

PAYMENT SYSTEMS AND SERVICES ACT

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PAYMENT SYSTEMS AND SERVICES ACT

An Act to provide for the regulation and supervision of payment services and oversight of payment systems in Trinidad and Tobago and for matters incidental and related thereto.

PART I PRELIMINARY

1. Short Title

This Act may be cited as the Payment Systems and Services Act.

2. Interpretation

(1) In this Act –

“access” in relation to a payment system, means an entitlement or eligibility to be a participant in the payment system;

“access regime” means a regime for access to a payment system by any participant, operator, settlement agent or other person as imposed by the Central Bank under section 29;

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

“acquirer” means a payments entity or a significant or controlling shareholder of a payments entity that either alone or with an affiliate, relative or connected party, is entitled to exercise ten per cent or more of the voting power at any general meeting of a licensee or the holding company of a licensee;

“advertisement” includes every form of advertising whether in a publication, or by display or notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematographic films, or by way of sound broadcasting, television, or telephonic, digital or electronic communication, but does not include a prospectus as defined in the Companies Act, issued by a company, and references to the issue of an advertisement shall be construed accordingly;

“affiliate” means in relation to a given company (“C”), means—

(a) a company which is or has at any relevant time been—

(i) a holding company of C;

(ii) a holding company of a holding company referred to in subparagraph (i);

(iii) a subsidiary of a holding company referred to in subparagraphs (i) or (ii);

(iv) a subsidiary of C; or

(v) a subsidiary of a subsidiary referred to in subparagraph (iv); and

(b) where company C is a licensee, any company over which the licensee and any connected party or connected party group of the licensee has control, and the word “affiliation” shall be construed accordingly;

“agent” means a person who acts on behalf of a payment service provider to the extent permitted by the Act and "agency" shall be construed accordingly;

“amalgamation” means the amalgamation of two or more companies pursuant to the provisions of the Companies Act;

“associate” has the meaning assigned to it in the Companies Act;

“Board” means the Board of Directors of the Central Bank as defined in the Central Bank Act;

“business day” means Monday to Friday except a public holiday or special festival where financial institutions and public offices are closed for business;

“banking business” or “business of banking” has the meaning assigned to it in the Financial Institutions Act;

“business of a financial nature” has the meaning assigned to it in the Financial Institutions Act;

“capital” means minimum capital or additional capital;

“Central Bank” means the Central Bank of Trinidad and Tobago established under the Central Bank Act;

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

“clearing house” means an entity that provides clearing or settlement services and includes the Central Bank;

“clearing system” means a set of procedures whereby participants present and exchange information relating to the Transfer of funds or securities to other participants through a centralised system or at a single location; and includes mechanisms for the calculation of the position of participants on a bilateral or multilateral basis with a view to facilitating the settlement of their obligations;

“closed loop payment services” means services based on specific payment instruments that can be used only in limited ways as specified by the Central Bank, including services that –

- (a) allow the user to acquire goods or services offered only by the issuer;
- (b) allow the user to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
- (c) may be used only to acquire a very limited range of goods or services; or
- (d) are provided at the request of, or by, the Government or a public sector entity, for specific social or tax purposes or to acquire specific goods or services from suppliers which have a commercial agreement with the Government, public sector entity, or their agent;

“close-out netting arrangement” means—

- (a) an arrangement under which, if a particular event happens, whether through the operation of netting or otherwise—
 - (i) 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 an amount; and
 - (ii) an account is taken of what is due from 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; or
- (b) such other arrangement as may be prescribed;

“connected party”, in relation to a licensee, has the meaning assigned to it in the Financial Institutions Act subject to the modification that it applies to a licensee under this Act;

“Consolidated Fund” has the meaning assigned to it in the Exchequer and Audit Act;

“control” means the power of a person, either alone or with an affiliate or relative or connected party or other person, or by an agreement or otherwise, to directly or indirectly—

- (a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of licensee, company or unincorporated body;
- (b) elect a majority of the directors of a licensee, company or unincorporated body;
- (c) ensure that the business and affairs of a licensee, company or unincorporated body are conducted in accordance with his wishes; or
- (d) exercise dominant influence over the conduct of the business and affairs of a licensee, company or unincorporated body, and the terms “controlling interest”, “controlling shareholding” and “controlling shareholder” shall be construed accordingly;

“designated payment system” means a payment system that is designated by the Central Bank under section 56;

“designated payment service provider” means a payment service provider that is designated by the Central Bank under section 57;

“director” has the meaning assigned to it by section 2 of the Companies Act;

“electronic money” or “e-money” means monetary value represented by a claim on the issuer, which is –

- (a) stored electronically, including digitally or magnetically, or on any other tangible or intangible device;
- (b) issued on receipt of funds of an amount not less than the monetary value issued for the purpose of making payment transactions; and
- (c) accepted as a means of payment by persons, other than the issuer,

so however that the funds referred to in paragraph (b) above shall not be treated as a deposit under the Financial Institutions Act;

“exempt person” means any person listed under Part I of the Second Schedule who is exempted from obtaining a licence pursuant to section 24;

“excluded service” means any service listed under Part II of the Second Schedule which is excluded from obtaining a licence pursuant to section 24;

"external administration" means any receivership, winding-up or reorganisation of a participant or party under the Companies Act, the Financial Institutions Act, this Act or any other written law, or in the case of a foreign participant, under the written law of the jurisdiction of that participant;

“external administrator” means the person appointed to take control of the assets or undertaking of a participant or party under external administration;

“financial collateral” means any asset or third-party commitment that has low credit, liquidity and market risk and is acceptable to the Central Bank which is to be reserved as collateral for securing or obtaining funds to facilitate settlement of a participant’s payment obligations in a payment system, and includes cash, treasury bills, commercial paper and money market funds;

“financial collateral arrangements” means pledges and Transfer of Title Agreements, including repurchase agreements, which apply to financial collateral;

“financial institution” means a company which carries on or used to carry on all or any aspects of banking business or business of a financial nature as defined in the Financial Institutions Act;

“financial reporting standards” mean the International Financial Reporting Standards (IFRS) or such other accounting standards as may be prescribed in this Act and Regulations thereto or specified by the Central Bank;

“fintech” means technologically enabled financial innovation that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services;

“FIU” means the Financial Intelligence Unit of Trinidad and Tobago established under the Financial Intelligence Unit of Trinidad and Tobago Act;

“funds” means notes and coins issued by the Central Bank, scriptural money or electronic money;

“Governor” means the Governor of the Central Bank of Trinidad and Tobago;

“holding company” means a company that owns more than fifty per cent of the voting shares in another company;

“ICATT” means the Institute of Chartered Accountants of Trinidad and Tobago;

“IFRS” means International Financial Reporting Standards issued by the International Accounting Standards Board as adopted by ICATT;

“innovation facilitator structure” means a structure set up and operated under the control of the Central Bank for purposes of promoting innovation in payments and includes a regulatory sandbox;

“insolvency event” means any of the following procedures in relation to a company-

- (a) the making of a wind-up order;
- (b) the passing of a resolution for voluntary winding-up;
- (c) the entry of the company into administration;
- (d) the appointment of a receiver or manager of the company’s property;
- (e) the making of an order pursuant to the bankruptcy and insolvency legislation; or
- (f) the making of any arrangement for the benefit of creditors.

“insurer” means has the meaning assigned to it in the Insurance Act;

“licence” means a licence issued under this Act;

“licensee” means a payment system operator or a payment service provider who has been issued a licence under this Act and includes, where applicable, a payment system operator and a payment service provider deemed to be licensed under this Act pursuant to section 16(1);

“minimum capital” means: -

- (a) paid-up share capital including the balance in a share premium account;
- (b) capital reserves;
- (c) retained earnings; and
- (d) any other item as may be specified by the Central Bank from time to time, in such amount as prescribed.

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

“national payment system” means all the services, entities and infrastructures associated with sending, receiving and the processing of orders of payment or transfer of money in domestic or foreign currencies and includes-

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

“netting” means an agreed offsetting of transfer orders, positions or obligations by trading partners or participants resulting in one net claim or one net obligation per participant or trading partner;

“officer” means—

- (a) in relation to a company or unincorporated body, a chief executive officer, chief operating officer, chief fintech officer, chief information technology officer, chief information security officer, president, vice-president, corporate secretary, treasurer, chief financial officer, chief accountant, chief auditor, chief investment officer, chief compliance officer or chief risk officer and any other individual designated as an officer by its articles of incorporation or continuance, by-laws or other constituent document, or resolution of the directors or members;
- (b) any other individual who performs functions for the company or other unincorporated body similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an officer;

“participant” means a person who participates in a payment system;

“payments entity” means a licensee, a financial institution, a mobile network operator, a settlement agent or any other entity that carries on a business that includes the provision of a payment service, the operation of a payment system, the provision of a technology service or fintech service or any other related service as may be prescribed by the Minister by Order;

“payment initiation service” means a service to initiate a payment instruction at the request of the payment service user with respect to a payment account held at another payment service provider;

“payment account” means an account held in the name of one or more users which is used for the execution of payment transactions;

“payment instruction” means an instruction sent by the payer or payee directing the execution of a payment transaction;

“payment instrument” means every paper-based, electronic or other means of effecting the transfer or withdrawal of funds and includes, but is not limited to, cheques, funds transfers initiated by any device such as automated teller machines, points of sale, internet or telephone or any payment cards, including those involving storage of electronic money

“payment service” means any service listed in the First Schedule;

“payment service provider” means a person licensed to provide a payment service listed in the First Schedule;

“payment system” means any organised set of infrastructure, persons, institutions, payment instruments, procedures, rules, standards and technologies allowing the transfer of funds, between or among participants including by means of payment instruments, or the discharge of obligations on a gross or net basis and includes interbank and non-interbank payment systems;

“payment system operator” or “operator” in relation to a payment system, means the Central Bank or a person that is, either independently or with other persons, licensed or authorised under the Act to operate a payment system and develop payment system rules;

“payment transaction” means a transaction initiated by a payer or a payee for placing, transferring, or withdrawing funds;

“prudential criteria” means the criteria and standards established under this Act and the Regulations, for the purpose of setting limits and constraints on licensees for the protection of users and participants and potential users and participants and for ensuring the safety, soundness, reliability and efficiency of payment systems and the stability of the financial system;

“relative” has the meaning assigned to it in the Financial Institutions Act;

“related group” has the meaning assigned to it in the Financial Institutions Act;

“regulatory sandbox” means a closed environment designed and controlled by the Central Bank for the testing of innovative payment products, systems or services;

“Relevant Securities Account” means the securities account in which the securities are held by the owner or the holder, or, if the securities are subject to a Financial Collateral Arrangement, the securities account in which the securities are held in the possession or under the control of the collateral taker or a person acting on behalf of the collateral taker;

“scriptural money” means all money in book-entry form and therefore not circulating in the form of banknotes and coins;

“securities” has the meaning assigned in the Securities Act;

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

“settlement account” means an account that a participant uses to hold funds or securities, that is debited or credited by a payment system in order to settle transfer orders processed within such system;

“settlement agent” means the person providing the settlement accounts through which the transfer orders within the payment system are settled;

“significant shareholder” means a person who either alone or with one or more affiliates or relatives or connected parties is entitled, whether by agreement or otherwise, to directly or indirectly exercise twenty

per cent or more of the voting power at any general meeting of the licensee and the term “significant interest” and “significant shareholding” shall be construed accordingly;

“supervisory information” means a record created or obtained by the Central Bank in connection with the performance of its responsibilities under this Act, such as a record concerning supervision, licensing or examination of a licensee or enforcement actions with respect to a licensee, and includes any communication or correspondence between the licensee and the Central Bank arising from its performance of such responsibilities;

“technology service” means an information technology service which, without entering at any time into possession or contact with funds or, without issuing or administering any means of payments at any time, supports the provision of payment services, including but not limited to processing and storage of data, trust and privacy protection services, data and entity authentication, information technology and communication network provision, provision and maintenance of terminals and devices used for payment services and the provision of hardware and software; and does not include payment initiation services and account information services;

“testing permit” means a permit to test a payment service or a payment system in a regulatory sandbox granted pursuant to section 13 and the “testing permit holder” shall be construed accordingly;

“Transfer of Title Agreement” means any arrangement or agreement, including a repurchase agreement, under which a collateral provider transfers title of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of obligations;

“transfer order” means an order issued in accordance with the rules of a payment system by a payment system participant to another payment system participant to transfer to the recipient funds or the title or claim to financial instruments or an order by which a participant assumes or discharges payment obligations as defined by payment system rules;

“user” means a person who is a customer of a payment service provider or who uses or has used or is entitled to use any of the payment services provided by the payment service provider in the capacity of a payer, a payee or of both;

“user funds” means any funds —

- (a) that is received by a payment service provider from, or on account of, a user in respect of the provision of payment services; and
- (b) that the payment service provider —
 - (i) continues to hold at the end of each business day; or
 - (ii) has held at any time, and has issued specific e-money in exchange for, but does not include any of the following:
- (c) any funds paid to the payment service provider to reduce the amount owed to the payment service provider by that user;

- (d) any funds that are repaid by the payment service provider to that user;
- (e) any funds which are paid to the payment service provider, or which the payment service provider has informed that user will be used, to defray any fee or charge imposed by the payment service provider for providing any payment service to that user;
- (f) any funds that are paid to, and received by, a recipient in accordance with the instructions of that user to the payment service provider;
- (g) any funds that are paid to a recipient in accordance with the instructions of that user to the payment service provider, whether-or not the recipient has received that funds; or
- (h) any funds paid to any other person that is entitled to the funds.

(2) For the purposes of this Act, an entity is insolvent where it resides, carries on business or has assets in Trinidad and Tobago, and its liabilities to creditors provable as claims under the Bankruptcy and Insolvency Act amount to not less than four thousand dollars or such other amount as may be prescribed under this Act and —

- (a) it is for any reason unable to meet its obligations as they generally become due;
- (b) it has ceased paying its current obligations in the ordinary course of business as they generally, become due; or
- (c) the aggregate of its assets is not, at a fair valuation, sufficient or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing,

whether or not the entity has been adjudged bankrupt, and “insolvency” shall be construed accordingly.

3. Inconsistency

- (1) In the case of any inconsistency or conflict with this Act and any other written law, with the exception of the Central Bank Act, the provisions of this Act shall prevail and take precedence over such written law, unless expressly provided to the contrary in this Act or such written law.
- (2) The Central Bank shall be consulted on any initiative of legislation or regulation which may have an impact on the soundness, efficiency and modernisation of payments in Trinidad and Tobago.

4. Scope of Act

Subject to section 15, this Act applies to all persons, whether or not established or resident in Trinidad and Tobago, who—

- (a) provide any class of payment service in Trinidad and Tobago; or
- (b) operate a payment system in Trinidad and Tobago.

5. Central Bank to administer this Act

- (1) The Central Bank shall be responsible for the general administration of this Act, the supervision and oversight of licensees, and shall have the powers and duties conferred on it by this Act and the Central Bank Act.

- (2) The Governor shall keep the Minister informed of all developments and activities which affect the provision of payment services and the operation of payment systems in Trinidad and Tobago.
- (3) The Central Bank shall provide a written report annually to the Minister with respect to the performance of the Central Bank in meeting its objectives under this Act.

6. Objectives

- (1) The primary objective of the Central Bank in respect of licensees is to maintain confidence in, and promote the safety, soundness, reliability, and efficiency of the national payment system and the stability of the financial system in Trinidad and Tobago.
- (2) Without prejudice to the primary objective as specified in subsection (1), the other objectives of the Central Bank shall be to -
 - (a) promote the existence of a fair market for payment systems and payment services; and
 - (b) promote access to the national payment system in the public interest.

PART II FUNCTIONS AND POWERS OF THE CENTRAL BANK

7. Functions

- (1) With a view to achieving the objectives of this Act the Central Bank shall regulate, supervise and oversee the national payment system, and exercise any other functions necessary to implement this Act.
- (2) The Central Bank may, in the exercise of its functions under this Act, take into account any relevant international standards or principles.

8. General powers

For the purpose of achieving the objectives of the Act and carrying out its functions under this Act, the Central Bank shall have the powers and duties conferred on it by this Act and the Central Bank Act and shall have the power to –

- (a) collect, compile, publish on a timely basis statistics related to the national payment system, so long as the publication does not disclose details regarding any particular licensee, its users or participants;
- (b) prohibit any person from acting as a director and officer of a licensee in the circumstances as prescribed;
- (c) prohibit a person or entity from holding shares in a licensee in the circumstances as prescribed and seek an order for the disposal of such shares;
- (d) approve any amalgamation involving a licensee in the circumstances as prescribed;
- (e) monitor emerging, innovative and planned payment services, payment systems and technologies; and
- (f) take such steps, or undertake any other ancillary or incidental action as it deems necessary for the implementation of the Act.

9. Delegation of functions and powers

- (1) The Governor or the Central Bank may delegate in writing any of their functions, powers or duties to any qualified officer, employee or agent of the Central Bank.
- (2) The Central Bank shall appoint, upon such terms and conditions as it may think fit, such persons as may be considered necessary to assist in the performance of its duties.
- (3) The Central Bank shall exercise any of its functions, powers and duties under this Act, through any qualified officer, employee or agent.
- (4) The Central Bank shall, whenever it considers necessary, cause arrangements for the services of an auditor or any other competent person to be made available for the purpose of advising the Central Bank on matters arising under this Act.
- (5) The Board may delegate in writing any of its functions, powers or duties to a committee appointed by the Board comprising a minimum of three members of the Board.

10. Confidentiality, co-operation and information sharing

- (1) No director, officer or employee of the Central Bank or person acting under the direction of the Central Bank shall disclose any information regarding the business or affairs of a licensee, any of its affiliates or any of its agents or any information regarding a participant, user or other person dealing with a licensee, that is obtained in the course of official duties.
- (2) Notwithstanding subsection (1) or any other written law, the Central Bank, or a person authorised in writing by the Central Bank, may disclose the information referred to in subsection (1) in accordance with a Court order or to -
 - (a) any local or foreign regulatory or supervisory agency or body, for regulatory purposes;
 - (b) any entity providing compensation or insurance for users and participants for services provided by payment system operators and payment service providers in Trinidad and Tobago for purposes related to its operations;
 - (c) the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago;
 - (d) any person designated under any other written law authorizing the disclosure of such information; or
 - (e) ICATT or other professional association pursuant to clause 37(10), if the Central Bank is satisfied that the information will be treated as confidential by the agency or body to whom it is disclosed and used strictly for the purpose for which it is disclosed and not otherwise.
- (3) The Central Bank may establish arrangements for such co-operation or information-sharing, including entering into a memorandum of understanding with any person mentioned in subsection (2), but the

absence of a memorandum of understanding shall not prevent the disclosure of information by the Central Bank to such person.

