

ACT

Supplement to the Sierra Leone Gazette Vol. CXLXIII, No. 43
dated 23rd June, 2022

THE NATIONAL PAYMENT SYSTEMS ACT, 2022

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SIGNED this 2nd day of June, 2022.

DR. JULIUS MAADA BIO,
President.



No. 8

2022



The National Payment Systems Act 2022

Short title.

Being an Act to regulate the national payment system and to provide for other related matters

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires-

"account information service" means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;

"acquiring of payment transactions" means a payment service provided by a payment service provider contracting with a payee (usually a merchant) to accept and process payment transactions, which results in a transfer of funds to the payee;

"agent" means a person to whom some or all aspects of a payment service have been delegated by a payment service provider and being legally authorized to act on behalf of such payment service provider as its principal against third parties ;

"Bank" means a body corporate licensed by the Central Bank to carry on banking business in accordance with the Banking Act 2019;

"Central Bank" means the Bank of Sierra Leone;

"central counter-party" means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts;

"central securities depository" means an entity that provides securities accounts, central safekeeping services, and asset services, which may include the

administration of corporate actions and redemptions, and plays an important role in helping to ensure the integrity of securities issues (that is, ensure that securities are not accidentally or fraudulently created or destroyed or their details changed);

"cheque in the electronic form" means a cheque which contains digital representation on the front and back of a paper cheque (cheque image), and is generated, written and signed in a secure system ensuring minimum safety standards as prescribed by the relevant authorities;

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

"clearing house" means any multilateral system or arrangement that provides its participants with clearing services for payment instructions, securities transactions, derivatives transactions, and in some cases, settlement services;

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

"close-out netting" means a netting arrangement under which, following the occurrence of certain events specified by the parties to the arrangement, all or

any of the transactions referred to in the netting arrangement may be terminated, and when terminated the termination value becomes due and payable;

"collateral" means an asset that is delivered by the collateral provider to secure an obligation to the collateral taker and collateral arrangements may take different legal forms;

"credit card" means a card or other device that authorizes the holder to charge goods or services to the account of an account holder on credit basis subject to repayment over a period of time;

"credit transfer" means the series of transfers, beginning with the payer's payment order, made for the purpose of making payment to the payee and includes any payment order issued by the payer's Bank or payment service provider, or an intermediary intended to carry out the payer's payment order;

"debit card" means a card or an access method by which money is automatically deducted from an account to pay for goods or services purchased;

"debit transfer" means the series of transfers, initiated by the payee, and based on the payer's consent given to the payee, to the payee payment service provider or to the payer own payment service provider and includes any payment order issued by the payee's bank or payment service provider, or an intermediary intended to carry out the payee's order;

"direct participant" means a participant in a system who is responsible for the settlement of its own payments, those of its consumers and those of indirect participants on whose behalf it is settling;

"electronic money" means monetary value as represented by a claim on its issuer, that is electronically stored in an instrument or device, issued against receipt of funds of an amount not lesser in value than the monetary value issued, accepted as a means of payment by persons other than the issuer, to be withdrawn in cash or any equivalent of cash as established by law, and issued in accordance with this Act;

"electronic presentment of cheques" means the electronic transmission, by an institution authorized to draw a cheque, of an image and payment information of the cheque, to the payee institution on whom it is drawn;

"financial Institution" means an institution subject to regulation and supervision by the Central Bank under the Banking Act 2019 or any other law;

"gross settlement" means the settlement of funds or other obligations' instructions that occurs individually on an instruction by instruction basis;

"indirect participant" means a participant in a system that settles its obligations in the system through a direct participant, which performs this activity on its behalf;

"issuing of payment instruments" means a payment service by a payment service provider contracting to provide a payer with a payment instrument to execute the payer's payment transactions;

"multilateral netting" means an arrangement among three or more parties to net their obligations;

"National Payment System" includes the whole of the services that are associated to sending, receiving and processing of orders of payment or transfer of money in domestic or foreign currencies, issuance and management of payment instruments, payment, clearing and settlement systems, processing securities, arrangements and procedures associated to those systems and services;

