Central Bank of Trinidad & Tobago

POLICY PROPOSAL DOCUMENT FOR A PAYMENTS SYSTEM BILL FOR TRINIDAD AND TOBAGO

DRAFT CONSULTATION DOCUMENT

MAY 2021

ABBREVIATIONS

Bill	Payment System Bill
CBA	Central Bank Act, Chap. 79:02
Central Bank	Central Bank of Trinidad and Tobago
CPMI	Committee on Payments and Market Infrastructure
EMI	E-Money Issuer
FIA	Financial Institutions Act, Chap. 79:09
FMI	Financial Market Infrastructures
IA	Insurance Act, 2018
IOSCO	International Organization of Securities Commissions
Order	E-Money Issuer Order, 2020
PFMI	Principles for Financial Market Infrastructures
PPD	Policy Proposal Document
PSP	Payment Service Provider
SIPS	Systemically Important Payment System
SRPS	Significant Retail Payment System
VASP	Virtual Asset Service Provider

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY

Internationally and regionally the payments system is being transformed by innovations in financial technology ("fintech"). In Trinidad and Tobago, the national payment landscape is being impacted by the emergence of fintech companies and other non-bank payment service providers (PSPs). PSPs facilitating e-commerce such as payment aggregators and merchant acquirers including payment gateways are becoming an important part of the payments ecosystem, particularly for small merchants that wish to participate in e-commerce.

The current legal framework governing the national payment system is fragmented and inadequate to provide the appropriate supervisory, regulatory and oversight regime necessary to promote the safety and efficiency of the payment system and to accommodate the new payment products and services and associated risks. As such, it is critical that the legislative and regulatory framework be modernized and strengthened to remove existing deficiencies and facilitate innovation in the payment space. This can be accomplished by *inter alia*, adoption of the internationally accepted Principles for Financial Market Infrastructures or PFMI.

The Central Bank, as the regulator of the payment system in Trinidad and Tobago, is therefore taking steps to develop modern and comprehensive payment system legislation and has documented the key proposals in this Policy Proposal Document ("PPD"). The **main objectives** of this PPD are to:

- consolidate the legal framework and streamline the oversight of all payment systems and the regulation and supervision of Payment Service Providers under a single law;
- promote the safety and efficiency of payment systems;
- give legal certainty to, and protect, users of payment, clearing and settlement systems;
- implement a modular and risk-based regulatory regime that is calibrated to the risks posed by different types of activities; and
- facilitate e-commerce, cashless payments and financial inclusion.

The key proposals are grouped under the following six (6) areas:

(1) **A registration regime for all payment systems.**

(2) **A designation and oversight regime for Systemically Important Payment Systems ("SIPS") and Significant Retail Payment Systems ("SRPS").**

(3) **A licensing and supervisory regime for PSPs** providing the following classes of payment services:

   (a) Account Issuance;
   (b) Merchant acquisition;
   (c) Domestic money transfer /remittance;
   (d) Cross border transfer /remittance;
   (e) Electronic money issuance; and

(f) Virtual assets service providers (VASPs) that provide services for the purpose of facilitating payments or transfers.

(4) **Exempted activities or entities** for which no PSP licence or payment system designation or registration would be required. These include reward or loyalty programmes, technology providers, financial institutions licensed under the FIA, and Central Bank-owned or operated systems and services.

(5) **Addressing regulatory risks and concerns by specific provisions** relating to:

(a) Ensuring Soundness of Payment Systems;

(b) Settlement risk;

(c) Collateral and Netting Arrangements;

(d) Interoperability;

(e) Consumer/User Protection;

(f) Obligations;

(g) Specific Restricted/Prohibited Activities; and

(h) ML/TF risk, technology and cyber risk, and business continuity.

(6) **Ensuring proper governance of payment systems and PSPs**.

(7) **General powers for supervision, oversight and enforcement** by the Central Bank similar to other Central Bank-administered legislation.

It is proposed that the existing National Payments System Council, which comprises both public and private stakeholder entities, would also be formally established in legislation.

Finally, the proposed Payment Systems Bill ("Bill") will contain appropriate transitional arrangements for existing regulated entities as well as consequential amendments to other laws as relevant, to allow for the smooth implementation of the new regulatory regime.

The draft PPD will be issued for public consultation for a six week period commencing May 17, 2021 with relevant stakeholders[1] that have interest in ensuring a modern, comprehensive payments bill that accomplishes the objectives set out on page 3. Written comments on the PPD should be submitted by June 30, 2021 in soft copy to PSBConsultation@central-bank.org.tt.

[1] Stakeholders will include members of the Payments System Council, licensees under the FIA, other domestic regulators, licensed payment systems and registered PSPs.

2. BACKGROUND

Currently, the Central Bank has a broad mandate under the Central Bank Act, Chap. 79:02 ("CBA") to "*supervise the operations of payment systems in Trinidad and Tobago generally, Interbank Payment Systems in accordance with the Financial Institutions Act and the transfer of funds by electronic means including money transmission or remittance business.*" (Per section 36(cc)). The Central Bank also has responsibility for the oversight of *interbank* payment systems under the provisions of the Financial Institutions Act, Chap. 79:09 ("FIA"). In addition, the Central Bank has issued several guidelines to treat with the regulation of non-interbank payment systems and payment service providers ("PSPs") in line with its responsibilities under the CBA, however, the framework for the regulation of these entities needs to be strengthened significantly.

Under the FIA, financial institutions as well as other categories of persons as may be prescribed by Order of the Minister on the advice of the Central Bank, are authorised to issue e-money. Following the E-money policy proposals of the Central Bank, the E-Money Issuer Order ("Order") was issued by the Minister on August 4, 2020 permitting other entities to issue e-money. The Order also prescribes a framework for the 'sandboxing' of e-money issuers through the issuance of a "provisional" registration. The Order therefore covers only one payment service activity – e-money issuance services. The regulatory framework for other payment service activities needs to be more comprehensively developed.

Further, the payments system is being transformed by innovations in financial technology ("fintech") and the existing fragmented and deficient legislative and regulatory framework is inadequate to deal with the new payment methods and instruments that are emerging rapidly.

The Central Bank is therefore desirous of introducing comprehensive payments systems legislation to consolidate and enhance the regulatory regime and reflect the international best practice as espoused in the Principles for Financial Market Infrastructures ("PFMI")[2]. This Policy Proposal Document ("PPD") sets out the proposed framework for a new Payment Systems Bill ("Bill"). In developing the proposals, the Central Bank examined the legislative models of *inter alia* Singapore, the United Kingdom, Guyana and Jamaica which have modern payments legislation that are generally reflective of the relevant PFMI.

3. TRINIDAD AND TOBAGO's PAYMENTS SYSTEMS LANDSCAPE

Financial Market Infrastructures ("FMI") play a critical role in the financial system by facilitating payments, clearing, settlement and recording of monetary and financial transactions and therefore it is

[2] See Section 4 of this PPD.

important to ensure that they are operating safely and efficiently. The FMI in Trinidad and Tobago is illustrated in *Diagram 1* below and comprise:

- **The Real Time Gross Settlement ("RTGS") system** which is the hub of the payments system and is owned and operated by the Central Bank. The RTGS processes large value ($500,000 and over) and time critical payments on behalf of the Central Bank, its customers, as well as the eight commercial banks which are direct participants in the system. Indirect participants include the Trinidad and Tobago Unit Trust Corporation, the Deposit Insurance Corporation and non-bank financial institutions;

- **Two Central Securities Depositories ("CSD")** namely the Trinidad and Tobago Central Depositories ("TTCD") for private securities, and the Government Securities Settlement System ("GSS") for Government securities. The GSS is administered by the Central Bank; and

- **Two Securities Settlement Systems ("SSS")** namely the Trinidad and Tobago Stock Exchange ("TTSE") for trades in private securities and secondary market Government securities and the GSS for primary auctions of government securities.

The Central Bank has a mandate for the supervision and oversight of the payment system as specified in the CBA and FIA, respectively. Currently, the RTGS is the only FMI that falls under the Central Bank's oversight mandate. The CSD and SSS fall under the remit of the Trinidad and Tobago Securities and Exchange Commission ("TTSEC"). Although, the GSS is owned and operated by the Central Bank it is currently not overseen by either the Central Bank or the TTSEC. The PPD recommends that the oversight remit of the Central Bank be extended to the GSS and subjected to cooperative oversight with the TTSEC. There are no central counterparties or trade repositories at this time.

