

THE NATIONAL PAYMENT SYSTEMS BILL
(No.XVII of 2018)

Explanatory Memorandum

The main objects of this Bill are to provide for –

- (a) the regulation, overseeing and supervision of national payment systems and payment systems being operated in Mauritius;
- (b) the Bank of Mauritius as the authority which shall ensure the safe, secure, efficient and effective operation and accessibility to the public of national payment systems and payment systems being operated in Mauritius;
- (c) common rules for the protection of systems,

and for matters connected and related thereto.

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Minister of Finance and Economic Development*

26 October 2018

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(No. XVII of 2018)

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A BILL

To provide for the regulation, overseeing and supervision of national payment systems and payment systems being operated in Mauritius, to designate the Bank of Mauritius as the authority for that purpose, for common rules for the protection of systems, 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 Systems Act 2018.

2. Interpretation

In this Act –

“affiliate”, in relation to a licensee, includes an entity which –

- (a) is a holding company, subsidiary company or company which is under common control of the licensee;
- (b) is a joint venture of the licensee;
- (c) is a subsidiary company or joint venture of the holding company of the licensee;
- (d) controls the composition of the Board of Directors or other body governing the licensee;
- (e) exercises, in the opinion of the central bank, significant influence on the licensee in taking financial or policy decisions; or
- (f) is able to obtain economic benefits from the activities of the licensee;

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

“authorisation” means an authorisation granted by the central bank under this Act;

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

“Bank of Mauritius Securities” means securities issued by the central bank under section 6(1)(m) and (2) of the Bank of Mauritius 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 section 3 of the Bank of Mauritius Act;

“central counter-party” means an entity which interposes itself between buyers and sellers, so as to become the buyer to every seller and the seller to every buyer in a settlement system;

“central securities depository” means an entity which provides securities accounts held either in electronic or physical form, central safekeeping services, and in whose register securities are immobilised or dematerialised, and enabling securities transactions to be processed by book-entry and which may, in addition, perform the function of securities settlement based on book-entry;

“cheque image” means a digital representation of the front and back of a 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 orders before settlement, the netting of transfer orders and the establishment of final positions for settlement;

“clearing house” means a common entity or common processing mechanism through which participants agree to exchange transfer instructions for funds, securities or other financial instruments;

“clearing system” –

- (a) means a system which contains a set of procedures whereby participants present and exchange information relating to the transfer of funds or securities to other participants through a centralised system or at a single location; and
- (b) includes a mechanism for the calculation of the position of participants on a bilateral or multilateral basis with a view to facilitating the settlement of their obligations;

“closing out” means the process of offsetting existing contracts, which may be used by the clearing house to prevent further losses from positions carried out by an entity which has defaulted;

“collateral” means any asset or third-party commitment which is acceptable to the central bank or operator, as the case may be, to secure an intraday, an overnight, a term or such other credit, regardless of the collateralisation technique such as repo, pledge or other title transfer arrangement, or the existence of a master agreement;

“control”, in relation to a company, means –

- (a) ownership or control of the company, or holding the power to vote 20 per cent 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 which 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 with which, or an access method by which, money is automatically deducted from the account of cardholder to pay for goods or services and with which or by which cash may be withdrawn;

“default” –

- (a) means an event stipulated in an agreement between a participant and the central bank or an operator as constituting a default; and
- (b) includes a failure to complete a transfer of funds or securities in accordance with the terms and rules of the system in question;

“default arrangement” –

- (a) means an arrangement put in place by a system to limit systemic and other types of risk which arise in the event of default by a participant or a participant appearing to be unable, or likely to become unable, to meet its obligations in respect of a transfer order; and
- (b) includes any arrangements for –
 - (i) close-out netting;

- (ii) the closing-out of open positions;
- (iii) the realisation or transfer of collateral security; or
- (iv) contributions to any settlement guarantee mechanisms;

“defaulter” means a participant in respect of whom action has been taken by a system under its default arrangements;

“dematerialisation” means the elimination of physical certificates or documents of title which represent ownership of securities so that securities exist only as accounting records;

“depository” means an agent who has the primary role of recording, directly or indirectly, holdings of securities and who may, in addition, act as a registry that records the ownership of securities on behalf of an issuer;

“derivative” –

- (a) means a financial contract the value of which depends on the value of one or more underlying reference assets, rates or indices, on a measure of economic value or on factual events; and
- (b) 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 the central bank may approve;

“disposition of property” includes a payment made into or out of an account of a participant;

“electronic fund transfer” –

- (a) 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
- (b) includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfer initiated by mobile phone, internet, card, cross-border transfer of funds or any other device as the central bank may approve;

“electronic money” –

- (a) means electronically, including digitally or 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, and is redeemable for cash or a deposit into a bank account on demand; but
- (b) does not include –
 - (i) monetary value stored in specific instruments, designed to be used for the purchase of goods or services only on the premises of the electronic money issuer or, under a commercial agreement with the issuer, within a limited network of service providers, or because they can be used only to acquire a limited range of goods and services; or
 - (ii) monetary value, which is used to execute payment operations, carried out through a telecommunication, a digital or an information device, where the goods or services bought are delivered and used through a telecommunication, a digital or an information device, and on condition that the operator of the telecommunication, digital or information device is not acting only as intermediary between the payment services user and the provider of goods and services;

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

“financial institution” has the same meaning as in the Banking Act;

“Financial Services Commission” means the Financial Services Commission established under section 3 of the Financial Services Act;

“Government securities” has the same meaning as in the Public Debt Management Act;

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

“immobilisation” means the act of concentrating the location of securities in a depository and transferring ownership by book entry;

“indirect participant” means a person for whom transfer orders are capable of being effected through a system pursuant to its or his contractual relationship with a direct participant;

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

“licence” means a licence issued by the central bank under this Act;

“licensee” means a person who has been issued with a licence or granted an authorisation under this Act;

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

“mobile payment system” means a system which enables the process of money transfer and exchange of money for goods and services between 2 parties using a mobile phone or an electronic mobile device;

“national payment systems” –

- (a) means all the services associated with sending, receiving and processing of transfer orders in domestic or foreign currencies; and
- (b) includes –
 - (i) the issuance and management of payment instruments;
 - (ii) payment systems, clearing systems and settlement systems, including the processing securities and other financial instruments, arrangements and procedures associated to those systems and services;
 - (iii) electronic money clearing and settlement;
 - (iv) recording of monetary and other financial transactions;
 - (v) payment service providers;
 - (vi) mobile payment systems; and
 - (vii) operators, participants and any third party acting on behalf of an operator or a participant, either as an agent or by way of outsourcing agreements, whether entirely or partially operating within Mauritius;

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

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

“netting arrangement” means a written arrangement to convert several claims or obligations into one net claim or one net obligation, including close-out netting arrangements in the context of financial collateral arrangements whereby on the insolvency, dissolution or winding-up of any party to the arrangement –

- (a) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value or are terminated and replaced by an obligation to pay such amount;
- (b) an account is taken of what is due by each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party;