"net settlement" means a settlement procedure in which final settlement occurs on a net basis at one or more discrete, pre-specified times during the processing day;

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

"netting arrangement" means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation and includes bilateral netting, multilateral netting, netting by novation, close-out netting, payments netting or a combination of any of these;

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

"netting" means the determination of the net payment obligations or the determination of the net termination value of settlement obligations between two or more system participants within a system;

"outsourcing" means an arrangement of any form between a payment service provider or a payment system operator and a service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the payment service provider or operator itself;

"payment system operator" (also "System Operator" or "Operator") means a person responsible for the operation of a payment system and ensures the operation of the payment system in accordance with this Act and implementing regulations;

"participant" means a duly licensed payment service provider that is recognized in the rules of a system as eligible to exchange, clear and settle through the system with other participants either directly or indirectly;

"payment aggregator" means the intermediary collecting funds received from customers for payment to merchants using any electronic or online payment mode, for goods and services availed by them and subsequently facilitate the transfer of these funds to the merchants in final settlement of the obligations of the paying customers;

"payment card" means any card or other device, including a code or any other means of access to an account, that may be used from time to time to obtain money or to make payment, and includes a debit, credit and stored-value card;

"payment gateway" means a payment service facilitating the authorization of card or direct payments processing for e-businesses, online retailers, or the like;

"payment initiation services" (PIS) means all services facilitating the authorization or validation of an electronic fund transfer, a card payment or otherwise facilitating the execution of electronic transactions;

"payment instrument" means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment or transfer money;

"payment services provider" means any entity providing payment services;

"payment services" mean services enabling cash deposits and withdrawals, execution of money transfers and payment transactions, issuing of payment Instruments and acquiring of payment transactions, the provision of remittance services, and any other services functional to the transfer of money;

"payment system" (also "System") means any system or arrangement for the processing, clearing or settlement of funds, but excludes-

- (a) an in-house system operated by a person solely for its own administrative purposes that does not transfer, clear or settle funds for third parties;
- (b) such other systems or arrangements as may be prescribed by law;

"payment terminal" means a device or channel which interfaces with payment cards or any other payment instruments to make electronic fund transfers;

"payment transaction" means an act, initiated by a payer on his behalf or by a payee, placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

"real-time gross settlement" (RTGS) means a settlement that effects final settlement of funds, payment obligations and book entry of securities and instruments on a real-time transaction-by-transaction basis as these occur during operating hours in a processing day;

"remittance services" means a financial service that accepts cash, cheques, other payment instruments (including E-money instruments) in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, a message, transfer or through a clearing network to which the money transfer service belongs;

"settlement agent" means a company providing accounts for the participants of a system to hold funds and to settle transactions between participants in the system;

"settlement rules" means the rules that provide the basis upon which payment obligations are calculated, netted or settled and includes rules for the taking of action in the event that a participant is unable or likely to become unable to meet its obligations to a payment system, clearing house, central Counter-party or other participants;

"settlement system" means a system established and operated by the Central Bank or any other system for the discharge of payment obligations as well as of settlement of obligations in relation to securities;

"settlement" means the act of discharging obligations by transferring funds or securities between two or more parties;

"settlement finality" means a settlement that is irrevocable and unconditional;

"system" includes a payment, clearing and settlement system;

"systemic risk" means the risk that relates to the inability of a participant to meet its obligations in a system as they become due or a disruption to the system that could, for whatever reason, cause other participants in the system to be unable to meet their obligations as they become due;

"truncation" means a settlement process in which the physical transfer of a paper-based payment instrument is substituted by the exchange and storage of its image and the corresponding electronic information;

"truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the Central Bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

PART II POWERS AND DUTIES OF THE CENTRAL BANK

2. (1) The Central Bank shall regulate and oversee the National Payment System and shall have the power to -

- (a) frame policies for continuous modernization of the national payment System;
- (b) license payment services providers and operators of systems in conformity with the provisions of this Act and any further implementing measure;
- (c) determine general or individual conditions, standards, rules and procedures in accordance with this Act and any further implementing measure relating to any licensed entity and their activities and ensure that such conditions, standards, rules and procedures are duly applied;
- (d) ensure that financial services are extended beyond traditional branch-based channels to the domain of everyday transactions;
- (e) act as a forum for the consideration of matters of policy and mutual interest concerning the National Payment System; and
- (f) perform any such other functions relating to payment systems or the issuance of payment instruments permitting the accomplishment of its functions .