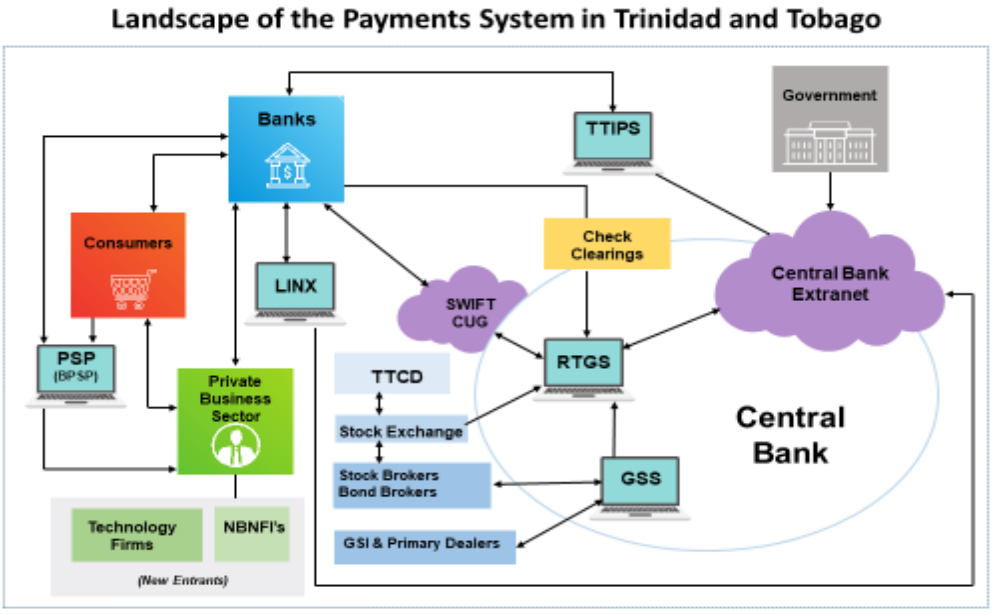
In addition to the FMI, there are a number of retail payment systems that utilise the RTGS for settlement of payments, namely: -

- **The Automated Clearing House ("ACH")** which is jointly owned by six of the eight commercial banks and the Central Bank, and is operated by the Trinidad and Tobago Interbank Payments System Limited ("TTIPS"). These seven owners are referred to as Shareholding System Participants. The ACH clears large volumes of low value transactions (under $500,000) within a 24-hour period. Direct participation in the ACH is currently only available to the commercial banks and the Central Bank.

- **The Cheque Clearing Arrangement ("CCA")** which is partially automated in areas of imaging and balancing of deposits received from commercial banks, Government and other customers. Representatives of the commercial banks and the Central Bank meet daily at a 'clearinghouse' where cheques are physically presented daily and parties agree on the net amounts to be cleared and settled on the basis of the cheque listings received the previous day. Plans are afoot to fully automate this system in 2021.

- **The Debit Card Network ("LINX")** was established in 1994 and is operated by Info-link Services Limited ("ISL"), a joint-venture corporation which is equally owned by four of the largest commercial banks in Trinidad and Tobago. The Eastern Credit Union, ANSA Bank Limited[3], First Caribbean International Bank and Jamaican Money Market Brokers also participate in the system. ISL is in the process of acquiring the ACH and plans to implement an Instant Payment System ("IPS") and an Electronic Cheque Clearings System ("ECCS") in 2021 thus making ISL a major provider of retail payments services in Trinidad and Tobago. It should be noted that internationally branded credit and debit cards bearing the VISA and MasterCard logos are also used in the market, but are cleared and settled via private arrangements between the commercial banks and those international clearing houses.

Diagram 1



Presently, the commercial banks are the direct participants in all these systems with other entities having indirect access, save for one credit union that has direct connection to the LINX system. There are linkages across the FMI as the RTGS facilitates settlements for the cash leg of the securities trades for the GSS and SSS and is also the settlement agent for the retail payment system operators namely LINX, CCA and the ACH. The Central Bank oversees the two payment systems which it owns and operates namely, the RTGS and the CCA.

In more recent years, the payment landscape has been impacted by the emergence of fintech companies and other non-bank payment service providers. There are PSPs that initially provided mainly bill

[3] Bank of Baroda Limited was acquired by ANSA Merchant Bank Limited with effect from March 1, 2021 and its name was changed to ANSA Bank Limited with effect from March 24, 2021.

payment services to utility companies that clear and settle their transactions via private commercial banks. These PSPs have now expanded their services beyond bill payments. Utility companies and commercial banks also provide bill payment services via mobile applications and online payment solutions. New players are also emerging on the payments landscape including e-money issuers ("EMIs"), virtual asset service providers ("VASPs") and other fintech entities utilising *inter alia*, cloud computing, application programming interface ("API") and Quick Response ("QR") codes, to facilitate online payments, remittances and international trade. PSPs facilitating e-commerce such as payment aggregators and merchant acquirers including payment gateways also exist in the payment landscape.

The changing payments landscape therefore requires a comprehensive, modern yet flexible payments legislation to treat with the expanding scope of payment systems and payment services and the various risks they pose.

4. INTERNATIONAL STANDARDS FOR PAYMENTS SYSTEMS - THE PFMI

The PFMI are the international standards for an FMI, i.e. payment systems, central securities depositories, securities settlement systems, central counterparties and trade repositories. Issued by the Committee on Payments and Market Infrastructure ("CPMI") and the International Organization of Securities Commissions ("IOSCO"), the PFMI are part of a set of 12 key standards that the international community considers essential to strengthening and preserving financial stability.[4]

The PFMI comprise twenty-four (24) principles that the FMI are required to meet and five (5) separate responsibilities which apply to central banks, market regulators and other authorities. Of particular significance to payments systems are PFMI 1- *Legal basis*; 2 – *Governance*; 3 – *Framework for comprehensive management of risks*; 5 – *Collateral*; 8 – *Settlement finality*; and 18 – *Access and Participation Requirements*. (*See Appendix 1*)

Principle I of the PFMI states *"[A]n FMI should have a well-founded, clear, transparent and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions"*. The first principle of the PFMI therefore requires a clear and enforceable legislative basis for the operation of payment systems and PSPs. Under this Principle, the law should clearly set out the rights and obligations of FMIs, participants, customers and all stakeholders as well as the powers and responsibilities of the regulator. The broad mandate under the CBA and the Guidelines issued by the Central Bank therefore need to be enhanced by a comprehensive piece of legislation in the interest of legal certainty and to protect stakeholders' interests.

The five (5) responsibilities of the Central Bank as the oversight and regulatory authority under the PFMI are:-

[4] Financial Stability Board https://www.fsb.org/work-of-the-fsb/about-the-compendium-of-standards/key_standards/.

(a) **Responsibility A** – *Regulation, supervision, and oversight of FMIs: FMIs should be subject to **appropriate and effective regulation**, supervision and oversight by a central bank, market regulator or other relevant authority.*

(b) **Responsibility B** – *Regulatory, supervisory and oversight powers and resources: Central banks, market regulators and other relevant authorities should have the **powers and resources** to carry out effectively their responsibilities in regulating, supervising and overseeing FMIs.*

(c) **Responsibility C** – *Disclosure of policies with respect to FMIs: Central banks, market regulators and other relevant authorities should **clearly define and disclose their regulatory, supervisory and oversight policies** with respect to FMIs.*

(d) **Responsibility D** – *Application of the principles for FMIs: Central banks, market regulators and other relevant authorities should adopt the CPSS-IOSCO Principles for financial market infrastructures and apply them **consistently**.*

(e) **Responsibility E** – *Cooperation with other authorities: **Central banks, market regulators and other relevant authorities should cooperate with each other**, both domestically and internationally, as appropriate, in promoting the safety and efficiency of FMIs.*

The proposed legislation would seek to ensure compliance with the above PFMI by imposing appropriate and clear requirements on payment system operators and PSPs and imbuing the Central Bank with the powers to appropriately and effectively regulate the sector, to define and disclose its policies and to co-operate with other regulators.

