ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER P18

PAYMENT SYSTEM ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 16/2009, in force 17 July 2009

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PAYMENT SYSTEM ACT

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PAYMENT SYSTEM ACT

PART 1

PRELIMINARY

Interpretation

1. In this Act—

"access", in relation to a funds transfer system or settlement system, means the entitlement or eligibility of a person to become a participant in the system, as a user of the system, on a commercial basis on terms that are fair and reasonable;

"access regime", in relation to a designated funds transfer system, means an access regime that has been established by the Central Bank under section 14;

"Authority" has the meaning assigned to it in the Money Services Business Act;

"banking business" means the business of receiving funds through—

(a) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;

(b) the sale or placement of bonds, certificates, notes or other securities;

and the use of such funds, either in whole or in part, for loans or investment, and includes any other activity recognised by the Central Bank as constituting customary banking practice and which a financial institution may additionally be authorised to do;

"Central Bank" means the Eastern Caribbean Central Bank established by the Eastern Caribbean Central Bank Agreement Act;

"central counterparty", in relation to a net settlement system, means an entity that is the buyer to every seller and the seller to every buyer in the net settlement system;

"clearing" means the process of transmitting, reconciling or confirming payment orders or security transfer instructions prior to settlement and includes the netting of instructions and the establishment of final positions for settlement;

"clearing house" means—

(a) an arrangement between 2 or more system participants governing the clearing or netting of payment instructions between those system participants; or

(b) a central location or central processing mechanism through which financial institutions agree to exchange payment instructions or other financial obligations;

"collateral" means an asset or third-party commitment that is provided by the collateral provider to the collateral taker and accepted by the collateral taker to secure an obligation of the collateral provider;

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"Currency Union" refers collectively to the territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency;

"designated", in relation to a funds transfer system or a settlement system, means a system which is classified as being systemically important and meeting prescribed standards established by the Central Bank in accordance with the provisions of this Act;

"document" includes information recorded in any form and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"electronic funds transfer" means funds transfer by electronic means, and includes the use of computer-telecommunications systems;

"financial institution" includes any person doing banking business, and all offices and branches of a financial institution in Anguilla shall be deemed to be one financial institution;

"funds transfer system" means a formal arrangement, based on private contract or statute law among participants, with common rules and standardised arrangements for the transmission and settlement of money obligations arising among the participants;

"large value electronic funds transfer system" means the large value electronic funds transfer system established under section 3(1)(a) through which large-value and high priority funds transfers are made between participants in the system for their own account or on behalf of their customers;

"Minister" means the Minister responsible for finance;

"money services business operator" means a person holding a licence under the Money Services Business Act to conduct money services business;

"netting" means the determination of the net payment obligations between 2 or more settling participants within a payment clearing house or the determination of the net settlement obligations between 2 or more settling participants within the payment system;

"operator" means a person authorised or appointed to operate a funds transfer system or settlement system;

"payment" means the transfer by a payor of a monetary claim to a party acceptable to the payee and includes clearing and settlement;

"payment obligation" means an indebtedness that is owed by one settling participant to another as a result of the clearing of one or more payment instructions;

"payment system" means—

(a) a network of competing and complementary services that facilitates transactions involving the exchange of payment in return for goods, services, real and financial assets and includes the instruments, rules, institutions, technical processes and

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procedures that facilitate the circulation of money and the transfer of value to discharge payment obligations; or

(b) several funds transfer systems and settlement systems that ensure the circulation of money;

"retail funds transfer system" means the retail funds transfer system referred to in section 3(1)(b) which handles a large volume of payments of relatively low value in such forms as cheques, credit transfers, direct debits by various means including through automated teller machines and electronic funds transfer systems;

"settlement" means the act of discharging obligations in respect of funds or securities transfers by 2 or more parties;

"settlement obligation" means an indebtedness by one settling participant to another as a result of one or more settlement instructions;

"settlement rules" means the rules which determine how payment obligations are calculated, netted or settled and includes rules prescribing corrective, punitive or other action in the event that a settling participant is unable or is likely to become unable to meet its obligations to the clearing house, the central counterparty or other settling participants;

"settlement system" means a system used to facilitate the settlement of transfers of funds or financial instruments;

"settling participant" means a participant who can settle transactions on his own account and for other participants;

"system participant" means a party who participates in a funds transfer system or settlement system operated, designated or regulated by the Central Bank;

"systemically important" means of fundamental importance to—

(a) the proper functioning of the Currency Union's financial system; or

(b) the maintenance of the Currency Union's economic stability.

