

GUYANA

BILL No. OF 2018

NATIONAL PAYMENTS SYSTEM BILL 2018

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SCHEDULE

A BILL

INTITULED

AN ACT to provide for the establishment, regulation and oversight of a National Payments System and for matters connected therewith.

A.D. 2018 Enacted by the Parliament of Guyana:-

**PART I
GENERAL PROVISIONS**

Short title and commencement.

1. This Act may be cited as the National Payments System Act 2018 and shall come into operation on a date as the Minister may by order appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

Cap. 85:03

(a) “agent” means a natural or legal person who acts on behalf of a payment service provider to provide payment services;

Cap. 85:02

(b) “bank” shall have the same meaning assigned to it as in the Financial Institutions Act;

Cap. 90:13

(c) “Bank” means the Bank of Guyana established under the Bank of Guyana Act;

(d) “bill of exchange” shall have the same meaning assigned to it as in section 3 of the Bills of Exchange Act;

(e) “central counterparty” means an entity that is the buyer to every seller and the seller to every buyer in a settlement system;

(f) “central securities depository” means an entity which enables -

- (i) securities transactions to be settled and processed by book-entry;
- (ii) custodial and asset services to be provided;
- (iii) securities to be immobilized and dematerialized; and

- (iv) securities to be held either as an electronic record or in physical form;
- (g) “cheque” shall have the same meaning assigned to it as in section 74 of the Bills of Exchange Act;
- (h) "cheque in electronic form" means a cheque which contains digital representation of the front and back of a paper cheque, that is, the cheque image, or data representing the essential features of the cheque or both, and is generated, written and signed in a secure system ensuring minimum safety standards as prescribed by the Bank;
- (i) “clearing” means the process of transmitting, reconciling or confirming funds or securities transfer instructions prior to settlement and includes the netting of instructions and the establishment of final positions for settlement;
- (j) “clearing house” means an entity that provides clearing or settlement services for a system, including the Bank;
- (k) “clearing system” means a set of procedures whereby participants present and exchange information relating to the transfer of funds or securities to other participants through a centralized system or at a single location and includes mechanisms for the calculation of participants’ positions on a bilateral or multilateral basis with a view to facilitating the settlement of their obligations;
- (l) “close-out netting” means a netting arrangement under which, following the occurrence of certain events specified by the parties to the arrangement, all or any of the transactions referred to in the netting arrangement may be terminated, and where so terminated the termination value becomes due and payable;
- (m) “collateral” means an asset or third-party commitment that is accepted by the collateral taker to secure an obligation of the collateral provider vis-à-vis the collateral taker;

- (n) “credit card” means a card that authorises the person named on it to charge goods or services to the account of an account holder on a credit basis subject to repayment over a period of time;
- (o) “credit transfer” means the series of transfers, beginning with the payer’s payment order, made for the purpose of making payment to the payee and includes a payment order issued by the payer’s bank or payment service provider, made for the purpose of making payment to the payee and includes a payment order issued by the payer’s bank or payment service provider, or an intermediary intended to carry out the payer’s payment order;
- (p) "dematerialized" means the elimination of physical certificates or documents of title which represents ownership of securities so that securities exist only as accounting records;
- (q) “debit card” means a card or other instrument, by which money is automatically deducted from an account at a deposit-taking institution to pay for goods or services purchased;
- (r) “debit transfer” means the series of transfers, initiated by the payee, on the basis of the payer’s consent given to the payee, to the payee’s payment service provider or the payer’s own payment service provider, and includes any payment order issued by the payee’s bank or payment service provider, or an intermediary intended to carry out the payee’s order;
- (s) "direct participant" means a participant in a system responsible for the settlement of the participant’s own payments, those of the participant’s consumers and those of other participants who are not entitled to settle through the system on their own behalf;
- (t) "electronic funds transfer" means a transfer of funds which is initiated by a person, so as to instruct, authorise or order a payment service provider to debit or credit an account through an electronic terminal, telephonic instrument or other automated

device, excluding the sale of postal money orders, and including –

- (i) point- of-sale transfers;
 - (ii) automated teller machine transactions;
 - (iii) transfers initiated by telephonic instruments, including mobile phones;
 - (iv) transactions through the internet and other communication channels; and
 - (v) credit card and debit card transfers;
- (u) “electronic money” means monetary value represented by a claim on the issuer, which is -

- (i) stored electronically, including magnetically or in any other tangible or intangible device such as a SIM card or a software;
- (ii) issued on receipt of funds of an amount not less in value than the monetary value issued for the purpose of making payment transactions; and
- (iii) accepted as a means of payment by persons other than the issuer,

but the funds referred to in subparagraph (ii) above shall not be treated as a deposit under this or another enactment;

- (v) "electronic presentment of cheque” means presentment of cheque in electronic form;
- (w) “financial institution” includes a non-banking financial institutions as defined in the Financial Institutions Act;
- (x) “National Payments System” means the whole of the services that are associated with the sending, receiving and processing of orders of payment or transfers of money in domestic or foreign currencies, issuance and management of payment instruments, payment systems, clearing systems and settlement systems, including those processing securities,

arrangements and procedures associated to those systems and services, and payment service providers, including operators, participants, and any third party acting on behalf of them, either as an agent or by way of outsourcing agreements, whether entirely or partially operating inside Guyana;

- (y) “net settlement” means a settlement procedure in which final settlement of transfer instructions occurs on a net basis at one or more discrete, pre-specified times during the processing day;
- (z) "net termination value" means the net amount obtained after setting off or otherwise netting the settlement obligations between the parties in accordance with settlement rules issued by the Bank or a netting arrangement entered into between the parties;
- (aa) “netting” means the determination of the net payment obligations or the determination of the net termination value of settlement obligations between two or more participants within a system;
- (bb) “netting arrangement” means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation and includes bilateral netting, multilateral netting, netting by novation, close-out netting, payments netting or a combination of these;
- (cc) "netting by novation" means a netting arrangement between the parties to a series of transactions where an account of amounts due is kept and the rights and obligations of the parties in respect of the account are continuously extinguished and replaced by a new single amount payable by one party to the other;
- (dd) “operator” means the Bank or any other entity licensed by the Bank to operate a system;
- (ee) “participant” means a party who is recognised in the rules of a system as eligible to exchange, clear and settle through the system with other participants as a direct participant or through the services of a direct participant;