- (4) A director, officer or employee of the Central Bank or any person acting under the direction of the Central Bank may disclose, at such times and in such manner as it deems appropriate, such information obtained by the Central Bank under this Act as the Central Bank considers ought to be disclosed for the purposes of the analysis of the financial condition of a licensee and that -
 - (a) is contained in any return, statement or other document required to be filed with the Central Bank pursuant to this Act and the Regulations and Guidelines made under this Act; or
 - (b) has been obtained as a result of any industry-wide or sectoral survey conducted by the Central Bank in relation to an issue or circumstance that could have an impact on the financial condition of payment systems operators and payment service providers generally, or the national payment system.
- (5) Where the Central Bank determines that the disclosure of further information concerning a licensee in addition to that referred to in subsection (4) would be in the best interest of—
 - (a) the national payment system;
 - (b) the financial system of Trinidad and Tobago; or
 - (c) the participants, users, agents, creditors or shareholders of such licensee as the case may be,the Central Bank or any person acting under the direction of the Central Bank may disclose such information by publication in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago or by any other means that the Central Bank considers appropriate.
- (6) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular individual to be ascertained from it.
- (7) No action shall lie against the Central Bank or any person acting under the direction of the Central Bank for the disclosure of information authorised under this section.
- (8) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.
- (9) Notwithstanding any provision in this section, the Central Bank shall notify the public where action has been taken under section 83 and may publish information where administrative or criminal sanctions have been imposed under this Act.

11. Establishment of the National Payment Systems Council to collaborate

- (1) The Central Bank may establish a National Payment Systems Council to facilitate dialogue and collaboration on the development of the national payment system.
- (2) The Central Bank may issue guidance and instructions on the composition and appointment of members of the National Payment Systems Council, its meeting procedures and all other matters relevant to its operations and functions.

12. Establishment of innovation facilitator structures

- (1) The Central Bank may set up and operate, directly or indirectly, innovation facilitator structures.
- (2) The Central Bank shall specify the general criteria, minimum requirements and procedure for the operation of, and participation in, these structures.

13. Testing permit to test within a regulatory sandbox

- (1) Where a person is desirous of providing a payment system or service in Trinidad and Tobago, he may apply to the Central Bank, or the Central Bank may require him to apply, for a testing permit to test the system or service in a regulatory sandbox and shall pay the applicable non-refundable fee set out in the Third Schedule.
- (2) For the purposes of subsection (1) the Central Bank may impose terms and conditions which may include the extent and nature of the operations, the period of testing, the size of its user base, and limits on the monetary values that may be transferred or funded using the tested service or products.
- (3) Sections 18(2)(a) to (i) shall apply *mutatis mutandis* to a testing permit.
- (4) The Central Bank may by notice in writing vary the terms and conditions of a testing permit as it considers appropriate or based on the request of the testing permit holder.
- (5) Following the testing, monitoring and review of the payment system or service in a regulatory sandbox
 - (a) where the Central Bank is of the view that the payment system or service-
 - (i) succeeds at testing within the testing period; and
 - (ii) is not likely to endanger, disrupt, damage, injure or impair the national payment system, the financial system or the interests of participants or users,

the Central Bank may inform the holder of the testing permit that he may apply to the Central Bank pursuant to section 17 for a licence to operate in Trinidad and Tobago or he shall notify the Central Bank and obtain its non-objection pursuant to section 21 to offer the new or materially different product or service; or

- (b) where the Central Bank is of the view that the payment system or service-

- (i) fails the testing within the testing period whether as a result of failures in information technology systems and software, internal control processes, consumer protection, data protection or for any other reason; or
- (ii) is likely to endanger, disrupt, damage, injure or impair the national payment system, the financial system or the interests of participants or users,

the Central Bank shall inform the testing permit holder that the payment system, product or service may not be operated or offered in Trinidad and Tobago and revoke the testing permit accordingly.

- (6) Notwithstanding subsection (5)(b), the Central Bank may at any time revoke a testing permit, by notice in writing after considering any representations made, where the testing permit holder:
- (a) breaches any term or condition of the testing permit;
 - (b) submits information that is materially false, misleading or inaccurate, or has concealed or failed to disclose material facts in the application;
 - (c) contravenes any applicable law administered by the Central Bank or any applicable law in Trinidad and Tobago or elsewhere which may affect the testing permit holder's integrity and reputation;
 - (d) is undergoing or has gone into liquidation;
 - (e) breaches data security and confidentiality requirements;
fails to effectively address any technical defects, flaws or vulnerabilities in the payment system or service which gives rise to recurring service disruptions or fraud incidents; or
 - (f) any other reason determined by the Central Bank.
- (7) The Central Bank reserves the right to revoke a testing permit without prior notice where there is an urgent need to protect the national payment system, the financial system or the interests of participants or users, and the general public and the testing permit holder may submit written representations within twenty business days of the effective date of revocation for the Central Bank's consideration.

PART III

LICENSING OF PAYMENT SERVICE PROVIDERS AND PAYMENT SYSTEM OPERATORS

14. Licensing of payment service providers and payment system operators

- (1) Except as otherwise expressly provided in this Act, no person may provide any class of payment service listed under the First Schedule or operate a payment system in Trinidad and Tobago unless that person is a company incorporated in Trinidad and Tobago and licensed by the Central Bank for that purpose.
- (2) Notwithstanding subsection (1), a person who only provides services categorised as ancillary services as described in the First Schedule, is not required to be licensed under this Act.

- (3) A licence may contain such terms and conditions as the Central Bank considers advisable taking into account the particular circumstances of the proposed licensee.
- (4) A person other than a licensee shall not—
 - (a) describe himself as a licensee; or
 - (b) so hold himself out as to indicate or be reasonably understood to indicate that he is a licensee.
- (5) A person who contravenes subsections (1), (3) or (4), commits an offence and is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years.
- (6) The Central Bank may direct the controlling shareholders and significant shareholders of a licensee to form a separate company incorporated in Trinidad and Tobago to provide any class of payment service or operate a payment system.
- (7) The Central Bank may require the controlling shareholders and significant shareholders of a person applying for a licence to form a separate company incorporated in Trinidad and Tobago to provide any class of payment service or operate a payment system as a condition for obtaining a licence under this Act.
- (8) Subject to subsections (6) and (7), a person may be licensed as both a payment service provider and a payment system operator.
- (9) Where a licensee provides a payment service and operates a payment system and the Central Bank does not require or direct that a separate company be formed under subsections (6) or (7), that licensee shall maintain separate records and accounts in respect of each activity and shall in addition to its obligations under this Act, submit financial statements and returns to the Central Bank in such format and at such time as may be required by the Central Bank.

15. Provision of a payment service and operation of a payment system in Trinidad and Tobago

- (1) In determining whether a person, not established or resident in Trinidad and Tobago, is providing a payment service or operating a payment system in Trinidad and Tobago, the Central Bank may consider whether that person engages in any one or more of the following activities:
 - (a) issuing or causing to issue advertisements targeted to persons resident or normally resident within Trinidad and Tobago;
 - (b) allowing the linking of users' accounts with accounts held with institutions in Trinidad and Tobago licensed under the Financial Institutions Act, the Cooperative Societies Act or the Securities Act;
 - (c) operating a website or mobile application that is tailored to Trinidad and Tobago either through the use of a domain name, legal tender, currency or other identifier associated specifically with Trinidad and Tobago; or

- (d) such other activities as the Central Bank may specify, whether carried on directly by a person or through another person acting with the actual or apparent authority or on behalf of the first person.
- (2) A person shall not be treated as providing a payment service or operating a payment system in Trinidad and Tobago if the only reason for so treating the person is that the user or participant is resident or normally resident within Trinidad and Tobago and paragraphs (a) to (d) of subsection (1) do not apply.

16. Transition provisions for companies previously licensed or registered

- (1) Subject to subsection (2), a person registered as a payment service provider pursuant to the Central Bank Act or licensed as a payment system operator under the Financial Institutions Act or registered as an e-money-issuer under the E-Money Issuer Order at the commencement of this Act shall be deemed to be licensed under this Act.
- (2) A person shall only be deemed to be licensed under subsection (1) in respect of the classes of payment services or the payment systems that the person has carried on in Trinidad and Tobago within the period of twelve months prior to the commencement of this Act and the person shall only be licensed under this Act in respect of the classes of payment services and the payment systems that it was registered or licensed to carry on during that twelve-month period.
- (3) For the avoidance of doubt, all persons deemed to be licensed under this Act shall continuously meet all licensing requirements under this Act and the Regulations, including capital requirements and fit and proper criteria as prescribed and shall comply with all terms and conditions of its licence.
- (4) Notwithstanding subsection (3), any person deemed to be licensed shall within six months of the commencement of this Act, submit a plan approved by its board of directors to the Central Bank to bring such person into compliance with the provisions of this Act and any Regulations made thereunder by the end of twenty-four months from the commencement of this Act.
- (5) The Central Bank may impose such conditions as it considers necessary on a licensee which is deemed licensed under this Act where —
 - (a) the licensee fails to submit or implement a plan approved by its board under subsection (3); or
 - (b) the Central Bank considers it appropriate so that that the licensee may meet the requirements for licensing under this Act by the end of twenty-four months after the commencement of this Act.
- (6) For the avoidance of doubt, if on the coming into force of this Act or at any time during the transitional period referred to in subsection (3), a licensee has satisfied the requirements for licensing under this Act, the licensee shall continue to satisfy those requirements from that period onward.
- (7) A licensee that contravenes subsection (3) commits an offence.

17. Application for licence

- (1) A person may apply to the Central Bank for a licence to provide a payment service or operate a payment system in accordance with prescribed procedures and requirements and the application shall be accompanied by -
 - (a) a non-refundable application fee as set out in the Third Schedule,
 - (b) the information and documents as may be specified by the Central Bank or prescribed; and
 - (c) any other information required by the Central Bank.
- (2) Where a licensee intends to –
 - (a) provide an additional or different class of payment service as specified in the First Schedule, in the case of a licensed payment service provider; or
 - (b) operate an additional payment system, in the case of a licensed operator, the licensee shall, apply to the Central Bank and the application shall be accompanied by a non-refundable application fee as set out in the Third Schedule and such information and documents as required under section 17 and as may be prescribed.
- (3) A person who certifies the information on an application under this section which contains or is found to contain any false particulars commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

18. Power to approve or refuse application for licence

- (1) The Central Bank may, on an application duly made in accordance with section 17, and after being provided with all such information and documents as it may require under the Regulations, and after being satisfied that this Act and any Regulations have been complied with, approve or refuse the application.
- (2) A company shall not be granted a licence unless the Central Bank is satisfied that –
 - (a) the company is incorporated in Trinidad and Tobago;
 - (b) at least one director or officer of the company is ordinarily resident in Trinidad and Tobago;
 - (c) the company satisfies such prudential criteria, including adequate capital and liquidity, as specified by the Central Bank or prescribed;
 - (d) the company is not part of a larger organisational or group structure that would hinder its effective supervision;
 - (e) the business plan for the future conduct and development of the business is sound and feasible;
 - (f) the company satisfies such operational requirements as the Central Bank may specify;
 - (g) the company's acquirers, controlling shareholders, significant shareholders, directors, officers of the company, and those who occupy such other positions as may be specified by the Central Bank, are fit and proper persons in accordance with any criteria as prescribed;

- (h) the acquirers, controlling shareholders and significant shareholders have been granted a permit in accordance with section 52;
 - (i) the company has adequate internal controls and risk management mechanisms, including but not limited to adequate controls for financial, anti-money laundering/counter financing of terrorism/proliferation financing risks, operational, settlement, liquidity, information technology, cyber-risk, cyber security, business resilience, business continuity, third-party risks and data protection and privacy controls for user or participant information;
 - (j) the public interest will be served by the granting of the licence; and
 - (k) the company meets such other criteria for the grant of the licence as the Central Bank considers relevant.
- (3) When considering an application to be licensed as a payment service provider or payment system operator, the Central Bank may take into account the expected contribution of the activity to financial innovation and development in Trinidad and Tobago, the interests of participants and users and the impact on the national payment system and the financial system, generally.
- (4) When considering an application to be licensed as a payment service provider, the Central Bank may take into account the interoperability or potential interoperability of the proposed product or service.
- (5) Where the decision is made to refuse an application, the Central Bank shall notify the applicant in writing of its rejection and shall give reasons to the applicant.
- (6) Where a licensee has applied to carry on an additional class of payment service or operate an additional payment system under subsection (2), the Central Bank-
- (a) may approve the application or refuse the application; and
 - (b) where the application is approved, shall amend the licence accordingly and may require the licensee to increase its capital, provide additional liquidity or satisfy such additional prudential criteria and other requirements as the Central Bank considers necessary.
- (7) A licence issued under this Act shall be valid until it is revoked.

19. Capital and liquidity requirements

- (1) A licensee shall maintain a minimum capital in the amount and in such form as prescribed.
- (2) A licensee shall maintain adequate liquidity in such form as prescribed.
- (3) Notwithstanding subsections (1) and (2), the Central Bank may direct a licensee to—
 - (a) provide additional capital; or
 - (b) provide additional liquidity,in such forms and amounts, based on the particular circumstances of the licensee.

20. Prohibition from carrying on certain businesses and activities

- (1) Subject to this Act, a licensee shall not-

- (a) provide any class of payment service or operate any payment system other than the class of payment service or the payment system for which it is licensed under this Act; and
 - (b) engage in or carry on any business other than the provision of payment services or the operation of a payment system, as the case may be.
- (2) For the avoidance of doubt, a payment service provider who has a licence to provide e-money accounts, issue electronic money and provide electronic wallet services shall not carry on a business of granting any credit facility, including the business of moneylending under the Moneylenders Act.
- (3) A payment service provider shall not –
- (a) utilise users’ funds to finance any activity or any business carried on by the payment service provider;
 - (b) co-mingle the users’ funds with any other funds including the funds of the payment service provider;
 - (c) buy, sell or deal in foreign currency except if authorised to buy and sell foreign currency under the Exchange Control Act as an ancillary service to money or funds transfer services;
 - (d) issue or allow joint accounts;
 - (e) pay interest on the user funds;
 - (f) issue or redeem e-money in currencies other than the Trinidad and Tobago dollars where the payment service provider is licensed to provide e-money accounts; and
 - (g) conduct any other activity that the Central Bank may specify.
- (4) A licensee that contravenes this section commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and, in the case of a continuing offence, to a further fine of thirty thousand dollars for every day or part of a day during which the offence continues.
- (5) In this section, “credit facility” includes loans, advances, lines of credit, commitment letters, stand-by facilities, letters of credit and any other facilities or arrangements whereby a licensee agrees to provide funds, financial guarantees or commitments to a user, or the licensee undertakes on behalf of a user, a financial liability to another person.

21. New products or services

- (1) Where a licensee wishes to offer to the public a new product or service or a product or service that is materially different from its existing products and services, within the class of payment services for which it is licensed, or where a licensee has successfully tested such new or materially different product or service, the licensee shall, notify the Central Bank in writing, providing a detailed description of the product or service and any documentation in connection therewith.

- (2) The Central Bank shall within seven business days of receipt of the notification and all documentation including any further documentation requested by it in writing, issue a notice acknowledging receipt of the notification and all related documentation.
- (3) Where the Central Bank objects to the product or service it shall issue to the licensee the appropriate notice within sixty business days of the acknowledgment referred to in subsection (2) and for the avoidance of doubt, time shall not start to run under this subsection until the licensee has provided all information and document requested by the Central Bank and the Bank has confirmed receipt of the information is in accordance with subsection (2).
- (4) Where the licensee does not receive the notice referred to in subsection (3), within the time prescribed, the licensee may proceed to offer the product or service to the public.
- (5) Notwithstanding that a licensee has offered a new or materially different product or service in accordance with subsection (4), the Central Bank may subsequently prohibit the licensee from continuing to offer the new or materially different product or service, if in the opinion of the Central Bank the continued use of the new or materially different product or service will be fraudulent, unjust, imprudent, or not in the public interest and the Central Bank shall give written reasons for the prohibition.
- (6) A licensee that offers a new or materially different product or service to the public after receiving a notice of objection or prohibition from the Central Bank commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars.

22. List of licensees

- (1) Not later than the thirty-first day of March in each year, the Central Bank shall publish and update in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago, and on its website a list of –
 - (a) licensed payment service providers and licensed payment system operators; and
 - (b) exempt payment service providers and exempt payment system operators.
- (2) The Central Bank shall make available to any person on request and on payment of such fee, if any, as it may reasonably require, a list of the licensees licensed either at the date of the request or at such earlier date, being not more than thirty days earlier, as may be specified in the request.
- (3) Within seven days of a person ceasing to hold a licence the Central Bank shall publish notice of that fact in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago and on the website of the Central Bank.

23. Annual fees

- (1) A licensee shall pay to the Central Bank all applicable annual fees as set out in the Third Schedule in such manner as the Central Bank may specify.

- (2) All fees set out in the Third Schedule may be reviewed periodically by the Central Bank and may be amended by the Minister, by Order, after receiving the recommendations of the Central Bank.
- (3) The annual fees referred to in subsection (1) shall be payable not later than the thirty first day of January in each year or such later date as may be specified by the Central Bank, except that where a licence is issued, or an agent is appointed, after the first quarter in any year, the fees payable shall be calculated on a pro rata basis in respect of the first year of the licence or agent's appointment.