3. (1) The Central Bank may provide facilities for payment systems , their operators or their participants.

Operational
role of the
Central
Bank

(2) The Central Bank shall have the power to-

- (a) establish, own, operate or participate in the ownership or operation of payment systems;
- (b) act as a central counterparty to participants;

- (c) hold cash accounts for operators and participants, which may be used for the clearing and settlement of transfers into a system;
- (d) hold securities on accounts for operators and participants, which may be used for the working of systems;
- (e) extend intraday credit as determined by the Central Bank to entities that are participating in payment systems and as a result of the adequate collateral shall be granted to the Central Bank; or
- (f) act as a central securities depository.

Cooperation
with other
authorities.

4. (1) The Central Bank shall co-operate with-

- (a) other public authorities engaged in the regulation and supervision of financial institutions;
- (b) other entities directly or indirectly involved in payment services and their operation in Sierra Leone;
- (c) authorities engaged in regulating, monitoring and supervising of capital markets in the country; or
- (d) other sectors bearing a role in the organization or the efficient execution of payments.

(2) The Central Bank shall have the power to cooperate with other monetary authorities and international organizations dealing with regulation and oversight of payments.

(3) For the purpose of this section the Central Bank shall have the power to conclude memoranda of understanding .

5. (1) There is hereby established a Committee to be known as the National Payment System committee. Establishment Of the National Payment System Committee .

(2) The Committee shall comprise representatives from the following institutions not below senior management cadre-

- (a) Bank of Sierra Leone -Chairman;
- (b) All the commercial banks;
- (c) Accountant General's Department ;
- (d) Discount Houses;
- (e) Community Banks represented by the Apex Bank;
- (f) Mobile money operators;
- (g) National Revenue Authority ;
- (h) Fintech Association
- (i) any other institution determined by the Central Bank

(3) The object for which the Committee is created is to advise the Central Bank on regulation and oversight of the National Payment System including but not limited to-

- (a) setting operational and technical standards;
- (b) clearing and settlement of payments and securities; and
- (c) other matters affecting payment services.

(4) The Committee may set up sub-committees

(5) The Committee shall-

- (a) provide for the terms and conditions for the establishment of any sub committee or working group to deal with various aspects of the National Payment System;
- (b) enable the Central Bank, when discharging its responsibilities, to adequately monitor the affairs of system operators and participants, as well as of service providers;
- (c) support the working of the Central Bank by promoting where appropriate contractual and other general measures by the market

(6) The Central Bank shall by statutory instrument make regulations on the establishment relating to the Committee which shall include without limitation-

- (a) the charter of the Committee;
- (b) sources of funds to operate the Committee;
- (c) any other matter that is deemed necessary for the efficient function of the Committee.

PART III LICENSING

Requirements
for a licence

6. (1) No person shall provide payment services or operate a System unless such person is duly licensed by the Central Bank.

(2) To obtain a license from the Central Bank, an applicant shall maintain capital adequacy at levels specified by the Central Bank.

(3) The capital level shall be determined by the type of service, average value of payments, aggregate value and other factors as the Central Bank deems necessary.

(4) An applicant shall prove that the following conditions are met-

- (a) the service of providing electronic money
- (b) electronic money is issued in exchange for the equivalent of Sierra Leone Leones or highly liquid assets acceptable by the Central Bank;
- (c) submit to the Central Bank periodic financial statement containing statistics on e-money loaded and redeemed values;
- (d) submit to the Central Bank sufficient and reliable information to monitor and control the quantity and velocity of electronic money supply in the country;
- (e) clearing and settlement mechanisms, facilitate rapid provision of final settlement after a payment instruction has been initiated in the banking system, according to time limits that the Central Bank may establish from time to time;
- (f) issuers redeem electronic money value in the Central Bank at par, upon request;
- (g) the management of the underlying float and redemption of electronic money value by the issuer to the holder is clearly defined.