- (ff) "payment card" means any card, coupon book, 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, credit and stored-value card;
- (gg) "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 device or paperless device such as automated teller machines, points of sale, internet, or telephone, or any payment cards including those involving storage of electronic money;
- (hh) "payment service" means a service enabling cash deposits and withdrawals, execution of payment transactions, issuing or acquisition of payment instruments, the provision of remittance services or any other service functional to the transfer of money and includes the issuance of electronic money and electronic funds transfers but does not include the provision of solely online or telecommunication services or network access;
- (ii) "payment service provider" means any entity that is licensed to provide a payment service;
- (jj) "payment system" means any system that consists of a set of instruments, procedures and rules for the transfer of funds between or among participants;
- (kk) "settlement" means the act of discharging obligations by transferring funds or securities or other financial instruments between two or more parties;
- (ll) "settlement account" means an account at the Bank that a participant uses to hold funds or securities to settle transactions between participants in the system;

(mm) “settlement agent” means a company providing accounts for the participants to hold funds and to settle transactions within a settlement system;

(nn) “settlement rules” means the rules, however established, that provide the basis upon which payment obligations are calculated, netted or settled and includes rules for the taking of action in the event that a participant is unable or likely to become unable to meet its obligations to a payment system, clearing house, Central Counter-Party or other participants and also covers settlement of obligations from securities;

(oo) “settlement system” means a system established and operated by the Bank for the discharge of payment obligations as well as settlement obligations in relation to securities or another system which is approved by the Bank for that purpose.

(2) The use of the term “system” in this Act, unless otherwise specified, refers to a payment system, a clearing system or a settlement system, as the case may be.

(3) This Act extends to the whole of Guyana, and to any payment service provided and system operating wholly or partially in the country.

PART II POWERS AND DUTIES OF THE BANK

General powers.
Cap 85:02

3. (1) Pursuant to section 65 of the Bank of Guyana Act, the Bank shall regulate and oversee the National Payments System as a whole with the aim of reducing any inefficiencies and potential risks therein and ensuring its reliability and soundness.

(2) Subject to subsection (1), the Bank shall regulate and oversee the National Payments System as a whole and any of its components, in the public interest and in particular, promote competition in the market for Payment services and the protection of payment system consumers.

(3) Without prejudice to the generality of subsections (1) and (2) and subject to the provisions of this Act, the Bank may -

(a) elaborate policies for continuous modernization of the National Payments System;

- (b) license payment service providers and operators in conformity with the terms of this Act and any further implementing measure;
- (c) determine general or individual conditions, standards, rules or procedures in accordance with this Act and any further implementing measure regarding any licensed entity and their activities and ensure that such conditions, standards, rules and procedures are duly applied;
- (d) promote the establishment of the National Payments System Council as an advisory body to the Bank in its oversight functions; and
- (e) perform any other functions relating to systems or the issuance of payment instruments permitting the accomplishment of its functions.

Operational role of the Bank.

4. (1) The Bank may provide facilities for Systems, their operators or their participants.

(2) The Bank may, in order to facilitate its role pursuant to subsection (1) -

- (a) establish, own, operate and participate in the ownership or operation of systems;
- (b) act as a central counterparty to participants;
- (c) hold cash accounts for operators and participants, which may be used for the clearing and settlement of transfers into a system;
- (d) hold securities for operators and participants, which may be used for the working of systems;
- (e) extend intraday credit to participants subject to adequate collateral being granted; and
- (f) act as a central securities depository for Government securities, in conformity with section 47 of the Bank of Guyana Act or corporate securities.

Cap. 85:02

Cooperation with other authorities.

5. (1) The Bank shall cooperate with other public authorities engaged in the regulation and supervision of payment services providers and any other entity directly or indirectly involved in payment services and their operation in Guyana, as well as on the regulation, monitoring and supervision of capital markets in Guyana.

(2) The Bank shall have the power to cooperate with other monetary authorities and international organisations dealing with regulation and oversight of payments.

(3) The Bank may enter into memoranda of understanding for the purpose of cooperating with an entity or authority referred to in subsections (1) and (2).

Establishment of the National Payments System Council.

6. (1) The Bank may, by order or regulations, establish a National Payments System Council.

(2) The Bank may make regulations or issue guidelines on the composition of the National Payments System Council, its competences, working procedures and all other matters relevant to the operations and functions of the Council.

(3) The objective of the Council is to advise the Bank on regulation and oversight of the National Payments System, including, but not limited to, setting operational and technical standards and other matters affecting payment services and the clearing and settlement of payments and securities.

PART III LICENSING OF PAYMENT SERVICE PROVIDERS AND SYSTEM OPERATORS

Necessity for licence to provide payment services.

7. No payment service shall be provided, including the issuing of a payment instrument, in Guyana except by a company which is in possession of a valid licence granted by the Bank licensing it to provide payment services in Guyana.

Necessity for licence to operate a system.

8. No system shall be operated in Guyana except by a company which is in possession of a valid licence granted by the Bank to operate a system in Guyana.

Application for licence.

9. (1) An applicant for a licence to provide a payment service or operate a system in Guyana shall submit to the Bank an application for a licence in such form and containing such information as may be

prescribed by the Bank together with an application fee of an amount to be prescribed by the Bank and having due regard to the types of payment services to be provided or the system to be operated.

(2) The Bank may specify different classes and subclasses of payment services in respect of which a person is required to apply for a licence and for which a licence may be granted under section 10, including-

- (a) a money transfer service;
- (b) an electronic funds transfer;
- (c) electronic money; and
- (d) any other classifications the Bank considers appropriate.

(3) The Bank may prescribe paid up capital or capital adequacy requirement for the purpose of licensing and the Bank may specify in the conditions of the licence capital adequacy levels required to be maintained, determined by the type of service, average value of payments, aggregate value and other factors as the Bank deems necessary.

Grant of licence to provide payment service.

Cap. 89:01

10. (1) In determining whether to grant a licence to provide a payment service the Bank shall have regard to whether the applicant –

- (a) is registered under the Companies Act as a company;
- (b) has the prescribed paid up capital and capital adequacy requirement;
- (c) has suitable and sufficient technical and organisational skills to provide a payment service including the proper mechanisms to achieve internal control and risk management as related to the provision of services;
- (d) has a mechanism to safeguard funds which have been received from consumers of a payment service or through another payment service Provider for the execution of payment transactions, by not making them commingled at any time with its own funds, the funds of third parties and making them insulated against the claims of other creditors of the service provider, in particular in the event of insolvency;
- (e) has a detailed strategy and business plan supported by realistic estimations in the budget forecast for five years;

- (f) is a fit and proper person and every officer is a fit and proper person;
- (g) guarantees liquidity of the settlement of orders accepted by the system and this is protected from credit risk;
- (h) being granted the licence is consistent with the protection of financial stability and is in the interest of the public; and
- (i) satisfies any other condition the Bank considers necessary.