PART 2

AUTHORITY OF THE CENTRAL BANK

Establishment of payment system and Central Bank's exclusive authority

2. (1) The Central Bank shall establish a payment system in Anguilla.

(2) The payment system established under subsection (1) shall be the sole payment system operating in Anguilla in respect of financial institutions licensed under the Banking Act[*] or the Money Services Business Act.

[*] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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(3) The Central Bank shall, subject to the Money Services Business Act, have exclusive authority for the operation, supervision and administration of the payment system established under subsection (1) and may issue guidelines and directives to govern its operation and regulation.

PART 3

THE PAYMENT SYSTEM

Characteristics of the payment system

3. (1) The payment system established under section 2(1) consists of—

(a) the large value electronic funds transfer system; and

(b) the retail funds transfer system.

(2) The large value electronic funds transfer system consists of—

(a) the inter-bank funds transfer system operated and administered by the Central Bank; and

(b) the securities settlement system.

(3) The retail funds transfer system consists of—

(a) the cheque clearing system operated and administered by the Central Bank;

(b) the debit transfer system;

(c) the credit transfer system; and

(d) any other funds transfer system designated by the Central Bank.

(4) The retail funds transfer system handles the following types of transactions—

(a) business to business;

(b) business to person;

(c) person to person; and

(d) person to business.

(5) Only the Central Bank and financial institutions which satisfy the eligibility criteria and comply with other requirements laid down in the rules of a funds transfer system may be members of that funds transfer system.

Large value electronic transfer system

4. (1) The large value electronic funds transfer system shall be the sole system for large value payments and settlement.

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(2) Subject to subsection (3), the operational design of the large value electronic funds transfer system shall facilitate the expeditious transmission of instructions to permit each payment to be made between parties to transactions—

(a) from and to accounts held at the Central Bank for that purpose; or

(b) from incoming transfers.

(3) The Central Bank may establish and administer a net settlement system in respect of a funds transfer system operated by it.

(4) The Central Bank shall be the central counterparty of a net settlement system established pursuant to subsection (3).

Cheque clearing system

5. The cheque clearing system referred to in section 3(3)(a) is the sole cheque clearing system in Anguilla for cheques drawn on licensed financial institutions carrying on business in the Currency Union.

Settlement for systems not operated by Central Bank

6. (1) The Central Bank may provide settlement facilities in respect of—

(a) a funds transfer system designated under this Act; or

(b) any part of a retail funds transfer system established or operated by another person.

(2) In giving effect to subsection (1), the Central Bank shall consider whether the system—

(a) is or is likely to be a systemically important system having regard to the function, volume or value of that system; or

(b) involves or might involve material risks which the Central Bank can abate or help to manage.

(3) The Central Bank may—

(a) provide payments facilities to effect the settlement of securities transactions including transactions of the securities system operated by the Eastern Caribbean Central Securities Depository Limited licensed under section 44 of the Securities Act by—

(i) direct participation, or

(ii) participation of the Eastern Caribbean Central Securities Depository Limited through the real time gross settlement or otherwise; and

(b) make rules and enter into agreements respecting the systems and processes referred to in paragraph (a).

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Participation in systems not operated by Central Bank

7. The Central Bank may participate in—

(a) any net settlement system, securities settlement system or any part of a retail funds transfer system established and operated by another person; or

(b) any non-Currency Union payment system on terms and conditions it considers necessary or desirable to accomplish its purposes.

Technical assistance for funds transfer systems

8. The Central Bank may, on terms and conditions it considers appropriate, provide technical, financial or any other assistance to another person for the establishment or operation of a funds transfer system.

