

# PAYMENT SYSTEMS BILL, 2010

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**PAYMENT SYSTEMS BILL, 2010**

**A BILL FOR AN ACT TO PROVIDE FOR THE REGULATION AND  
OVERSIGHT BY THE CENTRAL BANK OF THE BAHAMAS OF  
PAYMENT SYSTEMS AND PAYMENT INSTRUMENTS; THE  
ESTABLISHMENT AND PUBLICATION BY THE CENTRAL BANK OF  
A NATIONAL PAYMENT SYSTEM POLICY AND FOR CONNECTED  
MATTERS**

**Enacted by the Parliament of The Bahamas**

**PRELIMINARY**

**1. Short title and commencement.**

- (1) This Act may be cited as the Payment Systems Act, 2010.
- (2) This Act shall come into force on a date to be appointed by the Minister by notice published in the Gazette.

**2. Interpretation.**

In this Act —

“**approved system**” means a domestic payment system granted approval by the Central Bank under section 8;

“**bill of exchange**” has the same meaning as stated in section 3 of the Bills of Exchange Act (*Ch. 335*);

“**Central Bank**” and “**Bank**” respectively means the Central Bank of The Bahamas, established under section 3 of the Central Bank Act;

“**Central Bank Act**” means the Central Bank of The Bahamas Act (*Ch. 351*);

“**central counter-party**” means a company, corporation, association, partnership, agency or other entity in a payment system which is

interposed between the participants and which acts as the exclusive counter-party of these institutions with regard to their transfer orders;

**“cheque”** means a bill of exchange drawn on a banker payable on demand;

**“clearing”** means the process of transmitting, reconciling and, in some cases, confirming transfer orders or security transfer instructions prior to settlement and may include the netting of instructions and the establishment of final positions for settlement;

**“clearing-house”** means a company, corporation, association, partnership, agency, organisation or other entity or person that provides clearing or settlement services for a payment system but does not include the Central Bank;

**“Committee”** means the National Payments Committee;

**“designated system”** means any domestic payment system liable to pose a risk of systemic disruption or adversely affect the public interest and designated by the Bank pursuant to section 16;

**“existing payment system”** means a payment system operating at the time of the commencement of this Act;

**“financial collateral”** means —

(a) cash or cash equivalents, including negotiable instruments and demand deposits;

(b) securities, including a securities account, a securities entitlement, or a right to acquire securities;

(c) a futures agreement or futures account,

subject to an interest, right or title transfer securing payment or performance of an obligation in respect of a financial contract;

**“indirect participant”** means a financial institution for which transfer orders are capable of being affected through a designated system pursuant to a contractual relationship with a participant;

**“insolvency proceedings”** means any collective measures provided for in any applicable law —

(a) to wind-up or to re-organise a participant, whether voluntarily or involuntarily; or

(b) to suspend the business of a participant, where such measures involve the suspension of, or the imposition of limitations on, transfer orders and payments;

**“Minister”** means the Minister of Finance;

**“National Payments Committee”** and **“Committee”** respectively means the advisory body to the Bank established under section 7;

**“national payment system”** means the system referred to in section 5(1) (c) of the Central Bank Act comprising the rules and procedures

governing the establishment and operation of payment systems within The Bahamas and their oversight by the Central Bank and the oversight of payment instruments by the Central Bank;

**“netting”** means the conversion into one net claim or net obligation of claims and obligations resulting from orders which a participant either issues to, or receives from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

**“overseas regulatory authority”** means an authority in a country or territory outside The Bahamas which exercises functions corresponding to any functions of the Bank;

**“participant”** means any person, excluding the Bank, who is recognised in the rules of a payment system as being eligible to settle payments through the system with other participants but does not include a user or customer of a participant who instructs or receives payment over the system;

**“payment”** means the payer's transfer of a monetary claim on a party acceptable to the beneficiary;

**“payment instrument”** means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise execute payment transactions;

**“payment system”** means a formal arrangement with common rules and standardised arrangements for the execution of transfer orders between participants, including a clearing house, the settlement of payments relating to securities, or for the processing, clearing, or settling of payment transactions or payment messages between —

- (a) three or more participants; or
- (b) two or more participants provided such formal arrangement is designated by the Bank as a payment system pursuant to section 16;

**“payment transaction”** means any act initiated by the payer or the payee of placing, transferring or withdrawing funds irrespective of any underlying obligations between the payer and the payee and includes payment messages;

**“Policy”** means the national payment system policy referred to in section 6;

**“regulatory laws”** means the Banks and Trust Companies Regulation Act (*Ch. 316*);

**“securities”** means transferable securities traded on a local stock exchange authorised under the Securities Industry Act and or Regulations (*Ch. 363*);

**“settlement”** means an act that discharges obligations in respect of funds or securities transfers between two or more parties;

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

**“settlement agent”** means an institution that manages the settlement process, including the determination of settlement positions and monitoring of the exchange of payments, for transfer systems or other arrangements that require settlement;

**“settlement institution”** means an institution, excluding the Central Bank, that provides to participants and or a central counter-party participating in one or more systems —

(a) settlement accounts through which transfer orders within such system or systems are settled; and

(b) credit, as may be required, for settlement purposes;

**“system”** means an individual payment system;

**“transfer order”** means any instruction by a participant —

(a) to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a participant, settlement institution or the Bank;

(b) which results in the assumption or discharge of a payment obligation; or

(c) to transfer the title to, or interest in, a security or securities by means of a book entry on a register or otherwise.

### 3. Derogation.

(1) The obligations, requirements, powers and regulatory schemes established under or pursuant to the provisions of this Act shall be in addition to, and shall not derogate from —

(a) the obligations, requirements, powers and regulatory schemes established under or pursuant to any other written law; and

(b) the powers conferred on the Central Bank by the Central Bank Act, the Banks and Trust Companies Regulation Act (*Ch. 316*), or by any other written law for the time being in force.

(2) The provisions of this Act shall be read and construed in conformity with the Central Bank Act and the Banks and Trust Companies Regulation Act (*Ch. 316*).

## **PART I – FUNCTIONS AND POWERS OF THE CENTRAL BANK**

### **4. Oversight powers of Central Bank.**

- (1) The Central Bank may, in the exercise of its functions and powers pursuant to paragraphs (b) and (c) of subsection (1) of section 5 and section 25 respectively of the Central Bank Act, in relation to the establishment and oversight of a national payment system —
  - (a) determine general or individual standards and guidelines for approved systems, designated systems and payment instruments;
  - (b) establish and perform control and audit procedures; and
  - (c) impose administrative sanctions.
- (2) The Bank shall, in the exercise of the powers granted by or referred to in subsection (1), be guided by best international standards.

### **5. Bank to have regard to public interest.**

The Central Bank shall, in exercising its powers under this Act, have regard to the interests of the public and may take into consideration —

- (a) whether any system is, in the opinion of the Bank —
  - (i) financially safe for use by participants;
  - (ii) efficient;
  - (iii) competitive;
  - (iv) not materially causing or contributing to increased risk to the financial system of The Bahamas; and
- (b) such other matters as the Central Bank may consider to be relevant.

