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PAYMENT INSTRUMENTS (OVERSIGHT) REGULATIONS, 2017

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## MINISTRY OF FINANCE

S.I. No. 53 of 2017

### PAYMENT SYSTEMS ACT, 2012

### PAYMENT INSTRUMENTS (OVERSIGHT) REGULATIONS, 2017

The Central Bank of The Bahamas, in exercise of the powers conferred by Section 47 of the Payment Systems Act, 2012, makes the following Regulations -

#### PART I – PRELIMINARY

##### 1. Citation.

- (1) These Regulations may be cited as the Payment Instruments (Oversight) Regulations, 2017.
- (2) These Regulations shall come into force on the 21<sup>st</sup> of July, 2017.

##### 2. Interpretation.

- (1) In these regulations---
  - “Agent” means a person that has been contracted by a payment service provider to provide payment services on behalf of such institution in its name and on its behalf;
  - “Central Bank” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act, (*Ch.351*) and “the Bank” shall be construed accordingly.
  - “Credit Card” means a card that authorises the person named on it to obtain cash from, or to charge goods or services to, the account of an account holder on credit subject to repayment over a period of time;
  - “Custodian Account” means a special purpose trust account, where the issuer is the trustee and the relevant customers are the beneficiaries, and where funds of such customers are pooled for the purpose of settlement and management of the payment services to which the customers are entitled;

“Debit Card” means a card or an access device by which money is automatically deducted from a banking account to pay for goods or services purchased;

“Electronic Money” or “e-money” means electronically stored monetary value as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions and which is accepted as a means of payment by persons other than the issuer, and includes monetary value stored magnetically or in any other tangible or intangible device (such as a SIM card or software);

“Electronic Money Issuer” means a person that is licensed pursuant to Regulation 6(5) to issue electronic money;

“Merchant” means any person that accepts payment instruments, as well as electronic money as payment for their goods and services;

“Minister” means the Minister of Finance;

“Money Transmission Business” means the business of accepting cash, cheques, other monetary instruments or other stores of value in one location and the payment of a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money transfer business belongs;

“Money transmission service provider” has the meaning provided under section 2 of the Banks and Trust Companies Regulation Act;

“Outsourcing” means a contractual arrangement under which a payment service provider and another party agree that the other party shall perform one or more parts of a service normally carried out by the payment service provider, but the payment service provider retains responsibility for the provision of such services, but does not include any agency relationship where the agent acts in the name and on behalf of the principal;

“Payment Institution” means any entity licensed pursuant to these Regulations to provide payment services but for the purposes of these regulations, does not include--

- (a) a bank, a bank and trust company, a trust company, or a money transmission service provider licensed or registered pursuant to the

Banks and Trust Companies Regulation Act (Ch. 316);

- (b) a co-operative credit union which is registered pursuant to The Bahamas Co-operative Credit Unions Act, 2015.

"Payment Card" means a card or other device, including a code or any other means of access to an account, that may be used from time to time to obtain money or to make payment, and includes a debit card, credit card and stored-value card;

"Payment Instrument" means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment or transfer money and includes, but is not limited to, cheques, funds transfers initiated by any paper or paperless device (such as automated teller machines, points of sale, internet, telephone, mobile phones), payment cards, including those involving storage of electronic money;

"Payment Services" means services enabling cash deposits and withdrawals, execution of payment transactions, the provision of money transmission business, and any other services which are incidental to money transmission and shall include the issuance of electronic money and electronic money instruments;

"Payment Service Provider" means—

- (a) a payment institution licensed under these regulations;
- (b) a bank, a bank and trust company, a trust company, a money transmission service provider licensed or a money transmission agent registered, pursuant to the Banks and Trust Companies Regulation Act, or a co-operative credit union pursuant to The Bahamas Co-operative Credit Unions Act, 2015(Ch. 316); and
- (c) any other provider licensed to provide payment services under any other relevant law.

"Scheme" means the rules, standards and procedures governing the operational framework permitting the operation of the payment instrument and the linking of all stakeholders.

"the Act" means the Payment Systems Act, 2012.

“the regulatory laws” means the Banks and Trust Companies Regulation Act (Ch. 316) or The Bahamas Cooperative Credit Unions Act, 2015;

“User” means any person to whom electronic money has been issued or any person who uses a payment instrument and “payment services user” shall be construed accordingly.