Netting arrangement

9. (1) The discharge of settlement obligations between system participants is effected by means of entries processed through the settlement system in accordance with procedures described in the Schedule or any rules issued by the Central Bank.

(2) The obligation of a settling participant or central counterparty to make payment to and the corresponding right of a settling participant or central counterparty to receive payment from another settling participant or central counterparty shall be netted and a net settlement or close-out amount determined, entered and cleared in accordance with settlement rules.

(3) A settlement that is effected by means of an entry to the credit of an account maintained by the central counterparty is final and irrevocable and may not be reversed or set aside.

(4) An entry to or payment out of the account of a settling participant to settle a payment or settlement obligation in a settlement system is final and irrevocable and may not be reversed or set aside.

(5) The Minister may at any time amend the Schedule by regulations published in the *Gazette*.

PART 4

DESIGNATION OF FUNDS TRANSFER SYSTEM OR SETTLEMENT SYSTEM

Designation of funds transfer system or settlement system

10. (1) The Central Bank may designate a funds transfer system or settlement system—

(a) where such designation is in the public interest;

(b) on receipt—

(i) from the Authority, of a copy of the licence issued to a money services business operator accompanied by a recommendation for designation of that money services business operator pursuant to section 5(4) of the Money Services Business Act, or

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(ii) of information which establishes that a money services business operator who is licensed under the provisions of the Money Services Business Act is managing a systemically important funds transfer system or settlement system; or

(c) where—

(i) systemic disruption in the financial system may result if the operator or a participant of the funds transfer system or settlement system goes into insolvency or bankruptcy, and

(ii) any other matter specified in the regulations warrants designation of the funds transfer system or settlement system.

(2) The Central Bank shall—

(a) inform the operator of its decision to designate the funds transfer system or settlement system; and

(b) publish notification of such decision in the *Gazette* and any other media.

(3) The Central Bank may, in respect of any designation made under subsection (1)—

(a) impose conditions to which the designation is made subject;

(b) amend or revoke any condition to which the designation is made subject; or

(c) make the designation subject to a new condition.

(4) For the purposes of this Act—

(a) no variation or revocation of any condition to which a designation is made subject shall have retroactive effect; and

(b) such variation or revocation shall not affect—

(i) the validity or enforceability of the rules of the designated system,

(ii) any payment to or out of the account of a system participant or netting, or

(iii) any settlement that took place prior to the day on which the variation or revocation comes into force.

(5) The Central Bank may vary or revoke a designation made under subsection (1) by giving written notice to the operator of the designated funds transfer system or the designated settlement system.

(6) The Central Bank—

(a) shall publish in the *Gazette* a notice of its decision to vary or revoke a designation made under subsection (1); and

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(b) may publish notice of such decision in any other appropriate media.

Central Bank to establish standards for designated systems

11. (1) The Central Bank may establish standards to be complied with by the operator of, or participants in, a designated funds transfer system or designated settlement system if the Central Bank is satisfied that it is in the public interest to so do.

(2) Standards established under subsection (1)—

(a) shall be published in the *Gazette* and any other media;

(b) shall come into force—

(i) subject to sub-paragraph (ii), on the day on which such standards are published in accordance with paragraph (a), or

(ii) the date specified in such standards; and

(c) may be varied or revoked as provided in section 12.

Variation or revocation of standards

12. (1) The Central Bank may vary or revoke any or all of the standards established under section 11 if the Central Bank considers it is appropriate to so do, having regard to—

(a) whether the variation or revocation is in the public interest;

(b) the interests of the current participants in the designated funds system or designated settlement system;

(c) the interests of people who, in the future, may desire access to the designated funds system or designated settlement system; and

(d) any other matters the Central Bank considers relevant.

(2) The Central Bank—

(a) shall publish in the *Gazette* details of its decision to vary or revoke the standards and the particulars of the variation or revocation; and

(b) may publish notice of such decision in any other appropriate media.

(3) Failure by the Central Bank to comply with subsection (2) does not invalidate the variation or revocation.