## **PART II – NATIONAL PAYMENT SYSTEM POLICY**

### **6. Bank to oversee national payment system policy.**

- (1) The Central Bank shall formulate, adopt and monitor the implementation of a national payment system policy for The Bahamas.
- (2) The Bank shall make public the Policy adopted.
- (3) The Bank shall design the Policy primarily to —
  - (a) facilitate the overall stability of the financial system of The Bahamas;
  - (b) promote the safety and efficiency of payment systems;
  - (c) control risk;

- (d) contribute to the promotion of competition in the market for payment services;
  - (e) contribute to the protection of payment system users; and
  - (f) enhance other aspects of the public interest;
- (4) The Bank shall, in pursuance of the Policy objectives stated in subsection (3), facilitate —
- (a) the interaction of its clearing and settlement systems and related arrangements with other systems or arrangements connected with the exchange, clearing or settlement of payments or securities;
  - (b) the development of new methods and technologies for payments and the transfer of securities; and
  - (c) the cooperation among all participants in the evolution of payment systems and the provision of money transmission services.
- (5) The Bank shall, in promoting the safety and efficiency of the national payment system, cooperate with central banks of other countries and other relevant domestic authorities.
- (6) The Bank may, in pursuance of its obligations under subsection (5), undertake commitments under memoranda of understanding and or other instruments and, unless prohibited by law, adopt joint measures.

#### **7. Establishment of National Payments Committee.**

- (1) There is established for the purposes of this Act a committee to be known as the National Payments Committee.
- (2) The Committee shall act as an advisory body to the Bank in the exercise of its oversight function in respect of the national payment system.
- (3) The Committee shall support the achievement of sound and efficient payment systems in The Bahamas and serve as a forum for cooperation to maintain orderly conditions in regional and international systems.
- (4) The Committee shall be comprised of —
  - (a) the Bank, whose representative shall also act as chairman of the Committee;
  - (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;
  - (d) other persons approved by the Committee that are involved in the clearing and settlement of payments or securities or in the financial markets.



- (5) The Bank may issue bye-laws in respect of the —
  - (a) the composition of the Committee;
  - (b) the competences, working procedures and timing of meetings of the Committee;
  - (c) eligibility requirements for individuals and financial institutions; and
  - (c) all other matters relevant to the operations and functions of the Committee.
- (6) The Bank shall serve as the secretariat of the Committee.

**8. Approval required for domestic payment systems.**

- (1) No person shall, after this Act comes into force, organise, establish, operate or participate in a proposed domestic payment system unless —
  - (a) application is made to the Bank for approval; and
  - (b) the Bank grants approval in writing of such proposed payment system.
- (2) Every clearing house of an existing payment system shall, within three months after this Act comes into force —
  - (a) make application to the Bank to continue its operations; or
  - (b) cease to operate.
- (3) Every application made pursuant to subsections (1) or (2) shall be —
  - (a) in writing in such form and containing such particulars as the Bank may from time to time determine;
  - (b) accompanied by —
    - (i) the rules of the proposed payment system or existing payment system, as the case may be, in respect of which the application is made; and
    - (ii) such other documents as the Bank may require.
- (4) The Bank may, pending a decision pursuant to an application made under paragraph (a) of subsection (2), impose such conditions or restrictions on the existing payment system as the Bank deems necessary in the interest of —
  - (a) the proper and orderly regulation of the payment system concerned; and
  - (b) competition between payment systems.
- (5) This section shall not apply to a payment system operated by the Central Bank.

**9. Grant of approval.**

- (1) Subject to subsection (2), the Bank may upon approving an application made pursuant to section 8 impose such conditions or restrictions or both as the Bank thinks fit, in the interest of the proper and orderly regulation of the payment system concerned and of competition between payment systems, upon either or both —
  - (a) the class of payment system concerned; or
  - (b) the participants of the payment system concerned.
- (2) The Bank shall, before imposing any conditions or restrictions under subsection (1), provide the clearing house or participants of the payment system concerned with an opportunity to make representation regarding such proposed action.
- (3) The Bank shall not approve an application made pursuant to section 8 unless the clearing house of the existing payment system or proposed payment system, as the case may be, is a company incorporated under the Companies Act, (*Ch. 308*).
- (4) The Bank may publish an approval granted under this section in the Gazette.
- (5) A person who contravenes the provisions of subsections (1) or (2) of section 8 commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment, and, in the case of a continuing offence, to a fine not exceeding two thousand dollars for each day, or part of a day, during which the offence continues.

**10. Withdrawal of approval.**

- (1) The Bank may, where it is of the view that a system is being operated in a manner detrimental to the interests of the participants or customers of that system or to the financial system of The Bahamas, by order withdraw any approval granted under section 9.
- (2) An order withdrawing an approval pursuant to subsection (1) shall be published in the Gazette and shall take effect from such date as the Bank may determine and state in the order.
- (3) The Bank shall, before withdrawing any approval pursuant to subsection (1), give the clearing house an opportunity to be heard.

### **PART III – FINALITY OF PAYMENTS AND PROTECTION OF APPROVED SYSTEMS**

#### **11. System rules and finality of payments.**

- (1) Notwithstanding any provision of any statute or other law of The Bahamas —
  - (a) the system rules of a designated system are valid and shall be binding on the clearing house, the participants, a central counter-party and the Bank and any action may be taken or payment made in accordance with the system rules;
  - (b) the obligation of a participant, a clearing house or a central counter-party to make payment or transfer securities to a participant and the right of a participant, a clearing house or a central counter-party to receive payment or securities from a participant, a clearing house or a central counter-party shall be netted and a net settlement or close-out amount shall be determined in accordance with the system rules, if they so provide; and
  - (c) where the system rules of a designated system provide that the settlement of a payment obligation through an entry to or a payment out of a settlement account of a participant, a clearing house or a central counter-party at the Bank is final and irrevocable, the entry or payment, as the case may be, shall not be reversed, repaid or set aside.
- (2) An entry to or a payment out of the settlement account of a participant, a clearing house or a central counter-party at the Bank made to settle a payment obligation in accordance with the rules of a designated system shall not be the subject of any provision or order that operates as a stay of that activity.
- (3) The rights and remedies of a participant, a clearing house, a central counter-party or the Bank in respect of collateral granted to it as security for a payment or the performance of an obligation incurred in a designated system shall not be the subject of any stay, provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.
- (4) The provisions of this section shall apply in whole or in part where in any judicial proceedings in The Bahamas a court determines that, notwithstanding that all or part of the administration or operation of a designated system is conducted outside The Bahamas or that its system rules are governed by the laws of a foreign jurisdiction, the rights and obligations of any person arising out of or in connection with the

operation of a designated system are governed in whole or in part by Bahamian law.

- (5) A participant or the Bank, where it is a party to a netting agreement or to a close-out netting and notwithstanding —
- (a) any provision of any law, domestic or foreign, relating to bankruptcy or insolvency; or
  - (b) any order of a court, domestic or foreign, made pursuant to a petition to wind up any company or to an administration of a reorganisation, arrangement or receivership involving insolvency,
- may terminate the agreement and determine a net termination value or net settlement amount in accordance with the provisions of the agreement and the party entitled to the net termination value or settlement amount shall be a creditor of the party owing the net termination value or net settlement amount for that value or amount.
- (6) The Bank, or a participant with the approval of the Bank, may deal with financial collateral in accordance with the provisions of a netting agreement, including —
- (a) selling, foreclosing or surrendering financial collateral; and
  - (b) setting off or compensating financial collateral or applying the proceeds or value of financial collateral.

