

THE NATIONAL PAYMENT SYSTEM BILL

ARRANGEMENT OF CLAUSES

Clause

Part I - Preliminary

1. Short title
2. Interpretation

Part II – Powers and duties of the central bank

3. General Powers of the central bank
4. Operational role of the central bank
5. Cooperation with other authorities

Part III – Authorisation and licencing

6. Authority for issuing authorisation and licence
6. Authorisation of operators
7. Licensing of payment service providers
8. Variation of authorisation or licence

Part IV – Consumer protection

10. Transparency of fees, terms and conditions
11. Transparency of fees
12. Terms and consitions
13. Complaints

Part V – Rules to regulate a system

14. Rules of systems
15. Access to systems

Part VI – Ongoing oversight

16. Directions and guidelines
17. Confidentiality
18. Outsourcing of activities
19. Use of agents
20. Liability
21. Compliance with Anti-Money Laundering laws
22. Records
23. Submission of information to the central bank
24. Regular and special examinations
25. Duty of confidentiality by the central bank
26. Fees and charges

Part VII – Infringements, remedial measures and penalties

27. Infringement and remedial measures
28. Offences and Penalties

29. Compounding of offences

Part VIII – Settlement, netting and finality of payment

30. Settlement of accounts
31. Finality of payments and netting arrangement
32. Collateral for payment and settlement obligation

Part IX – Winding up and Receivership of a system operator or participant

33. Requirement to notify in the event of insolvency
34. Duty to notify of winding up or receivership
35. Prohibition
36. Winding up or receivership of participant not to affect finality
37. Rules of central bank and licensed systems to bind liquidators
38. Preservation of rights
39. Conflict of laws

Part X – Provisions affecting cheques

40. Cheque image and presentment of cheque for payment by electronic means

Part XI – Electronic-fund transfers and electronic money

41. Enforceability and evidentiary value of electronic fund transfers
42. Issuance of electronic money
43. Limited network exemption

Part XII – Miscellaneous Provisions

44. Computer entries
45. Settlement of disputes
46. Immunity
47. Use of information for personal gain
48. Regulations
49. Transitional provisions
50. Consequential amendments
51. Commencement

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

A BILL

To provide for the regulation and supervision of payment systems in Mauritius and to designate the Bank of Mauritius as the authority for that purpose and for related matters

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Payment System Act 2016.

2. Interpretation

In this Act, unless the context otherwise requires,

“affiliate” means a company that controls, or is controlled by, or is under common control with a payment service provider, an operator or a participant of a system;

“agent” means a person who acts on the basis of an authorization on behalf of a payment service provider in providing payment services;

“bank” has the same meaning as in the Banking Act;

“book-entry” means the electronic transfer of securities and other financial assets which does not involve the physical movement of paper documents or certificates;

“central bank” means the Bank of Mauritius established under the Bank of Mauritius 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 that provides securities accounts held either in electronic or physical form, central safekeeping services, and asset services, which may include the administration of corporate actions and redemptions and in

whose register securities are immobilised or dematerialized, and enabling securities transactions to be finally processed by book-entry;

“cheque image” means a digital representation of the front and back of a physical cheque and which complies with such minimum safety standards as may be specified 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, 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 facilitating the settlement of their obligations;

“collateral” means an asset or third-party commitment, which are acceptable to the central bank or the operator, as the case may be, to secure an intraday credit;

“control” in relation to a company means –

- (a) ownership, control, or holding the power to vote 20 percent or more of a class of voting securities of the company; or
- (b) consolidation of the company for financial reporting purposes.