24. Exempt persons and excluded services

- (1) Subject to sections 17 (4), (5) and (6) of the Financial Institutions Act, the persons listed under Part I of the Second Schedule are exempted from the requirement to have a licence under this Act.
- (2) Notwithstanding subsection (1), a financial institution that provides e-money accounts, issues electronic money or provides electronic wallet services shall comply with sections 42 to 46 of that Act, the Payment Systems and Services (Safeguarding of User Funds) Regulations, the Payment Systems and Services (E-Money) Regulations and any other requirements relating to these services, as may be prescribed under any written law and such compliance shall be enforced in accordance with the provisions of this Act and be subject to the penalties under this Act.
- (3) This Act does not apply to the excluded services listed under Part II of the Second Schedule.
- (4) Notwithstanding subsections (1) and (3), the Central Bank may in relation to a person exempted under paragraphs (2)(b) and (c) of Part I of the Second Schedule and a person conducting excluded services under Part II of the Second Schedule-
 - (a) request information from and enquire into or examine the affairs of any such person;
 - (b) specify such requirements as it deems necessary which such exempted person shall implement or adhere to in operating a payment system,in which case the compliance with a request under paragraph (a) and with a requirement under paragraph (b) shall be enforced in accordance with the provisions of this Act and be subject to the penalties under this Act.
- (5) Within thirty business days of the coming into force of this Act, a person exempted under paragraph (2) of Part I of the Second Schedule shall notify the Central Bank in writing of its services.
- (6) An exempt person listed under the Second Schedule shall notify the Central Bank in writing of its services and shall give the Central Bank thirty business days prior notice in writing of the introduction or provision of any exempt payment service.

(6) An exempt person or excluded service that contravenes this section shall be guilty of an offence.

25. Continuous licensing requirements

(1) A licensee shall continuously meet all licensing requirements under this Act and the Regulations including capital requirements and fit and proper criteria as prescribed and comply with all terms and conditions of its licence.

(2) A licensee that contravenes subsections (1) commits an offence.

26. Payment system rules

(1) An operator of a payment system shall, with the prior approval of the Central Bank, make the payment system rules for the governance, management and operation of the payment system, including at a minimum rules on -

- (a) the management of liquidity, credit and settlement risk;
- (b) the determination of the time when a transfer order and a settlement is final;
- (c) the participation in the payment system;
- (d) corporate governance;
- (e) access;
- (f) conditions for suspension or exclusion of participants;
- (g) contingency arrangements and operational risk; and
- (h) the rights and liabilities of participants and the operator.

(2) The rules shall comply with the requirements of this Act, any Regulations hereunder and any guidelines or directions issued by the Central Bank.

(3) A payment system operator shall-

- (a) disclose payment system rules and procedures and any amendments thereto to participants of the payment system within ten business days after the approval of the Central Bank of such rules or amendments;
- (b) publish relevant rules and key procedures as prescribed and as specified by the Central Bank in the manner and within the time specified by the Central Bank;
- (c) publish in a clear and conspicuous manner all fees and charges for the individual services that the payment system operator offers in the form and manner specified by the Central Bank; and
- (d) publish or disclose any other matter required by the Central Bank in a form and in a manner specified by the Central Bank.

27. Approval and Amendment of Payment System Rules

- (1) The Central Bank may, in approving any proposed rules, require matters to be included in, varied or omitted from the rules of a payment system.
- (2) The Central Bank may or revoke any rule of the operator made under section 26 where it considers it appropriate to do so, having regard to -
 - (a) the public interest;
 - (b) the interests of the participants in the system;
 - (c) the interests of persons who, in the future, may desire access to the system; and
 - (d) any other matters the Central Bank considers relevant.
- (3) An operator shall not amend any rule made under section 26 or cause any change in the payment system which would affect the structure, operation or administration of the payment system without -
 - (a) obtaining the written approval of the Central Bank; and
 - (b) giving prior notice of not less than twenty business days to the participants after the written approval of the Central Bank.
- (4) Notwithstanding subsection (3), the Central Bank may, in the interest of monetary policy, the safety and efficiency of the payment system, financial stability or in the public interest -
 - (a) make changes to the rules of a payment system; or
 - (b) permit a payment system operator to amend a rule of that operator's payment system,without giving notice to the participants or requiring the operator to give notice to the participants under subsection (3)(b).

28. Access to payment system

- (1) An operator of a payment system shall -
 - (a) make rules on access to a payment system which are objective, fair, non-discriminatory and proportionate; and
 - (b) not inhibit access more than is necessary to safeguard against risks, including settlement risks, credit, liquidity, systemic risks and the risk that deficiencies in information systems or internal controls could result in unexpected losses.

29. Power of the Central Bank to impose an access regime

- (1) Without prejudice to section 28, the Central Bank may, by notice in writing impose an access regime or vary or revoke an existing access regime, in respect of a licensed payment system on one or more of the following persons or classes of persons, on such terms and conditions as the Central Bank may consider appropriate:
 - (a) a participant or class of participants of that payment system;
 - (b) an operator or a class of operators of that payment system;
 - (c) a settlement agent or class of settlement agents of that payment system; and

- (d) any other person or class of persons that determines access to that payment system.
- (2) In considering whether to impose, vary or revoke an access regime under subsection (1) in respect of a payment system, the Central Bank shall have regard to the following matters:
- (a) whether the imposition, variation or revocation of that access regime would be in the public interest;
 - (b) the interests of the current participants and operator of that payment system;
 - (c) the interests of persons who, in the future, may require or desire access to that payment system; and
 - (d) such other matters as the Central Bank may consider to be relevant.
- (3) The Central Bank, in imposing an access regime under subsection (1), shall seek to ensure that the access regime is fair and not discriminatory.
- (4) The person or class of persons on whom an access regime has been imposed shall ensure at all times that the access regime complies with the notice issued under section (1) and any instruction or direction issued by the Central Bank in relation to the access regime.
- (5) An access regime in respect of a payment system ceases to be in force if —
- (a) the notice imposing or varying the access regime under this section provides for an expiry date, and that date is reached;
 - (b) the Central Bank revokes the access regime; or
 - (c) the payment system concerned ceases to exist or operate.

PART IV

SUPERVISION AND OVERSIGHT OF LICENSEES

30. Obligation of licensees to notify Central Bank of certain events

- (1) A licensee shall without delay notify the Central Bank of the occurrence of any of the following events:
- (a) any civil or criminal proceeding instituted against the licensee;
 - (b) an event or irregularity that impedes or prevents access to, or impairs the usual operations of the licensee;
 - (c) an intention to make a material change to the nature of the operating rules, access, settlement procedure or activities of a designated payment system;
 - (d) any disciplinary action taken against the licensee by any regulatory authority;
 - (e) any significant change to the supervisory requirements imposed on the licensee by any regulatory authority;
 - (f) any significant or material change to the operations of the licensee; or
 - (g) any other event that the Central Bank may specify.

- (2) Where, subsequent to the licensing of a person under this Act there is any change –
- (a) in the particulars specified in the application of the person;
 - (b) in any information which the person is required to furnish to the Central Bank, including in the particulars of any prescribed documents;
 - (c) of a director or officer of a licensee,
- the licensee shall, within five business days of such change, notify the Central Bank in writing of the change.
- (3) Pursuant to subsection (2)(c), a licensee shall submit documents and information in the form and manner specified by the Central Bank when submitting notice of a change in a director or officer.
- (4) A person that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding one year or both and, in the case of a continuing offence, to a further fine not exceeding thirty thousand dollars for every day or part of a day during which the offence continues.
- (5) A licensee -
- (a) shall not alter its articles of incorporation or continuance, by-laws or any other constituent documents under which it is incorporated, continued or constituted without notification to and approval of the Central Bank; and
 - (b) subject to subsection (1)(a), shall submit copies of the altered articles of incorporation or continuance, by-laws or any other constituent documents under which it is incorporated, continued or constituted.
- (6) A licensee that contravenes subsection (5) commits an offence.

31. Power to require information

- (1) The Central Bank may, in writing, require a –
- (a) licensee, its servant or its agent;
 - (b) holding company, controlling shareholder, significant shareholder or acquirer of a licensee;
 - (c) subsidiary of a licensee;
 - (d) company or unincorporated body that is an affiliate of the licensee or an associate of the licensee;
 - (e) company that is a member of a related group of which a licensee is a member; and
 - (f) present or former director, officer, auditor or controlling shareholder or significant shareholder of any person referred to in paragraphs (a) to (e),
- to furnish such information in such form and in such manner and within such period of time as the Central Bank may require.
- (2) The Central Bank may, in writing –
- (a) from time to time, require verification from the auditor of a licensee or any other company or unincorporated body referred to in subsection (1) with respect to the accuracy of information

submitted pursuant to that subsection and may itself verify the accuracy of such information by inspecting such licensee, its holding company or other company or unincorporated body;

- (b) require an officer or any other person in charge of a licensee or its holding company to supply, within such time as may be specified, any information relating to the licensee or any person over which the licensee, controlling shareholder of the licensee, significant shareholder of the licensee, or the directors or officers of the licensee have control.
- (3) The Central Bank may exercise the powers under subsection (1) in relation to any person who is or is about to be elected or appointed as a director or officer of a licensee, to determine whether the person is a fit and proper person in accordance with any criteria as prescribed, to hold the particular position which he holds or to which he is about to be elected or appointed.
- (4) A person whom the licensee proposes to elect as a director or appoint as an officer shall be entitled to refuse to supply the documents requested by the Central Bank pursuant to subsection (3) if he no longer intends to stand for election or take up the appointment and has so advised the Central Bank.
- (5) The Central Bank may, by notice in writing, require any shareholder of a licensee to transmit to it written information—
- (a) as to whether that shareholder holds any voting shares in the licensee as beneficial owner or as trustee; and
 - (b) if he holds them as trustee, the person for whom he holds them either by name or by such other particulars sufficient to enable those persons to be identified, and the nature of their interest, and the shareholder shall comply with the requirement within such time as may be specified in the notice.
- (6) Subject to subsection (4), a person who fails to supply information or produce the documents required under this section within the time specified in such request commits an offence.
- (7) A person who provides false or misleading information under this section commits an offence and is liable, on summary conviction, in the case of a licensee to a fine of six hundred thousand dollars and in the case of a director or officer of a licensee, to a fine of six hundred thousand dollars and to imprisonment for two years.

32. Submission of statements and other information

- (1) Every licensee shall deliver to the Central Bank within such period as may be specified by the Central Bank, and in such form and manner as the Central Bank may from time to time approve, returns containing statements of—
- (a) its assets and liabilities;
 - (b) its earnings and expenses; and

- (c) any other financial data that the Central Bank may require.
- (2) The Central Bank may apply reporting requirements under this section to a licensee on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign—
- (a) subsidiaries of the licensee; and
 - (b) companies in which the licensee is a significant shareholder.
- (3) No statement or return shall in any case be required in respect of the affairs of any particular user or participant of a licensee.
- (4) Every licensee shall submit to the Central Bank at the end of every quarter a list of—
- (a) beneficial and nominee shareholders who hold directly or indirectly shareholdings of five per cent or more of its issued share capital; and
 - (b) any agreement with respect to the voting of shares of the licensee.
- (5) A person who contravenes subsection (4) commits an offence.
- (6) The Central Bank may request that a licensee submit the lists referred to in subsection (4) at any time.
- (7) A person who becomes the holder of five per cent or more of the issued share capital of a licensee shall, within one month of becoming such holder, notify the Central Bank.

33. Information not to be disclosed

- (1) No licensee, holding company, controlling shareholder, significant shareholder or affiliate of a licensee, and no director, officer, employee or agent of a licensee, holding company or affiliate who receives information relating to the business or other affairs of a user or participant of the licensee or of any other person shall disclose the information unless—
- (a) the disclosure is required under compulsion of law;
 - (b) there is a duty to the public to disclose the information;
 - (c) the interest of the licensee requires disclosure; or
 - (d) the user or participant expressly or impliedly consents to the disclosure.
- (2) No person who obtains information referred to in subsection (1) directly or indirectly from a person referred to in subsection (1) shall disclose the information without the consent of the person to whom it relates and the person from whom it was received.
- (3) Notwithstanding subsection (1), a licensee or a person authorised by the licensee may, with the consent of the user, participant or other person concerned, exchange information with another licensee.

(4) This section does not apply to information which at the time of disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Supervisory information is the property of the Central Bank and may not be disclosed by a licensee or any other person to whom the information is made available without the prior written consent of the Central Bank.

(6) A person who discloses information in contravention of this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.

34. Financial statements

(1) Every licensee shall within three months after the close of its financial year, submit to the Central Bank financial statements prepared in accordance with financial reporting standards and duly audited by a certified auditor, on an individual basis as determined by the Central Bank in accordance with this section.

(2) The Central Bank may apply reporting requirements under subsection (1) to a licensee on a consolidated basis to include where applicable, all the domestic and foreign—

- (a) subsidiaries of the licensee; and
- (b) companies in which the licensee is a significant shareholder.

(3) A person who contravenes subsections (1) and (2) commits an offence.

(4) The Central Bank may stipulate reporting requirements in addition to those referred to in subsection (1).

(5) The Central Bank may require for supervisory purposes that a licensee exclude a subsidiary or other company in which it has a significant shareholding from the consolidated financial statements required under subsection (2).

(6) A licensee shall submit on the request of the Central Bank in respect of any—

- (a) subsidiary of the licensee or company in which the licensee is a significant shareholder;
and
- (b) member of the related group which the holding company or controlling shareholder of a licensee controls,

audited financial statements signed by two directors of that company or unincorporated body, as the case may be.

(7) A person who contravenes subsection (6) commits an offence.

- (8) Every consolidated audited financial statement to be submitted by a licensee shall be signed by two directors of the licensee.
- (9) If in the opinion of the Central Bank, the information contained in the audited financial statements of the licensee or in the audited financial statements of the companies referred to in subsection (5), indicates the likelihood of insolvency of any one of those companies, the Central Bank may, after consultation with the licensee, require the licensee to take such measures as the Central Bank considers necessary to prevent the financial condition of the company from affecting the licensee and, in particular, may require that the—
- (a) stated capital of the company be increased;
 - (b) company or its business or part of its business be sold, transferred or otherwise disposed of;
 - (c) licensee cease to make any advances or incur any credit exposures to the company; or
 - (d) licensee make special provision for any potential losses which in the opinion of the Central Bank, the company is likely to incur where such company has credit exposures with the licensee.
- (10) A licensee that fails to comply with any measure imposed under subsection (9) commits an offence and is liable to a fine of five million dollars and in the case of a continuing offence, to a fine of five hundred thousand dollars per day for each day that the offence continues.

35. Appointment of auditor

- (1) For the purposes of this section a “qualified accountant” means an accountant that is a practising member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago or is the holder of a valid practising certificate from such other professional association of accountants or auditors as the Central Bank may approve.
- (2) A licensee shall appoint annually, a qualified auditor satisfactory to the Central Bank to be the auditor of the licensee.
- (3) An auditor is qualified to be the auditor of a licensee if—
- (a) he is a qualified accountant who is independent, within the meaning of subsection (4), of the licensee; and
 - (b) has knowledge and experience in the audits of licensee (as the case may be) satisfactory to the directors of a licensee, and the Central Bank.
- (4) For the purposes of this section—
- (a) independence is a question of fact;
 - (b) a qualified accountant shall be deemed not to be independent of a licensee if he—

- (i) is a connected party of the licensee or of any of their respective affiliates;
 - (ii) has any business relationship with the licensee or with any of their respective connected parties, other than in his capacity as the auditor thereof;
 - (iii) beneficially owns or controls, directly or indirectly, five per cent or more of the shares or other securities of the licensee or of any of their respective affiliates; and
 - (iv) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of any affiliate of the licensee within two years immediately preceding the appointment of the qualified accountant, other than a subsidiary or affiliate acquired through a realisation of security.
- (5) A licensee shall not appoint a qualified accountant to be the auditor of the licensee pursuant to subsection (2) unless—
- (a) the licensee has served written notice on the Central Bank of its intention to make such appointment; and
 - (b) the Central Bank has failed to serve on the licensee a written notice of objection to the appointment within one month of the date on which the licensee served notice of its intention to make the appointment pursuant to paragraph (a).
- (6) A person who contravenes subsection (5)(a) commits an offence.
- (7) A qualified accountant shall not be the audit partner having primary responsibility for the audit of a licensee for a period of more than five consecutive years.
- (8) The auditor of a licensee shall not provide to that licensee—
- (a) book-keeping or other services related to its accounting records or financial statements;
 - (b) financial information systems design and implementation services;
 - (c) actuarial services;
 - (d) internal audit outsourcing services; or
 - (e) such other non-audit related services as the Central Bank may prescribe.
- (9) If a licensee fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall appoint such auditor at the expense of the licensee.

36. Duties of auditor to report to Board

- (1) Where the auditor of a licensee discovers, in the ordinary course of an audit, any irregular transactions or conditions which, in the opinion of the auditor meets one or more of the following criteria—
- (a) any change in accounting policy or any presentation of or any failure to present facts or figures which, in the opinion of the auditor, has the effect of misrepresenting the financial position of the licensee;

- (b) transactions that have a significant or material impact on the financial position of the licensee;
- (c) transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardise the financial viability of the licensee;
- (d) transactions or conditions indicating that the licensee has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise its financial viability;
- (e) transactions or conditions which contravene any provision of this Act or any Regulations made hereunder relating to capital adequacy or liquidity requirements; and
- (f) any other transactions or conditions which, in the opinion of the auditor, should be included in a report under this section,

the auditor shall report such findings in writing to the chief executive officer and the board of directors of the licensee, and to the Central Bank.

- (2) Where the auditor of a licensee discovers, after receiving a request in writing from the Central Bank for an inspection, any such transactions or conditions as set out in subsection (1), the auditor shall report such findings to the Central Bank, and the Central Bank shall share those findings with the licensee at such time as deemed necessary.

37. Further duties of auditor

- (1) The auditor of a licensee shall—

- (a) report annually in writing to the Central Bank on the adequacy of the accounting procedures, records and such internal control systems of the licensee as may be relevant to its financial reporting function; and
- (b) audit the returns of the licensee filed annually with the Central Bank.

- (2) The Central Bank may, by notice in writing to a licensee, require its auditor to comply with such other reporting requirements as the Central Bank may stipulate in addition to generally accepted auditing standards with respect to the report and annual returns referred to in subsection (1).

- (3) The Central Bank—

- (a) shall, in relation to the audit of a licensee, have access to the working papers of the auditor of the licensee for a period not exceeding four years preceding the date of submission of the audit report; and
- (b) may require the auditor of a licensee to provide him with any further information that he considers relevant.

- (4) Every licensee shall pay the expenses incurred by its auditor in the performance of the duties and obligations set out in this Part.