## **12. Protection from insolvency proceedings.**

- (1) Insolvency proceedings commenced against a participant shall not have retroactive effect on the rights and obligations of a participant which arose from, or in connection with, its participation in a designated system before the commencement of such insolvency proceedings.
- (2) For the purposes of this Act, the moment of commencement of insolvency proceedings against a participant of a designated system shall be the moment when the clearing house of that system —
- (a) receives from the court a copy of the court's written order for the winding up and dissolution of the participant; or
  - (b) in the case of a voluntary winding up of a participant, receives from the participant notice in writing that a creditor's resolution to wind up the participant has passed.
- (3) Transactions valid, enforceable and binding against liquidators and or third parties, and which shall not be challenged on any ground whatsoever, include —
- (a) transfer orders, and the payments and settlements resulting from such transfer orders, which have been entered into a designated system in accordance with its rules prior to the moment of the

- commencement of insolvency proceedings even if the payment or settlement took place after the moment of commencement of insolvency proceedings ; and
- (b) the netting of transfer orders and of the debts and obligations resulting from such transfer orders when the former have been entered into a designated system in accordance with its rules prior to the moment of the commencement of insolvency proceedings even if the netting took place after the moment of commencement of insolvency proceedings.
- (4) Subject to subsection (1), a clearing house, settlement institution or settlement agent if authorised under the applicable system rules of a designated system or other relevant contractual provisions may, notwithstanding the commencement of insolvency proceedings against a participant in the system, make use of or realise —
- (a) money and financial collateral available on the settlement account of the participant in order to settle outstanding transfer orders and any net debit balance the participant may owe after netting to allow for final settlement of the system;
  - (b) credit lines granted to the participant and collateral provided for the purpose of securing such credit lines.
- (5) A court shall, where it makes an order to wind-up a participant of a designated system, forthwith notify the clearing house of the designated system and the Central Bank that such an order has been made and forward to each one a copy of the order.
- (6) A participant of a designated system shall, where a resolution to voluntarily wind-up a participant of a designated system has been passed, forthwith notify the clearing house of the designated system and the Central Bank that such a resolution has been passed and forward to each one a copy of the resolution.

**13. Non-recognition of insolvency order of foreign court.**

Notwithstanding any provision of any other written law or rule of law, a court in The Bahamas shall not recognise or give effect to an order of a court outside The Bahamas exercising jurisdiction under the law of insolvency of that foreign jurisdiction to the extent that the making of or contents of that order would be inconsistent with or contrary to the provisions of this Act.

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## PART IV – ELECTRONIC PROCESSING OF PAYMENTS

### 14. Truncation of cheques.

- (1) A cheque may, in order to facilitate electronic processing of payment instruments, in particular by way of multilateral clearing procedures, be presented for payment to the banker on whom it is drawn by notification of the cheque's essential features by —
  - (a) physical presentation of the cheque; or
  - (b) electronic or other means, including electronic transmission of the image of the cheque.
- (2) For the purposes of subsection (1), the essential features of a cheque are —
  - (a) its serial number;
  - (b) the code which identifies the bank on whom the cheque is drawn;
  - (c) the account number of the drawer of the cheque;
  - (d) the amount for which the cheque is drawn as entered by the drawer of the cheque; and
  - (e) any other feature as the Central Bank may by order prescribe from time to time.
- (3) The image of a cheque presented electronically shall comprise both the front view and the back view of the cheque.
- (4) There shall be no requirement for presentment at the proper place or at a reasonable hour where a cheque is presented for payment under this section.
- (5) The banker on whom a cheque is drawn may, before the close of business on the business day immediately following presentment of a cheque by electronic means or otherwise, request the banker by whom the cheque was presented to present the cheque itself whereupon —
  - (a) the presentment by electronic means or otherwise shall be disregarded; and
  - (b) this section shall not apply to the subsequent presentment of the cheque.
- (6) A request by a banker under subsection (5) for the physical presentation of a cheque shall not constitute dishonour of the cheque by non-payment.
- (7) For the avoidance of doubt, any payment made upon presentment in accordance with this Part shall not be taken to have been made outside of the ordinary course of business, in bad faith, or negligently, by reason only that it is made by electronic or other means rather than by physical presentation of the cheque itself.

**15. Image return documents.**

- (1) The presenting banker shall, where a cheque presented for payment in accordance with section 14 is dishonoured for non-payment, issue to the holder an image return document unless —
  - (a) the presenting banker either returns the cheque itself to the holder; or
  - (b) the holder requests the return of the cheque itself.
- (2) Subject to subsection (4), an image return document may be presented for payment to the presenting banker by the holder to whom it was issued as if that document were the cheque to which it relates.
- (3) For the purpose of presentment under subsection (2), an image return document shall be deemed to be the cheque to which it relates.
- (4) The holder of an image return document may present it for payment only if —
  - (a) the presenting banker states in the document that it is valid for presentment; and
  - (b) the presentment is made within the period for its presentment stated in the document.
- (5) Subject to subsection (6), the person to whom an image return document was issued may, where that document has been lost before the expiry of the period for its presentment stated in the document, apply to the drawer of the cheque to which the document relates to give him another cheque of the same tenor.
- (6) The drawer of a cheque to which an image return document that has been lost before expiry relates shall, upon the request of the holder, issue another cheque of the same tenor —
  - (a) if the holder of the image return document so requests; and
  - (b) if the holder, upon the request of the drawer, provides security to indemnify the drawer against all claims arising in the event the document alleged to have been lost is found.
- (7) In this section —
  - (a) “image return document” means a document issued by a presenting banker containing such particulars as may be prescribed by regulations; and
  - (b) “presenting banker” means the banker to whom a cheque was first presented by the holder of the cheque.

## PART V – DESIGNATION OF SYSTEMS

### 16. Power of Bank to designate systems.

- (1) The Central Bank may, by order published in the Gazette, designate a system for the purposes of this Act as a designated system.
- (2) The Central Bank shall, when considering whether to designate a system, take the following factors into account —
  - (a) whether a disruption in the operations of the system could —
    - (i) trigger, cause or transmit further disruption to participants or systemic disruption to the financial system of The Bahamas; or
    - (ii) affect public confidence in payment systems or the financial system of The Bahamas;
  - (b) the best interests of —
    - (i) system participants and their customers; or
    - (ii) the financial system of The Bahamas.
- (3) An order made under subsection (1) shall identify the clearing house and the settlement institution of the designated system and shall continue to have effect until it is withdrawn by the Central Bank.
- (4) The Central Bank shall, prior to the designation of a system, consult the clearing house, participants of the system, and the settlement institution of the system, and may consult interested parties, with respect to the effects of such designation.
- (5) The Central Bank shall notify the clearing house, participants or settlement institution of the designation of the system in such manner as the Bank considers appropriate.
- (6) A designation made under subsection (1) shall be effective from the date specified in such notification.

### 17. Withdrawal of designation of a system.

- (1) Subject to subsection (2), the Central Bank may by order published in the Gazette withdraw the designation of any designated system at any time if, in the opinion of the Bank, the factors specified in subsection (2) of section 16 no longer apply.
- (2) The Central Bank shall, prior to the withdrawal of the designation of a system, give the clearing house and the settlement institution of the system an opportunity to be heard.