5. THE CURRENT LEGAL FRAMEWORK GOVERNING THE PAYMENTS SYSTEM

The current legislative framework under the FIA and CBA are set out in **Appendix 2**. The legal framework is currently quite fragmented and contains certain deficiencies which need to be addressed.

The FIA sets out oversight provisions for the regulation by the Central Bank of *interbank* payment systems, however, such detailed provisions are not extended to non-interbank systems. An explicit power to regulate all payments systems including designating SIPS and SRPS to promote safety and efficiency, and to license, regulate and supervise PSPs should be set out in legislation. Additionally, clear licensing, market conduct, prudential and operational requirements that are enforceable by the usual range of enforcement powers and criminal/administrative penalties are also needed to ensure compliance. Emergency powers to assume control and manage a crisis in relation to the payments system and payment services would also be important.

Critical provisions, as contained currently in the FIA, dealing with finality of settlement, netting, collateral arrangements and conflict of laws, should also be extended to all payment systems and not limited to interbank payments systems.

Under the current Order, e-money issuance is limited to certain eligible categories of persons[5] and is not purely activity-based (owing to constraints presently specified in section 17 of the FIA). Further, a person seeking to be registered as an EMI must also be registered separately as a PSP. In addition, 'sandboxing' requirements are restricted at present to EMIs as the Central Bank has the ability to grant provisional registration to such persons. Similar 'sandboxing' provisions are not in place for other PSPs/fintechs. A new Payments Systems law presents an opportunity to review and streamline the approach to the licensing/registration of all PSPs using an activity-based approach for a broader range of payment activities (e.g. e-money issuance, merchant acquisition services, money remittance services and virtual asset payment services. A new Act will also allow for the safe 'sandboxing' of wider range of PSPs to be incorporated in the law.

Finally, AML[6] risk is one of the key risks impacting PSPs such as, money remitters, EMIs and VASPS. The AML supervision of PSPs currently falls under the regulatory remit of the Financial Intelligence Unit of Trinidad and Tobago ("FIUTT"). This is unlike other financial institutions currently regulated by the Central Bank. Consequently, it is proposed that amendments will be required to AML legislation for the Central Bank to become the AML supervisory authority for all those PSPs that it licences or registers.

6. POLICY PROPOSALS FOR NEW PAYMENTS SYSTEM LEGISLATION

The Central Bank recommends new payments legislation in the form of a new Payments Systems Bill ("Bill") and accompanying regulations with the objective of:

- streamlining the oversight of payment systems and the regulation and supervision of PSPs under a single legislation by creating a comprehensive legislative framework for all payment systems (interbank and non-interbank) and a wider range of activity-based PSPs;
- promoting the safety and efficiency of payment systems and enhance financial system stability;
- giving legal certainty to, and protect, users of payment, clearing and settlement systems;
- implementing a flexible, modular and risk-based regulatory regime that is calibrated to the risks posed by different types of activities; and
- facilitating e-commerce, cashless payments and financial inclusion.

[5] The EMI Order specifies the following eligible category of entities: registered Payment Service Providers or Payment System Operators, money remitters registered with the FIU, mobile network operators, technology service providers and other financial institutions, such as credit unions, insurance companies and the T&T Unit Trust Corporation.

[6] AML refers collectively to Anti-Money Laundering ("AML"), Combatting of the Financing of Terrorism ("CFT") and Countering Proliferation Financing ("CPF").

It is therefore recommended that the mandate or objectives of the Bank in respect of the national payment system and payment services should be expressly set out in the proposed Bill. The primary objective of the Central Bank, in respect of the payments system will be to maintain confidence in, and promote the safety, soundness and efficiency of the payments system and the stability of the financial system in Trinidad and Tobago.

The other objectives of the Central Bank, in respect of the national payments system will be to:

- supervise licensed payment service providers, registration of all payment systems and the oversight of designated SIPS and SRPS to determine whether they are in compliance with the requirements under the Act;
- promote the existence of a fair market for payments systems and payment services;
- maintain an appropriate level of protection for participants in payment systems and the users of payment services; and
- promote the development of the payments system and treat appropriately with payments innovation.

The key proposals in this PPD seek to treat with the following areas:

(1) **A registration regime for all payment systems.**

(2) **A designation regime for SIPS and SRPS**. This includes establishing criteria for designation, as well as addressing the regulation of operators, settlement institutions and participants of the designated payment systems.

(3) **A regulatory regime for the licensing of PSPs**. The Central Bank proposes that the licensing of PSPs would be an activity focussed, risk-based regime that would seek to regulate the provision of payment services by way of a single, modular PSP licence with 6 eligible classes of payment services:

   (a) Account Issuance;

   (b) Merchant acquisition;

   (c) Domestic money transfer /remittance;

   (d) Cross border transfer /remittance subject to authorisation under the Exchange Control Act Chap. 79:80;

   (e) Electronic money or ("E-money") issuance;

   (f) Virtual assets service providers (VASPs) that provide services for the purpose of facilitating payments or transfers.

(4) **Exempted activities or entities** for which no PSP licence or Payment System designation or registration is required. For example, financial institutions licensed under the FIA would not be required to apply for a PSP licence and will only be required to adhere to such regulatory and operational requirements as the Central Bank specifies as appropriate.

(5) **Addressing regulatory risks and concerns by specific provisions** relating to:
   (a) Ensuring Soundness of Payment Systems;
   (b) Settlement risk;
   (c) Collateral and Netting Arrangements;
   (d) Interoperability;
   (e) Consumer/User Protection;
   (f) Obligations;
   (g) Specific Restricted/Prohibited Activities; and
   (h) AML risk, technology and cyber risk, and business continuity.

(6) **Ensuring proper governance** of designated and non-designated payment systems and licensed PSPs. Mergers and acquisitions would also have to receive the approval of the Central Bank.

(7) **General powers of supervision and oversight** of the Central Bank, including measures that treat with *inter alia* confidentiality, access to information and premises, regulatory co-operation and information sharing, and the usual suite of enforcement powers.

In the Bill, the functions of the Bank would also explicitly include the ability to establish, own and operate a payment system or payments service, to hold cash accounts and securities for operators and participants for clearing and settlement on a system and to extend intraday secured credit to participants.

The National Payment Systems Council ("NPSC") which comprises key public and private sector entities involved in the payments system would also be formally established in legislation. The role of the NPSC is to provide advice to the Central Bank on oversight policies, and policies, procedures, strategies and developments regarding payments system.

The proposed Bill will provide for transitional arrangements for existing regulated entities, consequential amendments (e.g. to AML legislation) and the repeal of relevant provisions in other laws.

7. DESIGNATION AND OVERSIGHT OF PAYMENT SYSTEMS

The PFMI's definition of a payment system is "a set of instruments, procedures, and rules for the transfer of funds between or among participants". It is therefore proposed that the new Payments Systems Bill define a "payment system" to mean ***"any organized set of infrastructure, persons, procedures and rules allowing the transfer of funds including by means of payment instruments, or the discharge of obligations on a gross or net basis and includes interbank or non-interbank payment systems"***. The word "funds" will also be defined to mean "*banknotes and coins, scriptural money, electronic money or such other representation of money as may be prescribed from time to time*".

Under PFMI *Responsibility A: Regulation, supervision, and oversight of FMIs*, FMIs should be subject to appropriate and effective regulation, supervision, and oversight. The PFMI notes that "***systemically important payment systems**, CSDs, SSSs, CCPs, and TRs **are typically subject to regulation**, supervision, and oversight **because of the critical role that they play in the financial system**. Criteria that are often considered in determining the need for, or degree of, oversight for various types of FMIs include:*

(a) the number and value of transactions processed;

(b) the number and type of participants;

(c) the markets served;

(d) the market share controlled;

(e) the interconnectedness with other FMIs and other financial institutions;

(f) the available alternatives to using the FMI at short notice; and

(g) *[other criteria relevant in the jurisdiction]*[7]."

Based on the above, only SIPS and SRPS are subject to oversight and benefit from the entrenched safeguards of settlement finality in the law. The PFMI state that "*a payment system is systemically important if it has the potential to trigger or transmit systemic disruptions; this includes, among other things, systems that:*

- *are the sole payment system in a country or the principal system in terms of the aggregate value of payments;*
- *mainly handle time-critical, high-value payments; and*
- *settle payments used to effect settlement in other systemically important FMIs*"[8].

