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## NATIONAL PAYMENT SYSTEM ACT, 2014

(Act 14 0/2014)

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## **PART I PRELIMINARY**

1. This Act may be cited as the National Payment System Act, 2014.

2. In this Act-

"agent" means a person which acts on the basis of an authorisation on behalf of a payment service provider in providing payment services;

"bank" means a bank as defined in the Financial Institutions Act, 2004;

"business day" means any day other than Saturday, Sunday or public holiday'

"Central Bank" means the Central Bank of Seychelles established under section 3 of the Central Bank of Seychelles Act, 2004;

"central counter-party" means an entity which interposes itself between buyers and sellers, becoming the buyer to every seller and the seller to every buyer in a settlement system;

"central securities depository" means an entity in whose register securities are immobilised, and enabling securities transactions to be finally processed by book-entry;

"cheque image" means a cheque which contains digital representation of the front and back of a physical cheque and which complies with such minimum safety standards as may be prescribed by the Central Bank;

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

"clearing system" means a set of procedures whereby participants present and exchange information relating to the transfer of funds or securities and other financial instruments to other participants through a centralised 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 facilitate the settlement of their obligations;

"credit card" means a card that authorises the person named on it to charge goods or services to the account of the cardholder or to obtain cash advances on credit basis subject to repayment of the credit extended;

"credit union" means a credit union established under section 3 of the Credit Union Act, 2009;

"customer funds" means sums received from, or for the benefit of, a payment system user for the execution of a payment transaction;

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

"electronic fund transfer" means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a bank to debit or credit an account maintained with that bank through electronic means and includes point of sale transfers, automated teller machine transactions direct deposits or withdrawal of funds, transfers initiated by telephone, internet, card or other devices;

"electronic money" means electronically including magnetically, stored monetary value as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions and which is accepted as a means of payment by persons other than the issuer;

"financial institution" means a financial institution as defined in the Financial Institutions Act, 2004;

"national payment system" means all the services associated with sending, receiving and processing of payment instructions or transfers of money in domestic or foreign currencies, and includes-

- (a) the issuance and management of payment instruments;
- (b) payment, clearing and settlement systems, including those processing securities and other financial instruments, arrangements and procedures associated to those systems and services;
- (c) payment service providers; and
- (d) system operators, participants and any third party acting on their behalf, either as an agent or by way of outsourcing agreements, whether entirely or partially operating inside Seychelles;

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

"operator" means the Central Bank or any other entity authorised by the Central Bank to operate a payment, clearing or settlement system;

"participant" means a person who is recognised in the rules of a system as eligible to exchange, clear and settle through the system with other participants either directly or indirectly;

"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 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 which include, but are not limited to, cheques, funds transfers initiated by any paper or paperless device (such as automated teller machines, points of sale, internet, telephone), payment cards, including those involving storage of electronic money; "payment services" means the services listed in the Schedule; "payment services provider" means any entity providing payment services; "payment system" means any system or arrangement for the processing, clearing or settlement of funds; "prescribed" means prescribed by regulations made under the Act;

"securities" means-

- (a) shares or stocks in the share capital of a company, whether incorporated in Seychelles or elsewhere, other than a collective investment scheme;
- (b) shares or other units of participation in a mutual fund as defined in the Mutual Fund and Hedge Fund Act, 2008;
- (c) debentures, debenture stock, loan stock, bonds, certificates of deposit or other similar instruments;
- (d) rights, warrants, options or interests in respect of securities mentioned in paragraphs (a) and (b);
- (e) treasury bills, loan stock, bonds and other instruments creating or acknowledging indebtedness and issued by or on behalf of or guaranteed by the Government of Seychelles or any public authority created thereby;
- (f) options, futures, forwards and other derivatives whether on securities or commodities;
- (g) any such other instruments as may be prescribed.

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

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

"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 or other financial instruments;

"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.

## **PART II POWERS AND DUTIES OF THE CENTRAL BANK**

3. (1) The Central Bank shall regulate and oversee the national payment system for the purpose of ensuring its safe, secure, efficient and effective operation so as to promote the stability of the country's financial system.

(2) Without prejudice to the generality of subsection (1) and subject to this Act, the Central Bank may-

- (a) formulate and adopt a national payment system oversight policy for Seychelles;
- (b) licence payment service providers and authorise operators of payment, clearing and settlement systems;
- (c) determine general or individual conditions, standards, rules and procedures in accordance with this Act and any further implementing measures regarding any licensed, authorised or designated entity or system and their activities and ensure that such conditions, standards, rules and procedures are duly applied;
- (d) act as a forum for the consideration of matters of policy and mutual interest concerning the national payment system; and
- (e) perform such other functions relating to payment, clearing and settlement systems or the issuance of payment instruments permitting the accomplishment of its functions.