Cessation of standards

13. Standards established under section 11(1) in respect of a designated funds system or designated settlement system cease to be in force on—

(a) the prescribed expiry date, if any, of such standards;

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(b) revocation of such standards by the Central Bank;

(c) voluntary cessation of operations of the designated funds transfer system or designated settlement system;

(d) dissolution of the designated funds transfer system or designated settlement system; or

(e) revocation or suspension of the designation of the funds transfer system or settlement system.

Establishment of access regime

14. (1) The Central Bank may establish an access regime for the participants of a designated funds transfer system or designated settlement system.

(2) The access regime must be an access regime that the Central Bank considers appropriate, having regard to—

(a) whether the access regime is in the public interest;

(b) the interests of the current participants in the designated funds system or designated settlement system;

(c) the interests of persons who, in the future, may desire access to the designated funds system or designated settlement system; and

(d) any other matters the Central Bank considers relevant.

(3) The Central Bank shall publish in the *Gazette*—

(a) details of its decision to establish an access regime; and

(b) the particulars of the access regime.

(4) Failure by the Central Bank to comply with subsection (3) does not invalidate the access regime.

Commencement and cessation of access regime

15. (1) An access regime—

(a) comes into force—

(i) subject to subparagraph (ii), on the day on which the particulars establishing the access regime are published in accordance with section 14, or

(ii) on the date specified in the particulars establishing the access regime; and

(b) may be varied as provided in section 16.

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(2) An access regime established in respect of a designated funds system or designated settlement system ceases to be in force on—

(a) the prescribed expiry date, if any, of the access regime;

(b) revocation of the access regime;

(c) voluntary cessation of operation of the designated funds transfer system or settlement system;

(d) dissolution of the designated funds transfer system or settlement system; or

(e) revocation or suspension of designation of the funds transfer system or settlement system.

Variation of access regime

16. (1) The Central Bank may vary an access regime if the Central Bank considers it appropriate to do so, having regard to—

(a) whether the variation is in the public interest;

(b) the interests of the current participants in the designated funds system or designated settlement system;

(c) the interests of people who, in the future, may desire access to the designated funds system or designated settlement system; and

(d) any other matters which the Central Bank considers relevant.

(2) The Central Bank—

(a) shall publish in the *Gazette* details of its decision to vary an access regime and the particulars of such variation; and

(b) may publish notice of such decision in any other media.

(3) Failure by the Central Bank to comply with subsection (2) does not invalidate the variation.

Commencement of variation

17. Variation of an access regime comes into force—

(a) subject to paragraph (b), on the day on which the decision to vary the access regime is published in accordance with section 16; or

(b) on the date specified in the decision to vary the access regime.

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Revocation of access regime

18. (1) A participant in a designated funds transfer system or designated settlement system may make an application to the Central Bank in the prescribed form for revocation of the access regime established in respect of that system.

(2) The Central Bank may, in the public interest or for any other compelling reason, revoke an access regime established in respect of a designated funds system or designated settlement system.

Effective date of revocation

19. Revocation of an access regime takes effect on the date specified in the decision to revoke the access regime.

PART 5

INSOLVENCY AND BANKRUPTCY OF SYSTEM PARTICIPANT AND OPERATOR

Bankruptcy and insolvency of system participant or operator

20. (1) A system participant or an operator must—

(a) notify the Central Bank if the system participant or operator goes into bankruptcy or insolvency; and

(b) give the notice as soon as practicable after proceedings in respect of the bankruptcy or insolvency are instituted.

(2) A system participant or an operator who contravenes subsection (1) commits an offence.

(3) In proceedings for an offence under this section, it is a defence for the person charged to show to the satisfaction of the Magistrate that that person took reasonable steps to comply with the provisions of subsection (1).