“novation” means a process by which the original obligation between a buyer and a seller is discharged through the substitution of the central counter-party as seller to the buyer and buyer to the seller, creating 2 new contracts;

“operational risk” means 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;

“operator” means the central bank, or any other entity authorised by the central bank or the Financial Services Commission, as the case may be or as the context may require, to operate a system;

“participant” means –

- (a) a financial institution;
- (b) a holder of an Investment Banking Licence under the Financial Services Act;

- (c) a body corporate, the head office of which is outside Mauritius and the functions of which correspond to those of an entity referred to in paragraph (a) or (b);
- (d) a public authority or an entity guaranteed by the State; or
- (e) a settlement agent or central counter-party,

which is recognised in the rules of a system as eligible to exchange, clear and settle through the system with other participants;

“payment card” –

- (a) means a card or other device, including a code or any other means of access to an account, which may be used to withdraw money or to make payment for goods and services; and
- (b) includes a debit, credit or stored-value card;

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

“payment instrument” –

- (a) means any instrument, whether tangible or intangible, which enables a person to obtain money, goods or services or to otherwise make payment or transfer money; and
- (b) includes cheques, funds transfers initiated by any paper or paperless device such as automated teller machines, points of sale, internet and mobile phone and payment cards, including cards involving storage of electronic money;

“payment obligation” means the indebtedness of one participant to another participant as a result of the clearing or settlement of one or more transfer orders relating to funds, securities or foreign exchange transactions;

“payment services” –

- (a) means a service specified in the First Schedule; but
- (b) does not include payment intermediary services provided exclusively outside Mauritius;

“payment service provider” means an entity which provides payment services, other than an entity licensed by the Financial Services

Commission to conduct payment intermediary services exclusively outside Mauritius;

“payment system” –

(a) means any system or arrangement for the processing, clearing or settlement of funds; and

(b) includes a mobile payment system;

“securities” has the same meaning as in the Securities Act;

“securities settlement system” means a system which enables securities to be transferred and settled by book-entry according to a set of predetermined multilateral rules;

“settlement” means the act of discharging obligations by transferring funds or securities between 2 or more parties;

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

“settlement agent” means an entity which provides accounts for the participants in a system to hold funds or securities and to settle transactions between participants in the system;

“settlement risk” means a risk that settlement will not occur as expected;

“settlement system” means a system established and operated by the central bank or any other system operator which contains a set of procedures for the discharge of payment obligations and of settlement of obligations in relation to securities;

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

“system” means a formal arrangement among 3 or more participants, excluding the operator, any settlement agent, central counter-party, clearing house or indirect participant, with common rules and standardised arrangements, established for the purpose of the clearing or execution of transfer orders among participants, and which is governed by Mauritius laws;

“systemic risk” means the risk arising from –

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

which, in the opinion of the central bank, 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;

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

“transfer order” means –

- (a) an instruction by a participant to place at the disposal of a recipient an amount of money by means of a book-entry on the accounts of a settlement system for a participant, or an instruction which, when settled, results in the assumption or discharge of a payment obligation as defined by the rules of a payment system, clearing system or settlement system; or
- (b) an instruction by a participant to transfer book-entry securities.

3. Application of Act

(1) Parts II to VII –

- (a) shall apply to every payment system; but
- (b) shall not apply to the Central Depository & Settlement Co. Ltd established under the Securities (Central Depository, Clearing and Settlement) Act.

(2) Parts VIII to X and section 48 shall apply to every system operating in Mauritius, including those operated by the Central Depository & Settlement Co. Ltd established under the Securities (Central Depository, Clearing and Settlement) Act.

(3) This Act shall be in addition to, and not in derogation from –

- (a) the Financial Services Act;
- (b) the Securities Act; and
- (c) the Securities (Central Depository, Clearing and Settlement) Act.

PART II – POWERS AND DUTIES OF CENTRAL BANK

4. General powers and duties of central bank

(1) Without prejudice to the functions and powers of the Financial Services Commission under the Financial Services Act, the Securities Act and the Securities (Central Depository, Clearing and Settlement) Act, the central bank shall regulate, oversee and supervise the national payment systems and payment systems being operated in Mauritius primarily for the purpose of ensuring their safe, secure, efficient and effective operation and accessibility to the public.

(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) issue a licence to payment service providers or grant an authorisation to operators of payment systems;
- (c) determine general or individual conditions, standards, rules and procedures in accordance with this Act and any other implementing measures applicable to any entity to which it has issued a licence or granted an authorisation and their activities and ensure that the conditions, standards, rules and procedures are applied;
- (d) establish a forum for the consideration of matters of policy and mutual interest concerning the national payment systems;
- (e) issue directives, instructions and guidelines for the operation of the national payment systems;
- (f) collect, compile, disseminate, on a timely basis, monetary and related financial statistics related to the national payment systems; and
- (g) perform such other duties relating to payment systems, clearing systems and settlement systems or the issue of payment instruments for the accomplishment of its duties.

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

5. Operational role of central bank

- (1) The central bank may provide facilities to –
 - (a) a payment system, clearing system or settlement system; and
 - (b) the operators and participants of a payment system, clearing system or settlement system.

- (2) The central bank may –
 - (a) establish, own, operate and participate in the ownership or operation of a payment system, clearing system or settlement system;
 - (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 system, clearing system or settlement system;
 - (d) hold securities on accounts for operators and participants, which may be used for the operation of a payment system, clearing system or settlement system;
 - (e) extend intraday, overnight, term or such other credit to participants subject to adequate collateral being granted;
 - (f) set up a committee for the purpose of advising it on the regulation, oversight and supervision of the national payment systems;
 - (g) act as a central securities depository for Government securities and Bank of Mauritius Securities;
 - (h) act as a securities settlement agent;
 - (i) act as a trade repository.

(3) The systems owned or operated by the central bank under this section shall not require a licence by, or be subject to the supervision of, the Financial Services Commission.

6. Cooperation with other authorities

(1) The central bank and the Financial Services Commission shall cooperate for the purpose of the effective oversight and supervision of the national payment systems.

(2) The central bank may cooperate with other local or foreign public authorities engaged in the regulation and supervision of payment service providers and other entities directly or indirectly involved in payment services and their operation in Mauritius, and the regulation, monitoring and supervision of capital markets in Mauritius, or with other monetary authorities and international or regional organisations dealing with the regulation, oversight and supervision of payment systems.

(3) For the purposes of subsections (1) and (2), the central bank may enter into a memorandum of understanding with the authorities specified in those subsections.

PART III – AUTHORISATION AND LICENSING

7. Authority for grant of authorisation and issue of licence

The central bank shall be the authority which may –

- (a) authorise a person to operate a payment system; and
- (b) issue a licence to a person to act as a payment service provider.

8. Authorisation to operators

(1) No person, other than the central bank, shall operate a payment system, clearing system or settlement system without an authorisation.

(2) An application for an authorisation shall be made to the central bank in such form and manner, and shall be accompanied by such non-refundable fee, as may be prescribed.

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

(4) The central bank may suspend or revoke an authorisation granted under this Act in such manner as may be prescribed.