(3) The Central Bank shall, in the discharge of its regulatory and oversight functions under this Act, take into account any international oversight standards.

(4) The Central Bank may —

- (a) determine the use or acceptance of any form of payment instruments;

- (b) impose a limit on the value of transactions permitted for a payment instrument;
- (b) pronounce on the amount which it shall consider to be deemed as 'high value transactions' and also specify in which systems or payment stream such transactions shall be processed, cleared and settled.

4.(1) The Central Bank may provide facilities for-

- (a) payment, clearing and settlement systems; and
- (b) the operators and participants of the payment, clearing and settlement system.

(2) The Central Bank may-

- (a) establish, own, operate and participate in the ownership or operation of payment, clearing and settlement systems;
- (b) act as a central counter-party to participants;
- (c) hold cash accounts for operators and participants, which may be used for the clearing and settlement of transfers into a payment, clearing or settlement system;
- (d) hold securities on accounts for operators and participants, which may be used for the working of payment, clearing and settlement systems;
- (e) extend intraday credit to participants subject to adequate collateral being granted; and
- (f) act as a central securities depository;
- (g) act as a custodian or a settlement agent, or both, for a clearing house.

### **PART III**

### **AUTHORISATION AND LICENSING**

5. The Central Bank shall be the authority to –

- (a) authorise a person to operate a payment, clearing or settlement system; and

(b) to grant licence to a person to act as a payment service provider.

**6.(1)** A person shall not operate a payment, clearing or settlement system unless such person is duly authorised by the Central Bank.

(2) An application for authorisation shall be made in such form and manner and accompanied by such fees as may be prescribed.

(3) The Central Bank shall make regulations for the authorisation of payment, clearing and settlement systems.

(4) In granting an authorisation, the Central Bank may specify the terms and conditions which shall be complied with by the operator.

(5) The Central Bank may suspend or revoke any authorisation granted under this Act in the manner as may be prescribed.

(6) An authorisation granted under this Act may be renewed in such manner and subject to payment of such fees as may be prescribed.

**7. (1)** A person shall not act as a payment service provider unless such person is duly licensed by the Central Bank or is an agent of a licensed payment service provider.

(2) An application for a licence shall be made in such form and manner as may be prescribed.

(3) The Central Bank may make regulations for the licensing of payment service providers.

(4) The Central Bank may specify the terms and conditions of licence which shall be complied with by the payment service provider.

(5) The Central Bank may suspend or revoke a licence granted under this Act in the manner as may be prescribed.

(6) A bank or a credit union shall not be required to obtain a licence under this Act to provide payment services.

(7) Notwithstanding subsection (6), a bank or a credit union shall comply with such operational, reporting, disclosure and other oversight requirements set by the Central Bank in respect of licensed payment service providers.

(8) A bank or credit union shall, before providing any payment services which the bank or credit union, as the case may be, is not providing on the commencement of this Act, obtain prior approval of the Central Bank.

(9) A licence granted under this Act may be renewed in such manner and subject to payment of such fees as may be prescribed.

**7A.** A payment service provider shall give written notice to the Central Bank at least thirty business days prior of its intention to extend its product or service offerings.

**8.(1)** The Central Bank may vary any condition of any authorisation or licence granted under this Act by way of alteration, substitution, addition, deletion or other modification in such manner as may be prescribed.

(2) Where the Central Bank varies any condition of an authorisation or licence, it shall serve a notice on the authorised or licensed person giving reasons for the proposed variation, and providing the authorised or licensed person with 15 days within which to provide its comments on the proposed variation.

(3) The Central Bank shall take into consideration the comments, if any received in pursuance of subsection (2), in confirming or modifying the conditions.

### **Part IIIA DESIGNATION**

**8A. (1)** The Central Bank may, by notice published in the *Gazette*, designate a financial market infrastructure as being Systemically Important if it determines that –

- (a) the financial market infrastructure poses systemic risk;
- (b) such designation is in the interest of maintaining the integrity of the national payment system and financial stability; and
- (c) such designation is necessary to protect the public interest.

(2) The notice of designation issued published under subsection (1) shall specify, at a minimum –

- (a) the financial market infrastructure that is subject of the designation;
- (b) the operator of the financial market infrastructure that is subject of the designation; and
- (c) any terms and conditions to which the designation may be subject.

(3) The Central Bank shall give a written notice of designation to the operator of the financial market infrastructure that is the subject of designation.

**8B.** (1) The Central Bank may vary or revoke a designation made by —

- (a) varying or revoking any condition to which the designation may be subject;  
or
- (b) making the designation subject to new conditions.