- (5) Where the auditor of a licensee discovers, in the ordinary course of an audit, that the licensee has contravened, is contravening or is likely to contravene this Act, the Regulations or any applicable financial reporting standards, the auditor shall report in writing such findings to the Central Bank.
- (6) The auditor of a licensee shall meet with the Central Bank in camera when requested to discuss any matter relating to this Act and Regulations made hereunder.
- (7) An auditor of a licensee who—
- (a) knowing that a financial statement does not fairly present the financial position of a licensee; or
 - (b) being reckless as to whether a financial statement fairly presents the financial position of a licensee,
- and renders an unqualified opinion on the financial statement, commits an offence.
- (8) Any person who contravenes this section commits an offence and is liable on summary conviction—
- (a) in the case of a firm, company or other unincorporated association of persons, to a fine of ten million dollars; and
 - (b) in the case of an individual auditor who signs a report on behalf of the audit entity, to a fine of five million dollars and to imprisonment for five years.
- (9) Where the Central Bank has reasonable grounds to believe that the auditor of a licensee—
- (a) has failed to perform his duties or to comply with the provisions of this Act;
 - (b) has been a party to the preparation of, or has rendered an unqualified opinion on a financial statement that does not fairly present the financial position of the licensee; or
 - (c) is incompetent or is accused of professional misconduct,
- the Central Bank shall deliver a written report to the licensee and as appropriate ICATT or such other professional association that may, in the opinion of the Central Bank be relevant.
- (10) Where the Central Bank has made a report under subsection (9) in good faith, the Central Bank and its officers or directors shall not be subject to any action, claim or demand by, or any liability to, any person in respect of which the report was made.

38. Protection of auditor and other persons providing information

- (1) No duty to which an auditor or former auditor of a licensee may be subject shall be regarded as contravened by reason of his communication in good faith to the Central Bank, whether or not in response to a request made by either of them, for any information or opinion on a matter to which this section applies and which is relevant to any function of the Central Bank under this Act or the Central Bank Act.

(2) In relation to an auditor of a licensee this section applies to any matter of which an auditor becomes aware in his capacity as auditor and which relates to the business or affairs of the licensee or any of its affiliates or any director or officer or relative of such persons, in relation to which the information is given.

(3) This section applies to the auditor of a former licensee as it applies to the auditor of a licensee.

(4) Subsection (1) applies to such other person required to give information under this Act in respect of any matter of which he becomes aware in his capacity as the person giving the information and which relates to the business or affairs of the licensee, its affiliate or any director, officer or relative of such persons, in relation to which the information is given.

39. Protection for whistle-blowers

(1) Where an auditor or former auditor of a licensee communicates information or gives an opinion to the Central Bank in good faith and—

(a) he is required to give such information or opinion to the Central Bank under this Act or the Central Bank Act; or

(b) where he reasonably believes that the licensee is in contravention of any written law, such auditor or former auditor, shall not be liable in any civil action seeking indemnification for damages attributable to the auditor or former auditor having communicated the information or given the opinion.

(2) This section applies to any matter of which an auditor or former auditor, becomes aware in his capacity as auditor or former auditor, and which relates to the business or affairs of a licensee or any of its affiliates or any director or officer or relative of such persons in relation to which the information is given.

(3) Subsection (1) shall apply *mutatis mutandis* to—

(a) any other person who is required to give information to the Central Bank under this Act; or

(b) any employee or external service provider of a licensee or the holding company of a licensee who provides information to the Central Bank regarding the conduct of a licensee, its affiliate or any director, officer or relative of such persons, which the employee or external service provider reasonably believes constitutes a violation of any written law.

(4) This section applies to the former auditor of a former licensee or former holding company of a licensee.

40. Risk management and internal controls

(1) A licensee shall –

(a) demonstrate that it has all relevant policies and procedures in place to effectively identify, analyse, assess, manage, monitor and report any risks to which it might be exposed;

- (b) establish, maintain and implement internal controls and risk management policies and procedures which address its key risks, inclusive of financial, operational, settlement, liquidity, information technology or cyber, third party, money laundering or terrorist financing risks and business continuity and resilience;
 - (c) review annually such policies and procedures, to ensure compliance and adequacy; and
 - (d) comply with any requirements relating to risk management and internal controls as may be prescribed.
- (2) A licensee shall establish and maintain -
- (a) adequate internal controls, safety and security measures and documented operational standards to deal with automatic payments and transfers, authentication of financial transactions and electronic messaging; and
 - (b) policies and procedures for transactions between the licensee and—
 - (i) connected parties; and
 - (ii) employees who are not connected parties.
- (3) The board of directors of a licensee shall review annually such policies, procedures and transactions referred to in subsection(2)(b).
- (4) The board of directors of a licensee shall provide to the Central Bank—
- (a) upon request, copies of the licensee’s policies and procedures; and
 - (b) within sixty business days after the end of its financial year, the results of the compliance reviews referred to in subsection (3).
- (5) The board of directors that fails to comply with subsections (3) and (4) commits an offence for which the licensee is liable.
- (6) Where, in the opinion of the Central Bank, any of the policies and procedures referred to in this section are inadequate, the Central Bank may require the board of directors of a licensee to take such action to change the policies and procedures.
- (7) The board of directors of a licensee that fails to make the changes required by the Central Bank referred to in subsection (6) commits an offence for which the licensee is liable on summary conviction to a fine of six hundred thousand dollars.

41. Outsourcing of activities

- (1) A licensee shall not undertake the outsourcing of material operational functions in such a way as to:
 - (a) impair the quality of the internal controls of the licensee;
 - (b) hinder the Central Bank’s supervision or oversight of the licensee;
 - (c) pose a risk to users or participants or cause harm to the interests of users or participants; or

(d) pose a risk to the safety, soundness, reliability or efficiency of the national payment system or the stability of the financial system.

- (2) A licensee shall not outsource any of its material operational functions without the prior written notification to the Central Bank.
- (3) A licensee shall ensure that the outsourcing of any material operational functions complies with the requirements of this Act, the Regulations and any Guidelines issued by the Central Bank.
- (4) The Central Bank may establish conditions, rules and procedures on outsourcing with which a licensee shall comply.
- (5) A licensee shall furnish on the request of the Central Bank such information in such form and in such period of time as the Central Bank may require in respect of the outsourcing arrangements and activities whether held by the licensee or by the outsourcing provider.
- (6) The Central Bank shall have the power to request an audit of the outsourcing provider to be undertaken by the licensee or an independent auditor as it relates to the outsourcing arrangement with the licensee and the Central Bank shall have access to internal and external audit reports prepared on the outsourcing provider in respect of the outsourced activity, function, process or service.
- (7) The Central Bank may examine any entity to which a licensee has outsourced material operational functions and the Central Bank shall have all powers of examination under this Act as if those services were being performed by the licensee itself.
- (8) In this section, the outsourcing of material operational functions refers to the outsourcing of a business activity, function, process or service which, if disrupted, has the potential to significantly impact the licensee's business operations, reputation or profitability.

42. Use of agents

- (1) A payment service provider may utilise an agent.
- (2) An agent acting on behalf of an electronic money issuer may conduct cash-in, cash out, collect information and complete documents for opening e-money accounts.
- (3) A payment service provider shall notify the Central Bank before using each agent and provide the information set out in the Regulation.
- (4) The Central Bank shall within seven business days of receipt of the notification referred to in subsection (5) and all documentation including any further documentation requested in writing, issue an acknowledgement of receipt to the payment service provider. For the avoidance of doubt, time shall not

start to run under this subsection until the payment service provider has provided all information and documentation requested by the Central Bank.

- (5) Where the Central Bank objects to the use of an agent by a payment service provider, it shall issue to the payment service provider the appropriate notice within thirty business days of the acknowledgment referred to in subsection (3).
- (6) Only where the payment service provider does not receive the notice referred to in subsection (4), within the time prescribed, the payment service provider may proceed to use the agent to provide any class of payment services in Trinidad and Tobago on its behalf.
- (7) Notwithstanding that a payment service provider has utilised an agent in accordance with subsection (5), the Central Bank may subsequently prohibit the licensee from continuing to utilise the agent if, in the opinion of the Central Bank, the continued use of the agent will be fraudulent, unjust, imprudent, or not in the public interest and the Central Bank shall give written reasons for the prohibition.
- (8) Where the Central Bank objects to, or prohibits, the use of an agent -
 - (a) it shall provide written reasons for doing so; and
 - (b) the payment service provider shall not use that agent to provide any class of payment services in Trinidad and Tobago on its behalf from the date of the objection.
- (9) The Central Bank shall have access to review the internal systems of an agent and all information, data and documents relevant to the agency's provision of services on behalf of a licensee.
- (10) A payment service provider shall have in place agency arrangements and management procedures with each agent as specified by the Central Bank.
- (11) A payment service provider utilizing an agent to conduct payment services is required to oversee the management of that agent to the satisfaction of the Central Bank.
- (12) A payment service provider shall ensure that its agent -
 - (a) maintains a separate bank account for the purpose of conducting payment services on its behalf; and
 - (b) does not co-mingle users' funds with any other funds including the funds relating to the other business activities of the agent.
- (13) A payment service provider shall be responsible and liable for—
 - (a) the acts and omissions of its agent in providing services within the scope of the relevant agency agreement and the agreement shall not exclude this liability; and
 - (b) any breach by its agent of the requirements in this Act, Regulations and any Guidelines issued by the Central Bank.

(14) The Central Bank may—

- (a) request any information from a payment service provider on its agent in respect of the conduct of payment services; and
- (b) direct a payment service provider to terminate its agency agreement with an agent in instances involving a breach of the requirements of this Act, Regulations and any Guidelines made under this Act, fraud, dishonesty or other financial impropriety on the part of the agent.

43. Safeguarding of user funds

(1) Subsection (2) applies to a payment service provider that provides any of the following payment services:

- (a) money remittance services;
- (b) acquiring of payment transactions including merchant acquisition services;
- (c) any other payment service that may be prescribed.

(2) A payment service provider mentioned in subsection (1) shall ensure that no later than the next business day after any relevant funds received from, or on account of, a user, is safeguarded in one of the following manners:

- (a) a guarantee given by a financial institution or an insurer;
- (b) an insurance policy issued by an insurer;
- (c) deposit the user's funds in an account designated by virtue of this section as a trust account which shall be-
 - (i) maintained with a financial institution;
 - (ii) segregated from any other funds that the payment service provider holds; and
 - (iii) held for the sole benefit of users; or
- (d) such other mechanism as may be specified by the Central Bank.

(3) A payment service provider that is licensed to provide e-money accounts, issue electronic money and provide electronic wallet services and a financial institution that provides e-money accounts, issues electronic money and provides electronic wallet services shall ensure that no later than the next business day after any relevant funds received from, or on account of, a user is safeguarded and, for this purpose:

- (a) shall hold such user funds in an account designated by virtue of this section as a trust account which shall be-
 - (i) maintained with a financial institution;
 - (ii) segregated from any other funds that this payment service provider holds; and
 - (iii) held for the sole benefit of users.

(b) may, or may be required by the Central Bank to, have additional mechanisms to safeguard user funds by way of -

- (i) a guarantee given by a financial institution or an insurer:

- (ii) an insurance policy issued by an insurer; or
- (iii) such other mechanism as may be specified by the Central Bank.

- (4) Despite any other written law, where funds are held in an account designated by virtue of this section as a trust account, such account shall be deemed to operate as a trust for the sole benefit of users and—
- (a) shall not be used for the payment of the debts of the payment service provider;
 - (b) shall not be used as collateral or attached for the purpose of satisfying any debt or claim;
 - (c) are not liable to be taken in execution of an order or a process of any court entered against the payment service provider;
 - (d) shall not form or be deemed to form part of the property of the payment service provider; and
 - (e) in the case of an insolvency event in relation to the payment service provider, shall not be applied directly or indirectly to any other creditor other than the users on behalf of whom the payment service provider was required to safeguard the relevant funds, save to the extent that the funds exceed the liabilities owed to such users.
- (5) Nothing in this section shall be construed as avoiding or affecting any lawful claim or lien which any person has in respect of any user funds held in a trust account or any funds belonging to a user before the funds are paid into a trust account.
- (6) Despite any other written law, where a guarantee, insurance policy or other mechanism is effected pursuant to this section, the proceeds of the guarantee, insurance policy or other mechanism shall be paid, in the case of an insolvency event, into a separate account held by a financial institution which shall be designated as a trust account by virtue of this section and applied solely to the users on behalf of whom the payment service provider was required to safeguard the relevant funds.
- (7) The Central Bank may request information from the financial institution or insurer referred to in this section for purposes of this Act.
- (8) A person that contravenes subsections (2) and (3) or any requirements in subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding three hundred thousand dollars and, in the case of a continuing offence, to a further fine not exceeding thirty thousand dollars for every day or part of a day during which the offence continues.
- (9) For the avoidance of doubt, an account designated as a trust account under this section shall be considered a “trust account” for the purposes of bye-law 15 of the Central Bank (Deposit Insurance) Bye-laws.

44. Protection of users

(1) A licensee shall operate in a fair, responsible and professional manner when dealing with users and participants.

(2) A licensee shall comply with the standards on market conduct as prescribed.

45. Powers of Central Bank to require interoperability between payment accounts, transaction accounts and payment systems

(1) In order to ensure interoperability between payment accounts or transaction accounts issued by a payment service provider and a payment system, the Central Bank may require a payment service provider:

(a) to be a participant in that payment system as per the conditions set by the Central Bank;
and

(b) enter into an arrangement with the operator of that payment system.

(2) In the exercise of its powers under subsection (1), the Central Bank shall take into consideration the public interest, the current participants and operators of such payment system, and such other matters as the Central Bank considers relevant.

46. Powers of Central Bank to ensure interoperability between licensees

(1) A licensee shall ensure that the payment system it operates or the payment service it provides conforms to any common standard set by the Central Bank on such terms and conditions as the Central Bank may consider appropriate, in order to ensure interoperability between payment systems and payment services.

(2) In this section “common standard” means any technical standard or set of technical standards that the Central Bank may specify and may include data standards, messaging standards and other key payment rules.

47. Advertisements

(1) A person other than a licensee shall not issue or cause to be issued any advertisement inviting the public to use a payment service or payment system with that person or with some other person or licensee.

(2) A licensee shall not issue or cause to be issued any advertisement which in the opinion of the Central Bank is misleading or objectionable.

(3) For the purpose of this section –

(a) an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be displayed or exhibited;

- (b) an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person; and
 - (c) an advertisement inviting the use a payment service or payment system of a licensee specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by the licensee.
- (4) Where in the opinion of the Central Bank, an advertisement is misleading or objectionable, the Central Bank may require the correction or withdrawal of the advertisement or any part thereof.
- (5) A person who contravenes subsection (1), (2) and a requirement of the Central Bank under subsection (4) commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.
- (6) In any proceedings for an offence under this section it shall be a defence for the person charged to prove that he is a person whose business it is to publish or to arrange for the publication of advertisements and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that the publication would constitute such an offence.

48. Alternate Dispute Resolution

A licensee shall, no later than three months after this Act comes into force, enrol in an alternate dispute resolution scheme approved by the Central Bank.

49. Compliance with anti-money laundering laws

A licensee, its agent or any third party acting on a licensee's behalf shall comply with the Proceeds of Crime Act, any Regulations made thereunder or such other statutory provision in relation to the prevention of money laundering and the combating of terrorism financing and proliferation financing as may be in force from time to time.

PART V MANAGEMENT AND OWNERSHIP

50. Persons debarred from management

- (1) A person who has been –
- (a) a director or officer of a company in the five years immediately preceding a winding-up order being made by a court of competent jurisdiction or the date that the company has been placed in receivership;

- (b) adjudged bankrupt under the Bankruptcy Act;
- (c) a director or officer of a former licensee during the five years prior to the revocation of the licence, unless such revocation was due to –
 - (i) its amalgamation with another licensee or financial service company; or
 - (ii) its voluntary winding-up;
- (d) a director or officer during the five years prior to the revocation of the licence of a foreign company providing a payment service, or operating a payment system, by a foreign regulatory agency, unless such revocation was due to—
 - (i) its amalgamation with another company;
 - (ii) its voluntary winding up; or
 - (iii) for any other reasons under the applicable laws,

shall not, without the express approval of the Central Bank, act or continue to act as a director or officer or be concerned in any way in the management of a licensee under this Act.

(2) A person who –

- (a) has been convicted by a court of competent jurisdiction for an offence involving fraud, dishonesty, a contravention of any legislation in relation to the prevention of money laundering, the combating of terrorist financing and proliferation financing as may be in force from time to time;
- (b) is or was convicted of an offence under the Act; or
- (c) is not a fit and proper person in accordance with the criteria as prescribed,

shall not act or continue to act as a director or officer of a licensee, or be concerned in any way in the management of a licensee.

(3) Subject to subsection (4), a director or officer of a licensee shall not act or continue to act as a director or officer or be concerned in any way in the management of another payments entity except with a permit from the Central Bank.

(4) Where a licensee is a member of a related group, a director or officer –

- (a) of the licensee; or
- (b) of a company that is part of the related group,

may act or continue to act as director or officer or be concerned in the management of a payments entity where that payments entity is part of the related group that includes the licensee.

51. Disqualification of Directors and Officers of Licensees

(1) Where for the purpose of section 50(2)(c) a person is not regarded, or is no longer regarded, by the Central Bank as fit and proper under the criteria as prescribed, the Central Bank shall serve a notice on the licensee and where appropriate the person concerned informing them that the Central Bank proposes to disqualify the person from acting as a director or officer and the reasons for its intention to disqualify.

- (2) The licensee and the person concerned may, within the period of ten business days, commencing from the day after which the notice under subsection (1) is served, make written representations to the Central Bank which shall take such representations into account in deciding whether or not to disqualify the person from acting as a director or officer.
- (3) The Central Bank shall inform the licensee and the person concerned, by notice in writing, of its decision and the reasons for its decision.
- (4) Where the decision of the Central Bank is to disqualify the person, that person shall forthwith cease to be a director or officer of the licensee.

52. Requirements for controlling and significant shareholders of payment service providers

(1) A person who holds shares -

- (a) that entitle him to exercise or control more than fifty per cent of the voting power at any general meeting of a payment service provider prior to the commencement of the Act shall be deemed to be a controlling shareholder to whom this section applies; and
- (b) that entitle him to exercise or control more than twenty per cent of the voting power at any general meeting of a payment service provider prior to the commencement of the Act shall be deemed to be a significant shareholder to whom this section applies.