“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;

“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;

“derivative” means an instrument, to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating or credit index, price of securities, or any other underlying or a combination of more than one of them and includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign

currency rupee swaps, foreign currency options, foreign currency rupee options or any other instrument, as may be specified by the central bank from time to time;

“electronic fund transfer” means any transfer of funds which is initiated by a person by way of instruction or authorisation to a payment service provider to debit or credit an account through electronic means and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfer initiated by mobile phone, internet, card or other devices and includes cross-border transfer of funds;

“electronic money” means electronically including magnetically, stored monetary value as represented by a claim on the issuer, which is issued on receipt of funds [legal tender] of an amount equivalent to the monetary value issued for the purpose of making payment transactions and which is accepted as a means of payment by persons other than the issuer;

“final settlement” means the irrevocable and unconditional transfer of an asset or financial instrument, or the discharge of an obligation by an operator or its participants in accordance with the terms of the underlying contract;

“gross settlement system” means a payment system in which each settlement of funds or securities occurs on the basis of separate or individual instructions;

“irrevocability” means a situation in which the transfer of an asset or financial instrument, or the discharge of an obligation by an operator or its participants cannot be revoked by the transferor;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“mobile payment system” means a system that enables the process of money transfer and exchange of money for goods and services between two parties using a mobile phone or an electronic mobile device;

“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) electronic money clearing and settlement;
- (d) recording of monetary and other financial transactions;
- (e) payment service providers;
- (f) mobile payment system; and
- (g) 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 Mauritius;

“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;

“netting” means the determination by the operator of the amount of money or securities, due or payable or deliverable, as a result of setting off or adjusting, the payment obligations or delivery obligations among the participants, including the claims and obligations arising out of the termination by the operator, on the insolvency or dissolution or winding up of any participant or such other circumstances as the operator may specify in its rules or regulations or bye-laws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

“netting arrangement” means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation;

“operator” means the central bank or any other entity authorised by the central bank to operate a payment, clearing or settlement system;

“operational risk” refers to the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events shall result in the reduction, deterioration, or breakdown of services provided by an operator;

“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 a 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 debit, credit or stored-value card;

“payment instruction” means any instrument or authorisation in any form, including electronic means, to effect a payment,

- (i) by a person to a participant; or
- (ii) by a participant to another participant;

“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, mobile phone), payment cards, including those involving storage of electronic money;

“payment obligation” means an indebtedness that is owned by one participant to another participant as a result of clearing or settlement of one or more payment instructions relating to funds, securities or foreign exchange or derivatives or other transactions;

“payment services” means the services listed in the First 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 and includes a mobile payment system;

“security” means the Government securities as defined in the Public Debt Management Act, the Bank of Mauritius securities issued under the Bank of Mauritius Act and corporate securities;

“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;

“settlement risk” refers to the risk that settlement will not take place as expected

“stored-value card” means a payment instrument which stores electronic money equivalent to monetary value of funds received from the cardholder

“systemic risk” means the risk arising from –

- (i) the inability of a participant to meet its obligations in a system as they become due; or
- (ii) any disruption to the system,

which may cause other participants to be unable to meet their obligations as they become due and is likely to have an impact on the stability of the financial system; Provided that if any doubt or difference arises as to whether a particular risk is likely to have an impact on the stability of the system, the decision of the central bank shall be final;

“trade repository” means an entity that maintains a centralised electronic record (database) of transaction data.

PART II - POWERS AND DUTIES OF THE CENTRAL BANK

3. General powers of the central bank

(1) The central bank shall regulate and oversee the national payment system primarily for the purpose of ensuring its safe, secure, efficient and effective operation.

(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 policy for Mauritius;
- (b) licence payment service providers and authorise operators;
- (c) determine general or individual conditions, standards, rules and procedures in accordance with this Act and any further implementing measures regarding any licensed or authorised entity 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;
- (e) issue regulations, directives and guidelines to govern the operation and regulation of the national payment system;
- (f) collect, compile, disseminate monetary and related financial statistics related to the national payment system; and
- (g) 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. Operational role of the central bank

- (1) The central bank may provide facilities to -
 - (a) a payment, clearing and settlement system; 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) open and 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;
 - (f) set up a committee for the purposes of advising the central bank on the regulation and oversight of the national payment system; and
 - (f) act as a central securities depository.