(2) Where the Bank after considering -

- (a) the type of payment service to be provided;
- (b) the average value of payments; and
- (c) any other relevant factor,

prescribes a paid up capital or capital adequacy requirement for the purpose of subsection (1)(b), the Bank shall specify in the terms and conditions of the licence the required paid up capital or capital adequacy to be maintained by the licensee as a condition of the licence.

(3) Upon determination that the applicant satisfies the requirements of the Act, for licensing, the Bank may, on the payment of a prescribed fee, grant a licence specifying the type of payment service to be provided and may impose any condition on the licence or the operations of the licensee it deems necessary or appropriate in accordance with section 15.

(4) If the Bank determines that the applicant does not satisfy the requirements of this Act, the Bank shall inform the applicant in writing of its refusal to grant a licence no later than three months after receipt of the application, stating the reasons for the refusal.

(5) Notice of the determination referred to in subsections (3) and (4) shall be published in at least two daily newspapers of general circulation in Guyana.

Grant of licence to
operate system.

11. (1) In determining whether to grant a licence to operate a system the Bank shall have regard to whether the applicant -

Cap. 89:01

- (a) is registered under the Companies Act as a company;
- (b) has the prescribed paid up capital and capital adequacy requirement;
- (c) has suitable and sufficient technical and organisational skills to operate a system including the proper mechanisms to achieve internal control and risk management as related to the operation of the system;
- (d) is a fit and proper person and every officer is a fit and proper person;
- (e) has an access criteria that is safe and non-discriminatory;
- (f) has risk management mechanisms to control credit, liquidity risk and settlement risk;
- (g) has satisfactory measures to safeguard technical operations, including a contingency plan in the event of an operational disruption should the ordinary system fail to function;
- (h) being granted the licence is consistent with the protection of financial stability and is in the interest of the public;
- (i) has rules and procedures of the system in compliance with section 25; and
- (j) satisfies any other condition the Bank considers necessary.

(2) Where the Bank after considering -

- (a) the type of system to be operated;
- (b) the volume and value of payments likely to be processed in the system; and
- (c) any other relevant factor,

prescribes a paid up capital or capital adequacy requirement for the purpose of subsection (1)(b), the Bank shall specify in the terms and conditions of the licence the required paid up capital or capital adequacy to be maintained by the licensee as a condition of the licence.

(3) Upon determination that the applicant satisfies the requirements of the Act, for licensing, the Bank may, on the payment of a prescribed fee, grant a licence specifying the type of system to be operated and may impose any condition on the licence or the operations of the licensee it deems necessary or appropriate in accordance with section 15.

(4) If the Bank determines that the applicant does not satisfy the requirements of this Act, the Bank shall inform the applicant in writing of its refusal to grant a licence no later than three months after receipt of application, stating the reasons for the refusal.

(5) Notice of the determination referred to in subsections (3) and (4) shall be published in at least two daily newspapers of general circulation in Guyana.

Exemptions from licensing.

12. (1) Notwithstanding sections 7 and 9, a bank shall be a direct participant and shall not be required to obtain a licence to provide a payment service under this Act.

Cap. 85:10 (2) Financial institutions which provide money transfer services under the Money Transfer Agencies (Licensing) Act are not required to obtain a licence to provide this payment service, under this Act.

(3) Notwithstanding subsections (1) and (2), a bank which provides a payment service under this Act or financial institution which provides money transfer services under the Money Transfer Agencies (Licensing) Act shall -

- (a) comply with all other requirements of this Act and regulations;
- (b) comply with operational, reporting and disclosure requirements as may be set by the Bank;
- (c) be subject to oversight requirements for licensed entities under this Act; and
- (d) be required to apply for a licence to operate a system under section 9.

Prohibition against transfer of licence.

13. A licence or any right acquired thereunder, whether wholly or partly, shall not be transferable except as may be prescribed by the Bank, and any transfer in contravention thereof shall be void.

Renewal of licence.

14. A licence granted under this Act may be renewed in such manner and subject to payment of such fees or other payments as may be prescribed by the Bank.

Conditions of
licence.

15. (1) A licence granted under this Act shall be subject to such conditions as the Bank considers necessary and the Bank may for the purposes of this Act, amend any condition of a licence issued under this Act by way of alteration, substitution, addition, omission or other modification.

(2) Where the Bank directs any amendment in the conditions of a licence, it shall serve a notice on the licensee informing the licensee of the reasons for the proposed amendment, and providing the licensee with fifteen days within which to provide comments on the proposed amendment.

(3) The Bank shall, upon receipt of any comments pursuant to subsection (2), take the comments into consideration in confirming or modifying the proposed amendment.

(4) The Bank may, upon the application of a licensee, amend a condition of a licence if it considers the proposed amendment to be appropriate.

(5) A person to whom a licence is granted shall display the licence conspicuously at the primary location where the licensee conducts business and shall display a copy of the licence at every other location in Guyana.

Suspension and
revocation of
licence.

16. (1) The Bank may suspend or revoke any licence granted under sections 10 or 11 where –

- (a) the licensed payment service provider or operator breaches a condition of the licence;
- (b) the licensed payment service provider or operator fails to comply with this Act or its regulations;
- (c) the licensed payment service provider or operator fails to provide the payment service or commence operation of the system within the prescribed period of time.
- (d) the licensed payment service provider or operator has ceased the provision of the payment service or the operation of the system for a period of more than one month or the prescribed period of time;
- (e) the licensed payment service provider or operator obtained the licence through the provision of incorrect information to the Bank or any other irregular means;
- (f) the licensed payment service provider or operator no longer meets the applicable criteria for the grant of a licence under sections 10 or 11;

- (g) the provision of the payment service or the operation of the system for which the licence was granted endangers the stability of the payment or financial system in Guyana;
- (h) the payment service provider or the company that owns or operates the system enters into insolvency proceedings;
- (i) in the opinion of the Bank, the provision of the payment service or the operation of the system is no longer in the public interest or the system no longer represents the interest of the participants; or
- (j) an infringement under Part XII of this Act occurs.