(2) In determining whether to vary or revoke a designation, the Central Bank shall have regard to any or all of the following —

- (a) failure by the designated financial market infrastructure to comply with any condition to which the designation may be subject;
- (b) whether or not the designated financial market infrastructure has ceased to operate;
- (c) whether or not the designated financial market infrastructure operator has knowingly furnished information or documents which are false or misleading in any material respect to the Central Bank in connection with the designation;
- (d) whether or not it is in the public interest to revoke the designation; and
- (e) any other matter that the Central Bank may deem appropriate.

(3) The variation of the conditions to which a designation is subject or the revocation of a designation shall not —

- (a) have retroactive effect; and
- (b) affect the validity or enforceability of the rules of the designated financial market infrastructure, nor shall it affect any payment to or out of the account of a system participant or netting or settlement that took place, prior to the coming into effect of such variation or revocation.

(4) Variation of conditions or revocation of designation of a designated financial market infrastructure shall be by notice in the *Gazette*, and immediate notification thereof shall be given in writing to the designated financial market infrastructure operator.

**8C.** (1) An operator or participant of a designated financial market infrastructure shall notify the Central Bank as soon as is practicable after the occurrence of any of the following events —

(a) an intention to make a material change to the operational rules, clearing or settlement procedures or activities of the designated financial market infrastructure;

(b) an event or irregularity that impedes or prevents access to, or impairs the usual operations of the designated financial market infrastructure, and

the operator or participant shall provide the Central Bank with any information it may require.

(3) Any person who refuses or fails to provide the information contemplated in subsection (1) shall be guilty of an offence and liable upon conviction to imprisonment for a period not exceeding six months or a fine not exceeding level 3 or both such fine and such imprisonment.

#### **PART IV ONGOING OVERSIGHT**

**9.**(1) Every operator of a payment, clearing or settlement system shall establish written rules for the governance, management and operations of the payment, clearing or settlement system including at a minimum rules on management of liquidity, credit and settlement risk, rules determining the time when a payment instruction and a settlement is final, participant default, corporate governance, access, contingency arrangements and operational risk, rights and liabilities of participants and the operator.

(2) The rules established under subsection (1) shall be in compliance with the requirements of this Act, and any guidelines, regulations, directions or other orders issued by the Central Bank in this regard.

(2A) The rules established under subsection (1) may where relevant and subject to Central Bank approval, be disclosed to the public in such manner as may be determined by the Central Bank.

(3) The Central Bank may vary or revoke any rules of the operator established under subsection (1), where it considers appropriate to do so, having regard to —

(a) the public interest;

(b) the interests of the current participants in the payment, clearing or settlement system;

(c) the interests of potential participants who, in the future, may desire access to the payment, clearing or settlement system; and

(c) any other matters the Central Bank considers relevant.

(4) An operator of a payment, clearing or settlement system shall not cause any change in the payment, clearing or settlement system which would affect the structure, operation or administration thereof without consulting with and giving notice of not less than thirty business days to the Central Bank and participants of the payment, clearing and settlement system.

(4A) For the purposes of subsection 4, the Central Bank may determine that such notification shall be accompanied with necessary documentation including —

(a) information related to changes in the design of the system;

(b) information on changes to the risk management framework applicable to the system;

(c) information on changes to contingency arrangements;

(d) information on changes to disclosure procedures for risk control measures; and

(e) information on all changes to the legal, organisational, and technical arrangements with service providers.

(4B) The Central Bank may request any supporting documentation or information in respect of the new changes to systems.

(5) Notwithstanding subsection (4), the Central Bank may —

(a) as operator of a payment, clearing or settlement system, make a change to the rules of its system; and

(b) in the interest of monetary policy, or financial stability, or in the public interest, permit an operator to make any changes to a payment, clearing or settlement system without giving notice to the participants thereof under subsection (4) or for requiring the operator to give notice for a period longer than thirty business days.

(6) Any changes made to the rules by the Central Bank in terms of subsection (5) shall be binding on and valid to the operators and participants of a payment, clearing or settlement system and any person not in compliance with such rules shall be liable to an administrative penalty which may be enforced by the operator or the Central Bank as the case may be.

**10.** The rules on access to payment, clearing or settlement systems shall be objective, non-discriminatory and proportionate and those rules shall not inhibit access to more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment, clearing or settlement system.

**11.(1)** A payment service provider or an operator shall not outsource any of its operational functions without the written approval of the Central Bank.

(2) Outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of the operator or payment service 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 subsection (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 payment service provider with the requirements of its licence, or its financial performance, or the soundness or the continuity of its services.