(2) Notwithstanding any other law, but subject to section 54, a person or a person on whose behalf shares are held either in trust or by a nominee or who becomes beneficially entitled to shares under a will or by intestacy, shall not become a controlling shareholder or significant shareholder of a payment system operator or a payment service provider without first obtaining a written permit from the Central Bank.

(3) In the circumstances where a proposed controlling shareholder or significant shareholder is an acquirer, the provisions of section 56 shall also apply and for the avoidance of doubt, where approval is granted for an acquirer to become a controlling shareholder or significant shareholder, a permit shall be issued under this section in addition to the permit issued under section 54.

(4) In determining whether a permit should be granted, the Central Bank shall take into account, without limitation, the fit and proper criteria as prescribed and, in particular, whether the proposed shareholder is a fit and proper person in accordance with such criteria, or may be such as to prejudice the interests of the participants of the payment system or users of the payment service, as the case may be, and whether ownership by a controlling shareholder or a significant shareholder who is—

- (a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or
 - (b) in the case of a company, an affiliate of another company,
- would be likely to prejudice the interests of participants of the payment system or users of the payment service.

(5) Where -

- (a) a controlling shareholder or a significant shareholder of a licensee is no longer a fit and proper person in accordance with the fit and proper criteria as prescribed;
- (b) a person who becomes beneficially entitled to shares after probate of a will or grant of letters of administration applies for a permit and is not granted a permit;
- (c) a controlling shareholder or a significant shareholder of a payment system operator or a payment service provider deemed to be granted a permit upon the commencement of this Act is not a fit and proper person under criteria as prescribed; or
- (d) after the commencement of this Act, a person who without being granted a permit under this section, obtains shares such as to make him a controlling shareholder or a significant shareholder of a licensee,

he shall be notified in writing by the Central Bank of this fact and he shall be required to take such steps in such time as may be specified by the Central Bank to reduce his entitlement to exercise the relevant voting power of a licensee as applicable

(6) Where the Central Bank gives a notice—

- (a) under subsections (5)(a), (b) and (c), the person is entitled to receive dividends and to exercise voting rights until such time as the shares are disposed of or an order of the High Court is made under this section;
- (b) under subsection (5)(d), a person shall not be entitled to receive any dividends or to exercise any voting rights;
- (c) under subsection (5), the controlling shareholder or a significant shareholder notified may, within the period of ten business days commencing the day after which the notice is given, make written representations to the Central Bank which shall take such representations into account in determining whether to withdraw or vary the notice or issue a final notice.

(7) Where a person fails to comply with a notice under subsection (6)(c) and without prejudice to any other penalty which may be incurred by any party pursuant to this Act, the Central Bank may, where the circumstances so warrant, apply to the High Court for an order for the disposal of shares on such terms and conditions as the High Court deems appropriate.

(8) Where shares referred to in subsection (4) are sold in pursuance of an order of the High Court, the proceeds of sale, less the costs of the sale, shall be paid into the High Court or into such fund as the High Court may specify for the benefit of the persons beneficially interested in the disposed shares, and any such person may apply to the High Court for the whole or part of the proceeds to be paid to him in satisfaction of his beneficial interest.

53. Amalgamations

(1) Notwithstanding any other law, an amalgamation shall not take place where one of the amalgamating companies is a licensee without the prior approval in writing of—

- (a) the Central Bank pursuant to subsection (6); or
- (b) the Minister pursuant to subsection (9).

(2) An application for approval under subsection (1) shall be made in writing, jointly, by all the companies proposing to amalgamate, and submitted to the Central Bank together with -

- (a) a copy of the proposed amalgamation agreement referred to in section 221 of the Companies Act, where applicable;
- (b) the resolution of the board of directors approving the amalgamation; and
- (c) such further information as the Central Bank may require.

(3) A proposed amalgamation agreement submitted to the Central Bank pursuant to subsection (2), shall not be amended without prior written approval of the Central Bank.

(4) In determining whether to approve a proposed amalgamation, the Central Bank shall take into account such relevant matters including, without limitation—

- (a) the terms of the proposed amalgamation agreement and any amendments thereto;
- (b) the proposed changes to the articles of incorporation or continuance of the companies;
- (c) the fit and proper criteria as prescribed as it applies to the proposed amalgamated company and all the companies proposing to amalgamate;
- (d) the size and concentration of economic power in the proposed amalgamated company; and
- (e) whether the business or a part of the business of—
 - (i) the amalgamating companies; or
 - (ii) which an amalgamating company is the holding company,has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition.

(5) In considering the criteria referred to in subsection (4)(d), the Central Bank shall take into account, without limitation—

- (a) the size of the proposed amalgamated company in terms of any combined market share that will be serviced or controlled by the proposed amalgamated company in Trinidad and Tobago;
- (b) the size of any of the affiliates of the proposed amalgamated company; and
- (c) whether such size and concentration will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the payments industry in Trinidad and Tobago.

(6) Subject to subsection (7), after due consideration of the matters referred to in subsection (4), the Central Bank shall approve the proposed amalgamation subject to such conditions, requirements or restrictions as the Central Bank deems appropriate or refuse to approve the proposed amalgamation and provide the reasons for its refusal.

(7) Where the percentage of any combined market share in Trinidad and Tobago of the proposed amalgamated company and any payments entity that will be affiliated with it would exceed forty per cent, the Central Bank shall forward to the Minister the application referred to in subsection (2), together with its recommendation, the proposed amalgamation agreement and any other relevant information.

(8) In determining whether to approve the proposed amalgamation, the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—

- (a) the interests of the national payment system, the payments industry and the financial services industry in Trinidad and Tobago; and

(b) the interests of participants of payment systems and users of payment service providers in Trinidad and Tobago.

(9) After due consideration of the matters referred to in subsection (8), the Minister shall approve the proposed amalgamation subject to such conditions, requirements or restrictions as the Minister deems appropriate or refuse to approve the proposed amalgamation and provide the reasons for his refusal.

(10) A copy of any approval or refusal to approve the proposed amalgamation by the Central Bank under subsection (6) or the Minister under subsection (9), shall be sent forthwith by the applicants to the Registrar of Companies who shall not issue a certificate of amalgamation under the Companies Act unless he receives a copy of the approval of the amalgamation by the Central Bank or the Ministry of Finance, as the case may require.

(11) Where a person fails to comply with any condition, requirement or restriction of an approval under subsection (6) or (9), the Central Bank may issue directions to the person and section 76 of the Act shall apply *mutatis mutandis* to this section.

(12) A purported amalgamation done in contravention of this section shall be null and void, but shall be without prejudice to the accrued rights of any other bona fide party without notice.

54. Acquisitions

(1) A payments entity or a significant or controlling shareholder of a payments entity shall not become an acquirer of a licensee without obtaining a permit issued by—

- (a) the Central Bank pursuant to subsection (6); or
- (b) the Minister pursuant to subsection (9).

(2) In considering an application for an acquirer to become a significant or controlling shareholder the Central Bank shall take into account the matters listed in subsection (4) and the provisions of this section shall apply *mutatis mutandis* to section 52.

(3) An application for a permit under subsection (1) shall be made in writing, by the proposed acquirer and submitted to the Central Bank together with such further information as the Central Bank may require.

(4) In determining whether to issue a permit to the proposed acquirer, the Central Bank shall take into account such relevant matters including, without limitation—

- (a) the fit and proper criteria as prescribed;
- (b) the size and concentration of economic power in the combination of the proposed acquirer and the licensee or the holding company of the licensee; and
- (c) whether the business or a part of the business of the acquirer, licensee or holding company of the licensee has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition.

(5) In considering the criteria referred to in subsection (4)(b), the Central Bank shall take into account without limitation—

- (a) the combined market share in Trinidad and Tobago of the licensee and any payments entity affiliated with the licensee, the proposed acquirer and any payments entity that is affiliated with the proposed acquirer; and
- (b) whether the size of, and concentration of economic power in, the combination of the proposed acquirer and the licensee will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the payments industry in Trinidad and Tobago.

(6) Subject to subsection (7), after due consideration of the matters referred to in subsection (4), the Central Bank shall issue a permit to the proposed acquirer subject to such conditions, requirements or restrictions as the Central Bank deems appropriate or refuse to issue a permit to the proposed amalgamation and provide the reasons for its refusal.

(7) Where the combined market share in Trinidad and Tobago of the licensee and any payments entity affiliated with the licensee, the proposed acquirer and any payments entity that is affiliated with the proposed acquirer would exceed forty per cent, the Central Bank shall forward to the Minister the application referred to in subsection (1), together with its recommendation and any other relevant information.

(8) In determining whether or not to issue a permit to the proposed acquirer, the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—

- (a) the interests of the national payment system, the payments industry and the financial services industry in Trinidad and Tobago; and
- (b) the interests of participants of payment systems and users of payment service providers in Trinidad and Tobago.

(9) After due consideration of the matters referred to in subsection (8), the Minister shall issue a permit to the proposed acquirer subject to such conditions, requirements or restrictions as the Minister deems appropriate or refuse to issue a permit to the proposed amalgamation and provide the reasons for its refusal.

(10) The provisions of sections 52(2) and (5) to (8) shall apply to this section *mutatis mutandis*.

(11) Where an acquirer fails to comply with any condition of its permit, the Central Bank may issue directions to the acquirer and section 76 of the Act shall apply *mutatis mutandis* to this section.

55. Holding Company

The Central Bank may require any entity which owns or controls two or more payment service providers or payment system operators to form a holding company so that the licensee is directly controlled by a holding company and the resulting structure allows for satisfactory supervision or oversight.

PART VI
DESIGNATION OF SYSTEMIC PAYMENT SYSTEMS AND PAYMENT SERVICE PROVIDERS

56. Power of Central Bank to designate systemic payment systems for enhanced oversight

(1) The Central Bank may designate a payment system as a designated payment system for the purposes of this Act, if the Central Bank is satisfied that any of the following considerations apply:

- (a) a disruption in the operations of the payment system is likely to –
 - (i) trigger, cause or transmit further disruptions to participants of the payment system or to other payment systems;
 - (ii) trigger or cause disruption, substantial damage, injury or impairment to the national payment system or the financial system of Trinidad and Tobago; or
 - (iii) affect public confidence in the national payment system or the financial system of Trinidad and Tobago;
- (b) the payment system is widely used in Trinidad and Tobago, handles time-critical, high-value payments or may have an impact on the operations of one or more other payment systems in Trinidad and Tobago;
- (c) the designation is otherwise in the public interest; or
- (d) any other criteria as may be prescribed by the Minister by Order, on the recommendation of the Central Bank.

57. Power of Central Bank to designate systemic payment service providers for enhanced supervision

The Central Bank may designate a payment service provider as a designated payment service provider, if the Central Bank is satisfied that any of the following considerations apply:

- (a) a disruption in the operations of the payment service is likely to –
 - (i) trigger, cause or transmit further disruptions to other payment service providers or a payment system or systems;
 - (ii) trigger or cause disruption, substantial damage, injury or impairment to the national payment system or the financial system of Trinidad and Tobago; or
 - (iii) affect public confidence in the national payment system or the financial system of Trinidad and Tobago;
- (b) a payment service provider is offering a payment service that may be of widespread use as a means of making payments or the value and volumes of payment transactions are significant, and may affect the national payment system or the financial system Trinidad and Tobago;
- (c) the designation is otherwise in the public interest; or
- (d) any other criteria as may be prescribed by the Minister by Order, on the recommendation of the Central Bank.

58. Power of Central Bank to impose conditions or restrictions on designated payment system operators and designated payment service providers

(1) The Central Bank may impose on a participant or an operator of a designated payment system and on a designated payment service provider such conditions or restrictions as the Central Bank thinks fit including in relation to any of the following:

- (a) additional regulatory and supervisory requirements including prudential criteria;
- (b) the activities that the operator of the designated payment system or the designated payment service provider may undertake; and
- (c) the standards to be maintained by the operator of the designated payment system or the designated payment service provider.

(2) The Central Bank may, at any time, vary any condition or restriction imposed pursuant to subsection (1).

(3) A person who fails to comply with any condition or restriction under this section commits an offence and is liable on summary conviction—

- (a) in the case of a participant or operator of a designated payment system or designated payment service provider to a fine of five million dollars and in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that the offence continues; or
- (b) in the case of a director or officer, other employee or agent, or principal officer of a participant or operator of a designated payment system or designated payment service provider, to a fine of five million dollars and to imprisonment for five years.

59. Withdrawal of designation of payment system or designation of payment service providers as systemic

(1) The Central Bank may withdraw the designation of any designated payment system or any designated payment service provider at any time if, in its opinion, the considerations set out in sections 56 and 57 no longer apply.

(2) Before withdrawing the designation of any designated payment system or designated payment service provider, the Central Bank shall give reasonable notice of the withdrawal to the operator of the designated payment system or the designated payment service provider.

(3) For the avoidance of doubt, a payment system or payment service provider whose designation is withdrawn under this Part may continue to operate as a payment system or payment service provider subject to the requirements of this Act.

60. Approval for certain transactions by designated payment system operators and designated payment service providers

(1) A designated payment system operator or a designated payment service provider shall not without prior approval of the Central Bank—

- (a) directly or indirectly establish or acquire a subsidiary in or outside of Trinidad and Tobago;

- (b) enter into an agreement for sale or other transfer of—
 - (i) its subsidiary ;
 - (ii) its controlling or significant interest in a payments entity; or
- (c) enter into an agreement to acquire, sell or transfer a controlling or significant interest in a business incidental to operating a payment system or providing a payment service.

(2) A designated payment system operator or a designated payment service provider shall not without prior approval of the Central Bank—

- (a) enter into an agreement for sale or other transfer of ten per cent or more of the assets of—
 - (i) the designated payment system operator or designated payment service provider;
 - (ii) a subsidiary of the designated payment system operator or designated payment service provider; or
 - (iii) a company or unincorporated body in which the designated payment system operator or designated payment service provider has a controlling or significant interest; or
- (b) undertake any other restructuring that would result in a reduction in the capital or liquidity of the designated payment system operator or payment service provider.

(3) A person that contravenes this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five million dollars and, in the case of a continuing offence, to a further fine not exceeding five hundred thousand dollars for every day or part of a day during which the offence continues after conviction.

PART VII

PROTECTION OF PAYMENT SYSTEMS

61. Finality and irrevocability of transfer orders and settlements

- (1) A transfer order or settlement shall be valid and enforceable by and against a payment system participant or operator and shall be final and irrevocable from the time the transfer order or settlement is determined to be final, under the rules of the payment system.
- (2) Notwithstanding any other law to the contrary, an order shall not be made by any court for the rectification or stay of a transfer order or settlement that is determined by the rules of the payment system to be final and irrevocable.
- (3) Notwithstanding subsections (1) and (2), a payment system operator shall with the approval of the Central Bank, specify in the rules of the payment system the manner of recovering an equivalent amount of the transfer arising from a transfer order or settlement made in the case of fraud, mistake, error or similar circumstances.

62. Settlement accounts

- (1) Every participant in a payment system shall open and maintain settlement accounts in the books of the Central Bank or a settlement agent, including the maintenance of minimum balances as prescribed by the rules of the payment system or the Central Bank.
- (2) The Central Bank may specify the requirements for the opening and maintenance of a settlement account and the rules with respect to settlement accounts and the funds and financial instruments held in or by those accounts.
- (3) A reserve account established and maintained pursuant to section 57 of the Financial Institutions Act shall not constitute a settlement account required under this Act.

63. Protection of settlement accounts

- (1) Funds and financial instruments held in settlement accounts shall not be subject to enforcement measures including but not limited to collection orders, attachments, assignments, or transfers for the purposes of satisfying any debt or claim.
- (2) Payment system operators or settlement agents may temporarily suspend transactions on the settlement accounts of system participants provided that such temporary suspension does not contravene the payment system rules and is in the interest of the payment system participants and the stability of the financial system.

64. Notification of commencement of external administration

- (1) Upon receiving information on the commencement of external administration in respect of foreign payment system participants, foreign payment system operators exempted under the Second Schedule or a foreign settlement agent, the Central Bank shall without delay provide the information to relevant payment system operators licensed under this Act.
- (2) When external administration is commenced against a participant, the participant shall without undue delay and not more than two hours after the commencement of external administration proceedings, notify the relevant payment system operators and the Central Bank of the commencement of the proceedings.

65. No retroactive effect of commencement of external administration

- (1) Notwithstanding the Companies Act and the Bankruptcy Act and any other written law, the commencement of external administration in respect of a participant shall have no retroactive effect on the subsisting rights and obligations of another participant arising from, or in connection with, its participation in a payment system.
- (2) External administration in respect of a participant shall only affect those rights and obligations of another participant arising from, or in connection with, its participation in a payment system, from the time which the payment systems operator was notified of the commencement of such external administration pursuant to section 64.

- (3) No stay, injunction, avoidance, moratorium or similar proceeding or order in external administration proceedings, 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.
- (4) Where, in a payment system, the transfer orders of a participant have been entered in accordance with the rules and procedures of that system prior to the notification of commencement of external administration in respect of that participant—
 - (a) the netting or settlement of such transfer orders shall be enforceable and binding on third parties, including the external administrator, and may not be undone, even where such netting or settlement occurs after the commencement of the external administration; and
 - (b) neither the participant, the external administrator of the participant nor a third party may revoke such transfer orders.
- (5) Subsection (4)(a) does not prevent a participant or a third party from exercising a right or claim resulting from the underlying transaction, which they may have in law, to recovery or restitution in respect of a transfer order which has entered the payment system.

66. Settlement accounts after commencement of external administration

- (1) Notwithstanding the commencement of external administration in respect of a participant, the payment system operator or settlement agent of a payment system may use funds or securities available on the settlement account of that participant in order to settle the transfer orders entered into the payment system prior to the payment system operator being notified of the commencement of such external administration pursuant to section 64.
- (2) Notwithstanding the commencement of external administration in respect of a participant, the payment system operator or settlement agent of a payment system may use any credit facility of that participant connected to the payment system, in order to settle the transfer orders entered into the system prior to the payment systems operator being notified of the commencement of external administration against the participant pursuant to section 64.
- (3) No settlement account, nor any amount credited on such account or destined to be credited on such account, may be seized or attached by any party other than the settlement agent in whose books such account is held.