(5) An authorisation granted under this Act may be renewed in such manner, and shall be subject to payment of such fee, as may be prescribed.

9. Licensing of payment service providers

(1) No person, other than the central bank or a bank, shall act as a payment service provider without a licence.

(2) An application for a licence shall be made to the central bank in such form and manner, and shall be accompanied by such non-refundable fee, as may be prescribed.

(3) In issuing a licence, the central bank shall specify the terms and conditions of the licence which the payment service provider shall comply with.

(4) The central bank may suspend or revoke a licence in such cases as may be prescribed.

(5) Notwithstanding subsection (1), a bank shall comply with such operational, reporting, disclosure and other oversight and supervisory requirements set by the central bank in respect of licensed payment service providers.

(6) A licence issued under this Act may be renewed in such manner, and shall be subject to payment of such fee, as may be prescribed.

(7) (a) A licence issued or any right acquired under this Act shall not be transferable, whether wholly or partly, except as may be specified in writing by the central bank.

(b) Any transfer in contravention of paragraph (a) shall be void.

10. Variation of authorisation or licence

(1) The central bank may vary the conditions of an authorisation granted or a licence issued under this Act.

(2) Where the central bank intends to vary any condition of an authorisation or a licence, it shall serve a notice on the licensee, giving reasons for the proposed variation, and providing him a delay of 15 days within which to submit comments on the proposed variation.

(3) The central bank shall take into consideration the comments, if any, received pursuant to subsection (2) in determining whether to confirm, modify or abandon the proposed variation.

11. Indirect participant treated as participant

The central bank may treat –

- (a) an indirect participant as a participant in a system; or
- (b) a class of indirect participants as participants in a system,

where it considers it appropriate on the ground of systemic risk and shall give written notice of its decision to the operator of the system.

PART IV – CONSUMER PROTECTION

12. Powers of central bank with respect to consumer protection

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

(2) A payment service provider shall communicate information proportionate to the needs of users and in a standard manner.

(3) For the purpose of subsection (1), the central bank may regulate fees or charges where it determines that it is in the public interest to do so.

13. Transparency of fees and charges

(1) Any rules established by the central bank under section 12 may require a payment service provider which imposes a fee or charge on any customer for executing a payment service, to give notice, in accordance with subsections (2) and (3), to the customer of –

- (a) the fact that a fee or charge is being imposed; and
- (b) the amount of the fee or charge.

(2) A notice regarding any fee or charge shall be posted at a prominent and conspicuous location where the customer initiates the payment order.

(3) The notice with respect to the charging of a fee or charge shall be approved by the central bank.

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

(5) Any fee or charge related to the processing of a transaction –

- (a) shall not be deducted from the transaction amount by any participant in the chain; and

- (b) shall, at all times, be charged separately by a participant to ensure transparency.

14. Disclosure of terms and conditions

A payment service provider shall, in accordance with any rules established by the central bank under section 12, disclose the terms and conditions of a payment service in a manner which may be clearly understood by a customer, at the time he contracts for the payment service.

15. Complaints

(1) (a) A customer of a payment service provider who is aggrieved by an act or omission of the payment service provider may make a complaint in writing to the 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) A complaint made under subsection (1) 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 2 months from the date of receipt of 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 refer the complaint, in writing, to the central bank –

- (i) specifying the nature of the complaint, the redress 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, if any; 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 –

- (i) more than one month from the date of receipt of a reply given under paragraph (a); or
- (ii) before the expiry of the period of 2 months referred to in paragraph (a), except where the payment service provider gives a reply thereunder,

unless the central bank considers it reasonable to do so.

(3) (a) The central bank shall examine a complaint referred to it under subsection (2)(b) and shall take such action as it may determine, including, but not limited to –

- (i) instructing the payment service provider to remedy the situation and where the central bank deems appropriate, it may order the payment service provider to pay to the complainant such compensation as it may determine in the circumstances; and
- (ii) imposing on the payment service provider, where appropriate, an administrative penalty under section 17(4).

(b) The central bank may, for the purpose of paragraph (a), order the complainant or the payment service provider to provide such information as it may require within such time as may be specified in the order, and the complainant or payment service provider shall comply with the order.

(c) The central bank shall, as far as practicable, give a written reply to the complainant within 2 months from the date the complaint is referred to it under subsection (2)(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 a breach of this Act may have been committed, the central bank may conduct an investigation in accordance with section 25.

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

PART V – RULES TO REGULATE SYSTEMS

16. Rules of systems

(1) Every operator of a system shall make written rules for the governance, management and operation of the system, including rules on the

management of liquidity, credit and settlement risk, rules determining the time when a transfer order is final, corporate governance, access, contingency arrangements and operational risk, rights and liabilities of participants and the operator and rules providing for a recovery plan which may be implemented effectively and efficiently.

(2) Any rules made under subsection (1) and any amendment thereto shall be subject to the approval of the central bank and shall comply with the requirements of this Act, and any guidelines, directives or instructions issued by the central bank.

(3) The central bank may vary or revoke any rules made by an operator under subsection (1), where it considers it appropriate to do so, having regard to –

- (a) the public interest;
- (b) the interests of the current participants;
- (c) the interests of potential participants who, in the future, may require access to the system; and
- (d) any other matter the central bank considers relevant.

(4) No operator shall make, or cause to be made, any change in a system which may affect its structure, operation or administration without –

- (a) the written approval of the central bank; and
- (b) giving at least 30 days' notice to the participants.

(5) Notwithstanding subsection (4)(b), the central bank may, in the interest of the public, monetary policy or financial stability, allow an operator to make changes to a system by giving less than 30 days' notice to the participants.

(6) The rules on access to payment systems, clearing systems or settlement systems shall be objective, non-discriminatory and proportionate and shall not inhibit access 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 system, clearing system or settlement system.

PART VI – ONGOING OVERSIGHT AND SUPERVISION

17. Directives, instructions and guidelines

- (1) The central bank may issue directives, instructions and guidelines –
 - (a) with respect to the governance, management or operation of payment 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 this Act.

(2) Any guidelines issued under subsection (1) may provide that it shall apply to all operators, participants or payment service providers, to one or more categories of operators, participants or payment service providers or to any specific operator, participant or payment service provider.

(3) Any person to whom directives, instructions or guidelines are issued shall comply with the directives, instructions or guidelines, as the case may be.

(4) (a) The central bank may impose an administrative penalty on any operator, participant or payment service provider which has failed to comply with any directives, instructions or guidelines issued by the central bank under this Act.

(b) The central bank shall, when determining the quantum of the administrative penalty to be imposed on the operator, participant or payment service provider, consider the gravity of the breach committed by the operator, participant or payment service provider and the length of time during which the breach has been committed.

(c) (i) The central bank may cause to be published, in such form and manner as it deems appropriate, a public notice specifying the administrative penalty which has been imposed on an operator, a participant or a payment service provider.

(ii) A notice published under subparagraph (i) shall not contain any information which the central bank considers to be sensitive.

(d) An administrative penalty imposed under paragraph (a) may be recovered by deduction from any balance held by the operator, participant or payment service provider with, or money owed to, the central bank, as if it were a civil debt.