**18. Clearing house to forward system rules to Central Bank.**

- (1) Upon designation of a system by the Central Bank under section 16, a copy of every system rule governing the designated system shall be forwarded to the Bank by —
  - (a) the clearing house of the designated system; or
  - (b) if there is no clearing house, the participants of the designated system.
- (2) A copy of a system rule shall be forwarded to the Bank —
  - (a) where a system rule was made before the designation of the system, within thirty days of the date of such designation; and
  - (b) where a system rule was made after the designation of the system, within ten days of the date of the making of such rule.
- (3) Subject to subsection (4), a system rule made after the designation of a system shall not come into operation before the thirtieth day after a copy of it is sent to the Central Bank.
- (4) The Central Bank may declare a system rule made after the designation of a system to be in force at any time before the expiry of the period referred to in subsection (3).
- (5) The Central Bank, if of the opinion that an extension of the period specified in subsection (3) is required to permit adequate review of a system rule, may within ten days of its receipt of the system rule extend that period up to thirty days after giving written notice to the sender of the system rule.
- (6) The Central Bank may, before or any time after it comes into force or is in force, disallow the whole or a part of a system rule governing a designated system.
- (7) A system rule that is disallowed pursuant to subsection (6) shall become ineffective from such date as may be stated by the Bank in the decision communicated in writing to the participants of the designated system.
- (8) The Central Bank shall, where a system rule in force is disallowed in whole or in part under subsection (6), include the decision to disallow it in a direction issued pursuant to section 20 in any case where the decision gives rise to the need to amend or replace the system rule in order to facilitate the continued smooth operation of the designated system..
- (9) A direction disallowing a system rule under subsection (8) shall provide a text for a temporary system rule which shall apply until an amendment or replacement of the disallowed rule is adopted by the system.
- (10) A temporary system rule shall become effective immediately upon the disallowed rule becoming ineffective.

- (11) The Central Bank may exempt a designated system from the requirements of subsections (1) or (2).

## **PART VII – CENTRAL BANK OVERSIGHT OF DESIGNATED SYSTEMS**

### **19. Power of Bank to issue directions.**

- (1) The Central Bank may issue written directions of a general or specific nature to any participant or class of participants or clearing house of a designated system in any case where the Bank is of the opinion that —
- (a) it is necessary or expedient for ensuring the integrity or proper management of a designated system;
  - (b) it is necessary or expedient for the effective administration of this Act;
  - (c) it is otherwise in the interests of the public or a section of the public;
  - (d) a person is engaged in, or is about to engage in, any unsafe, unsound or unfair practice in the operation of a designated system; or
  - (e) a person has contravened or failed to comply with, or is likely to contravene or fail to comply with, the provisions of this Act or any rule, regulation, instruction, direction or order given under it or any other written law which, in the opinion of the Bank, relates to systems or any category of system.
- (2) Without prejudice to the generality of subsection (1) —
- (a) any written direction issued by the Bank may relate to —
    - (i) the appropriate actions to be taken by the participant or class of participants, or the clearing house, in relation to its business;
    - (ii) the appointment of a person approved by the Bank to advise the participant or class of participants, or the clearing house, on the proper conduct of its business;
    - (iii) the conditions that will apply if any function of the clearing house is outsourced; and
    - (iv) such other matters as the Bank may consider necessary or expedient or in the interests of the public or a section of the public;

- (b) the Bank may by a written direction specify that a participant or clearing house of a designated system shall, within such time as the Bank considers necessary —
  - (i) cease or refrain from engaging in an act or course of conduct;
  - (ii) perform such acts as in the opinion of the Central Bank are necessary in the public interest; or
  - (iii) make, amend or repeal a payment system rule.
- (3) A person or class of persons to whom the Bank issues directions pursuant to subsections (1) or (2) shall comply with such directions.
- (4) Any person who fails to comply with a direction issued by the Bank under subsections (1) or (2) 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.

**20. Procedure for issuance of directions.**

- (1) The Central Bank shall, prior to issuing a direction under section 19, consult the person to whom it is directed, and such interested persons as the Bank considers appropriate, with respect to the content and the effect of the direction.
- (2) The person to whom the Bank gives a written direction under section 19 shall, within thirty days after implementing the direction and completing any actions required to be taken in connection with it, notify the Central Bank that the direction has been implemented and the action completed.
- (3) Every direction issued by the Bank under section 19 shall be —
  - (a) communicated to the person to whom it is directed and come into operation from the date of its issue;
  - (b) binding on the person to whom it is directed and contain a statement of the penalty prescribed for non-compliance pursuant to subsection (4) of section 19.

**21. Power of Bank to impose, vary or revoke conditions and restrictions.**

- (1) The Central Bank may impose on the participant or clearing house of a designated system such conditions or restrictions as the Bank thinks fit.
- (2) The Central Bank may vary or revoke at any time any condition or restriction imposed pursuant to subsection (1) as the Bank thinks fit.
- (3) The Central Bank may, without affecting the generality of subsections (1) or (2), impose conditions or restrictions relating to the —

- (a) conditions to be met by any person in order to have access to, or to become a participant of, the designated system;
  - (b) operation of the designated system, including the clearing and settlement procedures to be followed;
  - (c) interaction of the designated system with other systems; or
  - (d) relationship of the designated system with its participants.
- (4) A participant or clearing house of a designated system which fails to comply with any condition or restriction imposed or varied under subsections (1) or (2) 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.
- (5) A condition or restriction in respect of a designated system shall cease to be in force if —
- (a) the order imposing or varying the condition or restriction provide for an expiry date and that date is reached;
  - (b) the bank revokes the condition or restriction under subsection (2); or
  - (c) the payment system concerned ceases to exist or operate or ceases to be a designated system.
- (6) The Central Bank shall, in considering whether to impose, vary or revoke a condition or restriction under subsections (1) or (2), have regard to the following —
- (a) whether the imposition, variation or revocation of the condition or restriction in respect of the designated system would be in the interests of the public;
  - (b) the interests of the current participants and clearing house of the designated system;
  - (c) the interests of persons who, in the future, may require or desire access to the designated system; and
  - (d) such other matters as the Bank may consider to be relevant.
- (7) The Central Bank may publish any action it takes pursuant to subsections (1) and (2) in such forum as the Bank deems appropriate.

## **22. Power of Bank to inspect.**

- (1) The Central Bank may, for the purpose of satisfying itself that this Act or any other relevant law is being complied with, conduct on-site examinations and off-site supervision of the business of a participant or clearing house of a designated system.

- (2) The Bank shall, in the performance of its duties under this Act, be entitled at all reasonable times to —
  - (a) have access to the accounts, records, books and documents of any participant or clearing house;
  - (b) request from a participant or clearing house, or any of their managers or agents, such information or explanation relating to the accounts, records, books and documents as the Bank considers appropriate;
  - (c) call upon the participant or clearing house for such auditor's reports, working papers, information or explanation as the Bank considers appropriate;
  - (d) require that the auditor of a participant or clearing house, as the case may be, report to the Bank on the extent of the procedures of the auditor in respect of any examination undertaken by them;
  - (e) require that the auditor make a particular examination relating to the adequacy of the procedures adopted by the participant or clearing house, as the case may be, for the safety of its creditors and shareholders or any other examination as considered necessary by the Bank in order for it to reasonably perform its functions under this Act;
  - (f) require that audits of the operations and systems (including the informational technology system) of the clearing house of a designated system be conducted.
- (3) The Bank may, where it considers it necessary, delegate by appointment the conduct of examinations under subsection (1) in whole or in part to a person duly approved by the Bank and such person shall submit their report to the Bank within such period as the Bank may determine.
- (4) An examination carried out on behalf of the Bank pursuant to subsection (3) shall be at the expense of the participant or clearing house as the case may be.
- (5) All the duties imposed under this section on a clearing house of a system shall apply jointly and severally to each participant of the system and the participants jointly and severally shall, where the clearing house fails to perform such duties, comply with and be liable for contravention of those obligations in the same manner and to the same extent as the clearing house.
- (6) Any person who —
  - (a) fails, without reasonable justification, to comply with any requirement of the Bank pursuant to subsection (2) within the period of time determined by the Bank for compliance;
  - (b) being an auditor of a participant or clearing house —

- (i) makes untrue statements in an audit report;
- (ii) omits essential facts;
- (iii) fails to request pertinent information from the participant or clearing house; or
- (iv) fails to report his findings to the Bank,

commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment, and, in the case of a continuing offence, to a fine not exceeding two thousand dollars for each day or part of a day during which the offence continues.