(a) Designation Criteria:

Similar to Singapore and the UK, it is proposed that the Central Bank may, by notice in the *Gazette*, on its own initiative or upon receipt of an application, designate a payment system for purposes of its oversight under the Bill, if it is satisfied that any of the following considerations applies:

(i) a disruption in the operations of the payment system could trigger, cause or transmit further disruption to participants of the payment or financial system or affect public confidence in the payment systems or the financial system in Trinidad and Tobago;

[7] Para. 4.1.2 of the Principles for Financial Market Infrastructures. April 2012
[8] Ibid see Para 1.20

(ii) the payment system is widely used, 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; or

(iii) *the designation is otherwise in the interests of the public.*

The Bank would also be empowered to impose conditions or vary a designation. A payments system that does not meet the above criteria will not be designated by the Central Bank but will be subject to a lighter touch oversight regime where it will be required to register with the Central Bank and be subject to certain reporting requirements and conditions.

(b) Designation Requirements

Where a payment system has been designated it will be subject to a higher level of oversight by the Central Bank in accordance with the PFMI.

The application requirements for the designation of a payment system may be similar to those provided under section 94 of the FIA (*see Appendix 2*) with some strengthening in certain areas such as:

(i) Incorporation as a company under the Companies Act with permanent place of business or registered office in Trinidad and Tobago.
(ii) Fit and Proper requirements for:
    a. Board of Directors and Senior Management of the Company.
    b. Shareholders, including the ultimate beneficial owner, owning 10% or more of the entity whether directly or indirectly.
(iii) Paid up capital and capital adequacy requirements.
(iv) Sound financial condition (supported by 3 year audited financial statements or 3 year projected financial statements) or other financial requirements.
(v) Suitable and adequate technical and organisational skills, resources and structure (supported by strategic and business plans and feasibility studies) and other operational requirements.
(vi) Effective risk management policies, procedures and systems to identify, measure, monitor, manage and report any risks.
(vii) Adequate internal control mechanisms to ensure compliance with policies, procedures and laws including sound administrative, and accounting procedures.
(viii) The rules and procedures of the system
(ix) Such other matters as may be specified by the Central Bank.

It is proposed that a foreign payment system operator should be required to establish a physical presence locally and be incorporated in accordance with the laws of Trinidad and Tobago and pursuant to the proposed Bill. However, the Central Bank may exempt certain foreign entities that are regulated by a foreign regulator that is acceptable to the Central Bank where the services provided may not be available locally due to capacity issues or to facilitate critical access to international financial markets.

(c) Oversight Regime for Non-Designated Payment Systems

It is important to emphasize that all payments systems must be registered in Trinidad and Tobago and may be subject to designation in keeping with the specified criteria for determining a SIPS or SRPS or otherwise fall into the non-designated payment system (NDPS). As such, it is proposed that all persons wishing to operate a payment system in Trinidad and Tobago must be registered with the Central Bank and would be required to meet basic standards including capital, operation, risk management, governance and reporting. Where a payment system grows to the level of a SIPS or SRPS, thereby meeting the criteria for designation by the Central Bank, the operator would be required to meet the regulatory requirements of such a designated system. If, following designation, the payment system is unable to meet the regulatory requirements, the Central Bank would rely on the enforcement powers under the Bill.

Requirements applicable to designated and non-designated payment systems would be further detailed in Regulations and Guidelines, for example, for capital adequacy, clearing, settlement and outsourcing.

8. LICENSING OF PAYMENT SERVICES PROVIDERS

The licensing framework for payment services will be activity-based and risk-focused. In this way, the Central Bank may grant a licence to allow an entity to undertake one or more classes of payment services.

(a) Regulated Activities

Under the activity-based and risk-focused licensing approach, the Central Bank, in considering the granting of a licence, will take into account *inter alia* consumer protection, ML/TF risks; interoperability and cyber/technology risk. Governance arrangements including the fitness and propriety of the entities' directors, officers and significant and controlling shareholders will also be considered. The Central Bank may also attach such conditions to a licence as it thinks fit. A licence will be valid until revoked but will be subject to an annual fee.

The proposed Bill will apply to the payment services listed in Table 1 below as well as other payment service activities that pose a risk to the national payments system which may be added over time to the list by Order of the Minister on the recommendation of the Central Bank.

Table 1 – Brief Description of the Regulated Payment Service Activities

CLASSES OF PAYMENT SERVICES	BRIEF DESCRIPTION
(i.) Account Issuance Services	Issuing, maintaining or operating a payment account in Trinidad and Tobago or any service relating to any operation required for operating a payment account, including placing money on, and withdrawing money from, a payment account.
(ii.) Merchant acquisition Services	Any service of accepting and processing a payment transaction for a merchant in Trinidad and Tobago which results in a transfer of money to the merchant pursuant to the payment transaction – usually the service includes providing a point-of-sale terminal or online payment gateway.
(iii.) Domestic money transfer / remittance Services	Providing local funds transfer service in Trinidad and Tobago by electronic means.
(iv.) Cross border money transfer / remittance Services[9]	Providing funds transfer /money remittance service between parties that are located in different jurisdictions subject to authorisation under the Exchange Control Act Chap. 79:80 to convert currencies where incidental to the remittance service. "money remittance" means a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where— • funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or • funds are received on behalf of, and made available to, the payee.
(v.) E-money issuance Services	Issuing e-money[10] in Trinidad and Tobago for the purpose of facilitating payments to merchants or person to person transfers.
(vi.) Virtual asset service providers (VASPs) that provide services for the purpose of	For purposes of the proposed Bill, *virtual assets* refer to "any digital representation of value (whether called a digital payment token or by any other name) that can be digitally stored, traded, or transferred, and can be used for payment or investment purposes and satisfies such other characteristics as

[9] Subject to receiving authorization from the Central Bank under the Exchange Control Act, Chap 79:80 to buy, sell or deal in foreign currency.

[10] It is proposed that the definition of e-money in the FIA be amended in the Bill to mean "*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 (b) above shall not be treated as a deposit under the FIA" (per FIA with some enhancement)

CLASSES OF PAYMENT SERVICES	BRIEF DESCRIPTION
facilitating payments or transfers.	specified by the Central Bank. Virtual assets do not include digital representations of fiat currencies". While the Central Bank does not propose to be the regulator for the issuance of, or trading in, virtual assets on an exchange, where a person offers a service that uses a virtual asset to make payments or transfers that activity will be regulated.

An entity which intends to provide any one or more of the aforementioned payment services listed in Table 1 in Trinidad and Tobago would require a licence under the Bill, unless exempted from such a licence. Additionally, regulatory requirements will be commensurate with the classes of payment services that the entity intends to offer and the associated risks.

It should be noted that it is possible for a designated payment system operator to also be licensed separately to carry on payment services that require a license under the Bill.

For EMIs currently licensed under the Order, transition provisions would be included to bring them under the remit of the Bill. It is proposed that the definition of e-money would be revised in the Bill to read as follows:

"**monetary value represented by a claim on the issuer, which is –**

(a) stored electronically, including digitally or magnetically, or any other tangible or intangible device

(b) issued on receipt of funds of an amount equivalent to 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 (b) above shall not be treated as a deposit under this Act."

Other modifications will be considered, such as, the removal of the "category of persons" eligibility criteria. A PSP must be a legal entity and would be permitted to conduct one or more of the classes of activity as specified in Table 1.

(b) Requirements and Criteria for the Licensing of PSPs

It is important to set out clearly the minimum requirements and criteria for the licensing of PSPs in the legislation. Currently, registration requirements for a non-bank PSP are set out in a Guideline whereas the Order contains requirements for EMIs. As the Bill will apply to all PSPs, the registration/licensing requirements for PSPs in the Guideline and Order will be harmonized and strengthened in the Bill as required and should therefore include:

(i) The above requirements and criteria Nos. 1 – 7 applicable to designated payment systems would apply to a PSP based on its nature, scale and complexity.

(ii) Appropriate settlement arrangements.
(iii) Such other matters as may be specified by the Central Bank.

