



The Central Bank of The Bahamas

**NOTICE OF REVISIONS TO: Proposed Payment
Systems Act, Payment Systems (Oversight) Regulations
and Payment Systems (National Payments Committee)
Byelaws**

30th July, 2010

I. INTRODUCTION

In November 2009, the Central Bank of The Bahamas issued for public consultation three pieces of proposed legislation: the draft Payment Systems Act, Payment Systems (Oversight) Regulations and the Payment Systems (National Payments Committee) Byelaws as part of the payments modernization initiative.

These drafts have been revised to take account of comments received during the consultation period. Set out below is a summary of revisions made to the draft Payment Systems Act, (hereafter referred to as the “draft Payment Systems Bill, 2010”, “the draft Bill” or “the Bill”) Payment Systems (Oversight) Regulations and the Payment Systems (National Payments Committee) Byelaws.

A. Draft Payment Systems Bill, 2010

1. Section 2 - Definitions:

- a. Definitions for the following terms which appear in various provisions throughout the draft Bill have been inserted for clarity:

“approved system”, “bill of exchange”, “cheque”, “clearing”, “committee”, “designated system”, “existing payment system”, “indirect participant”, “insolvency proceedings” “national Payments Committee”, “national payment system”, “payment”, “policy” and “settlement”.

- b. As the current operators of the BISS and the ACH are the Central Bank and BACH, which also act as the clearing houses for these two systems, all references to the term ‘operator’ have been deleted from the Bill as the term is redundant in the present payment systems environment.
- c. The definition of “participant” has been revised to make clear, who is and is not eligible to be a participant in a payment system.
- d. New definitions of “settlement institution” and “settlement agent” have been inserted in the Bill to more clearly explain their roles and functions.
- e. The definition of “payment system” includes the clearing and settlement of payment transactions and payments relating to securities, consequently, references throughout the Bill to “clearing, payment and settlement systems” and “payment or securities settlement system” (and their variations), have been deleted and replaced with “payment systems”.

2. **Section 7(4) (previously section 7(3))** has been amended to reflect that the composition of the National Payments Committee shall be (i) the Central Bank and the clearing banks, as the existing members of the NPC, (ii) governmental bodies regulating or involved in payments activities or the financial markets, that are approved by the

Central Bank, and (iii) the other eligible parties which are listed, who must apply to the NPC for membership.

3. **Section 8** has been revised to include provisions which, inter alia,:
 - permit existing payment systems to apply to the Bank for approval to continue their operations; and
 - empower the Central Bank to impose conditions or restrictions on existing payment systems pending the Bank's decision on an application by a clearing house of an existing system for approval to continue operating.
4. **A new section 9** has been inserted which will empower the Bank to impose conditions or restrictions on any payment system, whether or not it is a designated system.
5. **In sections 11 and 12 (previously sections 10 and 11)**, the word 'system' has been replaced with the words 'designated system', so that the provisions on finality of payments and protection from insolvency proceedings, apply only to designated systems.
6. **Subsection (7) of section 14 (previously subsection 13(7))** has been deleted from the Bill and inserted in the proposed amendments to the Bills of Exchange Act.
7. **In sections 21(1) and 21(2) (previously sections 19(1) and 19(2))**, the references to publication in the Official Gazette have been deleted and a new subsection 21(7) has been inserted to allow the Central Bank to publish any action it takes pursuant to subsections 21(1) and 21(2) in such forum as it deems appropriate.
8. **Section 26 (previously section 28)** has been revised to permit existing issuers of electronic money to make application to the Central Bank to continue their operations.
9. Penalties for breach of the provisions of the Bill have been modified throughout the draft Bill.

B. Draft Payment Systems (Oversight) Regulations, 2010

1. As the current operators of the BISS and the ACH are the Central Bank and BACH, which also act as the clearing houses for these two systems, all references to the term 'operator' have been deleted in the draft Regulations as the term is redundant in the present payment systems environment.
2. **New regulations 6 and 7** have been inserted in the draft Regulations:
 - a. Regulation 6 will empower the Central Bank to require that audits and inspections of the systems and operations of a clearing house of a designated system be conducted. These audits and inspections may be carried out by a qualified auditor or by a person appointed by the Bank.

- b. Regulation 7 provides that a person appointed pursuant to regulation 6 is to have a right of access at all reasonable times to inter alia the books, records and systems of the clearing house as they consider necessary to carry out their functions.
3. **In regulation 8 (formerly regulation 7)** paragraph (9) has been deleted.
4. Penalties for breach of the provisions of the Regulations have been modified throughout the Regulations.

C. Draft Payment Systems (National Payments Committee) Byelaws 2010

1. In byelaw 2(1)-

- a. in the definition of “Council vote”, the references to paragraphs (2), (3) and (4) of bye-law 13 have been deleted and replaced with references to subparagraphs (p), (s) and (t) of bye-law 11(3);
 - b. the definition of “member” has been revised to be consistent with section 7 of the Payment Systems Bill which provides for the composition of the National Payments Committee; and
 - c. paragraph (b) in the definition of “related party” has been changed to reduce the percentage of voting shares which may be held in a subsidiary company that is regarded as a “related party” from 50% to 10%.
2. **A new paragraph (4) has been inserted in bye-law 9** to impose a duty on the Council of the National Payments Committee to have regard to the value and volume of payments handled by a system when determining whether the system is widely used or otherwise significant.

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