Utilisation of deposits, etc

21. (1) Notwithstanding anything to the contrary in the Bankruptcy Act, the Companies Act† or sections 50, 51 and 55 of the Banking Act‡, any asset of a settling participant which is provided prior to the issue of any bankruptcy, winding-up or receivership order against the settling participant to—

(a) the Central Bank;

(b) an operator; or

(c) a central counterparty;

† Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.
‡ Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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as security in respect of its payment or settlement obligations may be utilised by the Central Bank, the operator or the central counterparty to the extent required for the discharge of such payment or settlement obligations of the settling participant.

(2) Notwithstanding anything in the Bankruptcy Act, the Companies Act[§] or sections 50, 51 and 55 of the Banking Act[**], if a settling participant goes into bankruptcy or receivership or is wound up—

(a) any provision contained in a netting agreement to which that settling participant is a party;

(b) any provision contained in the rules of the settlement system or in any clearing, netting or settlement agreement to which that settling participant is a party; or

(c) any rule or practice applicable to the settling participant;

is binding upon the liquidator, receiver or administrator in respect of any payment or settlement obligation—

(d) which has been determined through netting prior to the issue of the bankruptcy, winding-up or receivership order; and

(e) which is to be discharged on or after the date of the winding-up, receivership or bankruptcy, or the discharge of which was overdue on the date of the winding-up, receivership or bankruptcy order.

(3) A settling participant against which a bankruptcy, winding-up or receivership application has been lodged is prohibited from clearing or participating in any settlement system other than for the purposes of discharging payment obligations.

(4) Notwithstanding section 10 of the Bankruptcy Act, the rights and remedies of a participant, a clearing house, a central counterparty or the Central Bank to realise any collateral granted to the participant, clearing house, central counterparty or Central Bank, as the case may be, as security for a payment or the performance of an obligation incurred in a net settlement system may not be the subject of any stay provision or court order.

(5) A settling participant who participates in any settlement system in violation of subsection (3) commits an offence and is liable on summary conviction to a fine of $50,000.

[§] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.
[**] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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PART 6

EXAMINATION, AUDIT AND INFORMATION

Validity of electronic data

22. (1) Information stored, disseminated or used by system participants and operators shall not be denied legal effect solely on the ground that such information—

(a) is in the form of an electronic record; or

(b) is not contained in the electronic record purporting to give it legal force and validity, but is referred to in another electronic record.

(2) Information recorded in electronic format may be produced in evidence in accordance with procedures established in the Evidence Act or other applicable law.

Retention of records

23. (1) The Central Bank and system participants shall retain every record obtained by them during the course of operation and administration of a funds transfer system or settlement system for a period of not less than 5 years from the date of the creation of that record.

(2) The records referred to in subsection (1) may be retained in an electronic form.

Central Bank examination of operator's books

24. (1) The Central Bank shall examine or cause an examination to be made of each designated funds transfer system and designated settlement system from time to time or whenever in its judgment such examination is necessary or expedient in order to determine whether—

(a) that designated funds transfer system or designated settlement system is in a sound financial condition; and

(b) the requirements of this Act have been complied with in the conduct of the business of that designated funds transfer system or designated settlement system.

(2) The Central Bank may assess a designated funds transfer system or designated settlement system for the reasonable expenses of conducting an examination under this section.

Disclosure and access to books and records

25. (1) The operator of a designated funds transfer system or designated settlement system shall produce for the inspection of any examiner appointed by the Central Bank at such time as the examiner specifies all books, minutes, accounts, cash, instruments, securities, documents and vouchers relating to its business and the business of its affiliates as requested by the examiner for the purpose of this Act.

(2) If any books, minutes, accounts, cash, instruments, securities, documents, vouchers or information are not produced or supplied in accordance with subsection (1), the defaulting operator commits an offence and is liable on summary conviction to a fine of $50,000, and in the case of a continuing offence to a further penalty of $1,000 for each day on which the offence is continued after the conviction for the offence.

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(3) Where the operator of the designated funds transfer system or designated settlement system knowingly supplies information or produces an item pursuant to subsection (2) which is false in any material particular, such operator commits an offence and is liable on summary conviction to a fine of $50,000.

System participant and operator to provide information

26. (1) A system participant and an operator shall provide any information requested by the Central Bank relating to the volumes or values of payment and settlement instructions or payment and settlement obligations.