Similar to the policy stance in respect of a foreign payment system, it is proposed that where a foreign PSP is desirous of providing critical payment services in Trinidad and Tobago, it should be required to establish a physical presence locally and be incorporated in accordance with the laws of Trinidad and Tobago and pursuant to the proposed Bill. However, the Central Bank may exempt certain foreign PSPs that are regulated by a foreign regulator that is acceptable to the Central Bank where the services provided may not be available locally due to capacity issues or to facilitate critical access to international financial markets.

The requirements for supervision of a PSP may be further detailed in Regulations and Guidelines. This may include for example, capital requirements, safeguarding provisions and outsourcing.

(c) Sandboxing – Power to Issue Provisional Licences

The Central Bank should be empowered to issue provisional licences on certain terms and conditions in order to authorise entities to develop and test innovative models and technology that may be used in the financial services sector in a safe 'sandboxing' environment. This should be applicable to all classes of payment service activities (and not just E-Money Issuers as currently obtains) and would be for a specified temporary period.

9. EXEMPTED ENTITIES AND ACTIVITIES

The regulated payment service activities are drafted broadly to allow the law to adapt to new technologies and business models. However, this means that the definitions of the regulated activities may inadvertently catch entities or activities that may present negligible risk and therefore should not to be regulated under the Bill. It is therefore proposed to carve out certain activities from the regulatory ambit of the Bill. The activities to be carved out are:

(a) Closed-loop payment schemes such as food vouchers, reward or loyalty programmes, and transportation payment schemes.

*(b) Payment service providers who conduct bill payments on behalf of utility companies **only**.*

*(c) Technology service providers who process data or develop or provide the enabling technology to assist others offering innovative means of payments **only**, but do not themselves process or receive the funds to be transferred or issue or administer any means of payments. (This includes the supply and maintenance of terminals and devices used for payment services, communication network provision, trust and privacy protection services and data and entity authentication.)*

(d) The services and systems owned and operated by the Central Bank shall be exempted from the provisions of the proposed Bill or any other law.

(e) Financial institutions licensed under the FIA would be exempted from the licensing requirements under the Bill but may be subject to certain requirements specified by the Bank

such as operational, reporting and disclosure requirements in relation to their payment services.

(f) Any other type of entity or activity as may be prescribed.

10. ADDRESSING REGULATORY RISKS AND CONCERNS

(a) Liquidity and Settlement Risk

The objective of Principle 8 of the PFMI on Settlement Finality *(See Appendix 1)* is to reduce settlement risk by clearly defining when payments or funds transfers are irrevocable and unconditional and therefore cannot be voided or unwound. This is particularly important in the case of the insolvency of a participant. The FIA currently contains provisions in sections 101 to 103 which collectively serve to mitigate settlement risk and should be moved to the Bill and applied for *all* designated payment systems.

The effect of sections 101 to 103 of the FIA is to exempt transactions in a protected system from the potential application of the "zero-hour rule"[11] and give legal certainty to existing net settlement arrangements even in the event of insolvency proceedings against a participant. Importantly, while it is proposed that payments will be settled for all orders entered *prior to* notification of an insolvency, an aggrieved party would still be able to exercise any right or file a claim for recovery or restitution on the underlying transaction (as under section 103(2) of the FIA).

(b) Collateral and Netting Arrangements

Principle 5 of the PFMI on Collateral states inter alia that*, "An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks.*" (*see Appendix 1*)

The proposals being recommended on collateral for payment and settlement obligations will ensure that they will remain valid, enforceable and binding on third parties and will not be affected by insolvency or winding-up proceedings, receivership, reorganization, administration, scheme of arrangement or any other law of similar effect. This is rooted in the key considerations supporting Principle 1 of the PMFI "Legal basis", which states, *inter alia*, that "*The legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions."*

[11] The zero-hour rule refers to a provision in the insolvency law whereby the transactions of a closed institution that have taken place after midnight on the date the institution is ordered closed may be retroactively rendered ineffective. This affects the finality of settlement since funds settled that day can be reversed as transactions are back dated to zero hour on that day.

Sections 104 to 109 of the FIA have clearly outlined provisions on the enforceability of financial collateral arrangements; substitution and topping-up of financial collateral; perfection of pledged financial collateral and enforcement of pledges financial collateral. Close-out netting arrangements are also rendered legally binding. These provisions are consistent with the PMFIs and international best practice.

In this regard, it is proposed that sections 104 to 109 of the FIA should be repealed and similar provisions incorporated into the proposed comprehensive Bill, with necessary changes so as to be consistent with the framework of the new legislation being recommended.

Further, sections 110 and 111 of the FIA serve to provide clarity on which law would be applicable where another jurisdiction is involved in the holding of collateral or the insolvency of a participant or where an FMI is subject to the laws of other jurisdictions. These sections would also be moved into the proposed Bill.

(c) Interoperability

The PFMI promote the importance of interoperability among PSPs and payment systems across various principles. For example, **Principle 20** which explicitly addresses FMI links and their risk management; **Principle 2** on governance, which states that FMIs should consider the interests of the broader markets; **Principle 3** on the framework for the comprehensive management of risks, which states that an FMI should consider the relevant risks that it bears from and pose to other entities; **Principle 18** on access and participation requirements, which states that an FMI should provide fair and open access, including to other FMIs.

Consumers may not be able to make payments directly to each other, or to merchants, if both parties use different PSPs. Lack of interoperability may act as a barrier to the adoption of e-payment solutions by consumers and merchants. Merchants are also faced with having to provide consumers with multiple point of sale terminals or other payment acceptance methods which should be compatible with each other.

To promote interoperability, it is proposed that similar to Singapore the Central Bank be given powers under the Bill, to impose in special circumstances, these three types of interoperability measures:

(i) **access regime measures** - to mandate that a designated or non-designated payment system operator allows third parties to access its system on fair and reasonable commercial terms. This would be important for those entities that operate widely used payment systems that should be interoperable with common payment methods.

(ii) **the adoption of a common system** - to mandate a major PSP's participation in a common system to achieve interoperability of major accounts or wallets covering a substantial population of users with other mainstream payment accounts.

(iii) **the adoption of common standards** – to direct a PSP to make widely used payment acceptance methods interoperable.

(d) Consumer/ User Protection

It is proposed that consumers be protected by way of the following types of user protection measures:

(i) The safeguarding measures as detailed in the Order should be incorporated in the Bill for EMIs. These include safeguarding of a float in an account and the separation of that account from operating accounts as well as limits on wallet size or load capacity and transaction limits. This should be further enhanced by permitting money received to be immediately safeguarded by **segregation in a trust account** maintained by a bank or other prescribed financial institution; or **secured by a guarantee** from a bank or other prescribed financial institution; or **by an undertaking** by a bank or other prescribed financial institution to be liable to the customer for the monies defined to be due or payable to a customer or in such other manner as may be prescribed.

(ii) The similar safeguarding of funds in transit applicable to Domestic and Cross-border money transfer/remittance services and Merchant Acquisition services.

(iii) Protection of personal use wallets applicable to Account Issuance services by measures such as limits on wallet size or load capacity and transaction limits.

(iv) Protection of access to funds applicable to Account Issuance services.

Similar to Singapore, the Minister should be specifically empowered upon the recommendation of the Central Bank to prescribe, by regulations, matters concerning the trust governing the trust account, permitted withdrawals from trust or custodian accounts, restrictions on commingling, the manner in which the customers' money must be treated and dealt with, despite any other written law, on the occurrence of either or both of the following:

(i) any event affecting the ability of the PSP to perform its obligations, such as in the event of its insolvency;

(ii) any event affecting the ability of the financial institution holding the money to perform its obligations, such as in the event of the insolvency of financial institution.

This would have the effect of creating a statutory 'trust' mechanism to protect user funds.

As provided for in the UK, it is further recommended that the Minister also make regulations for payment service user redress where the user notifies the PSP without undue delay on becoming aware of any unauthorised or incorrectly executed payment transaction or where the PSP fails to provide transaction records to the user.