(4) The Central Bank shall ensure compliance with the following conditions when an operator or payment service provider outsources important operational functions-

(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.

(5) A payment service provider or an operator shall advise the Central Bank without undue delay of any change regarding the use of entities to which activities are being outsourced in terms of subsection (1).

**12.(1)** A person who has access to the books, accounts, records, financial statements or other documents, whether electronically or otherwise in his or her capacity as –

(a) director, officer, employee, agent or service provider of an operator, participant or payment service provider; or

(b) member of the audit committee or liquidator of an operator or payment service provider;

shall not during or after his or her relationship with the operator, participant or payment service provider disclose to any person or governmental authority any information relating to the affairs of any customer of a participant or payment service provider, except —

(i) with the written authorisation of the customer or his or her personal representative;

(ii) for the purpose of the performance of his or her duties within the scope of employment or appointment in compliance with this Act;

(iii) as directed in writing by the Central Bank; or

(iv) when required to do so by law or any court of competent jurisdiction in Seychelles.

(2) Subject to any express requirement of this Act, every director, officer, employee, agent or service provider of an operator, participant or payment service provider shall preserve and aid in preserving confidentiality with regard to all matters relating to the affairs of the operator, participant or payment service provider and their customers that may come to his or her knowledge in the performance of his or her duties.

### **13. Repealed**

**14.(1)** Where the payment service providers or operators rely on third parties for the performance of operational functions, they shall take reasonable steps to ensure that the requirements of this Act are complied with.

(2) The 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.

**15.(1)** The payment service providers and operators shall meet the requirements and comply with the Anti-Money Laundering and the Financing of Terrorism Act 2020 and the Prevention of Terrorism Act 2004.

(2) The payment service providers and operators shall guarantee that any agent or other third party acting on their behalf shall comply with relevant requirements.

**16.(1)** Notwithstanding anything contained in any written law relating to the retention of records by the Central Bank in its operational functions, payment service providers, operators, and participants 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.

(2) Every record shall be kept in written form or kept on microfilm, magnetic tape, optical disk, or any other form of mechanical or electronic data storage and retrieval mechanism as the Central Bank may specify.

(3) Records may be kept in electronic form to the extent that adequate data recovery systems and procedures are in place.

(4) Every payment service provider, operator and participant and any other third-party service providers shall include binding contractual arrangements for record keeping and archiving of records within their service level agreements or any other operational manuals or rule books.

**17.**(1) Every payment service provider, operator and participant shall furnish such report, return, books, accounts or other information relating to the provision of payment services or the operation of a payment, clearing or settlement system, as the case may be, at such time and in such manner and form as may be determined by the Central Bank.

(2) Every payment service provider, operator and participant shall participate or become a member of any system or closed user group specified by the Central Bank for automatic collection of payment and/or securities processing or clearing or settlement-related data or statistics.

(3) The Central Bank may publish, in whole or in part, and at such times as it may decide, the information or data furnished under this section.

(4) Where any payment service provider, operator or participant —

(a) fails to comply with a requirement under this section;

(b) for the purposes of this section —

(i) knowingly furnishes information which is false or misleading in any material particular; or

(ii) wilfully or recklessly withholds any material information,

the service provider, operator or participant shall be guilty of an offence and liable on conviction to a fine not exceeding level 3 of the Standard Scale.

**18.**(1) The Central Bank may, for the purposes of carrying out its functions under this Act, conduct periodic inspections and audits of a payment service provider, an operator, a participant of a system or a designated financial market infrastructure —

- (a) as determined by its relevant framework; or
- (b) when issues arise that are of regulatory concern.

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

(3) If independent auditors or any other person are commissioned, the cost shall be borne by the payment service provider, system operator, a designated financial market infrastructure subject to the audit.

(4) An inspection may include officers or employees of another local authority that is charged with the regulation or supervision of activities of payment service providers, operators and participants and designated financial market infrastructure.

(5) The Central Bank and any person authorised under this section to inspect or audit a payment service provider, system operator, designated financial market infrastructure or its participants shall be subject to section 11 of the Central Bank of Seychelles Act in respect of information acquired in the course of performing functions under this section and may —

- (a) require any administrator, officer, employee or agent of a payment service provider, system operator or participant to furnish such information as deemed necessary for the purpose of the inspection; or
- (b) require any such administrator, officer, employee or agent to produce for inspection any books, records or other documents in his or her possession containing or likely to contain any such information.

**19.**(1) Subject to subsection (2), any information acquired by the Central Bank in the performance of its functions under this Act, shall be confidential and shall not be disclosed by any employee or officer of the Central Bank to any third party.