18. 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, a participant or a payment service provider; or
- (b) liquidator of an operator or a 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 a 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 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 a Court or under any enactment.

(2) Subject to subsection (3), every person referred to in subsection (1) shall, before he begins to perform any duties under this Act –

- (a) in the case of a director who is a resident or a senior officer who is a resident, take an oath of confidentiality in accordance with the form set out in the Second Schedule;
- (b) in the case of a director who is a non-resident or a service provider who is a non-resident, take an oath of confidentiality before the competent authority in the country of residence of the director or service provider, in such manner as the central bank may approve; and
- (c) 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 accordance with the form set out in the Third Schedule.

(3) Subsection (2) shall not apply to a director, an officer, an employee, an agent or a service provider of a financial institution who has taken or is required to take an oath of confidentiality or make a declaration of confidentiality under section 64(1) of the Banking Act.

(4) For the purpose of this section –

“professional relationship” means any relationship between an operator, a participant or a payment service provider and a service provider, of which the central bank has been made aware;

“senior officer” means –

- (a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary, treasurer, chief internal auditor, or manager of a significant business unit, of a financial institution; or
- (b) a person in a similar position and with similar responsibilities as a person referred to in paragraph (a).

19. Outsourcing of activities

(1) A payment service provider or an operator shall not outsource any of its operational functions without the prior written approval of the central bank.

(2) The outsourcing of important operational functions shall not be undertaken in such a way as to materially impair the quality of the internal control of the operator or payment service provider and the ability of the central bank to monitor compliance with their obligations under this Act.

(3) For the purpose of subsection (2), an operational function shall be regarded as important where a defect or failure in its performance may materially impair the continuing compliance of an operator or a payment service provider with the requirements of its licence, its financial performance, or the soundness or continuity of its services.

(4) Where an operator or a payment service provider outsources important operational functions, the central bank shall ensure that the following conditions are complied with –

- (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 licensed in accordance with this Act shall continue to apply and shall not be undermined; and
- (d) none of the other conditions subject to which the licence was issued shall be removed or modified.

(5) The central bank may request an operator or a payment service provider to provide it with such information on the third-party service provider as it deems necessary for the purpose of subsection (1).

(6) No operator or payment service provider shall outsource any of its material activities to a third-party service provider unless the central bank is satisfied that the third-party service provider meets the requirements of subsection (7).

(7) The central bank shall, for the purpose of determining whether a third-party service provider is a fit and proper person, have regard to –

- (a) its probity, integrity, diligence, competence and business experience;
- (b) its previous conduct and activities in business; and
- (c) any conviction for an offence involving fraud or dishonesty.

(8) Any operator or payment service provider which outsources any of its services to a third-party service provider shall ensure that the third-party service provider agrees that its services to the operator or payment service provider shall be subject to regulation and examination by the central bank to the same extent as if those services were being performed by the operator or payment service provider itself on its own premises.

(9) The central bank shall, for the purpose of subsection (8), have access to the full details of the outsourcing arrangement.

20. Use of agents

(1) A payment service provider may appoint an agent to undertake services on its behalf by entering into an agency agreement.

(2) The agency agreement shall provide for –

- (a) non-exclusive use of an agent;
- (b) compliance with anti-money laundering and combating financing of terrorism laws;
- (c) consumer protection mechanisms; and
- (d) any other requirement that the central bank shall prescribe.

(3) A payment service provider shall be liable to its customers for the acts and omissions of its agents, performed within the scope of the agency agreement.

(4) A payment service provider shall publish on its website an updated list of its agents and provide the central bank with an updated list of agents on a quarterly basis.

(5) A payment service provider shall comply with such guidelines as may be issued by the central bank.

21. Liability

(1) Where a payment service provider or an operator relies on third parties for the performance of operational functions, it shall take steps to ensure that this Act is complied with.

(2) An operator or a payment service provider shall be liable for any acts of its employees, or any agent, branch or entity to which activities are outsourced.

22. Compliance with anti-money laundering laws

(1) Every payment service provider or operator shall comply with the obligations and requirements under any enactment, directives, instructions and guidelines relating to anti-money laundering and the prevention of terrorism.

(2) Every payment service provider or operator shall guarantee that any agent or other third party acting on its behalf shall comply with the enactments, directives, instructions and guidelines referred to in subsection (1).

(3) Part VIIIA of the Banking Act shall apply to a licensee.

23. Records

(1) Every payment service provider, operator or participant shall, for the purposes of this Act, keep in relation to its activities, a full and true written

record of every transaction it conducts for a period of at least 7 years from the date the record is made.

- (2) The records referred to in subsection (1) shall include –
 - (a) accounting records showing clearly and correctly the state of its business affairs, explaining its transactions and financial position so as to enable the central bank to determine whether the payment service provider has complied with this Act;
 - (b) the financial statements;
 - (c) account files of every customer, business correspondences exchanged with every customer and records showing, for every customer, at least on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer;
 - (d) proper credit documentation; and
 - (e) such other records as the central bank may determine.
- (3) Every record shall be kept –
 - (a) in written form or on microfilm, magnetic tape, optical disk, or any other form of mechanical or electronic data storage and retrieval mechanism as the central bank may approve;
 - (b) for a period of at least 7 years from the completion of the transaction to which it relates;
 - (c) at the registered office or principal place of business of the payment service provider, or at such other place as the central bank may approve; and
 - (d) for identification purposes, in chronological order or sequential order, as appropriate, in batches of convenient size.

24. Submission of information to central bank

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

(2) Where a payment service provider, an operator or a 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 or participant shall participate or become a member of any system or closed user group specified by the central bank for the automatic collection of data or statistics.

(4) The central bank may appoint one or more of its officers or any other qualified person to examine the accounts, books, records and other documents of any payment service provider, operator or participant, whether they are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism, to assess whether the payment service provider, operator or participant is complying with this Act and with any directives, instructions and guidelines issued by the central bank.

(5) Where a payment service provider, an operator or a participant –

(a) fails to comply with 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 on it an administrative penalty not exceeding 50,000 rupees for each day on which such breach occurs and the penalty may be recovered by deduction from any balance which the payment service provider, operator or participant maintains with, or money owed to, the central bank, as if it were a civil debt.

25. Regular and special examinations

(1) (a) The central bank shall conduct regular examinations of the operations and affairs of every payment service provider, operator or participant of a system at such time as it may determine, including, where the central bank so specifies, of affiliates and overseas branches and affiliates of the payment service provider, operator or participant of a system.

(b) Any examination under paragraph (a) shall be conducted by officers of the central bank or such other duly qualified person as the central bank may appoint in order to enable the central bank to assess whether the payment service provider, operator or participant of a system is complying with

this Act and with any directives, guidelines and instructions issued by the central bank and whether the payment service provider, operator or participant of a system is in a sound financial condition.

(2) Where, in relation to any payment service provider, operator or participant of a system, a special examination appears to be necessary or expedient in order to determine whether the payment service provider, 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 any other qualified person to conduct a special examination in respect of the affairs of the payment service provider, operator or participant of a system and of its affiliates and overseas branches and affiliates, if any.