## **PART VIII – REQUIREMENTS FOR CLEARING HOUSES**

### **23. Duty of clearing house to notify Bank of certain events.**

- (1) Each clearing house shall, with respect to its designated system, provide the Central Bank with thirty days notice in advance of any significant change intended to be made in relation to the designated system.
- (2) For the purposes of subsection (1), a significant change shall include but not be limited to a change affecting —
  - (a) any document, including its Memorandum of Association and the relevant resolutions, agreements, rules and procedures, relating to the formation, establishment, constitution, governance, administration and operation of the designated system; or
  - (b) the operation of the designated system.
- (3) Each clearing house shall as soon as practicable after any non-significant change is made in relation to the designated system provide the Bank with written notice of such change including information in respect of any change affecting the composition of the Board of Directors, whether by resignation or otherwise.

### **24. Power of Bank to enter agreement with clearing house.**

- (1) Subject to any regulations made pursuant to subsection (2), the Central Bank may issue directions to, and enter into any agreement with, a clearing house or a participant of a designated system, or both clearing house and participant, in respect of the following matters —
  - (a) netting arrangements;
  - (b) risk sharing and risk control mechanisms;
  - (c) certainty of settlement and finality of payment;
  - (d) the nature of financial arrangements among participants;

- (e) the operational systems and financial soundness of the clearing house; and
  - (f) such other matters that, in the Bank's opinion, pertain to a risk to the financial system of The Bahamas.
- (2) The Bank may make regulations in respect of all or any of the matters specified in paragraphs (a) to (f) of subsection (1) and such regulations shall, in the event of a conflict between any rule, instruction, direction or agreement by the Bank, prevail.

**25. Function and powers of Bank in relation to designated systems.**

- (1) The Central Bank may perform all or any of the following functions in relation to a designated system and its clearing house —
- (a) the provision of a secured guarantee of settlement by participants;
  - (b) the making of liquidity loans to the clearing house and the central counter-party; and
  - (c) acting as the central counter-party to the participants.
- (2) The Bank may exercise in relation to a designated system and its clearing house all or any of the following powers —
- (a) to be a participant, participate and act as central counter-party, including in a loss-sharing mechanism; and
  - (b) to act as a custodian of financial assets, or settlement institution, or both.

**PART IX – LICENSING REGIME FOR ISSUE OF ELECTRONIC MONEY**

**26. Licence required to issue electronic money.**

- (1) No person other than a bank, bank and trust company or trust company licensed under the regulatory laws shall, after this Act comes into force, commence the issue of electronic money without having applied for and obtained the grant of a license from the Central Bank.
- (2) Every person issuing electronic money at the time this Act comes into force shall, within four months of the coming into force of this Act, —
- (a) make application to the Bank for the grant of a licence to issue electronic money; or
  - (b) cease to issue electronic money.

- (3) Application for a license to issue electronic money under this Part shall be made by the applicant to the Central Bank in such form and contain such particulars as the Bank may from time to time determine.

**27. Eligibility requirements.**

The Central Bank shall publish in the Gazette or by regulation prescribe the following —

- (a) the category of persons eligible to apply for a grant of a licence to issue electronic money;
- (b) the prudential and other requirements and criteria applicable to eligible applicants;
- (c) the persons or category of persons exempted from the requirement of a licence to issue electronic money.

**28. Grant of licence by the Bank.**

- (1) The Central Bank may grant and issue a licence pursuant to an application made under section 26 and may at any time —
  - (a) impose such terms and conditions on the licensee as the Bank sees fit;
  - (b) issue directions to licensees as the Bank sees fit; and
  - (c) revoke a licence if the licensee —
    - (i) fails to meet the prescribed category, requirements or criteria for the grant of a licence; or
    - (ii) is in breach of any terms and conditions imposed or directions issued by the Bank.
- (2) Any person who —
  - (a) subject to subsection (2) of section 26, issues electronic money without the grant of a licence by the Central Bank;
  - (b) being a licensee, continues to issue electronic money after his licence is revoked by the Bank; or
  - (c) is in breach of any terms and conditions imposed or directions issued by the Bank,

commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment, and, in the case of a continuing offence, to a fine not exceeding two thousand dollars for each day or part of a day during which the offence continues.



**29. Definition of “electronic money”.**

For the purposes of this Part, “electronic money” means monetary value represented by a claim on the issuer, which is —

- (a) stored electronically;
- (b) issued on receipt of funds for the purpose of making payment transactions but does not amount to a deposit under this Act; and
- (c) accepted as a means of payment by persons other than the issuer.

**PART X – GENERAL POWERS OF THE CENTRAL BANK**

**30. Power of Bank to investigate existence of systems.**

- (1) The Central Bank may, where it has reasonable grounds to believe that a system or arrangement exists for the clearing and settlement of payments or securities, request in writing a person who is a party to the system or arrangement to provide the Bank with further information, records and documents relating to the system or arrangement as the Bank may require in order to make a determination on the existence of the clearing and settlement system.
- (2) Every person who is requested by the Bank pursuant to subsection (1) to provide information, records and documents shall comply with such request within the time period for compliance stated in the request.
- (3) Any person who contravenes subsection (2) 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 each day or part of a day during which the offence continues after conviction.

**31. Power to obtain information.**

- (1) The Central Bank may, by notice in writing, require any participant or clearing house to supply to the Bank, in such form and within such time period as the Bank may determine, such information as the Bank considers necessary to enable it to carry out its functions under this Act.
- (2) The Bank may, as it may reasonably require in connection with the exercise of its functions under this Act and the regulatory laws, at all reasonable times by notice in writing require the production within a stated time of specified information or information of a specified description, or of specified documents or documents of a specified description, from —
  - (a) a person regulated under the regulatory laws;

- (b) a clearing house;
  - (c) a participant or indirect participant in a system;
  - (d) a connected person; or
  - (e) a person reasonably believed to have information relevant to an enquiry by the Bank.
- (3) Subject to subsection (4), and to subsections (4) and (7) of subsection 36, the Bank may, where it is satisfied that assistance should be provided in response to a request by an overseas regulatory authority and in order to provide such assistance, issue directions in writing to —
- (a) a person regulated under the regulatory laws;
  - (b) a clearing house;
  - (c) a participant or indirect participant in a system;
  - (d) a connected person;
  - (e) a person that is engaging in an activity that is subject to regulation under the regulatory laws; or
  - (f) a person reasonably believed to have information relevant to an enquiry to which the request relates.
- (4) Directions by the Bank issued pursuant to subsection (3) may request a person, within a time period stated in the direction, to —
- (a) provide the Bank with specified information or information of a specified description with respect to any matter relevant to the inquiries to which the request relates;
  - (b) produce specified documents or documents of a specified description relevant to those inquiries; or
  - (c) give to the Bank such assistance in connection with those inquiries as the Bank may specify in writing.
- (5) The Bank may, where documents are produced pursuant to this section, take copies of them or extracts from them.
- (6) The production of a document under this section shall, where a person claims a lien on such document, be without prejudice to the lien.
- (7) For the purposes of this section —
- (a) “document” includes information recorded in any form;
  - (b) “regulated person” means a person regulated under the regulatory laws;
  - (c) in relation to information recorded otherwise than in legible form, the power to require its production includes the power to request the production of a copy of it in legible and intelligible form; and
  - (d) a person is connected with a regulated person if he is or has at any relevant time been —