(2) The Central Bank may disclose information —

- (a) of which the disclosure is necessary to protect the integrity, effectiveness or security of the national payment system;
- (b) to any monetary authority or financial regulatory authority, within or outside Seychelles, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority;
- (c) if required by any written law or a court order; or

(d) submitted to it under section 17 in statistical or aggregated form if it does not disclose confidential information of a payment service provider, operator or participant.

(2A) Notwithstanding subsection (2)(d), the Central Bank may decide not to disclose information if —

- (a) the purpose for which the data or information will be used is insufficiently specified;
- (b) the confidential nature of the data or information is not adequately guaranteed; or
- (c) it is not sufficiently guaranteed that the data or information will not be used for a purpose other than for which it is supplied.

(3) The confidentiality provided in subsection (1) shall be without prejudice to —

- (a) the obligations of Seychelles under any international treaty, convention or agreement or the Mutual Assistance in Criminal Matters Act, 1995; and
- (b) the obligations of the Central Bank pursuant to section 40 of this Act.

**20.** The Central Bank may impose charges or fees —

- (a) to defray its direct and indirect costs incurred in providing its oversight and regulatory services to payment service providers, operators and participants; and
- (b) for the provisions of operational services and infrastructure under section 4.

## **PART V INFRINGEMENTS, REMEDIAL MEASURES AND PENALTIES**

**21.(1)** The remedial measures and penalties provided for infringements described in this section shall be determined in particular cases by the Central Bank.

(2) The action under subsection (3) shall be based on the seriousness of the infringement, its effect on systemic risk, the stage at which it was detected, whether it was voluntarily reported by the perpetrator, and what measure is appropriate to remedy or terminate the infringement.

(3) The Central Bank may take one or more of the following administrative actions, with respect to a payment service provider, an operator, a participant, its directors where it determines that one or more of these entities has committed an infringement consisting of the violation of any provisions of this Act or any regulations, directions or guidelines issued by the Central Bank under the Act –

- (a) issue written warnings;
- (b) issue written orders to cease and desist from such infractions and to undertake remedial action;
- (c) issue written orders to perform such acts as are necessary to comply with the Act, regulations, directions or guidelines;
- (d) impose restrictions or fines on the perpetrator in an amount up to SCR400,000 per day for each day that the infraction continues;
- (e) suspend temporarily or remove from office any director; or
- (f) suspend or revoke the licence of a payment service provider or the authorisation of an  
  
operator, or the authorisation to a participant.

**22.(1)** Any person who contravenes the provisions of sections 6 or 7 commits an offence and shall on conviction be liable to a fine not exceeding SCR400,000 and where the offence is committed for a second time, a fine not exceeding SCR20,000 for every day or part of a day on which the offence is continued.

(2) Any person who fails, refuses, neglects or unreasonably delays to comply with any requirement under section 18(3) commits an offence and shall on conviction be liable to a fine not exceeding SCR400,000.

(3) Any person who in complying with a requirement under section 18(3) furnishes any information or produces any book, record or other document which the person knows to be false in any material particular, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding six months or a fine not exceeding SCR40, 000.

(4) A director, manager or employee of an operator or participant who –

- (a) obstructs the proper performance of an auditor in accordance with this Act or inspection of the Central Bank by an inspector duly authorised by the Central Bank;
- (b) damages, destroys, alters or falsifies accounts, books or records of an operator or participant; or

- (c) with intent to deceive, makes false entries or fail to enter material items in the accounts of a payment, clearing or settlement system commits an offence and shall on conviction be liable to imprisonment for a term not exceeding six months or a fine not exceeding SCR40,000.
- (5) Any person who contravenes any other provision of this Act or any regulations, directions or guidelines issued under this Act commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or a fine not exceeding SCR400,000.
- 23.**(1) Where the Central Bank is satisfied that an operator, payment service provider or any other person has committed an offence punishable under this Act and agreed in writing for compounding of the offence, the Central Bank, in consultation with the Attorney General, may compound the offence in the manner as may be prescribed by regulations.
- (2) Where an offence is compounded under subsection (1), no proceedings shall be instituted in relation to that offence against the operator, payment service provider or the person referred to in subsection (1).

## **PART VI SETTLEMENT, NETTING AND FINALITY OF PAYMENT**

- 24.**(1) Every participant to a payment, clearing or settlement system shall –
- (a) open and maintain settlement accounts on the books of the Central Bank or an authorised settlement system, including the maintenance of minimum balances, on such terms and conditions as the Central Bank or operator may specify; 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.
- (2) In cases where a participant appoints a settlement agent under subsection 1(b), 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) Any participant who intends to terminate the appointment of his settlement agent, shall notify the operator in writing not less than seven days before the date of termination of such appointment.
- (4) A settlement account of any participant shall not be liable to attachments, garnishee proceedings or seizures.