(3) Any officer or other qualified person appointed by the central bank for the purpose of subsection (1) or (2) shall have the power to –

- (a) access the premises of the payment service provider, operator or participant of a system;
- (b) examine all books, minutes, accounts, records, cash, securities, vouchers and any other document, in the possession or custody of the payment service provider, operator or participant or of its affiliates in Mauritius or its branches and affiliates outside Mauritius;
- (c) 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 payment service provider, operator or participant or of its affiliates in Mauritius or its branches and affiliates outside Mauritius; and
- (d) require, within such time as he may specify, such information and copies of all relevant documents, as 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 qualified person to conduct an examination under subsection (1) or (2) in respect of the affairs of a payment service provider, an operator or a participant of a system and of its affiliates and overseas branches or affiliates, if any, the costs incurred in connection therewith shall be borne by the payment service provider, operator or participant or may be recovered, in whole or in part, by the central bank by deduction from any balance which the payment service provider, operator or participant maintains with, or money owed to, the central bank, 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 this Act.

26. Fees and charges

The central bank may impose charges or fees –

- (a) for the purpose of –
 - (i) meeting its direct and indirect costs incurred in providing oversight, supervisory and regulatory services to payment service providers, operators other than the central bank and participants; and
 - (ii) sections 8 and 9; and
- (b) for the provision of operational services and infrastructure under section 4.

27. Appointment, powers and duties of auditors

(1) A payment service provider or an operator, other than the central bank, shall, at each annual meeting appoint, and at all times, have one or more firms of auditors.

(2) Any firm of auditors appointed under subsection (1) shall be subject to the approval of the central bank.

(3) No firm of auditors appointed under subsection (1) shall be responsible for the audit of a payment service provider or an operator, other than the central bank, for a continuous period of more than 5 years.

(4) Where a firm of auditors has been responsible for the audit of a payment service provider or an operator, other than the central bank, for a continuous period of 5 years or less, that firm shall not be entrusted the responsibility for the audit of the same payment service provider or operator, other than the central bank, before a period of 5 years from the date of termination of its last audit assignment.

(5) The auditor's report shall be made on the financial statements of the payment service provider or operator, other than the central bank.

- (6) The auditor shall, in its report, state whether –

- (a) the financial statements have been prepared in accordance with the International Accounting Standards and any additional prudential requirements specified in guidelines issued by the central bank;
- (b) the financial statements are, in his opinion, complete, fair and properly drawn up;
- (c) the financial statements present a true and fair view of the affairs of the payment service provider or operator, other than the central bank;
- (d) the financial statements have been prepared on a basis consistent with that of the preceding year; and
- (e) the explanations or information called for or given to him by the officers or agents of the payment service provider or operator, other than the central bank, are satisfactory.

(7) The report shall –

- (a) in the case of a payment service provider or operator, other than the central bank, in Mauritius, be read together with the report of its board of directors at its annual meeting of shareholders;
- (b) in the case of a payment service provider or an operator, other than the central bank, incorporated outside Mauritius, be transmitted to its head office; and
- (c) be transmitted to the board of directors of the payment service provider or operator, other than the central bank.

(8) A certified copy of the report together with the audited financial statements and notes thereon shall be sent to the central bank by the payment service provider or operator, other than the central bank, within such period as the central bank may specify and, in any event, not later than one month after it is made.

(9) An auditor may be appointed by the central bank in every case where it does not approve an auditor appointed by a payment service provider or an operator, other than the central bank.

(10) Every auditor appointed under subsection (1) or (9) shall have a right of access, at all times, to all the books, accounts and records of the payment service provider or operator, other than the central bank, whether kept electronically or otherwise, in relation to which he has been appointed and those

of its affiliates in Mauritius and of its branches and affiliates outside Mauritius, if any, and may require from the directors, officers and agents of the payment service provider or operator, other than the central bank, or its affiliates in Mauritius or its branches and affiliates outside Mauritius, if any, such information and explanations as may appear to him to be necessary for the performance of his duties under this section.

(11) Every auditor appointed under subsection (1) or (9) shall be paid by the payment service provider or operator, other than the central bank, and where the appointment is made under subsection (9), the remuneration shall be determined by the central bank.

(12) The central bank may require an auditor to –

- (a) carry out any extended scope audit or other examination and make such recommendations as may be necessary;
- (b) submit to the central bank such additional information in relation to the audit, extended scope audit or other examination as the central bank may determine;
- (c) submit to it a report on any matter specified in paragraphs (a) and (b);
- (d) submit to it a report on the financial and accounting systems and internal controls of the payment service provider or operator, other than the central bank; and
- (e) submit to it a report as to whether or not, in his opinion, measures to counter the possibility of money laundering or the funding of terrorist activities have been adopted by the payment service provider or operator, other than the central bank, and are being implemented in accordance with any enactment relating to anti-money laundering and prevention of terrorism and with guidelines or instructions issued by the central bank.

(13) A payment service provider or an operator, other than the central bank, shall remunerate the auditor in respect of the performance by him of any additional duties under subsection (12).

(14) Where, in the course of the performance of his duties under this Act, an auditor comes across transactions or conditions in a payment service provider or an operator, other than the central bank, affecting its well-being and he has reason to believe that –

- (a) there has been a material adverse change in the risks inherent in the business of the licensee with the potential to jeopardise its ability to continue as a going concern;
- (b) there has been or there is a breach of any of the provisions of this Act or the Companies Act relating to the accounting records and audit;
- (c) measures to counter the possibility of money laundering or the funding of terrorist activities in accordance with any enactment have not been or are not being properly implemented;
- (d) directives, guidelines or instructions issued by the central bank have not been or are not being properly complied with;
- (e) a criminal offence involving fraud or dishonesty has been, is being or is likely to be committed;
- (f) losses have been incurred which reduce the amount paid as stated capital or assigned capital, as the case may be, of the licensee by 50 per cent or more;
- (g) serious irregularities have occurred; or
- (h) he is unable to confirm that the claims on the licensee are still covered by its assets,

he shall immediately inform the central bank of the matter and, as soon as practicable, submit a report thereon to the central bank.

(15) The central bank may, where it considers it desirable or necessary, arrange meetings with auditors of payment service providers or operators, other than the central bank.

(16) No civil, criminal or disciplinary proceedings shall, notwithstanding any other enactment, lie against an auditor by reason of his communicating in good faith to the central bank, whether in response to a request made by the central bank or not, any information or opinion which is relevant to the functions of the central bank under this Act, any other enactment or any directives, guidelines or instructions issued by the central bank.

PART VII – INFRINGEMENTS, REMEDIAL MEASURES AND OFFENCES

28. Infringement and remedial measures

The central bank may take one or more of the following administrative actions with respect to a payment service provider, an operator, a participant or its directors where it determines that one or more entities has or have contravened this Act or any directives, instructions or guidelines issued by the central bank, namely –

- (a) issue a written warning;
- (b) issue a written order to cease such contravention and to take remedial action;
- (c) issue a written order to perform such act as is necessary to comply with this Act or any directives, instructions or guidelines;
- (d) impose on the perpetrator a fine not exceeding 100,000 rupees per day for each day that the contravention continues;
- (e) suspend a director temporarily or remove him from office; or
- (f) suspend or revoke the licence of a payment service provider or the authorisation of an operator, or the authorisation to a participant.