- (2) For the purposes of these Regulations, payment services shall not include the provision of solely internet or telecommunication services or services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, including—
- (a) the processing and storage of data;
  - (b) trust and privacy protection services;
  - (c) data and entity authentication;
  - (d) information technology;
  - (e) communication network provision; and
  - (f) the provision and maintenance of terminals and devices used for payment services.

## **PART II – PAYMENT INSTITUTIONS**

### **3. Licensing**

- (1) No person other than a bank, a bank and trust company, a trust company, a co-operative credit union or a money transmission service provider licensed or registered under the regulatory laws may provide payment services unless such person is a company incorporated under the Companies Act, Chapter 308, and is duly licensed by the Central Bank of The Bahamas under the terms of these Regulations.
- (2) Any person desirous of providing a payment service under these regulations shall apply to the Central Bank by submitting the documents and information prescribed by regulation 4.
- (3) An applicant pursuant to paragraph (2) must satisfy the Central Bank that the applicant complies with the following minimum conditions:

- (a) that the applicant meets such capital requirements as the Central Bank may specify in writing.
- (b) that the applicant has robust governance arrangements for its payment services business, which –
  - (i) include a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
  - (ii) include effective procedures to identify manage, monitor and report the risks to which it is or might be exposed;
  - (iii) include adequate internal control mechanisms, including sound administrative and accounting procedures;
  - (iv) are comprehensive and proportionate to the nature, scale and complexity of the payment services to be provided by the applicant.
- (c) that the applicant has taken adequate measures for the purpose of safeguarding payment service users' funds in accordance with regulation 8.
- (d) that the applicant has clear rules to resolve disputes associated with payment services.
- (e) that the applicant has a safe and reliable information technology system and adequate interfaces to ensure interoperability, access and data protection, as well as robust contingency and disaster recovery procedures.
- (f) that any persons having a qualifying holding of 5% or more of the voting rights and/or shares of the applicant are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a licensed payment institution;
- (g) that the directors and persons responsible for the management of the applicant, and where relevant, the persons responsible for its payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;
- (h) that the applicant has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly.

#### 4. Documents to be submitted.

In order to comply with the conditions set forth in regulation 3(3), an applicant shall provide the following information:

- (a) a description of the nature and scope of the services to be offered and how these services fit in with its overall business strategy, together with a business plan;
- (b) a list of products and services to be provided;
- (c) a description of the legal structure of the scheme to provide the service, including the legal definition of any relationship with a bank or deposit taking institution which clearly describes how liabilities are shared and risks avoided or reduced;
- (d) the criteria used for the selection of agents and/or the outsourcing of parts of the services, where applicable, and a copy of any agency or outsourcing agreement, as the case may be, used by the applicant;
- (e) proof that the applicant has an adequate number of competent and trustworthy staff and management, adequately trained in respect of its business requirements, operational needs and risk management;
- (f) a signed document detailing the features and operational modalities of all information technology systems used or proposed to be used, including the operating systems, software and interfaces and explaining at a minimum the following:
  - (i) a description (including diagrams) of the configuration of any information technology and operating system used by the applicant and its capabilities showing--
    - (aa) how such system is linked to other host systems or the network infrastructure of the applicant;
    - (bb) how transactions and data flow through the network, a description of the settlement process and the maximum time in which the payment service will be executed ;
    - (cc) the types of telecommunication channels and remote access capabilities (for example, direct modem dial-in, internet access, or both) that exist; and
    - (dd) the security controls or measures installed.
  - (ii) a list of software and hardware components used by the applicant and an indication of the purpose of the software and hardware in the infrastructure;