67. Validity and enforceability of Close-out Netting Arrangements

- (1) Close-out netting arrangements which are effected in relation to a payment system, are valid, enforceable and binding on third parties, including the external administrator of a party to such arrangements, notwithstanding—
 - (a) the commencement or continuation of any external administration in respect of a party to the close-out netting arrangements; or

- (b) any purported assignment, judicial or other attachment, the creation of any encumbrance or any other interest, in relation to the rights which are subject to the close-out netting arrangement, or other disposition of or in respect of such rights.

68. Applicable law in the event of commencement of external administration

- (1) If external administration proceedings are commenced against a foreign participant of a payment system operated by a licensee or the Central Bank, the rights and obligations arising from or in connection with the participation of such participant in the system shall be determined and governed entirely and exclusively pursuant to the laws of Trinidad and Tobago.
- (2) If external administration proceedings are commenced against the participant of a foreign payment system, which is at the same time a person operating under the laws of Trinidad and Tobago, rights and obligations in connection with the participation of such participant in the system shall be governed by the law governing the payment system.
- (3) In the event of the commencement of external administration in Trinidad and Tobago in respect of a participant in a payment system, the rights and obligations arising from, or in connection with the participation of that participant in such system shall be entirely determined and governed by the laws of Trinidad and Tobago.

PART VIII
FINANCIAL COLLATERAL FOR PAYMENT SYSTEMS

69. Validity and enforceability of financial collateral arrangements

- (1) This Part shall apply to all matters related to the application of financial collateral.
- (2) Financial collateral arrangements, including pledges of cash, which are effected in relation to a payment system and perfected prior to commencement of external administration are valid, enforceable and binding on third parties, including the external administrator of a party to such arrangements.

70. Substitution and topping-up of financial collateral

- (1) The Central Bank may require a participant to hold adequate or additional financial collateral in such form and in such manner as may be specified by the Central Bank.
- (2) The provision of financial collateral, additional financial collateral, or substitute or replacement financial collateral, pursuant to an obligation or right to do so contained in the financial collateral arrangement is not invalid and shall not be reversed or declared void on the sole basis that—
 - (a) such provision was made on the same day of, but prior to, the commencement of, external administration in respect of the party making the provision; or
 - (b) the relevant financial obligations were incurred prior to the date of the provision of the financial collateral, additional financial collateral or substitute or replacement financial collateral.

71. Perfection of pledged financial collateral

The pledge of financial collateral is validly perfected between parties and against third parties once the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or a person acting on behalf of the collateral taker.

72. Enforcement of pledged financial collateral

- (1) Notwithstanding the commencement of external administration in respect of the pledgor and subject to the terms of the pledge agreement, a pledgee may enforce financial collateral pledged in his favour in the following manner:
 - (a) where cash is pledged, by setting off the amount against or applying it in discharge of the guaranteed obligation; or
 - (b) where any other financial collateral is pledged which is acceptable to the Central Bank, by the sale thereof and by setting off the value against, or applying the value in discharge of the guaranteed obligation.
- (2) No prior approval by the court or any other formality is required for enforcement under subsection (1).

73. Private International Law

Where securities are held in a securities account (“book entry securities”), the following issues shall be governed by the law of the jurisdiction in which the relevant securities account is maintained:

- (a) the legal nature and proprietary effects of book entry securities;
- (b) the requirements for perfecting a financial collateral arrangement relating to book-entry securities;
- (c) the steps required for the enforcement of financial collateral arrangements relating to book-entry securities; and
- (d) whether a person’s title to or interest in book entry securities is overridden or subordinated to a competing title or interest, or a good faith acquisition has occurred.

PART IX EXAMINATION AND ENFORCEMENT

74. Examination by Central Bank

- (1) The Central Bank may make or cause to be made such examination and inquiry, whether on-site or off-site, into the affairs or business of each-
 - (a) licensee;
 - (b) holding company of a licensee;
 - (c) subsidiary of a licensee in Trinidad and Tobago;

- (d) subsidiary of a licensee located outside of Trinidad and Tobago;
- (e) participant, or
- (f) settlement agent;

as it considers necessary or expedient, for the purpose of satisfying itself that the provisions of this Act, or any Regulations, directives, guidelines or instructions issued by the Central Bank are being observed and that the licensee, its holding company, subsidiary or participant is in a sound financial condition.

(2) The Central Bank may make or cause to be made at any time, an examination and inquiry of a participant's compliance with the rules of a payment system.

(3) Examinations and inquiries based on this section may include, where the Central Bank specifies, the examination of any affiliate of the licensee to assess any risk that such affiliate may pose to the licensee.

(4) The Central Bank or any other person authorised in writing by the Central Bank or any designated member of staff of the Central Bank shall have access to all books, records, accounts, vouchers, minutes of meetings, information technology systems, networks, electronic data, securities and any other documents, including documents stored in electronic form of a licensee or its holding company, even where in the possession of another person or accessible through another person, save that where the person who is in possession claims a lien on the books or papers, the production thereof shall be without prejudice to the lien.

(5) For the purpose of this section, the Central Bank and its officers or agents may enter the premises of a licensee, and any third party acting on behalf of the licensee, either as an agent or by way of an outsourcing agreement during normal business hours to examine, have access to and make copies of or remove from the premises information and data, records, accounts, vouchers, minutes of meetings, securities and any other documents, including information or documents stored in electronic form and to any information technology systems and network of the licensee or its holding company.

(6) Notwithstanding subsection (5), the Central Bank may apply to a Judge of the High Court for an *ex parte* order authorising any officer or agent of the Central Bank, to enter into the premises of a licensee or any third party acting on behalf of the licensee, either as an agent or by way of an outsourcing agreement to obtain access to all documents, information and data, including information and documents stored in electronic form and to any information technology systems and network of a licensee or its holding company and to conduct an examination, where in respect of its powers under this Act, the Central Bank is—

- (a) prevented from exercising its powers;
- (b) required to exercise its powers outside normal working hours; or
- (c) required to exercise its powers urgently.

(7) For the purpose of determining the condition of a licensee or its holding company, and its compliance with this Act, the Central Bank may call upon any present or former auditor, director or officer of the licensee or its holding company or of any controlling shareholder, significant shareholder or affiliate of the licensee or of its holding company to provide such information that is related to or may affect—

- (a) the financial condition of the licensee or other member of a related group that includes the licensee; and
- (b) any transaction between the licensee or controlling shareholder and any affiliate, in order to be satisfied that the licensee is in compliance with the provisions of the Act.

(8) Where a person fails to comply with a request to provide information under this section, the Central Bank may restrict any further transactions among the licensee and affiliates and take such other measures as it may think fit against the licensee or affiliates, if the Central Bank considers that the transactions or relationship among the licensee and affiliates may expose the licensee to undue risk and could prejudice the interests of users or potential users or participants of the licensee.

(9) A person who fails to comply with a request or with a restriction or measure imposed by the Central Bank under this section or who obstructs a person in the performance of his duties under this section commits an offence and is liable on summary conviction, in the case of a licensee or affiliate, to a fine of six hundred thousand dollars and in the case of a director, officer or employee of the licensee or affiliate, to a fine of six hundred thousand dollars and to imprisonment for two years.

(10) Where a person fails to comply with a request or with a restriction or measure imposed by the Central Bank under this section, the Central Bank may, in addition to any other action that may be taken under this Act, apply to a Judge in Chambers for an order requiring the person to comply with the restriction or measure imposed, and on such application, the Judge may so order and make any other order he thinks fit.

75. Providing a payment service or operating a payment system without a licence

(1) Where the Central Bank has reasonable grounds to believe that a person is providing any aspect of a payment service or the operation of a payment system without a licence issued under this Act, it may require information from, inquire into and examine the affairs of, that person, and may take any action that the Central Bank sees fit to ensure that the person discontinues the activity in question, including, without limitation, the issue of a compliance direction to cease the activity under section 76.

(2) The provisions of section 74 shall apply *mutatis mutandis* to the powers of examination and inquiry under this section.

76. Compliance directions

(1) Notwithstanding any other action or remedy available under this Act, if the Central Bank reasonably believes that any person—

- (a) has committed, is committing, or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice;
- (b) has committed, is committing, or is about to commit, an act, or is pursuing or is about to pursue a course of conduct, that may directly or indirectly be prejudicial to the interest of users or participants;

- (c) has violated or is about to violate any of the provisions of this Act or Regulations made thereunder; or
 - (d) has violated, is violating or is about to violate any of the provisions of any law designed to protect against fraud or relating to anti-money laundering/counter financing of terrorism/proliferation financing;
 - (e) is unlikely to meet obligations to users and participants; or
 - (f) has breached any requirement or failed to comply with any measure imposed by the Central Bank in accordance with this Act or Regulations made thereunder, the Central Bank may direct the person to—
 - (i) cease and or refrain from committing the act, pursuing the course of conduct, or committing a violation; or
 - (ii) perform such acts which in the opinion of the Central Bank are necessary to remedy the situation or minimise the prejudice.
- (2) For the purposes of this section, the term “unsafe or unsound practices” shall include without limitation, any action or lack of action that is contrary to generally accepted standards of prudent operation and behaviour, the possible consequences of which, if continued, would be a risk of loss or damage to a licensee, its users or participants.
- (3) Subject to subsection (6), before a direction is issued, the person to whom the direction is to be issued shall be served with a notice specifying—
- (a) the facts of the matter;
 - (b) the directions that are intended to be issued; and
 - (c) the time and place at which the person served with the notice may make representations to the Central Bank.
- (4) If the person served with the notice referred to in subsection (3) fails to attend at the time and place stipulated by the said notice, the Central Bank may proceed to issue directions in his absence.
- (5) Where after considering the representations made in response to the notice referred to in subsection (3), the Central Bank determines that the matters specified in the notice are established, the Central Bank may proceed to issue directions to the person served with the notice.
- (6) Notwithstanding subsection (3), if in the opinion of the Central Bank, the length of time required for representations to be made might be prejudicial to the interests of users, participants or to the stability of the financial system, the Central Bank may make an interim direction with respect to the matters referred to in subsection (1) having effect for a period of not more than twenty business days.
- (7) A direction made under subsection (6) continues to have effect after the expiration of the twenty-day period referred to in that subsection if no representations are made to the Central Bank within that period or, if representations have been made, the Central Bank notifies the person to whom the direction is issued that it is not satisfied that there are sufficient grounds for revoking the direction.
- (8) If a person to whom a direction is issued fails to comply with the said direction the Central Bank may, in addition to any other action that may be taken under this Act, apply to a Judge in Chambers for an Order

requiring that person to comply with the direction, cease the contravention or do anything that is required to be done, and on such application the Judge may so order and make any other Order he thinks fit.

(9) A person who fails to comply with directions under this section commits an offence and is liable on summary conviction—

- (a) in the case of a licensee, holding company, controlling shareholder, or significant shareholder to a fine of five million dollars and in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that the offence continues; or
- (b) in the case of a director or officer, other employee or agent, or principal officer of a licensee, to a fine of five million dollars and to imprisonment for five years.

(10) All directions issued under this section shall be referred to as “compliance directions”.

77. Injunctive relief

Where the Central Bank reasonably believes that a person is in violation of the Act, or is engaged in any activity or course of conduct described under section 761), the Central Bank may in addition to, or in lieu of other actions authorised under this Act—

- (a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or to prevent the activity or course of conduct in question or any other action; or
- (b) pursue any other remedy which may be provided by law.

78. Power to object on the appointment of directors or officers in specific circumstances

(1) Where –

- (a) the Central Bank places a restriction on the licence of a licensee;
 - (b) it appears to the Central Bank that a licensee’s capital or liquidity is inadequate and the Central Bank has so notified the licensee; or
 - (c) the Central Bank has exercised any of its powers in relation to the licensee under the special emergency powers under the Central Bank Act,
- the licensee shall notify the Central Bank at least twenty business days before the effective date of election or appointment of any director or officer and the licensee shall not elect to the board such director or appoint such officer if within the twenty business-day period the Central Bank disapproves of such appointment or employment.

(2) A licensee that contravenes subsection (1) commits an offence.

79. Power to revoke or restrict licence

(1) The Board may revoke or restrict a licence if it satisfied that:

- (a) any of the fit and proper criteria prescribed in the Regulations is not or has not been fulfilled or is unlikely to be, or may not have been fulfilled;
- (b) the licensee has failed to comply with any obligation imposed on it under this Act, Regulations or Guidelines issued under this Act;
- (c) the licensee has failed to pay any of the annual fees set out in the Third Schedule;

- (d) the licensee has failed to comply with any other written law designed to protect against fraud or relating to anti-money laundering/counter financing of terrorism/proliferation financing;
- (e) the licensee fails to comply with any requirement, prohibition, compliance direction, or any other direction issued by the Central Bank under this Act;
- (f) it would be contrary to the public interest for the licensee to continue its operations;
- (g) the licensee has provided the Central Bank with false, misleading or inaccurate information;
- (h) the licensee has failed to commence operations in Trinidad and Tobago, within the period of six months from the day on which the final licence was issued;
- (i) the licensee has ceased operations in Trinidad and Tobago for at least six months;
- (j) the manner in which the licensee's business is being conducted is likely to pose a risk to users, participants, the safety, soundness, reliability or efficiency of the national payment system or the stability of the financial system or;
- (k) the financial condition of the licensee is unsatisfactory;
- (l) a petition for winding up has been filed;
- (m) the licensee has been declared as insolvent;
- (n) the licensee is illiquid and is unable to meet its obligations; or
- (o) a receiver or receiver-manager of the licensee has been appointed.

(2) Notwithstanding subsection (3), no notice of intention is required to be given:

- (a) in respect of the imposition of a restriction in any case in which the Board considers that the restriction should be imposed or varied as a matter of urgency provided that such restriction shall state the reasons for which the Board has acted and give particulars of the licensee's right to appeal under this Act; and
- (b) In respect of a revocation of a licence in respect of the following circumstances:
 - (i) all the assets of the licensee have passed into the ownership of another person;
 - (ii) a resolution for the voluntary winding up of a licensee has been passed pursuant to this Act;
 - (iii) a winding up order has been made against the licensee.

(3) Before any licence is revoked or restricted, the Board shall give the licensee written notice of its intention, specifying—

- (a) the grounds upon which the Board intends to revoke or restrict the licence;
- (b) the date on which such proposed revocation or restriction is to take effect; and
- (c) the place and period of time during which the licensee may make written representations to the Board.

(4) After serving a notice of intention to revoke or restrict a licence, and after taking into account any representations under subsection (3), the Board shall decide whether to—

- (a) revoke the licence with or without directions under section 75
- (b) restrict the licence by issuing directions under section 75; or
- (b) take no further action.

(5) The Board shall inform the licensee, by notice in writing, of its decision.

(6) Where a decision is made to revoke a licence under subsection (4):

(a) the notice of revocation shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the right of appeal of the licensee under section 101; and

(b) the licensee shall cease providing the service or operating the payment system, as the case may be, from the date on which the revocation shall take effect.

(7) The Board may vary any restrictions imposed on the licence at any time after its issue and the provisions of subsections (3)-(5) shall apply *mutuatis mutandis* to the variation of a restriction of a licence otherwise than with the agreement of the licensee.

(8) Where a licensee is aggrieved by a decision of the Board to revoke or restrict its licence or vary a restriction imposed on the licence of a licensee, the licensee may appeal that decision in accordance with section 101.

(9) When a decision is made to revoke a licence for all classes of payment services or all payment systems for which a licensee is licensed, the Central Bank may—

(a) apply to the High Court for an order for the winding up of the licensee;

(b) direct the distribution of safeguarded users' funds; or

(c) take such other action as provided for under this Act.

80. Withdrawal of restriction

Where the Board withdraws a restriction or a condition of a restriction, the withdrawal shall be effected by written notice to the licensee.

81. Directions with the notice to restrict or notice of intention to revoke

(1) A licence may be restricted by issuing such directions as the Board thinks necessary to protect the interests of users or participants or potential users or participants.

(2) The Board may give directions to a licensee when giving a notice of intention to revoke or at any time after such notice is given.

(3) Directions issued under this section may-

(a) require the licensee to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) stipulate limitations on accepting new users or participants or the distribution of profit;

(c) direct the distribution of safeguarded users' funds;

- (d) prohibit the licensee from entering into any other transaction or class of transactions;
- (e) require the removal of any director or officer; or
- (f) contain such other requirements as may be considered necessary in any particular case.

(4) A licensee who fails to comply with any requirement or contravenes any prohibition imposed by a direction under this section commits an offence and is liable on summary conviction to a fine of five million dollars.

(5) Where—

- (a) the ground for a proposed restriction or variation of a restriction is that it appears to the Board that any of the fit and proper criteria as prescribed is not or has not been fulfilled, or is unlikely to be or may not have been fulfilled in the case of any person; or
- (b) a proposed restriction or direction consists of, or includes a condition requiring the removal of any person as director or officer,

the Board shall serve on that person a copy of the notice of intention to restrict or vary a restriction or a copy of the direction, as the case may be, together with a statement of his right to make representations under subsection (5).

(6) A person who is served with a copy of a notice of intention to restrict or vary a restriction or a copy of the direction under subsection (4) may make written representations to the Board during the period of time specified in the notice.

(7) After taking into account any representations made under subsection (5), the Board shall decide whether to—

- (a) proceed with the action proposed in the notice;
- (b) vary the restriction;
- (c) confirm, vary or cancel the direction; or
- (d) take no further action.

(8) The Board shall serve on the licensee and on any such person served with notice in subsection (4), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and the right of appeal under section 95.

82. Voluntary revocation

(1) A licensee may make an application to the Central Bank to have its licence voluntarily revoked at any time after it has been issued a licence.

(2) Every application for voluntary revocation shall be made to the Central Bank in writing and shall be accompanied by such information as the Central Bank may require.

(3) Where the Central Bank receives an application for voluntary revocation, it shall place restrictions on the licence of the licensee in accordance with the provisions of section 81 to cease any new business and any other restrictions and directions as the Central Bank deems necessary and no notice of intention is required to be given.

(4) The Central Bank shall direct the licensee to publish in the Gazette, in at least two daily newspapers circulated in Trinidad and Tobago and in any other manner specified by the Central Bank a notice approved by the Central Bank—

(a) informing the public of its application to have its licence voluntarily revoked and the reasons thereof;

(b) in the case of a payment service provider, requiring persons or their legal personal representative to redeem their funds and close their e-money accounts or transaction accounts within sixty business days from the date of publication in the *Gazette* or daily newspapers, whichever is published later;

(c) in the case of a payment system operator, requiring the settlement agent or operator to return any funds held on behalf of participants within sixty business days from the date of that the payment system ceases to operate; and

(d) containing any other information required by the Central Bank.