29. Offences

(1) Any person who contravenes section 8 or 9 shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and, where the offence is committed a second time, to a fine not exceeding 2 million rupees.

(2) Any person who fails, refuses, neglects or unreasonably delays to comply with any requirement under section 25(3) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

(3) Any person who, in complying with a requirement under section 25(3), furnishes any information or produces any book, record or other document which the person knows to be false in any material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 6 months.

(4) A director, a manager or an employee of a payment service provider, an operator or a participant who –

- (a) obstructs the proper performance of an auditor in accordance with this Act or inspection of the central bank by an inspector authorised by the central bank;
- (b) damages, destroys, alters or falsifies accounts, books or records of a payment service provider, an operator or a participant; or
- (c) with intent to deceive, makes false entries or fails to enter material items in the accounts of a payment system, clearing system or settlement system,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 6 months.

(5) Any person who contravenes any other provision under this Act or any directives, instructions or guidelines issued under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding one year.

30. 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.

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

(3) (a) The central bank may cause to be published, in such form and manner as it may determine, 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 ACCOUNTS, FINALITY AND COLLATERAL ARRANGEMENTS

31. Settlement accounts

(1) Every participant in a system shall –

- (a) open and maintain settlement accounts in the books of the operator, including the maintenance of minimum balances, on such terms and conditions as the 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) 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) A participant who intends to terminate the appointment of his settlement agent shall notify the operator in writing not less than 7 days before the date of termination of the appointment.

(4) A settlement agent shall inform the system operator of the termination of an arrangement with an indirect participant.

(5) No settlement account of any participant, or any amount credited on such account, or destined to be credited on such account, shall be liable to attachment, garnishee proceedings or seizure by any party other than the central bank or settlement agent in the books of which the settlement account is held.

32. Finality of transfer orders, netting and close-out netting

(1) A system operator shall specify the rules of the system to determine the finality of transfer orders entered into in accordance with this Act.

(2) The rules referred to in subsection (1) shall provide for the moment of entry and of irrevocability of transfer orders entered into the system.

(3) A transfer order shall be –

- (a) valid and legally enforceable by and against an operator or a participant in a system and binding on third parties;
- (b) final and shall not be revoked, reversed or set aside by any person from the time such transfer order is determined to be final under the rules referred to in subsection (1).

(4) Notwithstanding any other enactment and without prejudice to judicial proceedings to determine the validity of a contract underlying transfer

orders outside a system, no order shall be made at any time by any Court for the rectification or stay of such transfer orders in a system.

(5) Transfer orders which –

- (a) have entered into a system after a Court has made an order for bankruptcy or winding-up of a participant in a system or a resolution for the voluntary winding-up of such participant has been passed; and
- (b) are executed on the same date of the order or resolution,

shall be exceptionally valid and legally enforceable by and against the operator or participant in the system and binding on third parties if, after the time of settlement, the settlement agent, the central counter-party or the clearing house can prove that it was not aware, or could not have been aware, of the order or resolution.

(6) A netting arrangement shall be valid and enforceable and an operator or a participant in a system shall do what is permitted or required under the netting arrangement in order to give effect to the netting arrangement.

(7) Notwithstanding the Insolvency Act, where a Court makes an order for bankruptcy or winding-up of a participant in a system or a resolution for the voluntary winding-up of such participant is passed –

- (a) the operator of the system may effect the netting of all obligations owed to or by the participant, incurred before or on the day on which the Court makes the order for bankruptcy or winding-up of the participant or the resolution for the voluntary winding-up of the participant is passed;
- (b) the obligations that are netted shall be disregarded in the bankruptcy or winding-up proceedings;
- (c) any net obligation owed to the participant that is not discharged shall be provable in the bankruptcy or winding-up, as the case may be;
- (d) any net obligation owed by the participant that is not discharged shall be payable to the participant and may be recovered for the benefit of the creditors; and
- (e) the netting made by the operator of the system and any payment made by the participant pursuant thereto shall not be voidable in the bankruptcy or winding-up proceedings.

(8) Any payment or settlement obligations owed to an operator or a participant in a payment system under the netting arrangement that is not discharged –

(a) shall be provable in insolvency proceedings; and

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

(9) A transfer order or netting that is final and irrevocable under subsections (3) and (5) and any netting arrangement that is valid and enforceable under subsections (4) and (6) shall be given effect notwithstanding anything to the contrary in any other enactment.

(10) 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 is inconsistent with or contrary to this section.

33. Collateral for payment and settlement obligation

(1) Notwithstanding any other enactment, any asset of a participant which was, before the issue of any order for the winding-up of that participant, provided by that participant to the central bank, or an operator, as security for a loan in respect of its settlement obligations, may be utilised 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 participant.

(2) Notwithstanding any other enactment relating to insolvency or bankruptcy affecting participants in a system or the system itself, section 33 shall extend to financial collateral arrangements and to any collateral perfected prior to the commencement of a winding-up is valid, enforceable and binding on third parties, including the liquidator of the participant.

(3) Where a security is pledged by a participant in favour of an operator or another participant and the relevant entries have been made by the operator in its books and records, 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 2150-1 to 2150-6 of the Code Civil Mauricien shall apply to the operator as if it were a bank established under the Banking Act, provided that, in case of default by the participant, the operator may forthwith proceed with the realisation and sale of the security under articles 2129-5 and 2129-6 of the Code Civil Mauricien without the need 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 in a payment system, clearing system or 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 system, clearing system or settlement system shall not be affected by insolvency or bankruptcy proceedings or any other law similar in purpose and effect.

(6) Unless otherwise agreed by the parties and notwithstanding any other enactment, the realisation, appropriation or liquidation of collateral under a financial collateral arrangement shall take effect or occur without any requirement that prior notice shall be given to, or consent be received from, any person.

(7) Subsection (6) shall be without prejudice to any applicable law requiring that the realisation, appropriation or liquidation of collateral be conducted in a commercially reasonable manner.

PART IX – PROTECTION OF SYSTEMS AND COLLATERAL

34. Law of insolvency

(1) The law of insolvency shall have effect in relation to –

- (a) a transfer order effected through a system; and
- (b) any action taken under the rules of a system with respect to transfer orders,

subject to this Part.

(2) This Part shall apply to bankruptcy, judicial management and winding-up proceedings in respect of a participant.

(3) Notwithstanding that rights or liabilities arising from transfer orders are or may be dealt with in bankruptcy, judicial management or winding-up proceedings, this Part shall not apply to such proceedings in respect of any person who is not a participant.