- (i) a member of the regulated person's group;
  - (ii) a controller of the regulated person;
  - (iii) any other member of a partnership of which the regulated person is a member; or
  - (iv) a member, officer, manager, employee or agent of the regulated person.
- (8) A person who —
- (a) without reasonable cause fails to comply with a requirement or direction of the Bank under subsections (2) and (3) respectively;
  - (b) with intent to avoid the provisions of subsections (2) or (3) destroys, mutilates, defaces, hides or removes a document; or
  - (c) wilfully obstructs an inquiry by the Bank made in accordance with the provisions of this section,

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 fine not exceeding two thousand dollars for each day or part of a day during which the offence continues.

**32. Power of Bank to apply to the court.**

- (1) The Bank may, where a person fails to comply with a requirement under subsection (2) or a direction given under subsection (3) of section 31 within three days from the date stated in the requirement or direction for compliance or within such longer period as the Bank may permit, apply to a Stipendiary and Circuit Magistrate for an order requiring the person to comply with the requirement or direction.
- (2) The Bank may, where it considers it necessary in connection with a requirement under subsection (2) or a direction given under subsection (3) of section 31 to examine a person on oath, apply to a Stipendiary and Circuit Magistrate to have that person examined by the court and to have the result of that examination sent to the Bank.
- (3) The court shall process an application made under subsection (2) within seven days of its receipt and shall send the result of the examination to the Bank within fourteen days of the examination.

**33. Power to obtain assistance of Police.**

- (1) The Bank may at any time request the assistance of the Commissioner of Police in the exercise of its powers under this Act.
- (2) The Bank may, where necessary or expedient in relation to a request made under subsection (1), authorise in writing a person competent in the

opinion of the Bank to exercise on its behalf any one or more of its powers.

- (3) The Bank shall make no request under subsection (1) nor grant any authority under subsection (2) except for the purpose of investigating —
  - (a) the affairs, or any aspect of the affairs, of a person specified by the Bank; or
  - (b) a person or a subject matter specified by the Bank that is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank.
- (4) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under subsection (2) unless the authorised person has, if requested to do so, produced evidence of his authority.
- (5) The assistance or authority, where the Bank requests assistance or grants an authority under this section, shall be provided or executed in such manner as the Bank may determine.
- (6) A person granted an authority under this section shall make a report on the method and result of exercise of that authority in such manner as the Bank may require.

#### **34. Power of search.**

- (1) Subject to subsection (2), the Bank may apply by information on oath given by a duly authorised officer of the Bank to a Magistrate for the grant of a search warrant if there is reasonable ground for suspecting —
  - (a) that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information or in any vehicle, vessel or aircraft so specified; or
  - (b) that any books, accounts, records, documents or reports which ought to have been produced under subsection (2) of section 22 and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft specified in the information.
- (2) A Magistrate may, if satisfied of the matters referred to in paragraph (a) or (b) of subsection (1), grant a search warrant authorising the duly appointed representative of the Bank or any police officer together with any other person named in the warrant and any other police officers —
  - (a) at any time within four weeks from the date of the warrant to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be; and

- (b) to search the premises or, as the case may be, the vehicle, vessel or aircraft.
- (3) A person authorised pursuant to a warrant granted under subsection (2) may —
  - (a) search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, the specified premises or vehicle, vessel or aircraft, as the case may be; and
  - (b) seize any books, records, vouchers, documents, computers, cash or securities, found in the premises or the vehicle, vessel or aircraft which he has reasonable ground for believing —
    - (i) to be or to contain evidence of the commission of any offence against this Act; or
    - (ii) ought to have been produced under subsection (2) of section 22.
- (4) No female shall in pursuance of any warrant granted under this section be searched except by a female.
- (5) A person authorised by warrant under this section to enter any premises may use such force as is reasonably necessary for the purpose of exercising the power granted to him.
- (6) Any person who obstructs a person duly authorised by warrant under this section in the exercise of any powers conferred on him commits an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

## PART XI – CONFIDENTIALITY

### 35. Bank has duty of confidentiality.

- (1) Subject to the provisions of this Part, the Central Bank shall not disclose any information acquired in the course of its duties or in the exercise of its functions under this Act or any other law relating to —
  - (a) the affairs of the Bank;
  - (b) the affairs of a clearing house;
  - (c) any application for any approval or designation made to the Bank under this Act;
  - (d) the affairs of a participant or indirect participant; or
  - (e) the affairs of a customer of a participant, or indirect participant, of a payment system.

- (2) The Bank's duty of confidentiality shall extend to every director, officer, employee, agent or adviser of the Bank.
- (3) A director, officer, employee, agent or adviser of the Bank who discloses any information relating to the matters referred to in paragraphs (a) to (e) of subsection (1) that he has acquired in the course of his duties or in the exercise of the Bank's functions under this Act or any other law commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

### **36. Permissible disclosures.**

- (1) Section 35 shall not apply to a disclosure —
  - (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
  - (b) for the purpose of assisting the Bank to exercise any functions conferred on it by this Act, by any other Act, or by regulations made under this or any other Act;
  - (c) in respect of the affairs of a participant or clearing house, or a customer of a participant of a system, where the disclosure has been made with the authority and consent, voluntarily given, of the participant or clearing house, or customer of a participant of a system, as the case may be;
  - (d) if the information disclosed is or has been available to the public from any other source;
  - (e) where the information disclosed is in a manner that does not enable the identity of any participant or clearing house, or customer of a participant of a system, to which the information relates to be ascertained;
  - (f) made to a person with the view to the institution of, or for the purpose of —
    - (i) criminal proceedings;
    - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of of his professional duties; or
    - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Bank, of his duties;
  - (g) for the purposes of any legal proceedings in connection with —
    - (i) the winding-up or dissolution of a participant or clearing house; or

- (ii) the appointment or duties of a receiver of a participant or clearing house;
- (2) The Bank may, through its directors, officers, employees, agents or advisers, cooperate with any other regulatory authority in The Bahamas where the Bank considers that such cooperation may be —
  - (a) relevant to the functions of such other regulatory authority; or
  - (b) a necessary part of a framework for consolidated supervision, oversight or regulation, of the financial services sector.
- (3) Cooperation by the Bank pursuant to subsection (2) may include sharing with such other regulatory authority information that has been acquired by the Bank in the course of exercising its functions under this Act or any other law.
- (4) Subject to subsection (8), the Bank may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.
- (5) The Bank may, in deciding whether or not to exercise its power under subsection (4), take into account —
  - (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
  - (b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.
- (6) The Bank may decline to exercise its powers under subsection (4) unless the overseas regulatory authority undertakes to make such contribution towards the costs of the exercise as the Bank considers appropriate.
- (7) The Bank shall make no disclosure pursuant to subsection (4) unless the Bank is satisfied that —
  - (a) either the requesting regulatory authority is subject to adequate legal restrictions on further disclosures and has provided the Bank a written undertaking of confidentiality, or, the intended third party recipient authority has provided the Bank a written undertaking not to disclose the information provided without the written consent of the Bank;
  - (b) the assistance requested by the regulatory authority is required for the purposes of the authority's regulatory functions including the conduct of civil or administrative investigations or civil proceedings to enforce laws administered by the authority; and

- (c) information provided following the exercise of its powers under subsection (4) will not be used in criminal proceedings against the person providing the information.