7. (1) Where the relevant service does not involve specific Registration, risks for the market, the Central Bank may substitute the requirement of licensing with that of registration.

(2) Whether a service is licensed or registered it shall not generate discrimination among payment services providers offering the same services

Requirements
of banks and
financial
institutions

8. Banks and financial institutions providing payment services under any law shall-

- (a) not be required to obtain a new licence to provide payment services or issue new payment instruments under this Act;
- (b) be required to comply with operational, reporting and disclosure requirements as may be set by the Central Bank;
- (c) be subject to oversight requirements for licensed entities under this Act;
- (d) be required to obtain a license for the operation of systems.

Transferability

9. A licence or any right acquired under this Act whether wholly or partly, shall not be transferable except where such transfer is in accordance with stipulations prescribed by the Central Bank.

Renewal

10. A licence issued under this Act shall be renewed in any manner prescribed by regulations made under this Act.

Amendment

11. (1) The Central Bank may amend any condition of any licence issued under this Act by way of alteration, substitution, addition, omission or other modification.

(2) Where the Central Bank directs an amendment in the conditions of a licence, it shall serve a notice on the licensee informing him of the reasons for the proposed amendment, and providing the licensee with [15] days within which to provide its comments on the proposed change.

(3) Upon receipt of the comments under subsection (2) if any, the Central Bank shall take the comments into consideration in confirming or modifying the proposed amendment.

(4) The Central Bank shall, upon application of a licensee, amend any condition of a licence if it considers the proposed amendment to be fit and proper.

12. (1) Where the Central Bank has grounds for the cancellation or suspension of a licence issued under this Act it shall give notice to the licensee to show cause why the licence should not be withdrawn. Suspension or Cancellation

(2) Where the licensee is unable to persuade the Central Bank or fails to respond to the notice under sub-section (1), the Central Bank shall proceed to cancel or suspend the licence,

(3) The Central Bank may restore the licence when the licensee remedies the situation that gave cause for the cancellation or suspension.

PART IV ONGOING OVERSIGHT

13. (1) The Central Bank shall at any time adopt general standards and criteria for the conduct of measures payment services activities or the operation of systems either generally addressing the totality of entities or a specific category. General and Individual Measures.

(2) The Central Bank shall at any time issue directives to licensed payment services providers or operators relating to their governance, management, operations, relations with customers, and relations with systems; and any other matter for the efficient administration of this Act.

(3) At least 15 days prior to their effectiveness, measures issued by the Central Bank shall be published in the Gazette or the bank's website and shall take effect on the date of such publication or on such later date as such measure shall specify.

(4) The Central Bank shall, where it is of the opinion that it is necessary for the purposes of carrying out its functions under this Act, examine, with or without any prior written notice, the premises, offices in or outside the country, apparatus, equipment, machinery, books or other documents, accounts or transactions of a payment system participant, an authorized operator or issuer of payment instruments.

Designation
of Systems.

14. (1) The Central Bank shall designate systemically important payment systems and establish additional requirements for a systemically important system or its operator and participants

(2) The designation referred to under subsection (1) shall be based primarily on the following -

- (a) the role played in the National Payments System and financial markets,;
- (b) the potential economic effects in the event of a failure;
- (c) the potential to undermine public confidence in the National Payments System and in the domestic currency in general;
- (d) volume and value of transactions processed.

(3) This section shall not affect by any means the power of the Central Bank to oversee non systemically important systems as established by this Act.

(4) Any system which is designated as systemically important shall observe the CPMI- IOSCO Principles for Financial Markets Infrastructures (PFMIs) and any other applicable international standards recognized by the Central Bank

Rules of
Systems.

15. (1) An operator of a system shall establish written rules for the following -

- (a) governance, management and operations of the system that the operator runs;
- (b) management of liquidity, credit and settlement risk;
- (c) the time when a payment instruction and settlement is final,

- (d) corporate governance;
- (e) access to system;
- (f) contingency arrangements and operational risk,;
- (g) rights and liabilities of participants and the system operator.

(2) The rules shall be in compliance with the requirements of this Act.