35. Precedence over law of insolvency

(1) Notwithstanding the Insolvency Act or any other enactment, none of the following shall be regarded as invalid on the ground of inconsistency with the law for distribution of the assets of a person on bankruptcy or winding up, or on the appointment of a receiver, receiver and manager or an equivalent officer over any of the assets of a person –

- (a) a transfer order;
- (b) any disposition of property pursuant to such an order;
- (c) any default arrangements of a system; or
- (d) the rules of a system as to the settlement of transfer orders not dealt with under its default arrangements.

(2) The powers of a relevant office holder and the powers of a Court under the law of insolvency shall not be exercised in such a way as to prevent, interfere with or circumvent –

- (a) the settlement of a transfer order in accordance with the rules of a system not dealt with under its default arrangements; or
- (b) any action taken under the system's default arrangements.

(3) A debt or other liability arising out of a transfer order which is the subject of action taken under default arrangements may not be proved in a bankruptcy or winding-up until the completion of the action taken under default arrangements.

(4) A debt or other liability which, by virtue of subsection (3), may not be proved shall not be taken into account for the purposes of any set-off under the law of insolvency, until the completion of the action taken under default arrangements.

36. Default arrangements

(1) This section shall apply with respect to any net sum owed by or to a defaulter on the completion of the action taken under default arrangements.

(2) Notwithstanding the Insolvency Act, where a Court has made an order for bankruptcy or winding-up of a participant or a resolution for the voluntary winding-up of a participant has been passed, the net sum owed by or to a defaulter on the completion of any action taken under default arrangements shall be –

- (a) provable in the bankruptcy or winding-up or, as the case may be, payable to the relevant office holder; and
- (b) taken into account, where appropriate, under sections 92, 305 and 309 of the Insolvency Act.

**PART X – WINDING-UP AND RECEIVERSHIP OF SYSTEM
OPERATOR OR PARTICIPANT**

37. Notification of insolvency

(1) Where an operator –

- (a) is insolvent or is likely to become insolvent;
- (b) is unable or is likely to be unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors,

it shall immediately notify the participants of the payment system, clearing system or settlement system.

(2) Where a participant in a payment system, clearing system or settlement system –

- (a) is insolvent or is likely to become insolvent;
- (b) is unable or is likely to be unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors,

it shall immediately notify the operator which shall notify the other participants.

(3) Notwithstanding the Insolvency Act, the commencement of a receivership, administration or winding-up in respect of a participant shall –

- (a) not have retroactive effect on the subsisting rights and obligations of another participant arising from, or in connection with, its participation in a system;
- (b) only affect those rights and obligations of another participant arising from, or in connection with, its participation in a system, from the time when the operator of the system was notified of the commencement of the receivership, administration or winding-up of the participant.

(4) No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a Court, administrative agency, liquidator or otherwise, shall limit or delay application of otherwise enforceable netting arrangements in accordance with this Act.

38. Notification of winding-up or receivership

(1) No operator of, or participant in, a payment system, clearing system or settlement system shall be wound up or placed into receivership except after notification to the central bank and the Financial Services Commission.

(2) Where an operator or a participant is wound up, the applicant shall lodge with the central bank and the Financial Services Commission, and serve on any other settlement agent that requires notification, a copy of –

- (a) the application for winding-up when it is made; and
- (b) the subsequent winding-up order which shall record the date on which and the time when the order is made,

on the same business day or not later than at the start of the next business day, 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.

(4) Where a participant is voluntarily wound up, with the approval of the central bank or the Financial Services Commission, as the case may be, the participant shall inform all other participants of the winding-up resolution within 24 hours of the winding-up resolution taking effect.

(5) The central bank or the Financial Services Commission, as the case may be, shall notify relevant domestic and foreign system operators and participants about the voluntary winding-up of a participant on the same business day, or not later than at the start of the next business day, that the winding-up resolution takes effect.

39. Prohibition

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

40. System Rules to bind liquidators

(1) Notwithstanding any other enactment, where an operator of, or a participant in, a 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, shall be binding on the liquidator or receiver, as the case may be, of the operator or participant concerned in respect of any payment or settlement obligation –

- (a) which has been determined through netting before 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 an operator subsequent to a winding-up order for the purpose of –

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

41. Preservation of rights

(1) Except where expressly provided, this Act shall not limit, restrict or otherwise affect –

- (a) any right, title, interest, privilege, obligation or liability of a person resulting from the underlying transaction in respect of a transfer order which has been entered into a system; or
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

(2) Nothing in subsection (1) shall be construed so as to require –

- (a) the unwinding of any netting done by the operator of a system, whether pursuant to its default arrangements or otherwise;
- (b) the revocation of any transfer order given by a participant which is entered into a system; or

- (c) the reversal of a payment or settlement made under the rules of a system.

42. Conflict of laws

(1) In the event of the insolvency of a foreign participant, the following shall be governed by Mauritius laws –

- (a) the rights and obligations arising from, or in connection with, the participation of such participant in the system;
- (b) the legal nature and proprietary effects of book entry securities collateral;
- (c) the requirements for perfecting a financial collateral arrangement relating to book entry securities collateral and the provision of book entry securities collateral under such an arrangement, in a manner effective against third parties;
- (d) a person's title to or interest in book entry securities collateral; and
- (e) the steps required for the realisation of book entry securities collateral.

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

PART XI – PROVISIONS AFFECTING CHEQUES

43. Presentation of cheque by electronic means

Cheque image and presentation of cheque for payment by electronic means shall be governed by section 44A of the Bills of Exchange Act and any guidelines, rules, instructions or directives issued by the central bank.

PART XII – ELECTRONIC FUND TRANSFERS AND ELECTRONIC MONEY

44. Electronic fund transfers

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

(2) Notwithstanding subsection (1), any information stored, disseminated or used by 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.

45. Electronic money

(1) In addition to the general requirements provided for in this Act for obtaining a licence as a payment service provider, an applicant shall be required to meet the following conditions –

- (a) the provision of electronic money shall not include the provision of credit;
- (b) electronic money shall be issued in exchange for the equivalent of Mauritius rupees acceptable by the central bank;
- (c) electronic money shall never expire;
- (d) any points or rewards accruing under loyalty schemes cannot be converted into electronic money;
- (e) statistics on electronic money loaded and redeemed values shall be provided in the periodic reports;
- (f) 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;
- (g) clearing and settlement mechanisms shall facilitate provision of final settlement not more than 24 hours after a payment instruction has been initiated;
- (h) issuers shall be obliged to redeem electronic money value in central bank money, at par, upon request; and
- (i) 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 and any amount which has not been reclaimed for at least 7 years from the date the funds were received in exchange, where the customer fails to respond within 6 months, to a letter sent by the service provider by

registered post to the customer's last known address, shall be deemed to have been abandoned and shall, without further formality, be transferred forthwith by the payment service provider to the central bank to be dealt with in accordance with the procedures for abandoned funds in the Banking Act.

(3) The funds received in exchange for electronic money shall be safeguarded by setting up appropriate measures to protect them, including –

- (a) placing the funds in a trust account, administered by a trustee, solely for the benefit of the customers;
- (b) covering the funds by insurance or a comparable guarantee from an insurer or a bank.