**37. Attorney General may act as *amicus curiae*.**

- (1) The Bank shall, where it considers it necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate pursuant to section 32, immediately notify the Attorney General with particulars of the request and send him copies of all documents relating to the request.
- (2) The Attorney General shall be entitled, as *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any request for assistance received by the Bank from an overseas regulatory authority in which the Bank invokes the jurisdiction of the court under section 32.

**PART XII – MISCELLANEOUS**

**38. Protection of legal privilege.**

- (1) A person shall not be required under this Act to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.
- (2) For the purposes of this Act, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him —
  - (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
  - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
  - (c) by any person —
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (3) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.



**39. Liability and indemnity.**

- (1) If a body corporate commits an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that director, manager, secretary, similar officer or person as the case may be, as well as the body corporate, commits the offence and shall be liable to be prosecuted and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) No civil or criminal liability shall attach to the Central Bank or any officer, employee, director of the Bank, or any person acting under the direction of the Bank, for anything lawfully done or omitted to be done in good faith in the exercise or the performance of any powers, duties or functions of the Bank under this Act.
- (4) The Board of Directors of the Central Bank may indemnify any person duly authorised by the Bank to act under this Act against the cost of defending their actions while in good faith so discharging their functions.

**40. Attorney General's fiat.**

- (1) No prosecution in respect of any offence under this Act shall be instituted except by or with the consent of the Attorney General.
- (2) Proceedings for an offence against this Act may, notwithstanding any provision in any enactment prescribing the period within which summary proceedings may be commenced, be commenced at any time within the period of three months from the date on which evidence sufficient, in the opinion of the Attorney General, to justify a prosecution for the offence comes to his knowledge, or within the period of twelve months after the commission of the offence, whichever period last expires.

**41. Publication of information.**

The Central Bank may, from time to time, prepare and publish —

- (a) consolidated statements aggregating any information provided under this Act or any regulations made under this Act; or
- (b) for statistical purposes, statements that relate to or are derived from any information provided under this Act in respect of a payment system or a payment instrument.

**42. Memoranda of Understanding.**

- (1) The Central Bank may, for the purpose of facilitating the discharge of their respective functions under this or any other relevant legislation, enter into memoranda of understanding with the clearing house of a system.
- (2) No memorandum of understanding entered into pursuant to subsection (1) may —
  - (a) call for assistance beyond that which is provided for by this Act; or
  - (b) relieve the Central Bank of any of its functions or duties under this Act.

**43. Offences.**

- (1) Any person who knowing the same to be misleading or false in a material particular supplies or is concerned in supplying the Bank, or any person authorised by the Bank, any information lawfully required under this Act commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, and, in the case of a continuing offence to a fine not exceeding two thousand dollars for each day or part of a day during which the offence continues.
- (2) Every employee, agent or consultant —
  - (a) of a participant or clearing house; or
  - (b) of a person licensed to issue electronic money,shall take all reasonable steps to secure —
  - (i) compliance by the participant or clearing house, or person licensed to issue electronic money, as the case may be, with the requirements of this Act; and
  - (ii) the accuracy and correctness of any information provided to the Bank by the participant or clearing house, or person licensed to issue electronic money, as the case may be.
- (3) Subject to subsection (5), a person who contravenes subsection (2) commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.
- (4) It shall be a defence, in any proceedings against a person pursuant to subsection (3), for the defendant to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or of ensuring the accuracy and correctness of information provided to the Bank, as the case may be, and that such other person was competent and in a position to discharge that duty.

- (5) The court shall not impose a term of imprisonment for an offence under subsection (3) unless the court trying the offence is of the opinion the defendant committed the offence wilfully.

**44. Penalties and fines.**

- (1) Any penalty incurred under this Act shall be paid to the Central Bank.
- (2) Any person who commits an offence under this Act for which no penalty is expressly provided shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars.
- (3) The Central Bank may order a person to pay a fine —
  - (a) not exceeding one hundred thousand dollars in any case where the Bank is satisfied that such person has committed an offence against this Act; or
  - (b) as may be prescribed by regulations in any case where the Bank is satisfied such person has failed to comply with any directive issued pursuant to any provision of this Act or has contravened any regulations made under this Act.
- (4) An order made by the Bank pursuant to this section shall —
  - (a) be put in writing;
  - (b) specify the nature of the default or offence which the person committed and the penalty or fine imposed by the Central Bank;
  - (c) be copied and a copy of the order given to the person fined; and
  - (d) in the discretion of the Bank, be enforceable in the same manner as an order of the court.

**45. Appeals.**

- (1) An appeal by motion shall lie to the Supreme Court from any decision of the Bank —
  - (a) withdrawing an approval under section 10;
  - (b) requiring a participant or a clearing house, as the case may be, to comply with —
    - (i) general or specific directions by the Bank issued under subsection (1) of section 19;
    - (ii) specific directions by the Bank issued under subsection (1) of section 20;
  - (c) imposing or varying any conditions or restrictions under section 21;
  - (d) making an order for payment of a fine under section 44;
  - (e) requiring the replacement of an auditor under any regulation made pursuant to this Act.

- (2) Subject to subsection (3), the appellant shall, within twenty-one days after the date of the Bank's decision, serve on the Attorney-General a written notice of his intention to appeal and of the general ground for his appeal signed by the appellant or his counsel and attorney.
- (3) Any person aggrieved by a decision of the Bank referred to in subsection (1) may, upon written notice to the Attorney-General, apply to the Supreme Court for leave to extend the time within which the notice of intention to appeal may be served and the Supreme Court may, upon the hearing of such application, extend the time prescribed in subsection (2) as it deems fit.
- (4) The Attorney-General without delay shall, upon receiving the notice of appeal, transmit to the Registrar of the Supreme Court a copy of the Bank's decision and all papers relating to the appeal but the Attorney-General shall not be compelled to disclose any information if he considers that the public interest would suffer by such disclosure.
- (5) The Registrar shall set the appeal down for hearing on such day and shall cause notice of the date of such hearing to be published in such manner as the Supreme Court may direct.
- (6) The appellant at the hearing of the appeal shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Supreme Court, go into any matters not raised by his statement.
- (7) The Supreme Court may —
  - (a) adjourn the hearing of the appeal; and
  - (b) upon the hearing or adjourned hearing —
    - (i) confirm, reverse, vary or modify the decision of the Bank; or
    - (ii) remit the matter together with the opinion of the Supreme Court, to the Governor of the Central Bank.
- (8) An appeal against the decision of the Bank shall not have the effect of suspending the execution of such decision.

**46. Exemptions.**

- (1) The Central Bank may by regulations, subject to such conditions or restrictions as may be prescribed, either permanently or for such period as the Bank may think fit, exempt from all or any of the provisions of this Act —
  - (a) any person or class of persons;
  - (b) any system or class of systems; and
  - (c) any issuers of electronic money.