(e) Obligations

An operator of a designated payment system as well as a PSP should have the following obligations:

(i) To notify the Central Bank of significant matters, such as:
   (a) an intention to make a material change to the nature of the operating rules, settlement procedures or activities of the designated payment system;
   (b) an event or irregularity that impedes or prevents access to, or impairs the usual operations of, the designated payment system or its settlement operations;
   (c) any outsourced function;
   (d) litigation against the operator or settlement institution;
   (e) likely insolvency or inability to meet its obligations;
   (f) a change in the regulatory requirements imposed by another regulator or disciplinary action taken by another regulator;
   (g) changes to the directors or officers for non-objection by the Bank; and
   (h) any other matter that the Bank may specify by notice in writing.

(ii) To adequately disclose any terms and conditions including fees and charges.

(iii) To submit reports or returns in the form, manner and frequency specified by the Bank.

(iv) To inform the Bank of the conduct of any other business other than the business of a designated payment system or PSP.

An operator of a payment system would also be required to establish, with the approval of the Central Bank, written rules for the governance, management and operation of the system taking into account minimum requirements to be specified by the Bank.

(f) Specific Restricted/Prohibited Activities

Since only financial institutions licensed under the FIA may engage in "business of banking" or "business of a financial nature" which includes deposit taking and lending[12] and are subject to extensive prudential and regulatory requirements, PSPs will be prohibited from conducting consumer lending or any activity similar to deposit taking.

A PSP would also be prohibited from providing any class of payment service through an agent, unless the agent is meets criteria set by the Central Bank and is approved by the Bank.

Additionally, a PSP will be prohibited from using any customer money or any interest earned on any customer money to finance *wholly or to any material extent* any activity of any business carried on by the PSP.

There would also be a general prohibition against solicitation and advertising by unregulated persons.

[12] It should be noted that persons registered or licensed under the Money Lenders Act can also lend money.

Limitations may also be placed on the sizes of payment and e-money accounts, including e-wallets as well as the withdrawal of cash in order to reduce the amount of cash and promote cashless payments

(g) ML/TF Risk, Technology and Cyber Risk, and Business Continuity

PSPs providing account issuance services, domestic or cross-border money transfers/ remittances, e-money issuance services, and virtual asset services must satisfy AML/CFT requirements. AML/CFT requirements may be tiered to take into consideration the nature and size of the activity being undertaken.

Technology and cyber risks are key risks facing all payment systems and all payment systems should be required to have robust technology risk governance and management systems in place, including user authentication, data encryption, fraud monitoring and detection, and protection against denial of service attacks. Payments systems will be also required to have robust business continuity plans.

11. ENSURING PROPER CORPORATE GOVERNANCE OF PAYMENT SYSTEMS

(a) Control - Shareholders, Directors and Officers

An important aspect of designating or registering a payments system or licensing a PSP is ensuring that its principals – namely its directors, officers and shareholders are fit and proper[13]. Being fit and proper means, *inter alia*, that the persons are financial sound and possess the requisite, skills, expertise, education and integrity to own, manage or control a payments system.

Shareholders and proposed shareholders of a payments system operator or PSP seeking to acquire whether directly or indirectly:

- 10% or more;
- 20% or more; or
- 50% or more,

of the shareholding of the entity should be required to be fit and proper and must receive the prior approval of the Bank for those shareholdings.

Further, it is recommended that:

(i) The criteria and procedures similar to those in sections 71-72 of the FIA and sections 52 to 53 of the IA, in relation to, *inter alia*, the assessment of shareholders should be included with such modifications as necessary.

[13] Refer to the Bank's Fit and Proper Guideline, 2019.

(ii) Provisions similar to those in sections 33-35 of the FIA and sections 65 to 67 of the IA, in relation to the non-objection to directors should be included with such modifications as necessary.

(iii) The Central Bank should have the power to impose conditions in respect of its approval of shareholders.

(iv) In view of the ongoing obligations relating to fitness and propriety and regulatory compliance, the Bank should be empowered to object to an existing shareholder, director or officer where these obligations are no longer being met.

(v) The Central Bank should have the ancillary powers to enforce decisions taken in relation to shareholders by directing the transfer or disposal of all or any of the shares in the regulated person or restricting the transfer or disposal of all or any of the shares (as in the FIA and IA).

(vi) There should be a requirement for applicants and designated payment systems or licensed PSPs to report periodically all nominal and beneficial shareholders who hold directly or indirectly shareholdings of 5 percent or more of the issued share capital of the licensed payment system or one applying to be licensed.

(vii) The Central Bank should be allowed to specify other governance requirements for payments systems on the basis of risk, for example, the boards of designated systems should have a number of independent directors.

(b) Mergers and Acquisitions

Given that the ownership of a payments system or a PSP can change over time due to mergers or acquisitions, it is also proposed that:

(i) a payment system and a PSP, as well as the majority shareholder of a payment system or PSP, must obtain the approval of the Central Bank prior to acquiring or merging with another designated payment system or PSP; and

(ii) where an acquisition or merger under (i) would result in a combined market share greater than 40% of the market for payment systems and/or payment services or any subset thereof, the Central Bank shall submit a recommendation to the Minister for his approval (This is consistent with the approach to competition and market concentration in sections 73-74 of the FIA).

12. GENERAL POWERS OF SUPERVISION AND OVERSIGHT

The Bill will contain general requirements and powers that are common in other Central Bank-administered legislation. These include auditing requirements, inspections and investigations, offences, appeals and power to prescribe regulations, issue notices, and grant exemptions.

(a) The general powers of the Central Bank in respect of payments systems and PSPs should allow the Bank to:

(i) obtain information in relation to any payment system and PSP (whether designated/registered/licensed or not), including the power to conduct on and off-site inspections and investigations without hindrance;

(ii) enforce compliance through compliance directions, administrative fines, court enforcement of directions, injunctive orders, restricting, revoking licences/designations, suspending operations, and publication of non-compliance;

(iii) appoint subject experts, including auditors, to assist in the exercise of its functions;

(iv) exercise emergency powers in relation to designated payment systems and systemically important PSPs;

(v) issue guidelines and notices; and

(vi) advise the Minister on making regulations, generally, and the granting of exemptions in the public interest.

It is also considered necessary for the Central Bank to have emergency powers over all designated payment systems and systemically important PSPs, including the power to assume control, replace the Board and Management, appoint a Manager, issue directions, deal with assets and undertakings, restructure the entity and take all steps necessary to protect the interest of participants and users and the system (similar to those under the CBA). Where emergency powers have been exercised in a crisis, the redress for any claim related thereto (including judicial review) should be limited to the award of damages and shall exclude any stay the actions of the Bank. In this way, resolution plans aimed at the stability of the system in a crisis can progress while at the same time affording appropriate redress to an aggrieved party.

As under the Jamaica legislation, it is also proposed that notwithstanding the making of an application for judicial review of any designation or any direction issued under the proposed legislation, a stay of the designation or direction shall not be granted pending the final disposition of the application. This will serve to limit disruptions to payments systems and payment services until the judicial determination of the matter.

(b) Confidentiality, Co-operation and Information Sharing with other Regulators

Similar to the confidentiality provisions under other legislation such as the FIA and the IA, the Bill should contain clear responsibilities to maintain confidentiality under threat of criminal sanction:

(i) There should be a duty on the Central Bank to maintain confidentiality regarding information coming into its purview relating to the regulated entity and its customers;

(ii) There should be a duty on the payment system operator and PSP to maintain the confidentiality of information received from its participants and/or customers, unless it has the explicit consent from the owner of the information for disclosure.

(iii) There should also be the usual exceptions to the confidentiality rule, which allow disclosure of confidential information /documents for example –

(a) to facilitate cooperation with relevant local or foreign regulatory agencies or bodies;

(b) to designated Anti-Money Laundering/Combatting the Financing of Terrorism (AML/CFT) bodies;

(c) pursuant to an order of the court.

Responsibility E of the PFMI requires the regulator to "*cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of FMIs.*" This responsibility is currently codified under section 100 of the FIA in relation to interbank payment systems. This provision should be moved into the Bill and made applicable to all matters falling under the scope of the Bill. Under the Bill, the Central Bank should be authorised to enter into co-operation or information-sharing arrangements with any relevant local or foreign regulatory agency or body that oversees payment systems, the operations of PSPs and related services (including AML/CFT bodies) where the Central Bank is satisfied that any information disclosed to such agency or body will be kept confidential and used strictly for the purpose for which it was disclosed.