5. Cooperation with other authorities

(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 Mauritius, as well as on the regulation, monitoring and supervision of capital markets in the country.

(2) The 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 those subsections.

PART III - AUTHORISATION AND LICENSING

6. Authority for issuing authorisation and licence

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.

7. Authorisation of operators

(1) No person shall operate a payment, clearing or settlement system without an authorisation from 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 in regulations made by the central bank.

(3) In granting an authorisation, the central bank may specify the terms and conditions which shall be complied with by the operator.

(4) The central bank may suspend or revoke any authorisation granted under this Act in such manner as may be prescribed in regulations made by the central bank.

(5) An authorisation granted under this Act may be renewed in such manner and subject to payment of such fees as may be prescribed in regulations made by the central bank.

8. Licensing of payment service providers

(1) No person shall act as a payment service provider without a licence from the central bank.

(2) An application for a licence shall be made in such form and manner and accompanied by such fees as may be prescribed in regulations made by the central bank.

(3) The central bank may specify the terms and conditions of licence which shall be complied with by the payment service provider.

(4) The central bank may suspend or revoke a licence granted under this Act where specific conditions specified in regulations made by the central bank are met.

(5) A bank shall not be required to obtain a licence under this Act to provide payment services.

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

(7) A bank shall, before providing any payment services which it is not providing on the commencement of this Act, obtain prior approval of the central bank.

(8) A licence granted under this Act may be issued and renewed in such manner and subject to payment of such fees as may be prescribed in regulations made by the central bank.

(9) A licence or any right acquired under this Act shall not be transferable, whether wholly or partly, except as may be specified by the central bank, and any transfer in contravention thereof shall be void.

9. Variation of authorisation or licence

(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.

(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 IV - CONSUMER PROTECTION

10. Transparency of fees, terms and conditions

(1) The central bank may establish a set of rules in order to ensure transparency of conditions and information requirements for payment services.

(2) The information required should be proportionate to the needs of users and communicated in a standard manner.

11. Transparency of fees

(1) The rules issued by the central bank under section 10 may require a payment services provider who imposes a fee on any customer for executing a payment service, to provide notice in accordance with subsections (2) and (3) to the customer of the fact that-

- (a) a fee is imposed; and
- (b) the amount of any such fee.

(2) The notice required under subsection (1) with respect to any fee shall be posted at a prominent and conspicuous location at which the customer initiates the payment order.

(3) The notice required under subsection (1) with respect to the charging of a fee shall be as determined by the central bank.

(4) A payment services provider shall not impose a fee in connection with any payment instruction initiated by a customer where the notice as required under subsection (1) has not been satisfied.

12. Terms and conditions

A payment services provider shall, in accordance with the instructions issued by the central bank under section 10, disclose the terms and conditions of a payment service involving a customer's account in a manner clearly understood by the customer, at the time the customer contracts for the payment service.

13. Complaints

- (1) (a) Any customer of a payment service provider who is aggrieved by any act or omission of the payment service provider may, subject to paragraph (b), make a complaint in writing to the operator or payment service provider for remedial action.
- (b) The payment service provider shall not entertain a complaint where it is made more than 7 years from the date of the act or omission giving rise to the complaint.
- (2) (a) Any complaint made under subsection (2) shall be dealt with by the payment service provider and a written reply shall be given to the complainant as soon as practicable but not later than 3 months as from the date it receives the complaint.