- (iii) a description of how data security and data integrity are maintained;
  - (iv) a description of how the system is interoperable with other existing information technology and operating systems;
  - (v) a description of how relevant international, national and industry level standards, guidelines and recommendations are applied wherever possible;
- (g) proof of the applicant's ability to comply with all applicable anti-money laundering and combating the financing of terrorism laws and policies;
  - (h) a description of the consumer protection measures of the applicant, including out-of-court dispute resolution mechanisms, consumer recourse mechanisms and consumer awareness programs;
  - (i) a description of the applicant's data protection policy;
  - (j) the names of persons holding, whether, directly or indirectly, qualifying holdings of 5% or more of the voting rights and/or shares of the applicant at the time of application whether or not the shares of the applicant are publicly traded;
  - (k) for each existing or proposed shareholder referred to in sub-paragraph (j), the following information:
    - (i) date and place of birth and nationality;
    - (ii) curriculum vitae incorporating: personal data; educational background; professional education and training; a list of previous professional activities and scope of responsibilities, including details of the level and number of subordinates managed;
    - (iii) two character references in original form from sources satisfactory to the Central Bank; and
    - (iv) two financial references in original form from sources satisfactory to the Central Bank.
  - (l) the names of directors and persons responsible for the management of the entity providing services, and, where relevant, the names of persons responsible for the management of the specific payment service activities to be undertaken by the applicant;
  - (m) a certified copy of the applicant's Certificate of Good Standing, Memorandum and Articles of Association;
  - (n) the name and address of the applicant's external auditors;

- (o) such further or additional information as the Central Bank may require for the purpose of assessing an application to be licensed as a payment institution.

## **5. Electronic money issuers.**

All applicants to issue electronic money products must comply with the general requirements of regulation 3(2) and 3(3), and pursuant to section 26 of the Act, must also satisfy the Central Bank that the following conditions are met:

- (a) The applicant must:
  - (i) be constituted as a company limited by shares under the Companies Act and be either an independent company or a wholly-owned subsidiary of its parent company; and
  - (ii) have as its sole object, in its Memorandum of Association, the provision of electronic payment services;
  - (iii) submit the contract referred to in sub-sub-paragraph (c)(iii)(aa) to the Central Bank together with the application for a licence to issue electronic money.
- (b) the provision of electronic money shall not include the provision of credit, nor be treated as deposits;
- (c) Electronic money issuers must—
  - (i) issue electronic money in exchange for the equivalent value in Bahamian Dollars;
  - (ii) redeem the monetary value of electronic money at par with the Bahamian Dollar, upon the request of the payment service user;
  - (iii) ensure that—
    - (aa) the management of the underlying float, the conditions for redemption of electronic money, including payment of any fees relating to redemption are clearly set out in the contract between the electronic money issuer and the payment services user; and
    - (bb) the payment service user is informed of those conditions before being bound by any contract.

- (iv) disclose statistics on the value of electronic money loaded and redeemed in their periodic financial statements; and
  - (v) furnish any information on their operations, within such time and in such format as the Central Bank may require for its effective oversight of the payments system.
- (d) An electronic money issuer must ensure that the clearing and settlement mechanisms which it uses to execute electronic money transactions facilitate provision of final settlement not more than twenty four hours after a payment instruction has been initiated in the banking system or within such other time as the Central Bank may specify.
- (e) Electronic money shall not be insured individually and must be deposited in full (one hundred percent) in the banking system in a Custodian Account.
- (f) Electronic money deposited in accordance with subparagraph (e) shall remain the property of the payment service users of the electronic money issuer that deposited the electronic money who shall owe to such users, in respect of such deposit, the fullest fiduciary duties recognized under any applicable laws of The Bahamas.

## **6. Licensing procedure.**

- (1) After receipt of an application, the Central Bank shall assess whether the application is complete.
- (2) Within ten days of receipt of the completed application for a licence, the Central Bank shall either commence the process for determining the application under paragraph (3) or request that the applicant provide such additional information within such time as the Central Bank may reasonably require to enable it to determine the application.
- (3) If the Central Bank is satisfied that the application is complete, it shall evaluate whether the application complies with these Regulations or with any other requirements as may be prescribed by the Central Bank under any other law.
- (4) The Central Bank shall determine an application for licensing within forty five days beginning with the date on which it received the completed application.