(3) The rules of the system shall establish that any dispute between payment system operators and participants concerning any matter arising under this Act which cannot be resolved amicably shall be first referred to the Central Bank, and only following persisting disagreement be referred to arbitration or relevant courts.

(4) The Central Bank shall have the authority to modify or revoke any rules of the operator established under this section, where it considers it to be appropriate having regard to-

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

(5) No operator of a system shall cause any change in the system which would affect the structure, operation or administration of the system unless-

- (a) the Central Bank approves; and
- (b) subject to sub-section (6), notice of not less than thirty days is given to the participants of the system after the approval of the Central Bank.

(6) The Central Bank may, in the interest of monetary policy, financial stability or the public interest permit the operator to make any changes to a licensed system without giving notice to the system participants under paragraph (b) of sub-section (5) or requiring the operator to give notice for a period longer than [30] days.

(7) The Central Bank shall issue directives in respect of all or any of the matters specified in this section and in the event of a conflict between any rule, instruction, direction or agreement and any directives made in that behalf under this Act, such directives shall prevail.

Access to
Systems.

16. (1) The rules on access to systems referred to under paragraph (e) of subsection (1) of section 15 shall be objective, non-discriminatory and proportionate and those rules shall not inhibit access more than is necessary to safeguard against specific risks and operation stability of the payment system .

(2) The specific risks referred to under subsection (1) includes -

- (a) settlement risk;
- (b) operational risk; and
- (c) business risk.

Outsourcing
of Activities

17. (1) Where an operator or a payment service provider intends to outsource operational functions it shall inform the Central Bank accordingly.

(2) Outsourcing of important operational functions shall not be undertaken in a way as to impair materially the quality of the operator or provider's internal control and the ability of the Central Bank to monitor their compliance with all obligations laid down in this Act.

(3) For the purposes of sub-section (2) an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of an operator or service provider with the requirements of its license, or its financial performance, or the soundness or the continuity of its services.

(4) The Central Bank shall ensure that when an operator or provider of a service outsources important operational functions, it shall comply with the following conditions-

- (a) the outsourcing shall not result in the delegation by senior management of its responsibility;
- (b) the relationship and obligations of the issuer towards the users of any relevant payment instrument shall not be altered;
- (c) the conditions with which the operator or the payment service provider is to comply in order to be licensed and remain so in accordance with this Act shall not be undermined; and
- (d) none of the other conditions subject to which the licence was granted shall be removed or modified.

18. (1) Where a person intends to provide payment services to customers through agents it shall apply to the Central Bank for authorization.

(2) The Central Bank may grant an authorization based on the following -

- (a) the general business model used, indicating scope of functions of agents or categories and risk mitigation schemes by the payment service provider, by submission of the general contractual terms applying to the agents and indicating duties by agents towards the clients;
- (b) a description of the internal control mechanisms to be used by agents in order to comply with the obligations in relation to money laundering and terrorist financing; and
- (c) the management structures of agents to be used in providing the services and evidence that directors and persons responsible for management are fit and proper persons.

(3) When the Central Bank receives the application in accordance with subsection (1), it shall consider the scheme and request for amendments if it is not satisfied with the prospected model.

(4) No agent shall carry out any activities under the agency agreements unless the Central Bank grants the authorization.

(5) The principal shall ensure that agents acting on its behalf inform customers of their status as agents of a specific principal.

Liability.

19. (1) Where operators or payment services providers rely on third parties for the performance of operational functions, either under agency or outsourcing, they shall take reasonable steps to ensure that the requirements of this Act are complied with.

(2) Operators and payment service providers shall remain fully liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced.

20. (1) A payment services provider shall ensure that the following are complied with - Complaints
and redress
procedures

- (a) adopt general policies on prompt response to inquiries, complaints, refund demands and disputes;
- (b) put in place a channel for communication of customer complaints, such as dedicated customer care telephone lines;
- (c) put in place rapid dispute resolution mechanisms; and
- (d) provide a complaints redress mechanism, ensuring proper communication of this mechanism to its customers.

(2) Where a customer believes that the payment service provider does not comply with the provisions of this Act and statutory instruments made under this Act the customer may submit a complaint to the payment service provider.