(2) Subject to subsection (1), before suspending or revoking the licence granted under sections 10 or 11, the Bank shall give to the licensee notice in writing of its intention to do so, specifying the grounds upon which it proposes to suspend or revoke the licence and shall require the licensee to submit to it within a specified period a written statement of objections to the suspension or revocation of the licence.

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

(4) Notwithstanding subsection (2), where the Bank is of the opinion that the safety, soundness, reliability or efficiency of a licensee is or may be threatened, or the stability of the payment or financial system is endangered it may, without prior notice, suspend or revoke the licence of that system or payment service provider so, however, that the Bank publishes a notice in the Gazette and in at least two daily newspapers of general circulation in Guyana within fourteen days of the suspension or revocation the circumstances and the basis for such action.

(5) Except as provided in subsection (4), the Bank shall, within seven days of an operator ceasing to hold a licence, publish a notice of such cessation in the Gazette and in at least two daily newspapers of general circulation of Guyana.

(6) After suspending or revoking a licence, the Bank has the power to take a course of action to ensure continuity of the National Payments system.

PART IV ONGOING OVERSIGHT

17. (1) The Bank may at any time adopt general standards and criteria for the conduct of payment services activities or the operation of

General and individual measures.

systems, either generally addressing the totality of entities or a specific category.

(2) The Bank may at any time issue directives to licensed payment services providers or operators with respect to their governance, management, operations, relations with customers, and relations with systems and any other matter for the efficient administration of this Act.

(3) The Bank shall, at least fifteen days prior to the coming into effect of any directive issued under subsection (2) publish that directive in a newspaper of general circulation in Guyana and on its website.

Power to examine
and inspect.

18. (1) In the performance of its duties of oversight under this Act, the Bank shall have the right to inspect, with or without any prior written notice, the premises of a participant, a licensed operator or payment service provider, and any third party acting on behalf of them, either as an agent or by way of outsourcing agreements, and during such inspection the Bank may-

- (a) inspect and retain any book, account, minutes of meetings or other document or record of a payment system participant, operator or payment service provider;
- (b) inspect any other information regarding a participant, operator or payment service provider including documents stored in electronic form; or
- (c) interview staff of a payment service provider or operator.

(2) The Bank may, by its officers or agents duly authorised in writing -

- (a) enter and search the premises of a person that the Bank has reason to believe is providing a payment service or operating a system without a valid licence issued by the Bank;
- (b) inspect any books, accounts and records of that person and take copies of, or make extracts from; and
- (c) inspect and retain any apparatus, equipment or machinery or any other item or record found on the premises where the operation contrary to this Act is being conducted.

Audit.

19. The Bank may conduct an audit or commission an independent auditor to conduct an audit of the accounts, books, documents and other records of an operator, participant or payment service provider -

- (a) once per annum; or
- (b) when issues arise that are of regulatory concern,

and each such entity shall assist the Bank to the extent necessary for the purpose of enabling the Bank or its independent auditor to conduct an audit.

Access to information and disclosure.

20. An operator, participant or payment service provider shall provide any information requested by the Bank and produce all books, minutes, accounts, cash instruments, securities, vouchers or any documents relating to its business or the business of its affiliates for inspection by any examiner appointed by the Bank at such time and manner as the Bank or the examiner specifies and make staff available to the examiner for interviews if necessary.

Disclosure of information and duty of confidentiality.

21. (1) The Bank shall not directly or indirectly disclose to any person any information or document obtained during the exercise of its functions under this Act, except –

- (a) for the purposes of performing its functions under this Act;
- (b) where this is necessary to protect the financial integrity, effectiveness or security of the National Payment System;
- (c) where it is disclosed to a person who is legally authorised to receive such information;
- (d) when disclosure is ordered by a court of law;
- (e) for statistical purposes; or
- (f) where this is required for the purpose of meeting obligations under international treaties, conventions and agreements to which Guyana is a party.

(2) Notwithstanding subsection (1), the Bank may as contemplated by section 5 disclose data or information obtained under this Act to any entity in Guyana or a foreign entity which is engaged in the regulation and supervision of payment service providers, capital markets and oversight of the payment system as a whole, unless –

- (a) the purpose for which the data or information shall be used is insufficiently specified;

- (b) the intended use of the data or information does not fit the framework of the supervision of financial markets or participants active in these markets;
- (c) the supply of the data or information would not be compatible with the laws of Guyana or public order;
- (d) secrecy of the data or information is not adequately guaranteed;
- (e) the supply of the data or information may conflict with the objectives of the Act.

(3) Subsection (1) does not preclude the Bank from publishing -

- (a) in whole or in part any information or data obtained under this Act if-
 - (i) the information published does not disclose the financial affairs of a person other than an operator, payment service provider or participant; or
 - (ii) the person referred to in subparagraph (i) whose financial affairs are being disclosed, gives prior written consent to the publication; or
- (b) without consent, consolidated statements or aggregated data of -
 - (i) information provided under this Act; and
 - (ii) information related to or derived from information provided under this Act.

Retention of records.

22. (1) An operator, participant or payment service provider shall retain all records obtained and produced by them during the course of their operation, provision of a payment service and administration for a period of seven years from the date the record was obtained or produced.

(2) For the purpose of subsection (1), records retained electronically have the evidentiary value equivalent to the material ones.

Compliance with anti-money laundering and countering the financing of terrorism laws.
Cap. 10:11

23. (1) A payment service provider or operator shall comply with the Anti-Money Laundering and Countering the Financing of Terrorism Act, any subsidiary legislation under the Act including any guidelines and any other laws in relation to anti-money laundering and countering the financing of terrorism.

(2) A payment service provider or operator shall also guarantee that any third party acting on their behalf shall comply with the legislation referred to in subsection (1).

Fees and charges.

24. (1) The Bank may impose on an operator, participant or payment service provider a charge or fee that shall defray its direct and indirect costs incurred in providing its oversight and regulatory services.

(2) The Bank may also impose a charge or fee for the provision of operational services or infrastructure pursuant to section 4 of this Act.

PART V RULES OF THE SYSTEM

Establishment of rules of system.

25. (1) An operator shall establish written rules for the governance, management and operation of the system, including at a minimum rules on –

- (a) management of liquidity, credit and settlement risk;
- (b) determining the time when a payment instruction and a settlement is final; and
- (c) corporate governance, the access criteria, conditions for suspension or exclusion of participants, contingency arrangements and operational risk, rights and liabilities of participants and the operator.