- (5) The Central Bank may, after consideration of an application made pursuant to regulation 3(2), grant a licence subject to such terms and conditions as it thinks fit, where—
  - (a) the Bank is satisfied with respect to the matters in regulations 3(3) and 5 6; and
  - (b) subject to the Central Bank's approval, the applicant appoints a minimum of two fit and proper senior officers, both of whom must be resident in The Bahamas, to be responsible for the day-to-day operations of the business.
  - (c) the applicant has paid the fees prescribed in the First Schedule.
- (6) The Central Bank may at any time after the grant of a licence pursuant to paragraph (5), impose, amend or vary conditions upon the licence.
- (7) Where the Central Bank considers it to be in the public interest, the Central Bank may refuse to grant a licence.
- (8) The Central Bank shall in every case in which application is made pursuant to regulation 3(2) advise the Minister of its decision to either grant or refuse the grant of such licence.
- (9) A person obtaining a licence as a payment institution shall provide the services and execute the activities permitted in its licence and do so from any location listed in its licence.
- (10)
  - (a) Before obtaining a license, a payment institution must make a deposit in a trust account at an entity approved by the Central Bank.
  - (b) The deposit made pursuant to subparagraph (a) shall be refunded if the payment institution subsequently closes its business and fulfills all the requirements for closing the business as may be specified by the Central Bank in writing within established timeframes.
  - (c) The Central Bank may, by Notice in writing, increase or decrease the amount of the deposit referred to in subparagraph (a).

## **7. Prohibition or limitation on activities of payment institutions.**

- (1) In the absence of a separate license, registration or specific approval from the Central Bank or other relevant domestic regulatory authority, a licensed payment institution may not engage in any of the following activities:
  - (a) acceptance of deposits;

- (b) foreign exchange transactions;
  - (c) granting of loans;
  - (d) (i) include in its name words such as “bank”, “trust”, “bank and trust company”, “trust company”, “trust corporation”, “savings” or “savings and loan”, “cooperative” or credit union” or any other word indicative of activities other than as a payment institution;
  - (ii) use a name which is
    - (aa) identical with that of any company firm or business whether within The Bahamas or not or which so nearly resembles that name as to be calculated to deceive;
    - (bb) is calculated to suggest, falsely, the patronage of or connection with some person or authority whether within The Bahamas or not; or
    - (cc) is calculated to suggest, falsely, that such payment institution has a special status in relation to or derived from the Government of The Bahamas or has the official backing of or acts on behalf of the said Government or of any department, agency or official thereof.
  - (e) payment system operations.
- (2) (a) Subject to paragraph (b) a payment institution shall--
- (i) issue payment instruments in Bahamian Dollars, only;
  - (ii) not issue a payment instrument valued in excess of \$15,000 Bahamian Dollars or allow such value to be transferred or funded using the payment instrument.
- (b) The Central Bank may authorize a payment institution to issue payment instruments in excess of \$15,000 Bahamian Dollars to specific bodies for specific purposes.
- (4) A payment institution shall—
- (a) not at any time commingle funds received from payment service users or through another payment service provider for the execution of payment transactions, with the funds of third parties; and
  - (b) protect the funds received from payment service users or through another payment service provider for the execution of payment transactions from the claims of other creditors

of the payment institution, in particular, in the event of insolvency.

- (5) A payment institution shall not issue, transfer or dispose of its shares or any other securities without the prior written approval of the Central Bank.

## **8. Register.**

- (1) The Central Bank shall maintain a public register of licensed payment institutions.
- (2) The register shall contain the following information relating to the payment institution, as relevant:
  - (a) the index number of the license issued by the Central Bank and date of issuance;
  - (b) the taxpayer identification number;
  - (c) the name, registered office and head office of the payment institution;
  - (d) the names of the persons managing and representing the payment institution;
  - (e) the services/activities for which the payment institution was licensed;
  - (f) the location(s) of the payment institution and their contact details; and
  - (g) the date on which the Central Bank revoked the license of the payment institution or the date on which such Institution ceased to carry on business.
- (3) The Central Bank shall publish the register referred to in paragraph (1) online and shall update the register on a regular basis.