- (b) Where the complainant is dissatisfied with the reply, or does not receive a reply within the period, referred to in paragraph (a), he may, subject to paragraph (c), refer the complaint, in writing, to the central bank –
 - (i) specifying the nature of the complaint, the redress being sought and the reasons for his dissatisfaction; and
 - (ii) enclosing –
 - (A) a copy of the complaint made to the payment service provider;
 - (B) a copy of the reply made by the payment service provider; and
 - (C) any other document or information which may be of relevance to the complaint.
 - (c) The central bank shall not entertain a complaint referred to it under paragraph (b) where it is made more than one month from the date of the reply given under paragraph (a) or where no reply is made by the payment service provider within the period of 3 months referred to in paragraph (a), unless the central bank considers that it is reasonable to do so.
- (3) (a) The central bank shall examine a complaint referred to it under subsection (4)(b) and shall take such action as it thinks fit, including but not limited to –
- (i) instructing the payment system provider to remedy the situation and where the central bank thinks fit, ordering the payment system provider to pay such compensation as is appropriate in the circumstances, to the complainant; and
 - (ii) imposing on the payment service provider, where appropriate, an administrative penalty as provided for under section 50(6) of the Bank of Mauritius Act.
- (b) The central bank may order the complainant or the payment service provider to provide such information as may be required for the purposes of paragraph (a), within such time as may be specified in the order, and the payment service provider shall comply with the order.

- (c) The central bank shall, where possible, give a written reply to the complainant within 3 months from the date the complaint is referred to it under subsection (4)(b) or from the date the information referred to in paragraph (b) is received by it.
- (d) Where, in the course of an examination of a complaint by the central bank, it is suspected that there is a breach of this Act, the central bank may conduct an investigation under section 24.

(4) The central bank may issue such instructions or guidelines as may be necessary for the purposes of this section.

PART V – RULES TO REGULATE A SYSTEM

14. Rules of systems

(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, 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 subject to the approval of the central bank and shall be in compliance with the requirements of this Act, and any guidelines, regulations, directives or instructions issued by the central bank in this regard.

(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
- (d) any other matters the central bank considers relevant.

(4) No operator of a payment, clearing or settlement system shall cause any change in the payment, clearing or settlement system which would affect the structure, operation or administration thereof without –

- (a) the approval of the central bank; and
- (b) giving notice of not less than thirty days to the participants of the payment, clearing and settlement system after the approval of the central bank.

(5) Notwithstanding subsection (4), the central bank may, in the interest of monetary policy, financial stability, or 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)(b) or for requiring the operator to give notice for a period longer than thirty days.

15. Access to systems

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.

PART VI - ONGOING OVERSIGHT

16. Directions and guidelines

- (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.

17. Confidentiality

(1) A person who has access to the books, accounts, records, financial statements or other document, whether electronically or otherwise, in his capacity as-

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

shall not during or after his relationship with the operator, participant or payment service provider disclose to any person 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 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;
- (iv) when required to do so by law or any court of competent jurisdiction in Mauritius.

(2) Subject to this Act, every person referred in subsection (1), shall –

- (i) in the case of a director or senior officer, take an oath of confidentiality in the form set out in the Second Schedule;
- (ii) in the case of a director or service provider who is a non-resident, take an oath of confidentiality before the competent court or authority in the country of residence of the director or service provider, in such form as the central bank may approve; or
- (iii) in any other case, make a declaration of confidentiality before the chief executive officer or deputy chief executive officer of the operator, participant or payment service provider in the form set out in the Third Schedule,

before he begins to perform any duties under this Act.

(3) For the purposes of this section, “professional relationship” means any relationship between an operator, participant or payment service provider and a service provider of whom the central bank has been made aware of.

18. Outsourcing of activities

(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.

19. Use of agents

(1) Where a person intends to provide payment services, in particular when linked to a payment instrument, to customers through an agent, it shall apply, in such form and manner as the central bank may determine, to the central bank for approval and pay such non-refundable processing fee as may be prescribed in regulations made by the central bank.

(2) An application under subsection (1) shall be accompanied by such information or document as the central bank may determine.

(3) An approval under subsection (1) may be granted subject to such terms and conditions as the central bank may impose and payment of such annual licence fee as may be prescribed by regulations made by the central bank.

(4) Subsequent approval of each Agent is not required.