(2) Rules made pursuant to subsection (1) shall be subject to the approval of the Bank, prior to the start of the operation of the system, and shall be in compliance with the requirements of this Act, and any rules, regulations, directives, orders or guidelines issued by the Bank in this regard.

Amendment of rules.

26. (1) The Bank may vary or revoke any rule of the operator established under section 25(1), where it considers appropriate to do so, having regard to-

- (a) whether the variation or revocation would be in the public interest;
- (b) the interests of the participants in the system;
- (c) the interests of persons who, in the future, may desire access to the system; and
- (d) any other matters the Bank considers relevant.

(2) An operator shall not amend any rule established under section 25 or cause any change in the system which would affect the structure, operation or administration of the system without -

- (a) the written approval of the Bank; and
- (b) giving notice of not less than thirty days to the participants after the written approval of the Bank.

(3) Notwithstanding subsection 2, the Bank may -

- (a) as operator of a system, make a change to the rules of the system; or
- (b) permit any other operator to make a change to a rule of that operator's system,

without giving notice to the participants under subsection (2)(b) or requiring the operator to give notice for a period no less than thirty days, in the interest of monetary policy, financial stability, or in the public interest.

Access to system.

27. An operator shall-

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

Bank Directives.

28. Notwithstanding any other provision of this Part, the Bank may issue directives in respect of all or any of the matters specified in this Part and in the event of a conflict between any rule, instruction, direction or agreement made by or, as the case may be involving an operator and any directives made by the Bank under this Act, the directives of the Bank shall prevail.

PART VI CONSUMER PROTECTION

Transparency of Fees.

29. (1) A payment service provider and an operator who imposes a fee, charge or tax on any consumer for providing a service, shall provide notice in accordance with sub-sections (2) and (3) to the consumer of the fact that-

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

(2) The notice required under sub-section (1) shall be displayed prominently and conspicuously at the location or facility at which the consumer may initiate or requests the service.

(3) The notice required under subsection (1) shall be in such form as may be required by the Bank.

(4) A payment service provider and an operator shall not impose a fee in connection with any service initiated by a consumer where the notice as required under subsection (1) has not been satisfied.

Disclosure of terms and conditions.

30. (1) A payment service provider shall, in accordance with the guidelines of the Bank, disclose the terms and conditions of a payment service in a manner clearly understood by the consumer, at the time the consumer contracts for the payment service .

(2) Such terms and conditions shall be written in clear concise language.

(3) A payment service provider shall notify a consumer in writing or by such other means as may be prescribed by the Bank from time to time, at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed, unless such change is immediately necessary to maintain or restore the security of a payment system or a consumer's account.

Complaint procedure.

31. (1) Where the consumer considers that the Payment service provider has not complied with the provisions of this Act, the consumer may submit a complaint to the payment service provider.

(2) The payment service provider shall send a reply to the complaint referred to in subsection (1) to the consumer no later than seven business days after the day of receiving the complaint.

(3) The payment service provider shall establish an effective complaint procedure for –

- (a) the lodgment of any complaint by a consumer; and
- (b) the investigation and resolution of any complaint by a consumer of matters covered by this Act.

(4) The complaint procedure shall contain information relating to the right of a consumer to refer the complaint to the Bank, or any other body authorised by the Bank, where the consumer is not satisfied with the outcome of the complaint.

(5) The complaint procedure shall be followed by the consumer before the dispute is referred to be resolved in an alternative dispute resolution procedure or before a court.

PART VII OUTSOURCING AND USE OF AGENTS

Outsourcing of activities.

32. (1) An operator or payment service provider shall not outsource an aspect of the operation of its system or the provision of its payment service without prior written authorisation of the Bank and shall provide the Bank with all relevant information in relation to the proposed outsourcing in a request for authorisation.

(2) Outsourcing of important operational functions shall not be undertaken in such a way as to impair the quality of the operator or payment service provider's internal control or the ability of the Bank to monitor their compliance with all obligations laid down in this Act or notably lower the quality of service that the consumer should reasonably expect.

(3) The Bank shall ensure that when an operator or payment service provider outsources an important operational function, it complies with the following conditions –

- (a) the outsourcing shall not result in the delegation by senior management of their responsibilities;
- (b) the relationship and obligations of the issuer towards the users of any relevant payment instrument shall not be altered;
- (c) the conditions with which the operator or the payment service provider is to comply in order to be licensed and remain so in accordance with this Act shall not be undermined;
- (d) none of the other conditions subject to which the licence was granted shall be removed or modified; and
- (e) any other conditions as may be prescribed by the Bank.

(4) For the purposes of subsections (2) and (3), an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of an operator or payment service provider with the requirements of its licence, or its financial performance, or the soundness or the continuity of its services.

Use of agents.

33. (1) Any payment service provider seeking to provide payment services to a consumer through an agent shall submit to the Bank an application for approval in the form and manner and containing such information as may be prescribed by the Bank, together with the applicable prescribed fees.

(2) A payment service provider shall not provide any payment service through an agent prior to being approved by the Bank for that purpose in accordance with this section.

(3) Subsequent approval of each agent is not required.

(4) The Bank shall maintain a Register of Agents which shall be available to the public.

(5) The payment service provider shall notify the Bank in writing of each agent it has contracted and shall supply to the Bank the prescribed information required for the Register maintained under subsection (4).

(6) The Bank shall provide an agent of a payment service provider a certificate of agency and the agent shall display a certified copy of the certificate conspicuously at each location.

(7) A payment service provider shall ensure quality and soundness to consumers of payment services provided through the use of agents.

(8) When a payment service provider provides payment services to a consumer through the use of agents, in addition to any other power conferred on the Bank by this Act, the Bank shall have power to -

- (a) request from the payment service provider such data or information or carry out such inspection as it deems necessary.
- (b) request any information from any agent at any time as the Bank may deem necessary;
- (c) carry out unscheduled or scheduled inspection of the books and premises of the agent;
- (d) direct an agent to take such action or desist from such conduct as the Bank may find necessary;
- (e) direct the termination of the agency contract and closure of the agency business as it may find necessary;
- (f) direct the payment service provider to take such action or measures against or on behalf of the agent as the Bank may find appropriate;

- (g) direct the payment service provider to take such remedial action arising from the conduct of an agent as it may deem fit.

Liability.

34. (1) Where an operator or payment service provider uses an agent or outsources for the performance of an operational function, the operator or payment service provider shall take reasonable steps to ensure that the agent or person to which a function is outsourced complies with the requirements of this Act.