(2) Any information obtained by the Central Bank in response to a request made under subsection (1) is confidential and shall not be disclosed to any third party by the Central Bank, its servants or agents except—

(a) with the written consent of the system participant or operator;

(b) in the course of performance of his or its duties within the scope of his employment;

(c) when lawfully required to make disclosure by any court of competent jurisdiction within Anguilla;

(d) under the provisions of any law of Anguilla; or

(e) as deemed necessary by the Central Bank to protect the integrity, effectiveness or security of the payment system.

(3) Any person who contravenes the provisions of subsection (1) or (2) commits an offence.

Annual audit, report and publication of financial statements

27. (1) An operator of a designated funds transfer system or designated settlement system shall appoint annually an auditor satisfactory to the Central Bank whose duties shall be to—

(a) examine the books and records of the designated funds transfer system or designated settlement system; and

(b) make a report on the annual financial statements and financial position of the designated funds transfer system or designated settlement system, and in every such report the auditor shall state whether in the auditor's opinion the balance sheet and profit and loss account give a true and fair view of the state of affairs of such funds transfer system or settlement system and of its results for the period then ended.

(2) The auditor's duties include any of the following duties as may, from time to time, be assigned to the auditor by the operator at the request of the Central Bank—

(a) to submit such additional information in relation to the audit of the funds transfer system or settlement system as the Central Bank considers necessary;

(b) to carry out any other examination or establish any procedure in any particular case;

(c) to submit a report on any of the matters referred to in paragraphs (a) and (b);

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(d) to submit a report on the financial and accounting systems and risk management controls of the funds transfer system or settlement system;

(e) to certify whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the funds transfer system or settlement system and are being implemented in accordance with this Act.

(3) The operator shall remunerate the auditor in respect of the discharge by the auditor of the duties set out in subsections (1) and (2).

(4) Where in the course of the performance of his duties an auditor is satisfied that—

(a) there has been a serious breach of, or non-compliance with, the provisions of this Act or any regulations, notice, order, guidelines or directions issued under this Act; or

(b) there is evidence that a criminal offence involving fraud or other dishonesty may have been committed;

the auditor shall immediately report the matter to the operator and the Central Bank.

(5) The Central Bank may request copies of reports submitted to the operator by both its internal and external auditors.

(6) An auditor shall, simultaneously with its report to an investigative, regulatory or other institution on a funds transfer system or settlement system, report to the Central Bank any matter it is required to report to such institution.

(7) An operator who fails to secure compliance with a request under subsection (2) commits an offence and is liable on summary conviction to a fine of $50,000 for each such failure.

(8) If an operator fails to appoint an auditor satisfactory to the Central Bank, the Central Bank may appoint an auditor for the relevant funds transfer system or settlement system, and the remuneration of the auditor so appointed shall be determined by the Central Bank and paid by the operator.

(9) The Central Bank may appoint an auditor to conduct an independent audit of a funds transfer system or settlement system, in accordance with the instructions of the Central Bank, and to report the findings or results of that audit to the Central Bank.

(10) An auditor appointed under subsections (1) and (9) is not liable for breach of any duty solely by reason of non-compliance with the provisions of subsections (1), (4) or (6) or with any other request for information by the Central Bank.

(11) For the purposes of this Act—

(a) no person having an interest in any funds transfer system or settlement system otherwise than as a depositor is eligible for appointment as auditor for the funds transfer system or settlement system; and

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(b) no director, manager, secretary, employee or agent of a funds transfer system or settlement system is eligible for appointment as auditor for the funds transfer system or settlement system.

(12) Where a person who is appointed the auditor of a funds transfer system or settlement system—

(a) acquires, after the appointment, any interest in the funds transfer system or settlement system otherwise than as a depositor; or

(b) becomes, after the appointment, a director, manager, secretary, employee or agent of the funds transfer system or settlement system;

the person shall immediately cease to be the auditor of the funds transfer system or, as the case may be, the settlement system.