## **9. Revocation.**

- (1) If a payment institution--
  - (a) contravenes any provisions of these Regulations;
  - (b) does not comply with other general measures issued pursuant to these Regulations;
  - (c) fails to comply with directions issued by the Central Bank;
  - (d) provides services contrary to the terms and conditions specified in its licence;
  - (e) becomes insolvent, wound up or dissolved;

- (f) was licensed on the basis of false or wrong information submitted by the applicant; or
  - (g) has failed to commence operations within 12 months following the issuance of license,  
the Central Bank may revoke its license.
- (2) No revocation shall be made under paragraph (1) of this regulation except after giving the applicant a reasonable opportunity of being heard.
  - (3) Nothing contained under paragraph (2) of this regulation shall apply to a case where the Central Bank considers it necessary to revoke the license in the interest of the monetary policy or financial stability of the country or for any other reasons connected to public interest.
  - (4) The Central Bank may, in considering whether to prohibit any person from providing a payment service, inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions of the person.
  - (5) The order of revocation issued under paragraph (1) of this regulation shall include necessary provisions to protect and safeguard the interests of persons affected by such order of revocation.
  - (6) The decision to revoke the license shall be published by the Central Bank in a newspaper of wide circulation at the place where the head office of the applicant is situated.
  - (7) The revocation of the license shall become effective on the date of its publication or on any further date as the Central Bank may specify.
  - (8) The payment institution shall be prohibited from engaging in the provision of payment services starting from the effective date of the revocation.

### **PART III – TERMS AND CONDITIONS TO PROVIDE PAYMENT SERVICES**

#### **10. General requirements.**

- (1) Payment Service Providers shall ensure that their activities and instruments always comply with relevant regulations and other either general or individual measures adopted by the Central Bank to ensure a secure and efficient payment system in The Bahamas.

- (2) Payment Service Providers shall comply with the Financial Transactions Reporting Act, (*Ch. 368*) and all other applicable anti-money laundering and countering the financing of terrorism legislation.
- (3) A payment service provider shall maintain insurance coverage of such amount with respect to its payment services business as the Central Bank may require, having regard to the volume of the business.
- (4) A payment institution's head office, registered office or place of residence, as the case may be, must be in The Bahamas.
- (5) A payment institution shall inform the Central Bank of any change in the location of its head office or registered office, within seven days of such change.

#### **11. Surrender of Licence.**

- (1) A payment institution may subject to the prior written approval of the Central Bank, surrender its licence.
- (2) A payment institution shall give ninety days prior notice to the Central Bank of its intention to surrender its licence.
- (3) The Central Bank may grant approval for a payment institution to surrender its licence, subject to such terms and conditions as the Central Bank may approve.

#### **12. Rights and responsibilities of each payment service provider.**

- (1) A payment service provider shall—
  - (a) ensure that the rights and responsibilities of all stakeholders (including users and merchants) are clearly set out in the relevant contracts and any public communications;
  - (b) take reasonable measure to ensure that the terms and conditions for the use of retail payment instruments are easily accessible and understood;
  - (c) put in place a system to maintain accurate and complete records of transactions executed by the payment service users for a minimum of five years from the date of the transaction; and
  - (d) develop and implement an adequate fraud and risk management framework.



### **13. Consumer protection, education and privacy.**

- (1) A payment service provider shall implement measures to address consumer protection, education and privacy.
- (2) A payment service provider shall, pursuant to paragraph (1) ensure that:
  - (a) it adopts general policies on safe operations, privacy of customers' information, reliable and quality service, transparency of products and services, and prompt response to inquiries, complaints, refund demands and disputes;
  - (b) it puts in place rapid dispute resolution mechanisms and retains records of complaints or disputes;
  - (c) it provides adequate warning statements to users and merchants on the risk of loss arising from failure or insolvency of the issuer, lost or stolen payment instruments or access devices, or fraudulent transactions.
- (3) A payment service provider shall
  - (a) make publicly available clear terms and conditions for use of the payment instruments and devices which it offers, which should, at a minimum include the following;
    - (i) type of payments that can be made;
    - (ii) applicable fees and charges;
    - (iii) availability of user's statement;
    - (iv) procedures for reporting lost or stolen instruments/devices and the procedure for lodging a complaint;
    - (v) the payment service provider's refund policies;
    - (vi) rights and responsibilities of users and merchants;
    - (vii) termination rules; and
    - (viii) redemption procedures, when relevant.
  - (b) obtain the consent of its users and merchants to the terms and conditions for use of the payment instruments and devices which it offers and their acknowledgement that they have read and understood such terms and conditions prior to their participation in the scheme.