**25.**(1) A payment, clearing or settlement system shall specify the rules to achieve finality in its operations, in accordance with the provisions of this Act and as prescribed by any regulations, guidelines or directions issued by the Central Bank.

(2) The rules under subsection (1) shall include irrevocability of orders once these have entered into the payment, clearing or settlement system, unless special conditions apply.

(3) The entry or payment that has been effected in terms of sub section (1) 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 is not subject to any provision of law or order of an administrative or judicial authority that operates as a stay of that payment.

(4) An operator shall issue rules that include failure-to-settle arrangements that provide —

(a) for adequate assets as collateral; and

(b) how the effect of settlement failure is to be mitigated in the event of failure to settle payment obligations by one or more of the participants in the system.

**26.** (1) The rights and remedies of an operator, a participant, a central counter-party and any other third party into the payment, clearing and settlement 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 payment, clearing or settlement system shall not be affected by insolvency or bankruptcy proceedings, or any other written law similar in purpose and effect or any stay order.

(2) The collateral pledged by participants to operators of payment, clearing or settlement systems referred to in subsection (1) shall be for the sole purpose of providing security for the performance of obligations in a payment, clearing or settlement system.

**26A.**(1) A netting arrangement shall be valid and enforceable and an operator or participant of a payment, clearing or settlement system shall do whatever is permitted or required under the netting arrangement in order to give effect to the netting arrangement.

(2) Any payment or settlement obligation owed to an operator or participant of a payment system under the netting arrangement that has not been discharged —

(a) is provable in insolvency proceedings; and

(b) may be recovered for the benefit of the creditors.

(3) Any payment instruction or settlement that is final and irrevocable and any netting arrangement that is valid and enforceable shall be given effect to notwithstanding anything to the contrary contained in any other law.

(4) Notwithstanding any other law, a court shall not recognise or give effect to an order of a court exercising jurisdiction under a law of insolvency outside Seychelles in so far as the making of that order would be inconsistent with, or contrary to the provisions of this section.

**PART VII**  
**WINDING UP AND ADMINISTRATION OF A SYSTEM**  
**OPERATOR OR PARTICIPANT**

27.(1) Where an operator —

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to become unable to meet any or all of its obligations;  
or
- (c) has suspended payments or compounded with its creditors, such operator shall immediately notify the Central Bank and the participants of the payment, clearing or settlement system.

(2) Where a participant of a payment, clearing or settlement system —

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to become unable to meet any or all of its obligations;  
or
- (c) has suspended payments or compounded with its creditors, such participant shall immediately notify the operator who shall notify the Central Bank and other participants of the payment, clearing or settlement system.

(3) Where a payment service provider —

- (a) is insolvent or is likely to become insolvent; or
- (b) has become or is likely to become unable to meet any or all of its obligations, such payment service provider shall immediately cease to operate and notify the Central Bank and its customers that it has ceased operations.

(4) Notwithstanding any other law, no operator or participant in a payment, clearing or settlement system or payment service provider shall be wound up or placed into receivership except after prior approval of the Central Bank.

(5) Where an operator, participant of a payment, clearing or settlement system or payment service provider is being wound up, a copy of —

- (a) the application for winding up when it is made; and

(b) the subsequent winding up order which shall record the minute, hour and day that such order is made; or

(c) the winding up resolution in the case of a voluntary winding up, shall be lodged by the applicant with the Central Bank on the same business day, and in any case, no later than the start of the next business day, and served on any other settlement agent that requires notification, and the Central Bank shall immediately notify all relevant domestic and foreign system operators of the winding up proceedings, as applicable.

(6) The relevant operator or participant of payment clearing or settlement system or payment service provider shall enforce the winding up order or resolution immediately upon receiving the approval of the Central Bank of the order or resolution lodged with it under subsection (5).

(7) Where an operator or participant of a payment, clearing or settlement system is voluntarily wound up, with the approval of the Central Bank, that operator or participant, as the case may be, shall inform all other participants of the winding up resolution within twenty-four hours of the winding up order taking effect.

(8) The Central Bank shall notify relevant domestic and foreign system operators and participants of the voluntary winding up of a participant or operator on the same business day and in any case, no later than the start of the next business day of the winding up resolution taking effect.

**28.** (1) An operator or a participant against whom a winding-up application or scheme of administration has been lodged or decision for voluntary dissolution is made is prohibited from operating or participating in any payment, clearing or settlement system until such application or scheme is disposed of or finally determined.