(2) An operator or payment service provider shall remain fully liable for any acts of its employees, agent, branch or person to whom activities are outsourced.

PART VIII SETTLEMENT, NETTING AND FINALITY OF PAYMENT

Settlement.

35. The discharge of settlement obligations between participants is effected by means of entries processed through the settlement system in accordance with procedures prescribed by the operator.

Settlement
accounts.

36. (1) A participant shall-

- (a) open and maintain settlement accounts on the books of the Bank or an operator, including the maintenance of minimum balances, on such terms and conditions as the Bank or operator may specify; or
- (b) appoint another participant which has opened a settlement account as a settlement agent to settle all obligations due from the first-mentioned participant to any other participant arising out of each day's clearing.

(2) In the case where a participant appoints a settlement agent under subsection (1)(b) the participant shall, before any obligation is settled by the settlement agent on behalf of the participant, give the operator notice in writing of the appointment, accompanied by a written confirmation from the settlement agent of such appointment.

(3) A participant who intends to terminate the appointment of a settlement agent, shall notify the operator in writing not less than fifteen days before the date of termination of such appointment and shall provide details of a new settlement agent.

Netting
arrangements.

37. (1) The obligation of a settling participant or central counterparty to make payment to and the corresponding right of a participant or central counterparty to receive payment from another settling participant or

central counterparty shall be netted and a net settlement or close-out netting amount determined, entered and cleared in accordance with settlement rules.

(2) Transfer orders and their netting shall be legally enforceable within the jurisdiction of Guyana and binding on third parties.

Finality of payment.

38. (1) An operator shall specify the rules to achieve finality in its operations, in accordance with the provisions of this Act and as prescribed by any rules, regulations or directives issued by the Bank and shall include rules establishing irrevocability of orders once these have entered into the system, unless special conditions apply.

(2) The entry or payment that has been effected in terms of subsection (1) shall not be revoked, reversed, or set aside, including, without limitation, by insolvency or bankruptcy proceedings or any other law similar in purpose and effect and is not subject to any provision of law or order of an administrative or judicial authority that operates as a stay of that payment.

Collateral for payment and settlement.

39. (1) The rights and remedies of an operator, participant, clearing house, Central Counter-Party and any other third party in the system and the Bank with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a system shall not be affected by insolvency or bankruptcy proceedings or any other law similar in purpose and effect.

(2) The rights and remedies referred to in subsection (1) may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

PART IX WINDING UP AND ADMINISTRATION OF A SYSTEM OPERATOR OR PARTICIPANT

The Bank to be notified of winding up.

40. Where an operator or a participant is wound up or placed in scheme of administration, the operator or participant at whose instance the winding up or the administration order or the decision, as the case may be, was issued, shall without delay lodge a copy of the order or decision with the Bank.

Prohibition.

41. An operator or a participant against which a winding-up application or scheme of administration has been lodged or decision for voluntary dissolution is made is prohibited from operating or participating in any system until such application or scheme is disposed of or finally determined.

Winding up or administration of participant not to affect finality.

42. Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy, the winding up or the opening of scheme of administration of a participant shall not affect the finality or irrevocability of any entry or payment which became final and irrevocable in terms of section 38 of this Act before the copy of the relevant order or decision was lodged with the Bank.

Rules of systems to bind liquidators.

43. (1) If a participant is wound up or placed in administration or otherwise declared insolvent by a court, any provision contained in a written netting arrangement to which the participant is a party or any netting rules and practices applicable to the system, are binding upon the liquidator or administrator, as the case may be, of the participant concerned in respect of any payment or settlement obligation which-

(a) has been determined through netting prior to the issue of the winding-up or arrangement order, as the case may be; and

(b) is to be discharged on or after the date of the winding-up or arrangement order or discharge of which was overdue on the date of the winding-up or scheme of administration order, as the case may be.

(2) Subsection (1) shall apply notwithstanding anything to the contrary in any other law for the time being in force in Guyana.

Preservation of rights.

44. The provisions of this Part shall not restrict or preclude any person from enforcing the person's rights under the law in so far as it does not affect the finality of payment instruction or settlement or the validity and enforceability of a netting arrangement under this Part.

Conflict of laws provisions.

45. (1) In the event of insolvency of a foreign participant, the rights and obligations arising from, or in connection with, the participation of that foreign participant shall be governed and determined entirely and exclusively under the laws of Guyana.

(2) The rights and obligations of a domestic participant in a foreign system shall be governed by the law governing that foreign system.

(3) In this section "foreign participant" means a participant operating in Guyana but whose base of origin whether by incorporation, registration, licensing, ownership, citizenship, nationality or otherwise, is outside Guyana.

PART X
PROVISIONS AFFECTING CHEQUES

Presentment of
cheque for
payment.

46. (1) A cheque may be presented for payment to the bank on whom it is drawn by notifying that bank of the essential features of the cheque by physical presentation of the cheque or electronic presentment of cheque.

(2) For the purposes of this section, the essential features of a cheque are -

- (a) the serial number of the cheque;
- (b) the code which identifies the bank on whom the cheque is drawn;
- (c) the account number of the drawer of the cheque;
- (d) the amount of the cheque entered by the drawer of the cheque in value and words;
- (e) the date of the cheque; and
- (f) any other feature which the Bank prescribes from time to time.

(3) Notwithstanding subsections (1) and (2), the Bank shall determine and indicate in guidelines the form in which a cheque is to be presented for the purpose of a clearing house.

(4) Electronic presentment of cheques and cheque images in conformity with this section are admissible in evidence.

Electronic
presentment of
cheque.

47. (1) For the avoidance of doubt, any electronic presentment of cheque made pursuant to section 46 shall not be taken to have been made outside of the ordinary course of business, in bad faith or negligently because it is made by electronic means rather than by presentment of the physical cheque.

(2) If, before the close of business on the business day immediately following the electronic presentment of cheque, the bank on whom the cheque is drawn requests the bank by whom the cheque was presented to present the physical cheque –

- (a) the electronic presentment shall be disregarded; and
- (b) this section shall not apply in relation to the subsequent presentment of the cheque.

(3) A request under subsection (2) above for the presentment of a physical cheque shall not constitute dishonour of the cheque by non-payment.

(4) Where presentment of a cheque is made under section 46, the bank who presented the cheque and the bank on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the physical cheque had been presented for payment.

**PART XI
ELECTRONIC FUND TRANSFERS AND ELECTRONIC
MONEY**

Legal recognition
of electronic
records and
electronic
signatures.

Cap. 5:03.