(4) The central bank may –

- (a) prescribe the category of persons that may issue electronic money; and
- (b) issue directives regarding the issuance of electronic money, the operation of a trust account and the appointment of trustees.

46. Limited network

(1) Subject to subsections (2) and (3), this Act shall not apply to payment services based on instruments that may be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of payment service providers or for a limited range of goods or services.

(2) A service provider shall, before taking up an activity referred to in subsection (1), send a written notification to the central bank containing a description of the services offered and submit a request for recognition as a limited network, where –

- (a) the total value of payment transactions executed over the preceding 12 months exceeds the amount specified by the central bank; or
- (b) the total number of users of the service exceeds the number specified by the central bank.

(3) Within one month from the date of receipt of a request for recognition, the central bank shall take a decision on the basis of the criteria referred to in subsection (1) to recognise the activity as a limited network or not and inform the service provider accordingly.

PART XIII – MISCELLANEOUS

47. Admissibility of computer entries and electronic copy of document

Notwithstanding any other enactment, a photographic image such as a film, microfilm, microfiche or computer images of original documents such as cheques or other payment instruments, securities, certificates of deposits, account ledgers and electronic messages exchanged in the context of a financial collateral arrangement 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.

48. Settlement of disputes

(1) Any dispute arising between an operator and a participant or between participants in a payment system in relation to any matter arising from the operation of the 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 attempt to settle the matter amicably within 7 business days.

(3) Where the parties are unable to settle the matter amicably under subsection (2), they may attempt to settle it within a further period of 10 business days with the assistance of a mediator whose costs shall be shared equally by the parties.

(4) Where the parties are unable to settle the matter, the central bank may, at the request of the parties, refer the matter to a single arbitrator, and the provisions of the Code de Procédure Civile relating to arbitration shall apply.

(5) The arbitrator shall decide on the matter referred to him under subsection (4) within one month from the date of his appointment or such further period as the parties may determine.

49. Protection from liability

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, agent or examiner appointed by the central bank, in the discharge, in good faith, of its or his functions under this Act.

50. 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, for personal gain, of any information relating to the affairs of a participant, acquired in the performance of the person's duties under this Act or regulations made thereunder, shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees or double the amount of the person's gain, whichever is greater and imprisonment for a term not exceeding 6 months.

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

51. Regulations

(1) The central bank may, for the purposes of this Act, make such regulations as it thinks fit.

- (2) Any regulations made under subsection (1) may provide for –
- (a) the authorisation, licensing, regulation, supervision and oversight of payment service providers and operators of payment systems;
 - (b) the form and manner for applying for an authorisation to operate a payment system and for a licence to act as a payment service provider;
 - (c) the manner in which an authorisation or a licence may be suspended or revoked;
 - (d) any matter relating to payment orders and money transfers executed by electronic messages;
 - (e) the protection of users of payment instruments;
 - (f) the imposition of fees or charges;
 - (g) the amendment of the Schedules; and
 - (h) any matter which may be prescribed under this Act.

(3) Notwithstanding subsection (1), the Financial Services Commission may, in accordance with its powers and functions under this Act and for the

purpose of giving effect to this Act, make regulations with respect to any matter falling under its purview under this Act.

(4) Any regulations made under this section shall not require the approval of the Minister.

52. Consequential amendments

(1) The Bank of Mauritius Act is amended –

(a) in section 26 –

(i) in subsection (4) –

(A) in paragraph (a), by inserting, after the words “under this Act”, the words “or the National Payment Systems Act 2018”;

(B) by inserting, after paragraph (aa), the following new paragraph –

(ab) the Bank from publishing, in whole or in part and at such time as it may decide, any information or data furnished to it under section 24 of the National Payment Systems Act 2018;

(ii) by adding the following new subsection –

(6) For the purposes of this section –

“banking laws” includes the National Payment Systems Act 2018.

(b) by repealing sections 48(4) and 48A.

(2) The Banking Act is amended, in section 64(1), by repealing paragraph (b) and replacing it by the following paragraph –

(b) For the purpose of paragraph (a) –

(i) “banking laws” includes the National Payment Systems Act 2018;

- (ii) “professional relationship” means any relationship between a financial institution and a service provider, of which the central bank has been made aware.

(3) The Securities (Central Depository, Clearing and Settlement) Act is amended, by repealing sections 13(1) and 14.

(4) The Financial Services (Other Financial Business Activity) Rules 2008 is amended, in rule 3(c), by adding the words “conducted exclusively outside Mauritius”.

53. Transitional provisions

(1) Any person, other than the central bank, which is acting as a payment service provider or operating a payment system on the commencement of this Act, may continue to do so for a period of 6 months from the date of commencement of this Act.

(2) Any licence for the conduct of payment intermediary services issued by the Financial Services Commission to any person offering payment services in Mauritius shall lapse –

- (a) 12 months after all the sections of this Act have come into operation; or
- (b) on such date as may be prescribed.

(3) Any person, other than the central bank, that wishes to continue to act as a payment service provider or to operate a payment system, as the case may be, shall, not later than 90 days from the commencement of this Act, apply for a licence or an authorisation, as the case may be, under this Act.

(4) The central bank shall, on receipt of an application under subsection (3), determine the application before the expiry of the period referred to in subsection (1) or (2), as the case may be.

54. 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 different sections of this Act.

FIRST SCHEDULE

[Section 2]

PAYMENT SERVICES

1. Services enabling cash to be placed on a payment account, including all operations required for operating a payment account.
 2. Services enabling cash withdrawal from a payment account, including all operations required for operating a payment account.
 3. Execution of payment transactions, including transfers of funds on a payment account with the payment service provider of the user or with another payment service provider, including the execution of –
 - (a) direct debits and one-off direct debits;
 - (b) payment transactions through a payment card or a similar device;
 - (c) credit transfers and standing orders.
 4. Execution of payment transactions where the funds are covered by a credit line for a payment service user, including the execution of –
 - (a) direct debits and one-off direct debits;
 - (b) payment transactions through a payment card or a similar device;
 - (c) credit transfers and standing orders.
 5. Issue of payment instruments and/or acquiring of payment transactions.
 6. Money remittance.
 7. Payment initiation services.
 8. Account information services.
 9. Any other services functional to the transfer of money, including the issuance of electronic money and electronic money instruments, but excluding the provision of solely online or telecommunication services or network access.
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SECOND SCHEDULE

[Section 18(2)(a)]

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 Systems Act
2018 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 powers under the National Payment Systems Act 2018 or when lawfully
required to do so by a Judge in Chambers or any Court of law or under any
enactment.

Sworn/solemnly affirmed/declared* by
the abovenamed before me at
..... this day of
.....

Before me
.....
Master and Registrar
Supreme Court

**Delete as appropriate*

THIRD SCHEDULE

[Section 18(2)(c)]

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 Systems Act 2018
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 powers under
the National Payment Systems Act 2018 or when lawfully required to do so by
a Judge in Chambers or any Court of law or under any enactment.

Made before me

.....
Signature of declarant

.....
Signature

.....
Name of Chief Executive
Officer/Deputy Chief Executive
Officer

.....
Date