(5) The central bank shall keep a register for listing the agents and publish on its website a list of those agents.

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

(7) A payment service provider shall not provide any payment service through its agent prior to being approved by the central bank for that purpose in accordance with this section.

20. Liability

(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.

21. Compliance with Anti-Money Laundering laws

(1) The payment service providers and operators shall meet the requirements and comply with the obligations under any applicable enactment, instruction or guidelines relating to anti-money laundering and the prevention of terrorism.

(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.

22. Records

(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 or produced 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.

23. Submission of information to the central bank

(1) The central bank may require any payment service provider, operator or participant to furnish, at such time and in such manner and form as may be approved by the central bank, such information and data as the central bank may require for the proper discharge of its functions and responsibilities under this Act.

(2) Where a payment service provider, operator or participant is required to furnish information and data under subsection (1), the payment service provider, operator or participant shall comply with the requirement in a timely manner.

(3) 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 data or statistics.

(4) 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.

(5) The central bank may examine the accounts, books, records and other documents, whether they are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism of any payment service provider, operator or participant, in order to verify its compliance with any requirement under this Act.

(6) 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 central bank may impose such penalty or charge not exceeding 50,000 rupees for each day on which such breach occurs and such penalty may be recovered by deduction from any balance of or money owing to the central bank, as if it were a civil debt.

24. Regular and special examinations

(1) The central bank shall conduct regular examinations of the operations and affairs of every payment service provider, an operator or participant of a system at such time

as it may deem appropriate, including, where the central bank so specifies, of affiliates and overseas branches and affiliates of the payment service provider, an operator or participant of a system, to be made by its officers or such other duly qualified person as it may appoint and such examinations may be of a scope as the central bank deems necessary to assess that the payment service provider, an operator or participant of a system is duly observing the provisions of this Act, regulations, guidelines, and instructions issued by the central bank and is in a sound financial condition.

(2) Where, in relation to any payment service provider, an operator or participant of a system, a special examination appears to be necessary or expedient in order to determine whether the payment service provider, an operator or participant of a system is in a sound financial condition and whether this Act or any enactment relating to anti-money laundering or prevention of terrorism or guidelines and instructions issued by the central bank, as the case may be, are being complied with, the central bank may appoint one or more of its officers or such other duly qualified person to conduct a special examination in respect of the affairs of the payment service provider, an operator or participant of a system and of its affiliates and overseas branches and affiliates, if any.

(3) The central bank may authorise in writing any of its officers or any other person appointed by the central bank for that purpose to conduct, either jointly or separately, a regular examination under subsection (1) or a special examination under subsection (2), and any such officer or person shall have the power to –

- (a) examine all books, minutes, accounts, records, cash, securities, vouchers and any other document, in the possession or custody of the financial institution or of its affiliates in Mauritius or its branches and affiliates outside Mauritius;
- (b) have access to any program or data and take extracts of any file, document or record held electronically in any computer or other electronic device of the financial institution or of its affiliates in Mauritius or its branches and affiliates outside Mauritius; and
- (c) require, within such time as may be specified, such information and copies of all relevant documents, that he may reasonably require concerning its business, or that of its affiliates in Mauritius, or that of its branches and affiliates outside Mauritius, if any, as appear necessary.

(4) Where the central bank appoints a duly qualified person to conduct an examination under subsection (1) or (2) in respect of the affairs of a payment service provider, an operator or participant of a system and of its affiliates and overseas branches or affiliates, if any, the costs incurred in connection therewith may be recovered, in whole or in part, by the central bank by deduction from any balance of, or money owing to, the financial institution, as if it were a civil debt.

(5) Every person appointed by the central bank for the purposes of subsections (1) and (2) shall comply with the provisions of confidentiality under the banking laws.

25. Duty of confidentiality by the central bank

(1) Subject to subsection (3), 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 person.