#### **14. Outsourcing of activities.**

- (1) Where a payment service provider intends to outsource operational functions, it shall obtain the prior approval of the Central Bank to outsource such functions.
- (2) Outsourcing of important operational functions shall not be undertaken in such a way as to materially impair the quality of the payment service provider's internal controls or the ability of the Central Bank to monitor the payment service provider's compliance with these Regulations.
- (3) For the purposes of paragraph (2), an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a payment service provider with the requirements of its license, its financial performance, or the soundness or the continuity of its services.
- (4) When a payment service provider outsources important operational functions, it shall comply with the following conditions:
  - (a) the outsourcing shall not result in the delegation by senior management of the payment service provider's responsibility for complying with these Regulations;
  - (b) the relationship and obligations of the payment service provider towards the users of any relevant payment instrument shall not be altered;
  - (c) the conditions with which the payment service provider is to comply in order to be licensed and remain so in accordance with these Regulations shall not be adversely affected; and
  - (d) none of the other conditions subject to which the payment service provider's license was granted shall be removed or modified.

#### **15. Use of agents.**

- (1) When a payment service provider intends to provide payment services to customers through an agent, it shall prior to engaging the agent, communicate the following information to the Central Bank in writing:
  - (a) the name and address of each of its agent(s);
  - (b) a description of the internal control mechanisms that will be used by the agent(s) in order to comply with their anti-

money laundering and countering the financing of terrorism obligations;

- (c) the identity of directors and persons responsible for the management of the agents to be used in the provision of the services and evidence that they are fit and proper persons;
  - (d) evidence that—
    - (i) the agent is fit and proper to conduct payment services;
    - (ii) of the professional reputation and business experience of the agent;
    - (iii) that the agent, if an individual, is resident in The Bahamas or, if a company, is incorporated under the Companies Act; and
  - (e) such other information as the Central Bank may reasonably require.
- (2) A payment service provider shall inform the Central Bank of any substantial change in its agency network, including changes in the rules relating to such network and or number or kinds of agents, within thirty days of such change.
  - (3) A payment service provider shall keep an updated list of all of its agents on its website.
  - (4) A payment service provider shall ensure that agents acting on its behalf inform customers that they are acting on behalf of the payment service provider.
  - (5) The Central Bank may at any time require a payment institution to replace an agent by notice in writing delivered to the usual place of business of the payment institution or the agent.

## **16. Liability.**

- (1) When a payment service provider relies on third parties for the performance of operational functions, it shall take reasonable steps to ensure that the requirements of these Regulations are complied with.
- (2) A payment service provider shall remain fully liable for any acts of its employees, agents, branches or third party to which activities are outsourced.

## **17. Public disclosure for payment service providers.**

- (1) A payment service provider licensed by the Central Bank shall publish annually--

- (a) its annual reports together with its annual audited financial statements;
- (b) information on its-
  - (i) operations;
  - (ii) risk management practices including the results of audits conducted by its external auditors on the effectiveness of its risk management practices; and
  - (iii) information technology practices.
- (2) A payment service provider's annual report must be made publicly available within four months from the close of its accounting year.
- (3) A payment institution shall provide the Central Bank with a copy of its annual audited financial statements together with the information referred to in paragraph (1) within four months from the close of its accounting year.
- (4) In addition to publishing its annual reports, a payment service provider may be directed by the Central Bank to disclose such other information or data as the Bank deems necessary in the public interest.
- (5) The Central Bank may at any time require a payment institution to replace an auditor by notice in writing delivered to the usual place of business of the payment service provider or the auditor.
- (6) An auditor of a payment institution must give the Central Bank immediate written notification of the following matters –
  - (a) his intention to resign before the expiration of his term of office as auditor;
  - (b) his intention not to seek to be reappointed as auditor; and
  - (c) a decision to include a modification of his report on the payment service provider's financial statements and, in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.
- (7) An auditor or former auditor of a payment institution shall give written notice to the Central Bank of any fact or matter
  - (a) of which he has or had become aware; and
  - (b) which is likely to be of material significance for the discharge, in relation to the payment institution, of the functions of the Central Bank under this Act.
- (8) Notice under paragraph (7) shall be given—

- (a) in the case of an auditor, immediately after the auditor, becomes aware of the matters in respect of which notice is to be given to the Inspector; and
  - (b) in the case of a former auditor, as soon as reasonably practicable after this provision comes into force.
- (9) An auditor or former auditor who fails to comply with this section commits an offence and shall be liable on summary conviction to a fine of twenty-five thousand dollars.
- (10) This regulation shall apply to any matter of which an auditor or former auditor of a payment institution has or had become aware in his capacity as auditor and which relates to the business or affairs of the payment institution.