(3) The payment services provider shall respond to the complaint referred to in subsection (2) no later than 7 business days after the day of receiving the complaint.

(4) The payment services provider shall establish an effective complaint procedure for the following -

- (a) the lodgment of any complaint by a customer; and

(b) the investigation and resolution of any complaint by a customer of matters covered by this Act and statutory instruments made under this Act.

(5) The complaint procedure shall contain information relating to the right of a customer to refer the complaint to the Central Bank, or any other body authorized by the Central Bank, if it is not satisfied with the outcome of its complaint.

(6) The complaint procedure shall be followed by the customer before the dispute is referred to be resolved in an alternative dispute resolution procedure or before a court.

(7) Payment services providers shall keep record of all customer complaints and how such complaints are redressed, and send a quarterly report on these to the Central Bank.

Data
Protection
and privacy

21. (1) Payment service providers shall access, process and retain personal data necessary for providing their payment services, with the explicit consent of the payment service user.

(2) A payment service provider shall not sell or share any of a customer's information with any third party for any purpose without the explicit consent of the customer.

(3) Processing of personal data by payment systems and payment service providers shall be permitted when necessary to safeguard the prevention, investigation and detection of payment fraud.

(4) Providing information to individuals about the processing of personal data and the processing of such personal data and any other processing of personal data for the purposes of this Act shall be carried out in accordance with any law relating to data protection .

22 (1) Licensed payment service providers and system operators shall meet the requirement and comply with any law relating to anti-money laundering and counter financing of terrorism and any guidelines adopted by the Central Bank and the Financial Intelligence Unit. Anti-money laundering

(2) Licensed payment services providers and system operators shall guarantee that any third party acting on their behalf or agents shall comply with relevant requirements.

23. Operators and participants in a system and payment service providers shall retain all records obtained by them during the course of their operation and administration for a period of seven years from the date of the establishment of a record. Retention of Records

24. (1) An operator of a system, a system participants and a payment service provider shall provide any information requested by the Central Bank and produce all books, minutes, accounts, cash instruments, securities, vouchers or any documents relating to its business or the business of its affiliates for the inspection of any examiner appointed by the Central Bank at such time and manner the Central Bank or the examiner specifies. Access to information and Disclosure

(2) Information obtained by the Central Bank pursuant to subsection (1) shall not be directly or indirectly disclosed to another person except in the following circumstances-

- (a) for the purposes of the performance of one of the functions in terms of this Act;
- (b) where it is necessary to protect the financial integrity, effectiveness or security of the system;
- (c) where it is made to a recipient who is legally authorized to get such information;
- (d) when ordered by a court of law; or

- (e) where it is required for the purpose of meeting obligations which Sierra Leone entered into under international agreements.

(3) The Central Bank may conduct audits or commission independent auditors to conduct an audit of the accounts, books, documents and other records of an operator of a system and its participants and payment service provider.

(4) Each entity referred to under subsection (3) shall assist the Central Bank to the extent necessary for the purpose of enabling the Central Bank or its auditors to carry out an audit.

Fees and
Charges

25. (1) The Central Bank may impose charges or fees that shall defray its direct and indirect costs incurred in providing its oversight and regulatory services, to operators and participants of systems or payment service providers.

(2) The Central Bank may also impose charges or fees for providing its operational services and or infrastructure under this Act.

PART V

SETTLEMENT, NETTING AND FINALITY OF PAYMENT

Settlement
Accounts

26. (1) A participant to a system shall -

- (a) open and maintain settlement accounts on the books of the Central Bank or a licensed operator, including the maintenance of minimum balances, on such terms and conditions as the Central Bank or licensed operator may specify (direct participant); or
- (b) appoint another participant, which has opened a settlement account as a settlement agent, to settle all obligations due from the first-mentioned participant to any other participant arising out of each day's clearing (indirect participant).

(2) In the case where a participant appoints a settlement agent under paragraph (b) of subsection (1) the participant shall, before any obligation is settled by the settlement agent on his behalf, give the operator notice in writing of the appointment, accompanied by a written confirmation from the settlement agent of such appointment.