(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 central bank or financial regulatory authority, within or outside Mauritius, where such information is reasonably required for the proper discharge of the functions of the central bank or the requesting central bank or financial regulatory authority; or
- (c) if required by any written law or a court order.

(3) This section shall be without prejudice to the obligations of Mauritius under any international treaty, convention or agreement and to the obligations of the central bank under any concordat or arrangement or under any existing or future memorandum of understanding for cooperation and the obligations of the central bank pursuant to section 40 of this Act.

26. Fees and charges

The central bank may impose charges or fees –

- (a) to meet 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 VII - INFRINGEMENTS, REMEDIAL MEASURES AND PENALTIES

27. Infringement and remedial measures

(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 100,000 rupees 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.

28. Offences and penalties

(1) Any person who contravenes the provisions of sections 7 or 8 commits an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees, and where the offence is committed for a second time, a fine not exceeding 2,000,000 rupees.

(2) Any person who fails, refuses, neglects or unreasonably delays to comply with any requirement under section 24(3) commits an offence and shall on conviction be liable to a fine not exceeding 1,000,000 rupees.

(3) Any person who in complying with a requirement under section 24(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 500,000 rupees.

(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 500,000 rupees.

(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 1,000,000 rupees.

29. Compounding of offences

(1) The central bank may, with the consent of the Director of Public Prosecutions, compound any offence committed by a person under this Act where the person agrees in writing to pay such amount not exceeding the maximum penalty specified for the offence, acceptable to the central bank.

(1) Every agreement to compound shall be final and conclusive and on payment of the agreed amount, no further proceedings in regard to the offence shall be taken against the person who agreed to the compounding.

(2) (a) The central bank may cause to be published, in such form and manner as it thinks fit, a public notice setting out the particulars of the agreed amount under subsection (1).

(b) The notice under subparagraph (a) shall not contain any information which the central bank considers to be sensitive.

PART VIII - SETTLEMENT, NETTING AND FINALITY OF PAYMENT

30. Settlement of accounts

- (1) Every participant to a payment, clearing or settlement system shall -
 - (a) open and maintain settlement accounts in 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.

(3) A settlement account of any participant shall not be liable to attachments, garnishee proceedings or seizures.

31. Finality of payments and netting arrangement

(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) A payment instruction or settlement shall be valid and enforceable by and against an operator or participant of a payment, clearing or settlement system and shall be final and shall not be revoked, reversed or set aside by any person from the time the payment instruction or settlement is determined to be final under the rules of the payment, clearing or settlement system under subsection (1) and, notwithstanding any other enactment, no order shall be made by any court for the rectification or stay of such payment instruction or settlement.

(4) 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.

(5) Any payment or settlement obligations 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.

(6) Any payment instruction or settlement that is final and irrevocable under subsection (3) and any netting arrangement that is valid and enforceable under subsections (4) and (5) shall be given effect notwithstanding anything to the contrary contained in any other enactment.

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

32. Collateral for payment and settlement obligation

(1) Notwithstanding any other enactment, any asset of a participant which was provided prior to the issue of any order for that participant's winding-up by that participant to the central bank, or operator, as security for a loan in respect of its settlement obligations, may be utilized by the central bank or the operator, as the case may be, to the extent required for the discharge of the settlement obligations of the participants.

(2) Notwithstanding any other enactment relating to insolvency or bankruptcy affecting participants into a System or the System itself, Article 25 on finality shall extend to collateral.

(3) Where a security is pledged by a participant in favour of the central bank or another participant and the relevant entries have been made by the central bank in its books and records in this respect, such entries shall constitute the endorsement of the security for the purpose of Article 2076 of the Code Civil Mauricien and the registration of the pledge for the purpose of Article 2077 of the Code Civil Mauricien.

(4) Articles 2129-1 to 2129-6 and Articles 2150-1 to 2150-6 of the Code Civil Mauricien shall apply to the central bank as if the central bank were a bank established under the Banking Act 2004, provided that, in case of default by the participant, the central bank may forthwith proceed with the realization and sale of the security under Article 2129-5 and 2129-6 of the Code Civil Mauricien without the need for the central bank to give any notice to that effect to the participant.