#### **PART IV – OVERSIGHT**

#### **18. General oversight authority.**

The Central Bank shall have oversight of the payment services provided pursuant to these Regulations, whether provided directly or through agents, as well as of any third parties to which part of services have been outsourced.

#### **19. Publication of information.**

The Central Bank may prepare and publish consolidated statements aggregating any information provided under these Regulations for statistical purposes and other statements that relate to or are derived from any information provided under these Regulations.

#### **20. Authority to perform inspections.**

- (1) The Central Bank may at any reasonable time, enter and inspect the premises and the business activities of a payment service provider as part of the licensing process.
- (2) The Central Bank may, at any reasonable time, enter and inspect the premises and the business activities of—
  - (a) a licensed payment service provider;
  - (b) an Agent; or

- (c) an entity to which a licensed payment service provider has outsourced any of its business activities in order to satisfy itself that the provisions of these Regulations, the relevant anti-money laundering and countering the financing of terrorism laws or any other relevant law is being complied with and that the payment service provider is in a sound financial position.
- (3) The Central Bank may require any person on the premises of a payment service provider to provide an explanation of any document or to state where it may be found or to give such explanation as the Central Bank may reasonably require in the exercise of its functions under these Regulations.
- (4) The Central Bank may appoint an auditor or other party, at the expense of the payment service provider, to conduct an examination pursuant to paragraph (1) and may require the auditor or other party to report to the Central Bank on their findings.
- (5) The Central Bank or a person appointed by the Bank pursuant to paragraph (4), may inspect and retain any books, accounts, records, vouchers, documents, cash, access devices, equipment, (or interview staff) or other items as the Central Bank may reasonably require for the purpose of enabling the Bank to perform its functions under these Regulations.

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

### **21. Fines and late fees.**

- (1) The Central Bank may assess administrative monetary penalties for non-compliance with the provisions of these Regulations as provided in the Second Schedule.
- (2) Administrative monetary penalties imposed against a payment institution shall be debited directly out of the payment institution's account referred to in regulation 6(10).
- (3) Subject to paragraph (4), section 24A(2), (3) and (4) and section 24F, 24G and 24H of the Banks and Trust Companies Regulation Act shall apply mutatis mutandis in any case where the Central Bank assesses an administrative monetary penalty under paragraph (1).

- (4) The provisions of section 24A(4) of the Banks and Trust Companies Regulation Act shall not apply in any case where the Central Bank assesses a fixed penalty pursuant to paragraph (1).
- (5) Pursuant to paragraph (3) —
  - (a) the breach by a person of a provision of the Act or of a regulation set out in the second and third columns of the *First Schedule* are designated contraventions of the Act or of the regulation respectively; and
  - (b) the non-compliance of a person with a direction issued or order made or any conditions and limitations imposed under a provision of the Act or a regulation set out in the second and third columns of the *First Schedule* are designated contraventions of the Act or of the regulation respectively.
- (6) A contravention set out in the *First Schedule* may be proceeded with under paragraph (1).
- (7) A contravention shall be classified as a minor, serious or very serious contravention, as indicated in the fourth column of the *First Schedule*.
- (8) (a) Subject to paragraph (5), the penalty in respect of a contravention that is classified as minor —
  - (i) which consists of a late or erroneous filing; and
  - (ii) which is listed under items 1, 8, 13 and 14 of the fourth column of the *First Schedule*,
 shall be two hundred and fifty dollars.
  - (b) A minor contravention referred to in sub-paragraph (a) shall be subject to —
    - (i) a penalty of two hundred and fifty dollars and in the case of a continuing contravention, to a penalty of two hundred and fifty dollars for each day or part of a day during which the contravention continues; and
    - (ii) an aggregate maximum penalty of ten thousand dollars.

## **22. Penalties for payment service providers without a license.**

Every person who contravenes the provisions of regulation 3(1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars and in the case of a continuing

offence, to a fine not exceeding five hundred dollars for each day during which the offence continues.