(5) The licensee shall comply with all directions of the Central Bank with respect to the format of the notice and periods of publishing required under subsection (4).

(6) The Central Bank, upon being satisfied with the arrangements for the voluntary revocation of a licence, shall issue a notice of revocation to the licensee and the licence shall be deemed to be revoked as at the date of the notice.

(7) Nothing in this section shall be construed so as to prevent the Central Bank from revoking or restricting a licence under other provisions in this Act, from making an application for the winding up of the licensee or taking any other action under this Act.

83. Power of the Central Bank to suspend the operations of a licensee

(1) Where the Central Bank is satisfied after an on-site or off-site examination of the affairs of a licensee that the licensee is insolvent or unable to meet the minimum prudential criteria under this Act or is unlikely to meet obligations to users or participants or that its continuation in business is likely to involve a loss to the users, participants or creditors of a licensee or is otherwise in the public interest, the Governor or his delegate may advise the Board accordingly.

(2) The Board may, after receiving the advice of the Governor or his delegate and after considering all the relevant facts and circumstances, order the licensee to suspend business forthwith and may direct that-

- (a) the financial institution holding the licensee's accounts shall forthwith cease to execute instructions given by the licensee's directors or officers in respect of the licensee's accounts held with that institution;
 - (b) where the licensee is a payment service provider, the operator of the payment system to which the licensee is a participant shall suspend the licensee;
 - (c) an officer or agent of the Central Bank shall take charge of all books, records, other documents, including electronically stored information and assets of the licensee, including accounts held at financial institutions or any portion thereof;
 - (d) the licensee shall give such officer or agent of the Central Bank access to its information technology systems and networks;
 - (e) any entity to which activities are outsourced shall give access to such officer or agent of the Central Bank in respect of any documents, information and data of the licensee, including information and documents stored in an electronic form and information technology systems and networks of a licensee; and
 - (f) the officers or agents of the Central Bank shall take all such measures as may be necessary to prevent the continuation in business by that licensee during the period of suspension and preserve the assets of the licensee.
- (3) Notwithstanding subsection (1), where it appears to the Board that there are grounds on which its power to revoke the licence of a licensee under section 73 is exercisable, the Board may, after considering the circumstances, suspend the operations of the licensee and the provisions of subsections (2) and (4) to (11) shall apply *mutatis mutandis*.
- (4) Notwithstanding the provisions of any other law, no action or proceedings may be instituted in any Court for the purpose of securing the enjoining, review or revocation of any order made or direction given under subsection (2) or in respect of any loss or damage incurred or likely to be or alleged to be incurred by reason of such order or direction.
- (5) An order made under subsection (2) shall cease to have effect—
- (a) if the Board, on the recommendation of the Governor or his delegate, makes a further order permitting the licensee to resume business unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the users or participants and potential users or participants of the licensee and other creditors of the licensee; or
 - (b) upon the expiration of the period of suspension, unless the Board on the advice of the Governor or his delegate —
 - (i) extends the period of suspension;
 - (ii) directs that the Bank make an application to the Court for the appointment of a judicial manager of the licensee; or
 - (iii) directs the Bank to petition the Court to wind-up the licensee on behalf of its users or participants in accordance with this Act.
- (6) For the purposes of subsection (5)(b)(iii), the Court may order the winding-up of a licensee in accordance with the Companies Act subject to the modification that a licensee may be ordered to be wound up on the petition of the Central Bank on behalf of its users or participants in the public interest.

(7) Where subsection (5)(a) applies-

- (a) an operator shall re-admit the participant, subject to any conditions of the Board; and
- (b) a financial institution shall resume the execution of instructions given by the directors and officers of a licensee in respect of its accounts, subject to any conditions of the Board.

(8) Any person who directly or indirectly prevents the Central Bank from having access to a licensee or holding company of a licensee, its documents, information and data, including information stored in an electronic form and information technology systems and networks, or fails to make them available, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

(9) A financial institution, payment systems operator or entity to which activities are outsourced referred to under subsection (2) who fails to comply with any requirement or contravenes any prohibition imposed by a direction under this section commits an offence and is liable on summary conviction to a fine of five million dollars.

(10) No time shall run in relation to any period of limitation prescribed by the Limitation of Certain Actions Act or any other written law relating to the limitation of actions, proceedings or the enforcement of any judgment or order in respect of any unresolved dispute or claim between a licensee and a user or participant pursuant to a user agreement or the rules of the payment system, from the date of the suspension order under subsection (2) and until the termination of the suspension in accordance with this section.

(11) All costs incurred by the Central Bank pursuant to this section shall be treated as a loan by the Central Bank to the licensee and shall be repaid out of the assets of the licensee during the suspension and upon liquidation or judicial management, shall be payable out of the assets of the licensee in priority to all other unsecured claims.

(12) Notwithstanding subsection (2), the Board may also direct the Governor or his delegate to distribute the safeguarded users' funds in such manner as it sees fit during the period of suspension.

84. Power of the Central Bank to apply for Winding-up

(1) In any case where a petition is made by the Central Bank to the High Court for the winding-up of a licensee following suspension—

- (a) the licensee shall remain in suspension and shall not carry on business during the pendency of the petition unless it is authorised to do so by the High Court and except in accordance with such conditions, if any, as may be specified by the High Court; and
- (b) the High Court, if it is of the opinion after such inquiry as it may consider necessary, that the licensee—
 - (i) is not insolvent;
 - (ii) is able to meet the minimum capital requirement; and
 - (iii) is able to meet the demands of its users or participants and its continuation in business is not likely to involve a loss to its users, participants or creditors,

may permit the licensee to resume business either unconditionally or subject to such conditions as the High Court may consider necessary in the public interest or the interests of the users, participants and other creditors of the licensee but shall otherwise order that the licensee be wound-up.

(2) Notwithstanding the preceding sections, the Central Bank may take a direct petition to the Court for the winding-up of a licensee, in accordance with the Companies Act.

(3) A petition shall not be presented except by leave of the High Court, and such leave shall not be granted unless—

(a) a *prima facie* case has been established to the satisfaction of the High Court; and

(b) security for costs for such amount as the High Court may think reasonable has been given.

(4) The procedure governing petitions to wind up made to the High Court by the Central Bank under this Act and for the enforcing of orders made thereunder and for all matters incidental thereto shall be such as is provided for by the Companies Act or such other legislation for the time being in force.

(5) Notwithstanding subsection (2), a petition by the Central Bank pursuant to section 83(4)(b)(iii) and referred to in subsection (1) may be heard *ex-parte*.

(6) In any case where an order of the High Court is made, whether in pursuance of any petition made under this section or otherwise, for the winding-up of any licensee or for the appointment of a Judicial Manager then, notwithstanding the provisions of any other law, such person as may be nominated by the Central Bank shall be appointed as liquidator or judicial manager as the case may be.

(7) The appointment of the person nominated by the Central Bank as Liquidator or Judicial Manager does not in any way absolve any director or officer of the licensee from liability arising from willful neglect, fraudulent transactions, abuse of customers' funds and from breach of the provisions of this Act.

(8) The Central Bank shall be a party to any proceedings under the Companies Act relating to the winding up of a licensee.

(9) The Central Bank is entitled to be heard on any application in relation to the winding up of a licensee.

(10) The liquidator shall furnish the Central Bank with—

(a) such information as the Central Bank may from time to time require within the period specified by the Central Bank;

(b) all documents submitted to the Registrar of Companies as required under the Companies Act within five business days of such submission; or

(c) particulars of any application that the liquidator intends to make to the Court at least ten business days prior to making such application.

85. Duties and Protection of Liquidator

(1) The liquidator shall conduct the liquidation and management of a licensee with due diligence including the greatest economy compatible with efficiency.

(2) Where the Court, on application of the Central Bank, a contributory, a creditor, user or participant, is satisfied that the liquidator is acting with unreasonable delay or is failing or has failed to carry out any duty imposed in this Part or under any other written law, the Court may make an order, on such terms as it considers proper—

(a) directing the liquidator to carry out that duty;

- (b) restraining the liquidator from dealing with the property of the licensee until that duty has been carried out; or
 - (c) removing the liquidator and appointing another liquidator.
- (3) Where the Central Bank, a contributory, creditor, user or participant claims unreasonable delay or failure to act pursuant to subsection (1), the Court shall consider all relevant factors in deciding whether the delay was unreasonable including—
- (a) the length of the delay;
 - (b) the complexity of the liquidation;
 - (c) the reasons for the delay; and
 - (d) the conduct of the liquidator, the licensee or holding company, the Central Bank and the applicant.
- (4) The liquidator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of, or in connection with, the exercise of the powers conferred on him under this Part.

86. Voluntary Winding Up

- (1) A licensee shall not commence a voluntary winding-up without the approval of the Central Bank.
- (2) The procedure and documents required for the application of a licensee to voluntarily wind-up shall be as specified by the Central Bank.
- (3) The Central Bank shall not provide the approval referred to in subsection (1) unless it is satisfied that the voluntary winding-up will be effected in a manner that would not pose undue risks to users or participants of the licensee or adversely affect public confidence in the national payment system or the financial system of Trinidad and Tobago.
- (4) The Central Bank shall, within forty business days of receipt of the documents specified by the Central Bank, communicate to the licensee its approval or non-approval of the voluntary winding-up of the licensee.
- (5) Where the Central Bank has given the licensee approval to voluntarily wind-up, the licensee shall hold a meeting to pass the resolution to voluntarily wind-up within forty business days of the date of approval.
- (6) Where a licensee passes a resolution for voluntary winding-up, it shall within ten business days, give notice of the resolution -
 - (a) by publication in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago;
 - (b) to the Registrar of Companies, in writing; and
 - (c) to its users or participants, in such form and containing such information as the Central Bank may require.
- (7) Sections 84(8) and (9) shall apply *mutatis mutandis* to this section.
- (8) A licensee that contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of six hundred thousand dollars and every director who votes for or consents to a resolution

authorising a voluntary winding-up in contravention of this section also commits an offence and is liable, on summary conviction, to a fine of six hundred thousand dollars and to imprisonment for two years.

- (9) The provisions of this section shall apply with such modifications as are necessary on a voluntary winding up in accordance with the provisions of the Companies Act.

87. Application for Judicial Management

- (1) Where the Central Bank is satisfied that—

- (a) a ground for revocation or suspension under this Act exists;
- (b) the licensee has failed to submit financial statements and returns and that the true financial position of a licensee is uncertain; or
- (c) a controlling shareholder or significant shareholder is no longer considered to be fit and proper in accordance with any criteria as prescribed, the Governor or his delegate shall advise the Board accordingly

- (2) The Board may, after receiving the advice of the Governor and where it is of the opinion that it is necessary or proper for the licensee or any part of its business be placed under judicial management, direct the Governor or his delegate to apply to the High Court for an order of judicial management.

- (3) A licensee may, after giving the Central Bank twenty business days' notice in writing of its intention to do so, apply to the High Court for an order that it or any part of its business be placed under judicial management.

- (4) Where an application is made to the High Court under this section, the licensee and the Central Bank, shall be entitled to be heard on the application.

- (5) Where an application is made under this section for an order in respect of any licensee, all actions and the execution of all claims, writs, summonses and other processes against the licensee shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

88. *Judicial Management*

- (1) An order for the judicial management of a licensee or of any part of its business shall be subject to the provisions of this Act.

- (2) The High Court shall appoint a judicial manager who shall receive such remuneration from the licensee and may at any time cancel the appointment and appoint some other person as the judicial manager.

- (3) The High Court may, if it thinks fit, charge the remuneration charges and expenses of the judicial manager on the property of the licensee in such order of priority, in relation to any existing charges on that property, as it thinks fit.

- (4) Where an order for judicial management is made under this section, the management of the licensee or of that part of its business to which the order relates shall, on and after the date specified in the order, vest exclusively in the judicial manager.
- (5) A person who is appointed judicial manager, shall not, except with the leave of the High Court, solicit or accept any new users or participants.
- (6) The High Court may from time to time issue to the judicial manager such directions regarding his powers and duties as it considers necessary.
- (7) The judicial manager shall act under the control of the High Court and may at any time apply to the High Court for instructions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.
- (8) The judicial manager shall give a report on the status of the judicial management to the Central Bank on a monthly basis and shall provide the Central Bank with such information as it may from time to time require and shall report to the Central Bank whenever he intends to apply to the High Court for instructions and shall at the same time furnish the Central Bank with particulars of the application.
- (9) The Central Bank is entitled to be heard on any application made pursuant to subsection (7) and may make an application to the High Court to be heard on any matter relating to the conduct of the judicial management.

89. Report by Judicial Manager

- (1) The judicial manager shall conduct the management with due diligence, and shall as soon as possible after his appointment, file with the High Court a report stating which of the following courses is in the circumstances, in his opinion most advantageous to the general interests of the users or participants of a licensee:
 - (a) the transfer of the business of the licensee to some other company;
 - (b) the carrying on of its business by the licensee;
 - (c) the winding up of the licensee or any part of its business; or
 - (d) the dealing with part of the business of the licensee in one manner, and with another part in another manner.
- (2) The judicial manager shall, as soon as he has filed the report, furnish a copy thereof to the Central Bank and make a written application to the High Court for an order to give effect to the course stated in the report.
- (3) The report or a copy thereof shall be open for inspection by any person during official hours at the registry of the High Court in which the report is filed or at such other place as the Central Bank determines.
- (4) Where the judicial manager recommends the transfer of the business of the licensee in accordance with subsection (1)(a), the Central Bank shall assess whether the proposed transfer meets the criteria in this Act and advise the High Court of its assessment during the hearing of the matter.

90. Decision of High Court on judicial manager

- (1) The High Court shall on the hearing of an application made under section 83(2)—

(a) after hearing the Central Bank, the judicial manager and any other person who in the opinion of the High Court ought properly to be heard; and
(b) after considering the report of the judicial manager,
make an order giving effect to the course which it considers in the circumstances to be most advantageous to the general interest of the users or participants of the licensee.

(2) An order of the High Court under subsection (1) shall be binding on all persons, and shall have effect notwithstanding anything contained in the articles of incorporation or continuance, by-laws or other constituent documents of the licensee.

91. Cancellation of contracts or agreements

The High Court may, either of its own motion or on the application of the judicial manager, at any time while an order made under section 84 is in force with respect to a licensee, after hearing all persons who, in the opinion of the High Court are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the High Court thinks just, any contract or agreement, between a licensee and any other person, which the High Court is satisfied is detrimental to the interests of users or participants.

92 Indemnity

The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of, or in connection with the exercise of, the powers conferred on him under this Part.

93. Cancellation of judicial management

(1) The judicial manager, the Central Bank or any interested person may at any time apply to the High Court for the cancellation of an order made by the High Court under section 84.

(2) Where an application is made under subsection (1) and the High Court has heard the Central Bank on such application, the High Court may cancel the order if it appears to it that—

- (a) the purpose of the order has been fulfilled; or
- (b) it is undesirable for the order to remain in force.

(3) Upon the cancellation of an order, the judicial manager shall be divested of the management which shall thereupon vest in the board of directors, other governing body of the company, the liquidator or receiver, appointed by the High Court.

PART X MISCELLANEOUS

94. General exemption

(1) The Minister may, by Order on the recommendation of the Central Bank, exempt any of the following from all or any of the provisions of this Act, subject to such conditions as the Central Bank advises are appropriate in the circumstances of the case:

- (a) any person or class of persons;
 - (b) any payment service or class of payment services; and
 - (c) any payment system or class of payment systems;
- (2) The Minister, on the advice of the Central Bank, may at any time add to, vary or revoke any condition imposed under subsection (1).
- (3) A person shall be guilty of an offence if the person contravenes any condition imposed under this section.

95. Guidelines by Central Bank

- (1) The Central Bank may issue guidelines on any matter it considers necessary to—
- (a) give effect to this Act;
 - (b) enable the Central Bank to meet its objectives;
 - (c) aid compliance with the Proceeds of Crime Act, the Anti-Terrorism Act, Economic Sanctions Act or Orders made thereunder as they relate to proliferation financing, or any other written law relating to the prevention of money laundering, combating the financing of terrorism and proliferation financing; and
 - (d) regulate the market conduct of licensees.
- (2) Contravention of a guideline although not an offence, shall not prevent the Central Bank from taking action under section 76.

96. Power of Minister to make Regulations

- (1) The Minister may, after receiving recommendations from the Central Bank, make Regulations for—
- (a) any matter required to be prescribed under this Act; and
 - (b) generally giving effect to the provisions of this Act.
- (2) Regulations made under this section shall be subject to a negative resolution of Parliament.
- (3) Regulations made under this section may include, but shall not be limited to –
- (a) the regulation, supervision and oversight of payment systems and any class of or all payment service providers and payment instruments;
 - (b) governance of payment systems and payment service providers;
 - (c) prudential criteria;
 - (d) access regimes;
 - (e) payment system rules;
 - (f) interoperability;
 - (g) protection of users and for ensuring that a payment service provider is fair, responsible and professional when dealing with users;
 - (h) any matter concerning the safeguarding of user funds;
 - (i) measures to ensure redemption of e-money or refund of user funds;
 - (j) any matter concerning the distribution of interest, if any, from the funds held in an account designated as a trust account.

(4) Without limiting the generality of subsection (3)(1), regulations made under that subsection may be in respect of any or all of the following matters:

- (a) transparency and disclosure requirements including the provision of information to users that is accurate, clear, timely and not misleading, and transparency of fees and charges;
 - (b) fairness of terms and conditions in any contract or agreement with a payment service provider for the provision of payment services;
 - (c) promotion and marketing of payment services;
 - (d) complaints and dispute resolution mechanisms; and
 - (e) confidentiality and protection of user information.
- (5) A person who contravenes Regulations made under this Act commits an offence and where the person—
- (a) is an individual, the person is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence to a fine of five hundred thousand dollars for every day on which the offence continues;
 - (b) is a company—
 - (i) every director and officer of such company is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence to a fine of five hundred thousand dollars for every day on which the offence continues; and
 - (ii) the company is liable on summary conviction to a fine of five million dollars and in the case of a continuing offence to a fine of five hundred thousand dollars for every day on which the offence continues.