48. (1) An electronic funds transfer and a record of an electronic funds transfer is enforceable and has the evidentiary value in accordance with section 94 of the Evidence Act and may not be denied legal effect.

(2) In implementing the provisions of this Act and in accordance with any relevant laws on electronic transactions, the Bank may make or issue such regulations, instructions or other relevant measures within its power to address specific issues on payment orders and money transfers executed by electronic messages including when relevant protection of users of electronic payment instruments.

Issuance of
electronic money.

49. (1) An applicant for a licence as a payment service provider who intends to issue electronic money shall, in addition to general requirements specified by this Act for obtaining a licence as a payment service provider, satisfy the Bank that the following conditions are met-

- (a) the provision of electronic money shall not include the provision of credit;
- (b) electronic money providers shall provide statistics on electronic money loaded and redeemed values in their periodic financial statements and shall also be able to provide sufficient and reliable information to the Bank to monitor and control the quantity and velocity of electronic money supply in the economy;
- (c) clearing and settlement mechanisms shall facilitate rapid provision of final settlement after a payment instruction has been initiated in the banking system, according to time limits that the Bank may establish from time to time; and
- (d) issuers shall be obliged to redeem electronic money value in Bank money, at par, upon request and the management of the underlying float and redemption of electronic money value by the issuer to the holder shall be clearly defined.

(2) The funds received in exchange for electronic money shall not be treated as a deposit.

(3) The Bank may by regulation, prescribe -

(a) the category of persons, subject to subsection (1), which may issue electronic money; and

(b) the prudential and other requirements and criteria applicable to such persons.

PART XII
INFRINGEMENTS, ADMINISTRATIVE MEASURES AND
PENALTIES

Infringements and administrative measures.

50. (1) A person who –

(a) contravenes a provision of this Act, regulations or guidelines made thereunder; or

(b) breaches a term or condition of a licence or authorisation issued under this Act

commits an infringement if that contravention does not constitute an offence under section 50 or any other provision of this Act.

(2) The Bank may take one or more of the following administrative measures in respect of a person including, but not limited to an operator, participant, payment service provider or any officer, manager or employee of the payment service provider, who commits an infringement, namely -

(a) issue a verbal or written warning;

(b) issue a written order to cease and desist from such infringement and to undertake remedial action;

(c) issue a written order to perform such acts as are necessary for compliance;

(d) impose a fine not exceeding ten thousand dollars for each day that the infringement continues;

(e) impose a restriction on participation or provision of a payment service ;

(f) direct the operator or payment service provider to suspend temporarily or dismiss an officer, manager or employee;

(g) suspend or revoke the licence or authorisation.

(3) In determining the administrative measure to be taken, the Bank shall consider -

- (a) the seriousness of the infringement;
- (b) the actual or potential effect of the infringement on systemic risk;
- (c) the stage at which the infringement was detected;
- (d) whether the infringement was voluntarily reported by the person who committed the infringement;
- (e) the measure that is appropriate to remedy or terminate the infringement.

(4) A person who fails to comply with an order issued, pay a fine imposed or otherwise comply with administrative measures taken by the Bank in accordance with this section commits an offence and is liable on summary conviction as specified in section 51.

Offences and penalties.

51. (1) Any person who contravenes the provisions of sections 7, 8, 12(3)(d), 13, 23, 32 (1), 33 (2) and 50(4) of this Act commits an offence and is liable on summary conviction –

- (a) in the case of natural person, to a fine of five hundred thousand dollars and to imprisonment for two years; or
- (b) in the case of a body corporate, to a fine of two million dollars,

and if the offence is a continuing one to an additional fine of ten thousand dollars for every day or part of a day during which the offence continues.

(2) If a director, manager or employee of an operator or participant:

- (a) obstructs the proper performance of an auditor in accordance with this Act or inspection of the Bank by an inspector duly authorised by the Bank;
- (b) damages, destroys, alters or falsifies accounts, books or records of an operator or participant;
- (c) with intent to deceive, makes false entries or fail to enter material items in the accounts of a licensed system;

commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and imprisonment for one year.

(3) Every person who contravenes any other provision of this Act, regulations, orders, notices or guidelines issued to implement this Act commits an offence and –

(a) in the case of a natural person, is liable on summary conviction to a fine five hundred thousand dollars and imprisonment for one year; or

(b) in the case of a body corporate, is liable on summary conviction to a fine of two million dollars.

(4) Where an offence under this Act, committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, the director, manager, secretary, officer or person, as well as the body corporate, commits that offence and shall be liable on summary conviction to the penalty under subsection (1).

PART XIII MISCELLANEOUS PROVISIONS

Settlement of
disputes by
arbitration.

52. (1) Where any dispute arises between the operator and participants or between participants concerning any matter arising under this Act they shall in the first instance attempt to settle the dispute by mutual agreement within seven days of the aggrieved party notifying the other party of such grievance.

Cap. 7:03

(2) Where the parties fail to settle the dispute within seven days the parties may refer the dispute to arbitration in accordance with the Arbitration Act.

Immunity.

53. Neither the Governor of the Bank nor any officer, employee, director or any person acting on the direction of the Governor shall be liable in damages for anything done or omitted in the discharge or purported discharge of his or her functions under this Act, unless it is shown that the act or omission was done in bad faith.

Transitional
provisions.

54. (1) A payment service provider, operator, participant or its officers conducting business on the commencement date of this Act shall conform their –

(i) organisation;

(ii) administration; and

(iii) operations,

to the requirements of this Act within six months from the commencement date of this Act, and shall, within two months from the commencement of this Act, submit to the Bank, a programme for becoming fully compliant by the end of the six-month period.

(2) A payment service provider, operator, participant or its officers whose organisation, administration or operations do not conform in one or more material respects with the requirements of any directive issued by the Bank pursuant to this Act, such payment service provider, operator or participant shall conform to the requirements of the directive within the time period to be specified by such directive.

Regulations and notices.

55. The Bank may make such regulations, orders, notices or guidelines as may be required from time to time for carrying into effect the provisions of this Act, including on specific issues on payment orders and fund transfers executed by electronic means.

Amendments to Acts.