(5) 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 provided 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.

PART IX - WINDING UP AND RECEIVERSHIP OF A SYSTEM OPERATOR OR PARTICIPANT

33. Requirement to notify in the event of insolvency

- (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 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 other participants of the designated payment system.

34. Duty to notify of winding up or receivership

(1) No operator or participant in a payment, clearing or settlement system shall be wound up or placed into receivership except with prior notification to the central bank.

- (2) Where an operator or participant is 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,

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.

(3) The relevant operator shall enforce the winding up order immediately upon being notified by the central bank of the order lodged with it under subsection (2).

(4) Where a participant is voluntarily wound up, with the approval of the central bank, that participant shall inform all other participants of the winding-up resolution within twenty four hours of the winding up resolution taking effect.

(4) The central bank shall notify relevant domestic and foreign system operators and participants about the voluntary winding-up of a participant 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.

35. Prohibition

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

36. Winding up or receivership of participant or operator not to affect finality

Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy, the winding up or the receivership of a participant or an operator 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.

37. Rules of central bank and licensed systems to bind liquidators

(1) Notwithstanding any other enactment, where a participant or operator in a payment, clearing or settlement system is wound up or placed in receivership or otherwise declared insolvent by a court, any provision contained in a written clearing, netting and settlement arrangement to which the participant or the operator is a party or any clearing, netting and settlement rules and practices applicable to the system, are binding upon the liquidator or receiver, 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 order; 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 order.

(2) The liquidator shall have authority to credit and debit the settlement accounts of a participant or operator subsequent to a winding-up order for purposes of –

- (a) discharging outstanding payments or settlement obligations;
- (b) making use of a credit line; or
- (c) realizing collateral provided, in order to enable settlement in accordance with the rules and practices of the clearing, netting and settlement agreements to which that participant was a party.

38. Preservation of rights

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.

39. Conflict of laws

(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 Mauritius.

(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 X – PROVISIONS AFFECTING CHEQUES

40. Cheque image and presentment of cheque for payment by electronic means

Cheque image and presentment of cheque for payment by electronic means shall be governed by the provisions of section 44A of the Bills of Exchange Act and such guidelines, rules, instructions or directives issued by the central bank in this respect.

PART XI - ELECTRONIC FUND TRANSFERS AND ELECTRONIC MONEY

41. Enforceability and evidentiary value of electronic fund transfers

(1) The enforceability and evidentiary value of electronic fund transfers and records shall be as provided in the Electronic Transactions Act.

(2) Notwithstanding subsection (1), information stored, disseminated or used by system participants and operators shall not be denied legal effect solely on the ground that -

- (a) it is in the form of an electronic record; or
- (b) it is not contained in the electronic record purporting to give it legal force and validity, but is referred to in another electronic record.

42. Issuance of electronic money

(1) 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 Mauritius rupees or highly liquid assets acceptable by the central bank;
- (c) electronic money shall never expire;
- (d) Any points/rewards accruing under loyalty schemes cannot be converted into electronic money;
- (e) Any unclaimed amount which has been left untouched and not reclaimed for 7 years or more and the customer has not responded within 6 months to a letter from the service provider about the unclaimed amount sent by registered post to the customer's last known address, the unclaimed amount, shall be deemed to have been abandoned and shall, without further formality, be transferred forthwith by the service provider concerned to the Bank to be dealt with as decided by the Bank. The procedures set out in Section 59 of the Banking Act with respect to abandoned funds shall apply to these unclaimed amounts;
- (f) electronic money providers shall provide statistics on electronic money loaded and redeemed values in their periodic reports;