- (2) The Bank may, where it considers it appropriate to do so in the circumstances of the case, exempt by notice in writing any person from —
  - (a) all or any of the provisions of this Act; or
  - (b) the requirements specified in any written direction made by the Bank under this Act.
- (3) An exemption granted pursuant to subsection (2) —
  - (a) shall be granted pursuant to an application made in writing by the applicant;
  - (b) may be granted subject to such conditions or restrictions as the Bank may specify by notice in writing;
  - (c) need not be published in the Gazette; and
  - (d) may be withdrawn at any time by the Central Bank.
- (4) Any person who contravenes any condition or restriction imposed pursuant to subsection (1) or (3) commits an offence against this Act.

**47. Regulations.**

- (1) The Central Bank may make regulations, rules and bye-laws for carrying out the purposes and provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Bank may make regulations for or with respect to systems, including but not limited to regulating, prescribing and providing for the following matters —
  - (a) such matters as may be necessary or expedient for giving effect to the provisions of this Act in respect of any matter or thing relating to cheque truncation;
  - (b) the information which is to be disclosed to the Central Bank, a participant or clearing house on the commencement of insolvency proceedings against a participant or clearing house;
  - (c) the imposition, variation or revocation of an oversight regime by the Bank and such transitional or savings provisions as the Bank may consider necessary or expedient;
  - (d) the standards to be maintained by a participant or a clearing house;
  - (e) the responsibilities and duties of the chief executive officer and directors of a clearing house;
  - (f) the preparation and publication of reports on the performance of a designated system;
  - (g) the acquisition or holding of shares or any other interest in a clearing house;
  - (h) the acquisition or holding of shares or any other interest by a clearing house in any other person;

- (i) different requirements for the audit of accounts in relation to different designated systems;
  - (j) the responsibilities of a clearing house relating to the audit of its accounts;
  - (k) the responsibilities of an auditor for the accounts of a participant or clearing house;
  - (l) the procedures applicable in the event of a default in payment obligations, including the suspension and re-admission of participants;
  - (m) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including the refund and remission whether in whole or in part of such fees; and
  - (n) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (3) Without prejudice to the generality of subsection (1), the Bank may make regulations for or with respect to electronic money, including but not limited to regulating, prescribing and providing for the following matters —
- (a) all matters necessary or expedient to ensure that an issuer of electronic money is fully liable to the users of such money;
  - (b) the standards to be maintained by an issuer in respect of electronic money; and
  - (c) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (4) Except as otherwise expressly provided in this Act, regulations may —
- (a) be of a general or specific application;
  - (b) prescribe, where this Act provides for a person to be given an opportunity to be heard, the manner in which the Bank shall give the person an opportunity to be heard;
  - (c) provide that a contravention of any specified regulation or provision thereof shall be an offence liable to be prosecuted summarily; and
  - (d) for each offence pursuant to paragraph (c), provide penalties not exceeding a fine of one hundred thousand dollars or imprisonment for a term not exceeding twelve months, or both; and, in the case of a continuing offence, a further penalty not exceeding a fine of two thousand dollars for each day or part of a day during which the offence continues after conviction.

**48. Bank may promulgate codes, guidelines.**

- (1) The Central Bank may, as and in such manner as it considers appropriate, issue and publish such codes, guidelines, policy statements and practice notes for providing guidance —
  - (a) in furtherance of its regulatory objectives;
  - (b) in relation to any matter relating to any of the functions of the Bank under any of the provisions of this Act; and
  - (c) in relation to the operation of any of the provisions of this Act.
- (2) Subject to subsection (3), the Bank may, in such manner as it thinks fit, revoke, vary, revise or amend the whole or any part of a code, guideline, policy statement or practice note issued under this section.
- (3) This section shall apply in the same manner to a code, guideline, policy statement or practice note both before and after its variation, revision or amendment and any reference in this Act or any other written law to such code, guideline, policy statement or practice note however expressed shall, unless the context otherwise requires, be a reference to it as so varied, revised or amended.
- (4) A failure to comply with a code, guideline, policy statement or practice note shall not of itself render a person liable to criminal proceedings but any such failure may in any proceedings, whether civil or criminal, be relied on by any party to the proceedings as evidence to establish or to negate any liability which is in question in the proceedings.
- (5) A code, guideline, policy statement or practice note —
  - (a) may be of a general or specific application;
  - (b) may specify that its different provisions apply to different circumstances or provide for different cases or classes of cases; and
  - (c) shall be deemed not to be subsidiary legislation.

### OBJECTS AND REASONS

The purpose of the Bill is to provide for the regulation by the Central Bank of payment systems and payment instruments in facilitation of the establishment and supervision of a national payment system policy for The Bahamas.

Clause 1 provides for the short title and commencement.

Clause 2 provides for key words and phrases and their definitions.

Clause 3 provides for non-derogation from the powers of the Central Bank outside of the Bill.

Clauses 4 and 5 establish the oversight powers of the Bank and its duty to protect the public interest.

Clause 6 mandates the Bank to establish and oversee a national payment system policy for The Bahamas.

Clause 7 establishes a National Payments Committee to advise the Bank.

Clauses 8 through 10 provide for Central Bank approval to establish domestic payment systems and for the grant and withdrawal of such approval.

Clause 11 provides for system rules and the finality of payments within an approved system.

Clauses 12 and 13 provide for the protection of transactions within approved systems from insolvency proceedings and for the non-recognition of insolvency orders issued by foreign courts.

Clauses 14 and 15 provide for the electronic processing of payments through truncation of cheques and use of image return documents.

Clauses 16 through 18 provide for the designation of systems by the bank including the power to withdraw designation and the duty of clearing houses to forward system rules to the Bank.

Clauses 19 to 22 provide for the oversight of designated systems by the Central Bank and invests the Bank with powers to issue specific and general directions, to inspect and impose conditions and restrictions on designated systems and to receive notification of certain events with respect to designated system.

Clauses 23 to 25 provide for the Banks' duties and powers with respect to the oversight of clearing and settlement systems.

Clause 26 provides for the establishment of a licensing regime with respect to the issue of electronic money.

Clauses 27 to 29 establish eligibility requirements for the grant of a licence by the Bank and define "electronic money" for the purposes of the Bill.



Clauses 30 to 34 set out the general powers of the Central Bank which include the power to investigate the existence of systems, obtain information, apply to the court, to request assistance from the Police and power of search.

Clauses 35 to 37 impose a duty of confidentiality on the Bank, provide for permissible disclosures and authorises the Attorney General to act as *amicus curiae*.

Clause 38 provides for the protection of legal privilege.

Clause 39 provides for the liability of bodies corporate for offences and for the protection from liability and indemnity of, inter alia, employees and directors of the Bank.

Clause 40 provides for the consent of the Attorney General before commencement of a prosecution.

Clause 41 empowers the Bank to publish certain information.

Clause 42 empowers the Bank to enter into Memoranda of Understanding with certain system participants or institutions.

Clauses 43 and 44 provide for offences and the imposition of penalties and fines.

Clause 45 provides for appeals against certain decisions of the Bank.

Clause 46 empowers the Bank to grant certain exemptions from the provisions of the Bill.

Clauses 47 and 48 empower the Bank to make regulations, rules and bye-laws, and to promulgate codes and guidelines.