13. THE NATIONAL PAYMENTS SYSTEM COUNCIL

The payments legislation in Jamaica and Guyana[14] both enshrine in law a National Payments System Council. Trinidad and Tobago has an informal Council[15] and it is proposed that a National Payments System Council be established under the Bill to provide advice to the Central Bank on oversight policies, including advising on operational and technical standards, promoting standardized procedures and common initiatives to improve payments infrastructure and other matters affecting payment services. The Council may also seek to improve education and public awareness of payment system issues and developments.

The Council should be chaired by the Central Bank and comprise representatives of:

(i) the Central Bank;

(ii) other governmental bodies regulating or in any other way involved in the payments and financial markets;

(iii) national associations of financial institutions involved in payment activities or clearing and settlement of securities; and

[14] Jamaica Payment Clearing and Settlement Act, No. 32 of 2010 (section 23): Guyana National Payments System Act, No. 13 of 2018 (section 6)

[15] Information on the current Council can be found at the following link for https://www.central-bank.org.tt/psc/index.html

(iv) any other entity, involved in payments activities or in the clearing and settlement of securities, as may be determined by the Bank.

It is proposed that the Bank may issue guidance and instructions to the Council, from time to time, as it considers expedient, with which the Council shall comply.

APPENDIX 1

EXTRACTS OF CPSS-IOSCO – PRINCIPLES FOR FINANCIAL MARKET INFRASTRUCTURES – APRIL 2012[16]

Principle 1: Legal Basis

An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

Key Considerations

1. The legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions.

2. An FMI should have rules, procedures, and contracts that are clear, understandable, and consistent with relevant laws and regulations.

3. An FMI should be able to articulate the legal basis for its activities to relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.

4. An FMI should have rules, procedures, and contracts that are enforceable in all relevant jurisdictions. There should be a high degree of certainty that actions taken by the FMI under such rules and procedures will not be voided, reversed, or subject to stays.

5. An FMI conducting business in multiple jurisdictions should identify and mitigate the risks arising from any potential conflict of laws across jurisdictions.

Principle 2: Governance

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

Key Considerations

1. An FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.

[16] For the full text of the PFMI, see https://www.bis.org/cpmi/publ/d101a.pdf.

2. An FMI should have documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements should be disclosed to owners, relevant authorities, participants, and, at a more general level, the public.

3. The roles and responsibilities of an FMI's board of directors (or equivalent) should be clearly specified, and there should be documented procedures for its functioning, including procedures to identify, address, and manage member conflicts of interest. The board should review both its overall performance and the performance of its individual board members regularly.

4. The board should contain suitable members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board member(s).

5. The roles and responsibilities of management should be clearly specified. An FMI's management should have the appropriate experience, a mix of skills, and the integrity necessary to discharge their responsibilities for the operation and risk management of the FMI.

6. The board should establish a clear, documented risk-management framework that includes the FMI's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements should ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board.

7. The board should ensure that the FMI's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.

Principle 3: Framework for the Comprehensive Management of Risks

An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

Key Considerations

1. An FMI should have risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by the FMI. Risk-management frameworks should be subject to periodic review.

2. An FMI should provide incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the FMI.

3. An FMI should regularly review the material risks it bears from and poses to other entities (such as other FMIs, settlement banks, liquidity providers, and service providers) as a result of interdependencies and develop appropriate risk-management tools to address these risks.

4. An FMI should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. An FMI should prepare appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Where applicable, an FMI should also provide relevant authorities with the information needed for purposes of resolution planning.

Principle 5: Collateral

An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.

Key Considerations

1. An FMI should generally limit the assets it (routinely) accepts as collateral to those with low credit, liquidity, and market risks.

2. An FMI should establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions.

3. In order to reduce the need for procyclical adjustments, an FMI should establish stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.

4. An FMI should avoid concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.

5. An FMI that accepts cross-border collateral should mitigate the risks associated with its use and ensure that the collateral can be used in a timely manner.

6. An FMI should use a collateral management system that is well-designed and operationally flexible.

Principle 8: Settlement Finality

An FMI should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.

Key Considerations

1. An FMI's rules and procedures should clearly define the point at which settlement is final.

2. An FMI should complete final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk. An LVPS or SSS should consider adopting RTGS or multiple-batch processing during the settlement day.

3. An FMI should clearly define the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant.

Principle 18: Access and Participation Requirements

An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

Key Considerations

1. An FMI should allow for fair and open access to its services, including by direct and, where relevant, indirect participants and other FMIs, based on reasonable risk-related participation requirements.

2. An FMI's participation requirements should be justified in terms of the safety and efficiency of the FMI and the markets it serves, be tailored to and commensurate with the FMI's specific risks, and be publicly disclosed. Subject to maintaining acceptable risk control standards, an FMI should endeavour to set requirements that have the least-restrictive impact on access that circumstances permit.

3. An FMI should monitor compliance with its participation requirements on an ongoing basis and have clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a participant that breaches, or no longer meets, the participation requirements.

APPENDIX 2

THE CURRENT LEGISLATIVE FRAMEWORK GOVERNING PAYMENTS SYSTEM

CENTRAL BANK ACT CHAP. 79:09 ("CBA")

PART IV

THE BUSINESS OF THE BANK

36. *Subject to this Act, the Bank may –*

…(cc) supervise the operations of payments systems in Trinidad and Tobago generally, Interbank Payment Systems in accordance with the Financial Institutions Act and the transfer of funds by electronic means including money transmission or remittance business.

FINANCIAL INSTITUTIONS ACT CHAP. 79:09 ("FIA")

PART II

GENERAL PROVISIONS CONCERNING REGULATION, SUPERVISION, GUIDELINES AND PENALTIES

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

Regulations, Guidelines and Penalties

9.(1) *The Minister may, after receiving recommendations from the Central Bank, make Regulations for -*

(a) any matter required to be prescribed under this Act;

(b) the transfer of funds by electronic means;

(c) prudential criteria;

(d) the oversight of payment systems;

(e) generally giving effect to the provisions of this Act.

(2) *Regulations made under subsection (1) shall be subject to a negative resolution of Parliament.*

(3) *Regulations made under subsection (1)(c) may include, but shall not be limited to -*

(a) capital adequacy and solvency requirements and capital ratios in relation to licensees, financial holding companies and members of financial groups;

(b) liquidity requirements and ratios;

(c) treatment of credit exposures;

(d) treatment of assets and investments;

(e) treatment of interest;

(f) transactions with connected parties and connected party groups;

(g) risks relating to self dealing;

(h) profiting from insider information;

(i) risks relating to foreign exchange transactions, sectoral and business risks and off balance sheet transactions;

(j) reporting requirements for large deposits;

(k) reporting requirements for transactions referred to in paragraph (f);

(l) other reporting requirements;

(m) information required in published financial statements;

(n) new financial instruments;

(o) relationships with holding companies, controlling shareholders, significant shareholders, subsidiaries and other affiliates as they may affect the capital position of the licensee; and

(p) issuing electronic money.

(4) *Capital adequacy and solvency requirements and capital ratios shall apply -*

(a) to a licensee on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign -

(i) subsidiaries of the licensee;

(ii) companies in which the licensee is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

(5) *Regulations pertaining to the oversight of payment systems may include but shall not be limited to -*

(a) access regimes;

(b) operating rules;

(c) standards of compliance for payment systems;

(d) standards of compliance for participants to the payment systems;

(e) risk-control and risk-limitation mechanisms;

(f) disclosure requirements; and

(g) procedures for the processing of applications.

***(6)** A person who contravenes Regulations made under this section 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.

***10.** 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, or any other written law relating to the prevention of money laundering and combating the financing of terrorism; and

(d) regulate the market conduct of licensees.