Cap. 5:03
Cap. 90:13
Schedule

56. The Evidence Act and the Bills of Exchange Act are amended in the manner specified in the Schedule.

SCHEDULE

s.55

Act	Section	How Amended
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<p>Evidence Act, Cap.5:03</p>	<p>Section 2</p>	<p>Substitute for the definition of "bankers book" the following-</p> <p>"banker's book" includes any ledger, day book, cash book, account book and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a microfilm, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site or both;"</p>
	<p>Section 10</p>	<p>Substitute for section 10, not including the marginal note, the following as section 10-</p> <p>“Entry in 10. A copy of any entry in a banker’s book is admissible as <i>prima facie</i> evidence of the entry, and of the matter, transactions or accounts therein recorded: Provided that the copy cannot be received in evidence unless-</p> <p>(a) where the books of the bank are maintained in written form, it is first proved that the book in which the entry was made was at the time of making that entry, one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank, which proof may be</p>

		<p>given either orally or by affidavit, by a partner or officer of the bank, and that the copy has been examined with the original entry and is correct, which proof must be given by some person who has examined the copy with the original entry, and may be given either orally or by affidavit;</p> <p>b) where the copy consists of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, the printout of such entry or a copy of such printout is submitted together with such statements certified in accordance with the provisions of section 10A; or</p> <p>c) where the copy consists of a printout of any entry in the books of a bank stored in a microfilm, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in</p>
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		<p>accordance with the provisions of section 10A.</p>
	<p>Insertion of section 10A</p>	<p>Immediately after section 10, insert the following section as section 10A -</p> <p>“Conditions in 10A. A printout of entry or a the printout. copy of printout referred to in section 10 shall be accompanied by the following, namely-</p> <ul style="list-style-type: none"> (a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the branch manager and; (b) a certificate by a person in-charge of the computer system containing a brief description of the computer system and the particulars of - <ul style="list-style-type: none"> (i) the safeguards adopted by system to ensure that data is entered or any other operation performed only by authorised persons; (ii) the safeguards adopted to prevent and detect unauthorised change of data; (iii)the safeguards available to retrieve data that is lost due to systemic failure or any other reasons; (iv) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-

		<p>magnetic data storage devices;</p> <p>(v) the mode of verification in order to ensure that data has been accurately transferred to such removable media;</p> <p>(vi) the mode of identification of such data storage devices;</p> <p>(viii) the arrangements for the storage and custody of such storage devices;</p> <p>(ix) the safeguards to prevent and detect any tampering with the system and;</p> <p>(x) any other factor which will vouch for the integrity and accuracy of the system.".</p>
<p>Bills of Exchange Act, Cap. 90:13</p>	<p>Section 74 (1)</p>	<p>Substitute for subsection (1) the following as subsection (1)-</p> <p>"(1) A cheque means a bill of exchange drawn on a specified banker payable on demand and includes a cheque in electronic form.".</p>
	<p>Section 74</p>	<p>Insert immediately after subsection (2) the following as subsection (3)-</p> <p>"(3) A cheque in electronic form means a cheque which contains digital representation of the front and back of a paper cheque (cheque image) or data representing the essential features of the cheque or both, and is generated, written and signed in a secure system ensuring minimum safety standards as prescribed by the Bank of Guyana.".</p>

EXPLANATORY MEMORANDUM

This Bill seeks to introduce legislation for the establishment, regulation and oversight of a National Payments System and for matters connected therewith.

PART II provides for the establishment of the National Payments System Council. It sets out the general powers and duties of the National Payments System Council. It also lays out the operational role of the Bank in relation to the National Payments System Council.

PART III provides for the licensing of payment service providers and systems operators. The Bank is also given the power to impose individual conditions for the operation of systems and the provision of services, ask for information, and agree with the individual operator or payments service provider on limitations in the activity or specific protective measures or impose sanctions and withdraw the relevant licence.

PART IV provides for the ongoing oversight by the Bank. These powers are defined as broad and general to permit the bank of Guyana to diversify the levels of control according to each specific sector of the National Payments System. These include the power to audit, have access to all records and information, examine and inspect where necessary for the oversight of systems and payment service providers. Clause 17 provides that the Bank has the power to adopt measures of a general or individual nature such as regulations, circulars, guidelines, orders or directives.

PART V provides for the establishment of rules of a system. Once a system is authorised or its operator licensed by the Bank it is consequently overseen by it the National Payment system makes its operational rules enforceable against third parties.

PART VI provides for consumer protection. Clause 29 includes provisions for the transparency of fees charged by the payment service provider. While Clause 30 provides that Payment service providers should disclose the terms and conditions of a payment service in a manner clearly understood by the consumer, at the time the consumer contracts for the payment service. Clause 31 sets out the complaint procedure.

PART VII sets out the guidelines regarding outsourcing and the use of agents. The Bank requires payment service providers or operators seek approval from the Bank before outsourcing any operational function. Clause 32 states that an operator or payment service provider shall not outsource an aspect of the operation of its system or the provision of its payment service without prior written authorisation of the Bank. Clause 33 provides that a payment service provider seeking to provide payment services to a consumer through the use of agents shall submit to the Bank an application for approval. operators and payment service providers remain fully liable for any acts of their agents or entities to which activities are outsourced.

PART VIII relates to settlement, netting and finality of payment. This Part also applies to collateral used for providing liquidity in the system. Clause 37 provides that transfer orders and their netting shall be legally enforceable within the jurisdiction of Guyana and binding on third parties. This

Part is intended to protect against systemic risk and reflect international best practice for ensuring completion of daily operation.

PART IX provides for the winding up and administration of a system operator or Participant. This Part regulates the effects of bankruptcy over licensed systems. This Part is intended to ensure that the daily operations of a system duly overseen by the Bank are protected from any liquidation or winding up procedure.

PART X lays out the provisions affecting cheques. Clause 47 relates to the processing of cheques by electronic means and on the use of cheque images and their enforceability under any circumstance.

PART XI provides for the legal recognition of electronic records and electronic signatures. Clause 48 provides that electronic funds transfers and records of an electronic funds transfers are enforceable and may be used as evidence. Clause 49 sets up additional conditions with which a payment service provider should comply to obtain a licence for the issuance of electronic money.

PART XII lays out infringements, administrative measures and penalties. The Bank has the power to withdraw licences or suspend activities of payment service providers or operators.

PART XIII sets out the provisions for the settlement of disputes by arbitration along with transitional provisions for existing payment service providers and operators. Clause 53 provides for immunity from suit for supervisory staff. Clause 55 also provides that the Bank may make such regulations, orders, notices or guidelines as may be required from time to time for carrying into effect the provisions of this Act, including on specific issues on payment orders and fund transfers executed by electronic means.

Hon. Winston Jordan, M.P.

Minister of Finance