(3) A participant who intends to terminate the appointment of his settlement agent, shall notify the operator in writing not less than [7] days before the date of termination of such appointment

27. (1) A system shall specify the rules to achieve finality in its operations in accordance with the provisions of this Act and statutory instrument made under this Act. Finality of Payment

(2) The rules referred to under subsection (1) shall include rules establishing irrevocability of orders once these have entered into the system, unless special conditions apply.

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

28. (1) The rights and remedies of an operator, a clearing house, a central counter party and any third party into the system or the Central Bank with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a system shall not be affected by insolvency or bankruptcy proceedings of either the system operator or a participant, or any other law similar in purpose and effect. Collateral and Settlement

(2) The rights and remedies referred to under subsection (1) may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies relating to the collateral

PART VI WINDING UP AND ADMINISTRATION OF A SYSTEM
OPERATOR OR A PARTICIPANT

winding up

29. Where an operator or a participant in a payment system is wound up or placed in a scheme of administration, or decided for voluntary dissolution, the operator or participant at whose instance the winding up or the administration order or the decision, as the case may be, was issued, shall with no delay lodge a copy of the order or decision with the Central Bank.

Operating or
participating
in a system

30. An operator or a participant against which a winding up application or scheme of administration has been lodged or decision for a voluntary dissolution is made shall not operate or participate in any system until the application or scheme is disposed off or finally determined.

Finality

31. Notwithstanding anything to the contrary in any law relating to insolvency or bankruptcy, the winding up or the opening of scheme of administration of the operator or a participant in a system shall not affect the finality or irrevocability of any entry or payment which became final and irrevocable under section 30 before the copy of the relevant order or decision was lodged with the Central Bank.

binding
liquidators

32. (1) Where an institution in a system is wound up or placed in administration or otherwise declared insolvent by a court, any provision contained in a written netting arrangement to which the participant is a party or any netting rules and practices applicable to the system, shall be binding upon the liquidator or administrator, as the case may be, of the participant concerned in respect of any payment or settlement obligation which-

- (a) has been determined through netting prior to the issue of the winding-up or arrangement order, as the case may be; and
- (b) is to be discharged on or after the date of the winding-up or arrangement order or discharge

of which was overdue on the date of the winding-up or scheme of administration order, as the case may be.

(2) Subsection (1) shall apply notwithstanding anything to the contrary in any other law

(3) The Central Bank shall regulate any other aspects connected to the consequences of insolvency or wind up upon a system, as well as its resolution.

PART VII—PROVISION CONCERNING PAYMENT TRANSACTIONS AND INSTRUMENTS

33. (1) The Central Bank shall regulate execution of payment transparency transactions including transparency requirements

(2) A payment service provider who imposes a fee or charge on any customer for executing payment transactions, shall provide notice in accordance with subsections (3) and (4) to the customer on the -

(a) fee or charge imposed; and

(b) the amount of the fee or charge.

(3) The notice referred to under subsection (2) shall be in the format as determined by the Central Bank

(4) No fee shall be imposed for any transaction initiated by a customer for which a notice is required under sub-section (2), unless the customer receives the notice in accordance with subsections (2) and (3) and it elects to continue in the manner necessary to effect the transaction after receiving such notice.

34. (1) The terms and conditions of transactions shall be disclosed in a manner clearly understandable by the customer, at the time the customer contracts for the service, in accordance with the instructions of the Central Bank.

(2) The disclosure referred to under subsection (1) shall include at least the following-

- (a) the customer's liability for unauthorized transactions and notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of an instrument, access code or other means of access;
- (b) the telephone number of the person to be notified in the event the customer believes that an unauthorized transaction has been or may be effected;
- (c) the kind and nature of transaction which the customer may initiate, including any limitations on the frequency or amount of such transactions;
- (d) any charges for transactions or for the right to make such transactions;
- (e) the customer's right to stop payment of a preauthorized transactions and the procedure to initiate such a stop payment order;
- (f) the customer's right to receive information of transactions;
- (g) the payment service provider's liability to the customer;
- (h) the circumstances under which the payment service provider will in the ordinary course of business disclose information concerning the customer's account to third parties; and

- (i) a notice to the customer that a fee may be imposed if the customer initiates a transfer from an ATM or other electronic terminal that is not operated by the issuer of the instrument or other means of access.