PART XII

PAYMENT SYTEMS

Division 1—Framework for Oversight

92. *In this Part -*

"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 type of arrangement as the Minister may by Regulations prescribe;

"External Administration" means any receivership, winding-up or reorganisation of a Participant or party under the Companies Act or this Act, 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 cash, securities, such as but not limited to shares, bonds, money market instruments, other debt instruments, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange, as well as precious metals and commodities, including derivatives on such securities, precious metals and commodities;

"Financial Collateral Arrangements" means pledges and Transfer of Title Agreements, including repurchase agreements, which apply to Financial Collateral;

"Interbank Payment System" means any payment system between or among financial institutions which facilitates the transfer of money or the discharge of obligations on a gross or net settlement basis;

"Licensed Interbank Payment System" means an Interbank Payment System which is licensed under section 94;

"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;

"Operator" means the Central Bank or the person operating an Interbank Payment System or a Licensed Interbank Payment System;

"Participant" means a person who participates in a Protected System in accordance with the Rules and Procedures of the protected system;

"Protected System" means either a Licensed Interbank Payment System, any payment system operated by the Central Bank or a securities settlement system for the settlement of transactions in book-entry securities of the Government of Trinidad and Tobago, including those of State Agencies or Enterprises and Statutory Authorities;

"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;

"reliable" in relation to a payment system means apt to limit systemic and other risks, including liquidity, credit, legal and operational risks, that may jeopardise or negatively affect the proper and continuous operation of the payment system and public confidence in payment instruments and the word "reliability" shall be construed accordingly;

"Rules and Procedures" means the contractual documentation, in the widest sense of the term, governing the use and operation of a Protected System, including but not limited to terms and conditions, technical annexes, agreement letters, instructions and operating circulars and guidelines issued by the Central Bank;

"Settlement Account" means any cash or securities account, that is debited or credited by a Protected 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 Protected System are settled; and

"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.

***93.(1)** Subject to subsection (3) no person shall operate an Interbank Payment System in Trinidad and Tobago unless the Central Bank has issued a licence for that purpose in accordance with this Part.*

***(2)** A person intending to operate an Interbank Payment System shall, before commencing such operations, apply for a licence under section 94.*

***(3)** Any Interbank Payment System, other than a system operated by the Central Bank, operating before the coming into force of this Act shall be issued a provisional licence and shall be given a period of six months to comply with the provisions of this Act and any Regulations made hereunder.*

***94.(1)** Every application for a licence to operate an Interbank Payment System shall be made to the Central Bank in writing and shall be accompanied by -*

(a) a statement of the name and the registered address of the applicant/Operator;

(b) a certified copy of the Articles of Incorporation/Continuance, Bye-laws or other constituent document of the applicant/Operator;

(c) the name, address, nationality, experience and other relevant information pertaining to each director and officer of the applicant/Operator;

(d) the latest audited Financial Statements of the Operator and its policies for risk management and internal controls;

(e) a statement outlining the organisational structure of the Operator;

(f) a statement establishing the identity of the Settlement Agent;

(g) the Rules and Procedures of the system; and

(h) such additional information as the Central Bank may require.

(2) *In determining whether to approve an application under subsection (1), the Central Bank shall consider -*

(a) the adequacy of the Rules and Procedures of the system;

(b) whether operations of the Interbank Payment System as proposed will be safe, sound, reliable and efficient;

(c) whether the Interbank Payment System will contribute to the stability of the financial

system in Trinidad and Tobago; and

(d) such other matters as may be specified by the Central Bank.

(3) *A licence to operate an Interbank Payment System may contain such terms and conditions as may be specified by the Central Bank.*

95.(1) *The Central Bank may suspend or withdraw the licence of the Operator of a Licensed Interbank Payment System where -*

(a) the Operator has failed to comply with the rules and procedures of the system;

(b) any of the criteria set out in section 94(2) is not being fulfilled or is unlikely to be fulfilled;

(c) the Operator of a Licensed Interbank System has failed to comply with any term or condition imposed under section 94(3); or

(d) the Operator of a Licensed Interbank Payment System has failed to comply with any provision of this Act, any Regulations made hereunder or any requirement of the Central Bank made under this Part.

(2) *Subject to subsection (4), before suspending or withdrawing the licence of a Licensed Interbank Payment System, the Central Bank shall give to its Operator notice in writing of its intention to do so, specifying the grounds upon which it proposes to suspend or withdraw the licence and shall require the Operator to submit to it within a specified period a written statement of objections to the suspension or withdrawal of the licence.*

(3) *Upon consideration of the written statement of objections referred to in subsection (2) the Central Bank shall give the Operator written notice of its decision to suspend, withdraw or continue the licence.*

(4) *Notwithstanding subsection (2), where the Central Bank is of the opinion that the safety, soundness, reliability or efficiency of a Licensed Interbank Payment System is or may be threatened, it may, without prior notice, suspend or withdraw the licence of the Operator of that system so, however, that the Central Bank publishes a notice in the Gazette and in at least two daily newspapers published and circulated in Trinidad and Tobago within fourteen days of the suspension or withdrawal, the circumstances and the basis for such action.*

(5) *Except as provided in subsection (4), the Central Bank shall, within seven days of an Operator ceasing to hold a licence, publish notice of such cessation in the Gazette and in at least two daily newspapers published and circulated in Trinidad and Tobago.*

96. *Where an Operator is aggrieved by a decision of the Central Bank to suspend or withdraw its licence, that Operator may appeal to a Judge in Chambers within fourteen days of the date of notice in the Gazette and in at least two daily newspapers published and circulated in Trinidad and Tobago under section 95(4) or notice of suspension or withdrawal under section 95(3), setting forth the grounds of such appeal and the Judge may confirm or set aside the decision of the Central Bank.*

97.(1) *The Central Bank may give directions to an Operator -*

(a) during the pendency of a provisional licence issued under section 93(4);

(b) where a notice of intention to suspend or withdraw is served under section 95(2); and

(c) where the Operator has violated or is about to violate a provision of this Part or any Regulations made under section 9.

(2) *Section 86(9) applies mutatis mutandis to this section.*

(3) *A person who fails to comply with a direction given under subsection (1) 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.*

98. *In the performance of its duties of oversight under this Act, whether on-site or off-site, the Central Bank shall at all reasonable times have access to all books, records, accounts, minutes of meetings, statements and any other information regarding an Operator, including documents stored in electronic form and the right to call upon any director or officer of the Operator for any information or explanation as may be necessary.*

99. *An Operator who fails to comply with an obligation imposed under this Part or Regulations made under this Act commits an offence and is liable on summary conviction to a fine of five million dollars and where such offence is committed with the consent or connivance of or is attributable to any neglect on the part of any director or officer of the Operator, that person also commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.*

100. *The Central Bank may enter into co-operation or information-sharing arrangements with any local or foreign regulatory agency or body that oversees payment systems where the Central Bank is satisfied that any information disclosed to such agency or body will be kept confidential and used strictly for the purpose for which it was disclosed.*

Division 2— Soundness of Payment Systems

101.(1) *Upon knowledge of External Administration in respect of any Participant the Inspector shall promptly notify the Governor of such fact.*

(2) *Upon receiving the notification referred to in subsection (1), the Central Bank shall promptly notify the relevant Operator of the commencement of the said External Administration.*

102.(1) *Notwithstanding the Companies Act and the Bankruptcy Act 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 Protected 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 Protected System, from the time which the Operator of the Protected System was notified of the commencement of such External Administration pursuant to section 101.*

103.(1) *Where, in a Protected 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.

(2) *Subsection (1)(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 system.*

104.(1) *Notwithstanding the commencement of External Administration in respect of a Participant, the Operator or Settlement Agent of a Protected System may use funds or securities available on the Settlement Account of that Participant in order to settle the transfer orders entered into the system prior to the Operator being notified of the commencement of such External Administration pursuant to section 101.*

(2) *Notwithstanding the commencement of External Administration in respect of a Participant, the Operator or Settlement Agent of a Protected System may use any credit facility of that Participant connected to the system, in order to settle the transfer orders entered into the system prior to the Operator being notified of the commencement of External Administration against the Participant pursuant to section 101.*

(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.*

105. *Financial Collateral Arrangements, including pledges of cash, which are effected in relation to a Protected 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.*

106. *Close-out Netting Arrangements which are effected in relation to a Protected 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.

107. *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.

108. *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.*

109.(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 securities, precious metals or commodities, including derivatives on such securities, precious metals or commodities are pledged, 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).*

110. *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.

111. *In the event of the commencement of External Administration in Trinidad and Tobago in respect of a Participant in a Protected 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.*