**FIRST SCHEDULE (Regulation 6(5)(c))**

**FEES**

The following shall be fees under these Regulations, that is to say —

| <b>Matters in respect of which fee is payable</b>   | <b>Amount of fee \$</b> |
|---|-------------------------|
| (a) Licensing as a payment institution  | 10,000                  |
| (b) Continuance in being on the first day of January in any year as a payment institution as mentioned in sub-paragraph (a) of this paragraph | 10,000                  |

**SECOND SCHEDULE (Regulation 21)**

**ADMINISTRATIVE MONETARY PENALTIES**

| No.  | Description of Contravention  | Act or Regulation   | Classification  |
|--|---|---------------------|---|
| <b>PAYMENT SYSTEMS ACT</b>                     |   |                     |   |
| 1  | Failure of a person to provide any document or information required by the Central Bank, on time.                                 | Section 31(2)       | Minor, if the contravention relates to information required as part of periodic reports. Serious in any other case. |
| <b>PAYMENT SYSTEMS (OVERSIGHT) REGULATIONS</b> |   |                     |   |
| 2  | Carrying on business as a payment institution without being licensed by the Central Bank.   | Regulation 3(1)     | Very Serious  |
| 3  | Failure of an electronic money issuer to deposit electronic money in a custodian account  | Regulation 5(e)     | Serious   |
| 4  | Engaging in any of the activities listed in regulation 7(1) without being licensed or registered by the Central Bank              | Regulation 7(1)     | Very Serious  |
| 5  | Issuing a payment instrument in excess of B\$15,000 or allowing such value to be transferred or funded using a payment instrument | Regulation 7(2)(ii) | Serious   |
| 6  | Commingling payment service users' funds with the funds of third parties  | Regulation 7(4)(ii) | Serious   |

| No. | Description of Contravention  | Act or Regulation                   | Classification |
|-----|---|-------------------------------------|----------------|
| 7   | Failure of a payment institution to have its head office and registered office located within The Bahamas   | Regulation 10(4)                    | Serious        |
| 8   | Failure by a payment institution to notify the Central Bank in writing of any change in the location of its head office, on time.   | Regulation 10(5)                    | Minor          |
| 9   | Failure of a payment service provider to set out the rights and responsibilities of users in contracts  | Regulation 12(1)(a)                 | Serious        |
| 10  | Failure of a payment service provider to maintain accurate and complete transaction records of its payment service users at all or for the time stipulated in regulation 12(1)(c) | Regulation 12(1)(c)                 | Serious        |
| 11  | Failure by a payment system provider to implement or maintain an adequate fraud and risk management framework   | Regulation 12 (1)(d)                | Serious        |
| 12  | Failure of a payment service provider to publish the terms and conditions for use of its payment instruments and devices  | Regulation 13(3)                    | Serious        |
| 13  | Failure of a payment service provider to provide the Central Bank with information on its agents, prescribed by Regulation 15(1).   | Regulation 15(1)                    | Minor          |
| 14  | Failure of a payment service provider to inform the Central Bank of substantial changes in its agency network, on time  | Regulation 15(2)                    | Minor          |
| 15  | Failure of a payment service provider to keep a current list of agents on its website   | Regulation 15(3)                    | Minor          |
| 16  | Failure of a payment service provider to ensure that its agents disclose that they are acting on the payment service provider's behalf.   | Regulation 15(4)                    | Minor          |
| 17  | Failure of a payment institution to publish its audited financial statements and annual reports and other information required by regulations 17(1), 17(2) and 17(3), on time     | Regulations 17(1), 17(2) and 17(3). | Serious        |
| 18  | Failure by a payment institution to replace an auditor on the request of the Central Bank.  | Regulation 17(5)                    | Serious        |

| <b>No.</b> | <b>Description of Contravention</b>   | <b>Act or Regulation</b>    | <b>Classification</b> |
|------------|---|-----------------------------|-----------------------|
| <b>19</b>  | Failure of an auditor or former auditor to give notice to the Inspector pursuant to regulations 17(6) and 17(7) | Regulations 17(6) and 17(7) | Very Serious          |

**Dated the 21<sup>st</sup> day of July, 2017.**

**Signed**  
**John A. Rolle**  
**Governor**  
**Central Bank of The Bahamas**