97. Draft Regulations

- (1) Before Regulations are made or amended pursuant to section 90, the Central Bank shall consult with licensees and other persons who may be affected by the draft regulations or amendment.
- (2) Where, in the opinion of the Minister, any matter proposed to be dealt with in Regulations or by an amendment thereof has become urgent, the Minister may proceed to effect promulgation of the Regulations or an amendment thereof without following the process referred to in subsection (1) and may subsequently consult with the licensees and other persons who may be affected by the Regulation or amendment.

98. Amendment of Schedules

The Minister may by Order, upon recommendation of the Central Bank, amend the Schedules.

99. Offences and penalties

- (1) Any person who, in purported compliance with any requirement under this Act or any Regulations made hereunder, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading commits an offence.
- (2) A person who knowingly or recklessly contravenes—
 - (a) any provision of this Act or any Regulations or Order made hereunder; or
 - (b) any direction or requirement given or made by the Central Bank,

commits an offence and the offence shall be deemed to be continued so long as the default continues.

- (3) Any person who fails to comply with this Act or the Regulations for which no other penalty is expressly provided commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.
- (4) Where a person is convicted of an offence under this Act, the court may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or any Regulations or Order made hereunder or any direction, requirement or measure given or made by the Central Bank, in respect of which the person was convicted.
- (5) In any proceedings for an offence under this Act or the Regulations, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.
- (6) In any proceedings for an offence under this Act or the Regulations, where it is proved that the person charged intended to deceive, defraud or profit from the offence, the penalty shall be a fine ten times the amount stipulated for that offence and to imprisonment for twenty years.
- (7) The Court may, in addition to any other punishment it may otherwise impose under subsection (6)—
 - (a) order the person to comply with the requirement in respect of which the person was convicted;
 - (b) where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person's spouse or other dependent, order the convicted person to pay restitution to the party deceived or defrauded, in an amount equal to the court's estimation of those monetary benefits.
- (8) Where a person commits an offence under this Act and such offence is proved to have been—
 - (a) committed with the acquiescence, consent or connivance of—
 - (i) any director or officer of the company;
 - (ii) any person purporting to act in a capacity referred to in subparagraph (i); or
 - (b) attributable to any neglect on the part of—
 - (i) any director or officer of the company;
 - (ii) any person purporting to act in a capacity referred to in subparagraph (i)the persons referred to in paragraph (a) or (b) shall be presumed to have also committed the offence.

100. Financial fraud on users

- (1) A person who perpetrates a financial fraud on users commits an offence.
- (2) Any director or officer of a licensee who—
 - (a) falsifies the accounts of the licensee which leads to a loss of users' funds;
 - (b) uses the users' funds for their own benefit or for the benefit of their relatives or a connected party which leads to a loss of users' funds; or
 - (c) provides to the Central Bank false or misleading financial data or other relevant information with the intent to conceal the true financial position of a licensee, perpetrates a financial fraud on users.

(3) Any person who commits an offence under this section is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years.

101. Appeals

(1) Except where otherwise provided by this Act or the Regulations, an appeal shall lie to a Judge of the High Court from any decision, direction, refusal, ruling or order of the Central Bank or the Minister, given or made under this Act.

(2) An appellant may, within fifteen business days of the receipt of the notification of the decision, direction, refusal, ruling or order of the Central Bank or the Minister file with the Registrar of the Supreme Court, an appeal against such decision, direction, refusal, ruling or order, setting forth the ground of appeal.

(3) Notwithstanding that an appeal lies under this Act or under the Regulations from any decision, direction, refusal, ruling or order of the Central Bank or the Minister, such decision, direction, refusal, ruling or order shall be binding upon the appellant unless, on an *inter partes* application made to the High Court for the grant of an injunction before the determination of the appeal, the High Court is satisfied that circumstances exist that warrant the stay of the particular decision, direction, refusal, ruling or order or any further action by the Minister or the Central Bank and grants an injunction to the appellant on such terms and conditions as the High Court may direct.

(4) Where a Judge grants an injunction under subsection (3)—

(a) no further action may be taken by the Central Bank or the Minister, in respect of any decision, direction, refusal, ruling or order to which the injunction relates; and

(b) the injunction shall have effect—

(i) unless otherwise revoked, varied or suspended by the High Court, before any proceedings to which the appeal relates, are concluded; or

(ii) until the High Court determines the appeal, whichever is earlier.

(5) On an appeal, a Judge or the Court of Appeal, as the case may be, may confirm, reverse or vary any decision, direction, refusal, ruling or order made or given by the Central Bank or the Minister.

(6) Subject to this Part, the procedure for determining appeals shall be in accordance with the Civil Proceeding Rules of the Supreme Court of Judicature.

(7) On an appeal, the appellant and the Central Bank or the Minister as respondent may appear in person or be represented by an Attorney-at-law or by any other person.

102. Jurisdiction and limitation

(1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against a licensee, including an unincorporated body in any place at which it has a place of business, and against an individual in any place at which he is for the time being located.

(2) Notwithstanding anything in any other law to the contrary, any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within seven years after the commission of the offence or within eighteen months after the relevant date.

(3) In this section, the “relevant date” means the date on which evidence sufficient in the opinion of the Central Bank to justify the institution of summary proceedings comes to its knowledge.

(4) For the purpose of subsection (3), a certificate as to the date on which evidence referred to in subsection (3) came to the knowledge of the Central Bank shall be conclusive evidence of that fact.

103. Evidence

(1) In any proceeding, any document referred to in subsection (2) and certifying—

- (a) that a particular person is or is not a licensee or was or was not licensed at a particular time;
- (b) the date on which a particular licensee became or ceased to be licensed;
- (c) whether or not a particular licensee’s licence is or was restricted;
- (d) the date on which a restricted licence expires or expired; or
- (e) any other fact or matter relating to a licensee,

shall be admissible in evidence and, shall be sufficient evidence of the facts stated in the document.

(2) The documents admissible in evidence pursuant to subsection (1) are—

- (a) a certificate signed by the Governor;
- (b) a true copy of or extract from a document certified as such by the Governor or a Deputy Governor; and
- (c) a copy of the Gazette and in at least two daily newspapers published and circulated in Trinidad and Tobago purporting to contain the document.

104. Administrative fines

(1) The Central Bank may issue to any person who, there is reasonable cause to believe, has committed an offence referred to in the Fourth Schedule, a Notice offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of the administrative fine specified for the offence in the Fourth Schedule.

(2) Where a person is given a Notice under this section, criminal proceedings shall not be taken against him for the offence specified in the Notice until the expiration of fifteen business days commencing from the day after which the Notice was served.

(3) Where a person fails to pay the administrative fine referred to in subsection (1) or where he continues to commit the offence after the expiration of fifteen business days following the date of receipt of the Notice referred to in subsection (1) that person is liable on summary conviction for the original offence committed.

(4) Where a person paid an administrative fine under subsection (1), but continues to commit the offence and is convicted under subsection (3), he is liable to the criminal penalty prescribed in Schedule 6 from the date after which he made the payment.

(5) Payment of an administrative fine under this section shall be made to the Central Bank and a certificate that payment of the penalty was made to the Central Bank by the specified date shall, if the certificate purports to be signed by an authorised officer of the Central Bank, be admissible as evidence of the facts stated therein.

- (6) All monies received under this section shall be paid into the Central Bank and credited to the Consolidated Fund.
- (7) A Notice under subsection (1) shall—
- (a) specify the offence alleged;
 - (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
 - (c) state—
 - (i) that criminal proceedings shall not be laid until the expiration of fifteen business days from the date of receipt of the Notice where payment of the fixed penalty is made and the commission of the offence is discontinued; and
 - (ii) the amount of the fixed penalty and the fact that it is to be paid to the Comptroller of Accounts whose address is to be stated.
- (8) In any proceedings for an offence to which this section applies, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of a fixed penalty thereunder unless in the course of the proceedings or in some document which is before the Court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a Notice, or, as the case may be, to such payment.
- (9) The Minister may, by Order, provide for any matter incidental to the operation of this section, and in particular, any such Order may prescribe—
- (a) the form of Notice under subsection (2); and
 - (b) the nature of the information to be furnished to the Central Bank along with any payment.

105. 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, acquire in the performance of the person's duties under this Act or regulations made thereunder, commits an offence and shall, on summary conviction, be liable to a fine not exceeding ten million dollars or double the amount of the person's gain, whichever is greater, and imprisonment for a term not exceeding ten years.
- (2) It shall be a defence to a charge under subsection (1) to show that the information at the time it was used was generally known to the public or a substantial section of the public.

106. Offence to suppress information

- (1) A person who without reasonable excuse alters, suppresses, conceals or destroys or refuses to produce any document which he is liable to produce or has been so required to produce commits an offence.

(2) A person shall not, with intent to defeat the purposes of this Act or with intent to delay or obstruct the carrying out of an investigation under this Act send, cause to be sent, or conspire with another person to send out of Trinidad and Tobago a book, information and other document including in electronic form or any money or property belonging to, or under the control of a licensee.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years.

107. Transactions and rights intact

Subject to this Act and notwithstanding that it may constitute an offence, no transaction shall be invalid and the rights of any party to the transaction shall not be affected by reason only of a contravention of the provisions of this Act.

PART XI SAVINGS AND CONSEQUENTIAL AMENDMENTS

108. Consequential amendments

(The Central Bank Act, the Financial Institutions Act, the Proceeds of Crime Act and the Financial Intelligence Unit of Trinidad and Tobago Act have been identified for consequential amendment and will be amended following the finalisation of the substantive PSS Bill. The extent of the amendments will be set out in XXX Schedule.)

109. Savings

(1) Any Guideline, Regulation, Order or other subsidiary legislation made pursuant to the Central Bank Act or Financial Institutions Act in relation to any matter which corresponds with any provision of this Act, shall, if in force at the commencement of this Act, continue in force in relation to the person to whom it applied until revoked, amended or replaced by other subsidiary legislation made under this Act.

(2) Any pending legal proceedings, criminal prosecution or investigation under the applicable provisions of the Central Bank Act or the Financial Institutions Act shall be continued under the Financial Institutions Act or the Central Bank Act in relation to the person to whom it applied.

110. Act binds the State

This Act binds the State.

FIRST SCHEDULE

Payment Services

1. Each of the following services is a payment service for the purposes of this Act:

Category	Class of Payment Service	Definition
(A) Providing payment services	(a) Provision of transaction accounts	A service of providing transaction accounts held with non-bank payment service providers that can be used for making and receiving payments.
	(b) Provision of e-money account	A service providing an e-money account.
	(c) Issuance of electronic money	The service of issuing electronic money to any person for the purpose of allowing a person to make payment transactions.
	(d) Provision of electronic wallet services	A service that enables users to access, manage and use payment instruments issued by one or more payment service providers through a mobile application or a website.
	(e) Issuing of payment instruments	A service by a non-bank payment service provider contracting to provide a user with a payment instrument to initiate and process the user's payment transactions.
	(f) Acquiring of payment transactions	A service provided by a non-bank payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to a user including merchant acquisition services.

Category	Class of Payment Service	Definition
	(g) Money remittance service	<p>A service for the transmission of funds, without any payment accounts being created in the name of the payer or the payee, where—</p> <p>(a) funds are accepted in Trinidad and Tobago for the purpose of transmitting, or arranging for the transmission of, the funds on behalf of the payer to any person outside Trinidad and Tobago;</p> <p>(b) funds are received from outside of Trinidad and Tobago for any person in Trinidad and Tobago, or arrangements are made for the receipt of any funds from outside of Trinidad and Tobago by any person in Trinidad and Tobago; or</p> <p>(c) funds are accepted in Trinidad and Tobago for the purpose of transmitting, or arranging for the transmission of, the funds on behalf of the payer to any person in Trinidad and Tobago,</p> <p>subject to any required authorisation for the conversion of currencies under the Exchange Control Act Chap. 79:80 where incidental or ancillary to the remittance service.</p>
	(h) Processing of electronic funds transfer for third parties	<p>Processing includes information technology or network communication service, such as authentication and authorisation, that involves the acceptance, coming into possession or the settlement of funds, in order to enable a payment service provider or financial institution to conduct transfers of funds including direct debits, credit transfers, card payments and e-money transfers.</p>
(B) Providing ancillary services	(i) Payment initiation service	Has the meaning assigned to it in section 2 of this Act.
	(j) Account information service	Has the meaning assigned to it in section 2 of this Act.

For the purposes of this Act -

- a) “transaction account” means a payment account intended for holding funds that are linked to present or future payment transactions of a user; and
- b) “e-money account” means an account used for the purpose of loading an e-money instrument and includes prepaid accounts and the term “e-money account holder” shall be construed accordingly;

SECOND SCHEDULE

Exempt Persons and Excluded Services

Part I

Exempt Persons

1. Subject to section 24, the following persons are exempt from a requirement to obtain a licence under this Act to provide a payment service:
 - (a) a financial institution licensed under the Financial Institutions Act that provides e-money accounts, issues electronic money or provides electronic wallet services; and
 - (b) the Central Bank.
2. Subject to section 24, the following persons are exempt from a requirement to obtain a licence under this Act to operate a payment system:
 - (a) the Central Bank;
 - (b) an operator of a securities clearing system regulated under the Securities Act;
 - (c) a foreign operator of a payment system that is regulated and supervised by a foreign regulator acceptable to the Central Bank where-
 - (i) the services provided may not be available locally; or
 - (ii) the services are deemed necessary by the Central Bank for any reason, including capacity issues or to facilitate critical access to international financial markets.

Part II

Excluded Services

This Act does not apply to the following services:

- (a) closed loop payment services;
- (b) cash or processing of cash-only transactions which do not involve an intermediary or which do not involve funds held on payment account;
- (c) professional physical transport of banknotes and coins, including their collection, processing and delivery;
- (d) payment transactions services through cheques, however, for the avoidance of doubt a person operating a cheque clearing house is required to be licensed as an operator, unless otherwise exempted under this Act;
- (e) provision of a technology service;
- (f) payment transactions services carried out within a payment system or securities settlement system between settlement agents, central counterparties, clearing houses, central banks and other participants of the system;

- (g) payment transactions services related to securities asset servicing, including dividends, income or other distributions, sale and redemption of securities, carried out by a regulated securities market participant; and
- (h) payment transactions services by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service for purchase of content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill.

THIRD SCHEDULE
Application and Annual Fees

1. The following non-refundable fees shall be payable by a payment service provider in accordance with the provisions of this Act—

Matters in respect of which a fee is payable	Application Fee	Annual Fee
Licence to provide a payment service in any category listed in the First Schedule	\$10,000	\$20,000
Annual fee payable in respect of each agent	-	\$500 in respect of the first year of appointment of an agent and \$1000 for every year thereafter.
Application for testing permit within the regulatory sandbox	\$5,000	-

2. The following non-refundable fees shall be payable by a payment system operator in accordance with the provisions of this Act—

Matters in respect of which a fee is payable	Application Fee	Fee per Payment System Upon Licensing	Annual Fee
Licence to carry on the business of a payment system operator	\$10,000	\$50,000	\$25,000

3. The annual fees within this Schedule shall be payable not later than the thirty first day of January in each year or such later date as may be specified by the Central Bank, except that where a licence is issued, or an agent is appointed, after the first quarter in any year, the fees payable shall be calculated on a pro rata basis in respect of the first year of the licence or agent's appointment.

FOURTH SCHEDULE

Administrative Fines

Offences in Respect of which Criminal Liability may be discharged by payment of an Administrative Fine

Section	General Description of Offence	Criminal Penalty (applicable solely on summary conviction)	Administrative Fine (Payment Service Provider)	Administrative Fine (Payment System Operator)	Administrative Fine (Individual)
23	Failure to pay annual fees		\$5,000 per day for each day that the offence continues	\$10,000 per day for each day that the offence continues	
30 (1)	Obligation to notify of certain events		\$5,000 per day for each day that the offence continues	\$10,000 per day for each day that the offence continues	
30(2)(c)	Failure to notify of change in director or officer of a licensee		\$32,500	\$65,000	
30(2)(a)	Failure to notify Central Bank of a change		\$62,500	\$125,000	
30(4)(a)	Making an alteration to articles of incorporation, continuance, by-laws or other Constituent documents without notifying and receiving the		\$62,500	\$125,000	

	approval of the Central Bank				
30 (4) (b)	Failure of a licensee to submit to the Central Bank copies of altered articles of incorporation, continuance, bye-laws or other constituent documents		\$62,500	\$125,000	
31(1)(b)	Failure of a shareholder to provide the Central Bank with the information requested under this section within such time as may be specified				\$100,000
(31(1)(a), (c)-(f)	Failure to provide information		\$62,500	\$125,000	
31(2)	Failure to comply with a notice to provide or verify information		\$62,500	\$125,000	
2(1)	Failure to submit statements and other information		\$5,000 per day for each day that the offence continues	\$10,000 per day for each day that the offence continues	
32(4)	Failure of the licensee to submit to the Central Bank a list of		\$62,500	\$125,000	

	beneficial and nominee shareholders who hold directly or indirectly shareholdings of five per cent or more of issued share capital, and any agreement with respect to the voting of shares of the licensee				
34(1)	Failure to submit financial statements duly audited by a certified auditor		\$5,000 per day for each day that the offence continues	\$10,000 per day for each day that the offence continues	
34(2)	Failure to submit consolidated financial statements duly audited by a certified auditor		\$62,500	\$125,000	
34(6)	Failure of a licensee to submit to the Central Bank within the prescribed time audited financial statements signed by two directors of the affiliate or other company or unincorporated body		\$62,500	\$125,000	
34(8)	Failure to submit financial statements within the prescribed time audited financial statements and		\$62,500	\$125,000	

	management accounts verified by two directors				
37(2)	Failure of a licensee to comply with additional reporting requirements as the Central Bank may prescribe in addition to generally accepted auditing standards		\$62,500	\$125,000	
40(1) 40(2)	Failure to establish and maintain risk management and internal controls		\$62,500	\$125,000	
42(2)	Failure to notify the Central Bank of use of an agent		\$2,500		
45(5)	Failure to correct or withdraw an objectionable or misleading advertisement		\$32,500	\$65,000	
78(6)	Failure of a licensee to publish notice of the passing of a resolution for voluntary winding-up and to give notice, in the case of a licensee, to its users or participants		\$62,500	\$125,000	