(3) A payment service provider shall notify a customer in writing or such other means as may be prescribed by the Central Bank from time to time, at least twenty-one days prior to the effective date of any material change in any term or condition of the customer's account required to be disclosed, unless such change is immediately necessary to maintain or restore the security of a system or a customer's account.

35. (1) Initiation and authorization of payment transactions and any other relevant aspects of execution of transfers and access to bank accounts by payment service providers or payment initiation service providers shall be established by the Central Bank.

Initiation
and
authorization
of payment
transactions

(2) A payment transaction shall be considered to be authorized if the payer has given consent to execute the payment transaction.

(3) A payment transaction may be authorized by the payer prior to or, if agreed between the payer and the payment service provider, after the execution of the payment transaction.

(4) Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and the payment service provider.

(5) Consent to execute a payment transaction may be given via the payee or the payment initiation service provider.

(6) A payment transaction shall be considered unauthorized if there is no consent.

Cheque transaction and electronic cheque image presentment

36. (1) A bank may present a cheque for payment to the bank on whom it is drawn by notifying it of its essential features by electronic means or otherwise instead of presenting the cheque itself

(2) Where a cheque is presented for payment under this section, presentment need not be made at the proper place or at a reasonable hour on a business day.

(3) Before the close of business on the next business day following presentment of a cheque under this section if the Bank on whom the cheque is drawn requests the Bank by whom the cheque was presented to present the cheque itself -

(a) the presentment under this section shall be disregarded, and

(b) this section shall not apply in relation to the subsequent presentment of the cheque.

(4) A request made under subsection (3) for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.

(5) Where presentment of a cheque is made under this section, the Bank who presented the cheque and the Bank on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.

(6) For the purposes of this section, the essential features of a cheque shall be as follows-

(a) serial number of the cheque;

(b) code which identifies the bank on whom the cheque is drawn;

- (c) account number of the drawer of the cheque;
and
- (d) amount of the cheque is entered by the
drawer of the cheque.

PART VIII
MISCELLANEOUS PROVISIONS

37. (1) Any person who contravenes any provision of of General this Act or statutory instruments made under the Act commits an penalty And offence and shall be liable on conviction to a fine not less than liability Le100,000,000 or imprisonment for a term not less than five years or to both the fine and imprisonment.

(2) Where an offence is committed by a body of person in the case of -

- (a) a body corporate any person who at the time the offence was committed was a director , manager or other officer of that corporate body;
- (b) a firm every person who at the time the offence was committed was a partner or officer of that firm shall be deemed to have committed that offence charged , prosecuted and punished on conviction .

(3) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that -

- (a) the offence was committed without his knowledge or consent ; or
- (b) he took all reasonable precaution and exercised all due diligence to prevent the commission of the offence.

38. No suit or other legal proceedings shall lie against Central Bank or officer, employee or agent of the Central Bank or against any director , officer, employee or member of a financial institution or any other person in respect of anything done in good faith pursuant to this Act Protection for Acts done in Good faith

Transitory
Provisions

39. (1) Banks and other system operators, participants or their operators conducting businesses on the commencement of this Act shall conform with the requirements of this Act within six months from the commencement of this Act.

(2) Banks and other system operators or participants or their operators who do not conform with the requirements of any directive issued by the Central Bank pursuant to this Act, such Bank or system or their operator shall conform to the requirements of the directive within the time period to be specified by such directive.

Rules or
Regulations.

40. The Central Bank shall by statutory instrument make rules or regulations for the effective implementation of this Act.

Repeal
and savings.

41. (1) The Payments Systems Act 2009 is hereby repealed

(2) Notwithstanding the repeal of the Payments System Act 2009, rules, regulations, notices or other statutory instruments issued under the repealed Act shall continue to be in force until expressly revoked.

Passed in Parliament this 22nd day of February, in the year of our Lord two thousand and twenty two.

PARAN UMAR TARAWALLY (PhD),
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

PARAN UMAR TARAWALLY (PhD),
Clerk of Parliament.