(2) An operator or a participant against whom a winding up application or scheme of administration has been lodged or decision for voluntary dissolution is made, is prohibited from operating or participating in any payment, clearing or settlement system other than for purposes of discharging payment or settlement obligations in accordance with the rules of the payment, clearing or settlement system or clearing, netting and settlement agreements to which that participant is a party, or any rules and practices applicable to the participant in relation to such agreements.

(3) A payment service provider shall be prohibited from providing its services to members of the public once an order for compulsory winding up, or resolution for voluntary winding up has been lodged with the Central Bank.

(4) Notwithstanding any other law, in the event of the insolvency of a payment service provider, its customer funds shall be used solely for the payment of claims of payment service users.

**29.** Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy, the winding up or the opening of scheme of administration of an operator or a participant in a payment, clearing or settlement system shall not affect the finality or irrevocability of any entry or payment which became final and irrevocable in terms of section 25 before the copy of the relevant order or decision was lodged with the Central Bank in accordance with section 27.

**30.(1)** Where a participant in a payment, clearing or settlement 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, are binding upon the liquidator or administrator, as the case may be, of the participant concerned in respect of any payment or settlement obligation –

(a) which has been determined through netting prior to the issue of the winding-up or arrangement order, as the case may be; and

(b) which 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 written law for the time being in force.

(3) The liquidator or administrator shall have authority to credit and debit the settlement accounts of a participant or operator subsequent to a winding up or scheme of administration order for the purposes of —

(a) discharging outstanding payments or settlement obligations; or

(b) realising collateral provided, in order to enable settlement in accordance with the rules of the clearing, netting and settlement agreements to which that participant or operator was a party.

**31.** The provisions of this Part shall not restrict or preclude any person from enforcing his rights under the law in so far as it does not affect the finality of payment instruction or settlement or the validity and enforceability of a netting arrangement.

**32.(1)** In the event of insolvency of a foreign participant the rights and obligations of the foreign participant, relating to settlement shall be governed by the written laws of Seychelles.

(2) The rights and obligations of a domestic participant in a foreign payment, clearing or settlement system shall be governed by the law governing that foreign payment, clearing or settlement system.

**PART VIII**  
**PROVISIONS AFFECTING CHEQUES**

**33.** (1) Notwithstanding the Bills of Exchange Act (Cap 15) a bank or a credit union may present a cheque for payment to the bank or credit union on whom it is drawn by notifying the latter of its essential features by electronic means or otherwise, instead of by physical presentation of the cheque.

(2) Notwithstanding the Bills of Exchange Act (Cap 15), 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) Where, before the close of business on the next business day following presentment of a cheque under this section, the bank or credit union on whom the cheque is drawn requests the bank or credit Union by whom the cheque was presented to present the cheque itself, then -

(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 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 or credit union who presented the cheque and the bank or credit union 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 are-

(a) the serial number of the cheque;

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

(c) the account number of the drawer of the cheque;

(d) the amount of the cheque entered by the drawer of the cheque; and

(e) the signature.

**PART IX**  
**ELECTRONIC-FUND TRANSFERS AND**  
**ELECTRONIC MONEY**

**34.** The enforceability and evidentiary value of electronic fund transfers and records shall be as provided in the Electronic Transactions Act, 2001.

**35.** In addition to general requirements established by this Act for obtaining an authorisation as a payment service provider, any applicant shall prove that the following conditions are met -

- (a) the provision of electronic money shall not include the provision of credit;
- (b) electronic money must be issued in exchange for the equivalent of Seychelles rupees or highly liquid assets acceptable by the Central Bank;
- (c) electronic money providers shall provide statistics on electronic money loaded and redeemed values in their periodic reports;
- (d) the scheme shall provide sufficient and reliable information to the Central Bank to monitor and control the quantity and velocity of electronic money supply in the economy;
- (e) clearing and settlement mechanisms shall facilitate provision of final settlement not more than one business day after a payment instruction has been initiated in the banking system;
- (f) issuers shall be obliged to redeem electronic money value in Central Bank money, at par, upon request; and
- (g) the management of the underlying float and redemption of electronic money value by the issuer to the holder shall be clearly defined.

**PART X**  
**MISCELLANEOUS PROVISIONS**

**36.** Notwithstanding any other written law to the contrary, photographic images such as film, microfilm, microfiche or computer images of original documents such as cheques or other payment instruments, securities, certificates of deposits, account ledgers shall be admissible as prima facie evidence of the matters, or transactions of the original instrument, on proof being given on written affidavit or oral testimony.

**37.(1)** Any, dispute arising between an operator and a participant or between participants in a payment, clearing or operation of a payment, clearing and settlement system, shall be settled in accordance with this section.

