusive of proxy votes held for the General Meeting, which constitute a minimum of 75% of total Council votes.
- (10) A resolution shall not be valid at a General Meeting unless a quorum is present when the resolution is passed.
- (11) A proxy vote shall be valid if written notification in a form satisfactory to the Secretary has been received by the Secretary prior to the relevant General Meeting.

- (12) Where a Member is also acting as a proxy for another Member, the proxy vote(s) of the absent Member shall be added to the vote(s) of the Member present.
- (13) A vote by post or email shall be invalid.
- (14) Each Member shall at a General Meeting be entitled to cast the same number of votes as its Council member would at that time be entitled to cast at a Council Meeting.
- (15) A written resolution signed on behalf of Members whose Council members hold at least 75% of the total Council Votes shall be as valid and effectual as if it had been proposed and passed at a General Meeting duly convened and held provided such resolution was sent, prior to its being signed on behalf of any Member, to all Members, all Council members and the Chairman.

14. Notices.

Any notice or other document which is required or authorised by or under these Bye-laws to be given to or served upon any person shall be in writing and may be given or served in any way or using any mechanism endorsed by the Chairman.

15. Indemnity.

Every Council member, or agent of the Council properly appointed pursuant to sub-paragraph (b) of paragraph (3) of bye-law 9, or Committee officer for the time being, shall be indemnified out of the Committee's assets against all liabilities incurred by such member, agent or officer insofar as he or she is acting in good faith in pursuit of the objectives of the Committee.

FIRST SCHEDULE

(Bye-law 4(1))

PROCEDURES FOR ADMISSION TO MEMBERSHIP

OF THE NATIONAL PAYMENTS COMMITTEE

1. Any person who wishes to be a Member of the Committee shall make application in writing to the Chairman.
2. An applicant which meets the criteria set out in paragraph (2) of bye-law 4 shall be admitted to Membership.
3. The Chairman shall confirm that the applicant meets the Membership criteria. and the applicant shall provide additional information if requested by the Chairman.
4. The Chairman shall, within thirty calendar days of receiving an application and any additional information requested, recommend to the Council (or a sub-committee designated by the Council to determine Membership applications) whether the application should be approved.
5. The Council (or its designated sub-committee) shall, within thirty calendar days, decide whether the application should be approved and the Secretary shall notify the applicant in writing of the decision within seven calendar days.
6. The Secretary shall, if the application is unsuccessful, within 14 days notify the applicant of the Council's reasons for rejecting the application and shall brief the applicant on the Appeals Process set out in the Second Schedule.

SECOND SCHEDULE

(Bye-law 7(1))

THE APPEALS PROCESS

1. The Appellant may, within thirty days after the Council or the governing body of the relevant Interest Group has notified its decision, give written notice of appeal to the Chairman of its appeal against the relevant decision.
2. The Chairman shall, within 7 working days following the receipt of the notice of appeal, by written notice nominate an Appeals Panel to hear and determine the Appeal.
3. The Appeals Panel shall consist of three individuals who, in the opinion of the Chairman, are —
 - (a) members of, or professional advisers to, the banking and or financial services community in The Bahamas;
 - (b) of appropriate qualification and experience; and
 - (c) independent of the Appellant and the Committee.
4. The Chairman may but shall not be obliged to consult the Appellant and the Committee before making nominations to the Appeals Panel.
5. The Chairman shall appoint three individuals to serve on the Appeals Panel from among those nominated who have confirmed in writing their willingness to serve.
6. The members of the Appeals Panel shall, within 14 days following their appointment by the Chairman, appoint one of their number to preside over the Appeal as the Chair.
7. The Appeal shall be a re-hearing of the original determination of the Council or governing body of the relevant Interest Group and shall be conducted in accordance with such process as the Chair shall consider appropriate to fulfil the requirements of natural justice.
8. The Appeals Panel shall arrive at its decision by majority vote and such decision shall be final and binding on the Appellant and the Committee and may include a ruling as to how the costs of the appeal, including the remuneration of members of the Appeals Panel, shall be borne as between the Appellant and the Committee.