- (g) 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;
 - (h) clearing and settlement mechanisms shall facilitate provision of final settlement not more than twenty four hours after a payment instruction has been initiated in the banking system;
 - (i) issuers shall be obliged to redeem electronic money value in central bank money, at par, upon request; and
 - (j) the management of the underlying float and redemption of electronic money value by the issuer to the holder shall be clearly defined.
- (2) The funds received in exchange for electronic money shall not be treated as a deposit
- (3) The funds received in exchange for electronic money shall be safeguarded by setting up appropriate measures to protect them, including -
- (i) placing the funds in a trust account, administered by a trustee, solely for the benefit of the customers;
 - (ii) covering the funds by insurance or a comparable guarantee from an insurer or a bank.
- (4) The central bank may, by regulation, prescribe the category of persons, subject to subsection (1), which may issue electronic money.

43. Limited network exemption

- (1) A service provider, which qualifies for the limited network exemption under the definition on electronic money, and for which either or both -
- (a) the total value of payment transactions executed over the preceding 12 months exceeds the amount established by the central bank,
 - (b) the total number of user of the service exceed the number established by the central bank

shall send a notification to the central bank containing a description of the services offered.

(2) On the basis of that notification, the central bank may decide where the activity does not qualify as a limited network, and inform the service provider accordingly.

PART X - MISCELLANEOUS PROVISIONS

44. Computer entries

Notwithstanding any other enactment, 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.

45. Settlement of disputes

(1) Any dispute arising between an operator and a participant or between participants in a payment, clearing or settlement system in relation to any matter arising from the 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 Code de Procedure Civil 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.

(6) In this section, "business day" means any day other than Saturday, Sunday or a public holiday.

46. Immunity

No action shall lie against the central bank, any officer, employee, agent or examiner appointed by the central bank in respect of any act done or omitted to be done by the central bank, any officer, employee, examiner or agent appointed by the central bank, in the execution, in good faith, of its or his functions under this Act or any regulations made thereunder.

47. Use of information for personal gain

(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 1,000,000 rupees 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.

48. Rules and Regulations

(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 Schedules.
- (4) Any rules or regulations made under this Act shall not require the prior approval of the Minister.

49. Transitional provisions

(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 may be, 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).

50. Consequential amendments

- (1) The Bank of Mauritius Act is amended by deleting section 48(4) and 48A.
- (2) The Financial Services (Other Financial Business Activity) Rules 2008 is amended in Regulation 3 by deleting paragraph (iii) and renumbering paragraph (iv) as paragraph (iii).

51. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of the different sections of this Act.

FIRST 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.
-

SECOND SCHEDULE

[Section 17(2)(i)]

OATH OF CONFIDENTIALITY

IN THE SUPREME COURT OF MAURITIUS

I,, being appointed
..... do hereby swear/solemnly affirm/declare* that I shall
maintain during or after my relationship with the
confidentiality of any matter relating to the National Payment System Act which comes to my
knowledge in my capacity as or in any other capacity with
..... and shall not, on any account and at any time, disclose directly
or indirectly to any person, any matter or information relating to the affairs of
..... otherwise than for the purposes of the performance
of my duties or the exercise of my functions under the National Payment System Act or when
lawfully required to do so by a Judge in Chambers or any Court of law or under any enactment.

Signature of declarant

Taken before me,, the
Master and Registrar of the Supreme Court on (date).

**Delete as appropriate*

THIRD SCHEDULE

(Section 17(2)(iii))

Declaration of confidentiality

I being appointed
..... do hereby declare that I shall maintain during or after my
relationship with the confidentiality of
any matter relating to the National Payment System Act which comes to my knowledge and
shall not, on any account and at any time, disclose directly or indirectly to any person, any
matter or information relating to the affairs of
otherwise than for the purposes of the performance of my duties or the exercise of my functions
under the National Payment System Act or when lawfully required to do so by a Judge in
Chambers or any court of law or under any enactment.

Signature of declarant

Made before me this

Signature

Name

Chief Executive Officer/Deputy Chief Executive Officer