(2) The aggrieved party shall provide the other party with a written statement setting out the full particulars of its grievance, and the parties shall thereupon attempt to settle the matter amicably by consensus within seven business days.

(3) Where the parties are unable to settle the matter as contemplated in subsection (2), they may attempt to settle it within a further period of ten business days by a process of mediation whereby-

- (a) the parties agree on a mediator;
- (b) the mediator takes cognizance of the parties' respective contentions;
- (c) the mediator and all parties discuss the matter at one or more meetings attended by them all, and attempt to settle the matter by consensus; and
- (d) the parties share the mediator's costs equally.

(4) Where the parties are unable to settle the matter by consensus in terms of subsection (2) or if mediation in terms of subsection (3) has been unsuccessful, the Central Bank may on the request of the parties refer the matter to a single arbitrator, and the provisions of the Commercial Code Act relating to arbitration shall apply in respect of the matter.

(5) The arbitrator shall decide on the matter referred to him or her under subsection (4) within one month after being appointed, unless the parties agree to an extension of that period.

**38.** Any person aggrieved by the decision of the Central Bank under this Act may appeal to the prescribed authority in such form and manner as may be prescribed.

**39.** No action shall lie against the Central Bank, any officer or employee or person appointed by the Central Bank for anything done or omitted to be done in good faith in the administration or discharge of any function under this Act.

**40.(1)** A person who, being –

- (a) an officer or employee of the Central Bank; or
- (b) an officer or employee of an operator makes

use of for personal gain, any information relating to the affairs of a participant acquired in the performance of the person's functions under this Act or regulations made thereunder any payment, clearing or settlement system, commits an offence and shall on conviction be liable to a fine not exceeding SCR40,000 or double the amount of the person's gain whichever is greater or imprisonment for a term not exceeding six months.

(2) It shall be a defence to a charge under subsection (1) for the person charged to show that the information used was generally known to members of the public or to a substantial section of the public.

**41.(1)** The Central Bank may cooperate with other public authorities engaged in the regulation and supervision of financial institutions and other entities directly or indirectly involved in payment services and their operation in Seychelles, as well as on the regulation, monitoring and supervision of Capital markets in the country.

(2) Central Bank may cooperate with other monetary authorities and international or regional organisations dealing with regulation and oversight of payment system.

(3) For the purpose of subsections (1) and (2), the Central Bank may enter into memoranda of understanding with the relevant authorities specified in that subsection.

**42.(1)** The Central Bank may for the purpose of giving effect to the principles and provisions of this Act, make regulations with regard to any matter required by this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Central Bank may, make regulations providing for –

(a) the authorisation, licensing, regulation and oversight of payment service providers and operators of payment, clearing and settlement systems;

(b) the form and manner for applying for authorisation to operate a payment, clearing or settlement system and for licence to act as a payment service provider;

(c) the manner of suspension or revocation of an authorisation or a licence;

(d) any matter relating to payment orders and money transfers executed by electronic messages;

(e) the protection of users of payment instruments.

(3) The Central Bank may by regulations amend the Schedule.

**43.(1)** The Central Bank may issue directions and guidelines –

(a) with respect to the governance, management or operations of payment, clearing and settlement systems and payment service providers;

(b) with respect to the relationship between operators and payment service providers and their customers; and

(c) for the efficient implementation, administration and enforcement of the provisions of this Act.

(2) The directions or guidelines issued under subsection (1) may provide that it shall apply to all operators, participants or payment service providers or to one or more categories of operators, participants or payment service providers.

(3) Notwithstanding subsection (2), the Central Bank may issue specific directions to any operator, participant or payment service provider.

(4) Any person to whom directions or guidelines are issued shall comply with those directions or guidelines.

**44.**(1) Upon commencement of this Act any person who is acting as a payment service provider or operating a payment, clearing or settlement system may continue to do so for a period of six months from the date of commencement of this Act.

(2) Without prejudice to subsection (1) any person who wishes to continue to act as a payment service provider or operating a payment, clearing or settlement system, as the case may be, shall not later than ninety days from the commencement of this Act apply for a licence or authorisation, as the case maybe, under this Act.

(3) The Central Bank shall on receipt of application under subsection (2), determine the application before the expiry of the period mentioned in subsection (1).

**45.** The National Clearance and Settlement Systems Act, 2010 is hereby repealed.

**SCHEDULE**  
*(Section 2)*  
**Payment Services**

- (a) services enabling cash deposits and withdrawals;
- (b) execution of payment transactions;
- (c) issuing and/or acquisition of payment instruments;
- (d) money remittances; and
- (e) any other services functional to the transfer of money. This shall also include the issuance of electronic money and electronic money instruments. The term does not include the provision of solely online or telecommunication services or network access.