(Am. in L.R. 15/12/2010)

PART 7

COMPLIANCE, ARBITRATION AND REGULATION

Management's duty to comply with the Act

28. (1) A director, manager, secretary or other officer concerned in the management of a system participant shall take all reasonable steps to secure compliance by the system participant with the requirements of this Act.

(2) A director, manager, secretary or other officer concerned in the management of a system participant who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $50,000 or to imprisonment for a term of 6 months or to both.

Settlement of disputes by arbitration

29. (1) Any dispute between system participants concerning any matter arising under this Act shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to subsection (2).

(2) If the dispute is between—

(a) two parties, each party shall be entitled to appoint one arbitrator, and the 2 parties shall together appoint a third arbitrator, who shall be the Chairman of the tribunal; or

(b) three or more parties, each party shall be entitled to appoint one arbitrator and all the parties shall together appoint an additional arbitrator, who shall be the Chairman of the tribunal.

(3) If within 30 days of—

(a) the receipt of the request for arbitration, any party has not appointed an arbitrator; or

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(b) the appointment of an arbitrator by each party, the parties have not together appointed the third arbitrator or, as the case may be, the additional arbitrator;

any party to the dispute may request such judicial authority as may be prescribed by the Minister to make the required appointment.

(4) The procedure of the tribunal shall be fixed by the arbitrators, but the Chairman of the tribunal shall have full power to settle all questions of procedure in any case of disagreement.

(5) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding on the parties.

(6) The Chairman of the tribunal shall be entitled to an original vote and, in the event of an equality of votes, shall have a casting vote.

Directives by Central Bank

30. (1) The Central Bank may issue directives to any person regarding a designated funds transfer system or designated settlement system in relation to the application of the provisions of this Act and may, in any such directive, require any person—

(a) to cease or refrain from engaging in or performing any conduct or such other act as is necessary to remedy the situation;

(b) to perform such acts as are necessary to comply with the directive or to effect the changes; or

(c) to provide the Central Bank with such information and documents, relating to the matter as specified in the directive.

(2) In considering whether to issue a directive, the Central Bank may have regard to any or all of the following matters—

(a) that reasonable grounds exist to believe that any person is engaging or is about to engage in any conduct with respect to the payment system which results or is likely to result in systemic risk;

(b) that reasonable grounds exist to believe that any person is engaging or is about to engage in any conduct with respect to the payment system which is contrary or is likely to be contrary to the public interest relative to the integrity, effectiveness, efficiency or security of the payment system;

(c) the public interest;

(d) the integrity, effectiveness, efficiency or security of the payment system;

(e) the stability of Anguilla or the Currency Union;

(f) any other matters that the Central Bank considers appropriate.

(3) Any person who neglects, refuses or fails to comply with a directive issued under subsection (1) commits an offence.

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(4) Without prejudice to any proceedings which may be instituted, the Central Bank may apply to the High Court for an order directing a system participant to comply with a directive issued under subsection (1).

(5) The Central Bank may impose restrictions against an operator or system participant who contravenes any provision of this Act or regulations, rules or directives issued pursuant to this Act.

(6) In this section, "systemic risk" refers to a scenario in which the failure of one or more settling participants to meet their payment obligations or their settlement obligations is likely to cause any or all of the other system participants to be unable to meet their respective payment or settlement obligations.

Regulations

31. The Minister may, on the recommendation of the Central Bank, make regulations for giving effect to the provisions of this Act, including regulations respecting any or all of the following—

(a) reports or other information to be supplied by designated funds transfer systems or designated settlement systems and any other matter associated with their use;

(b) records to be kept and returns and reports to be made to the Central Bank or the Minister by persons who are appointed auditors under this Act;

(c) the form of reports and returns to be made by designated funds transfer systems or designated settlement systems and fixing of the times when such reports and returns shall be made;

(d) forms necessary for the administration of this Act;

(e) penalties that may be imposed for violations or contraventions of regulations made under this Act, but no such penalty shall exceed a fine of $50,000 or a term of imprisonment of 12 months;

(f) minimum criteria for fit and proper persons;

(g) any other matter required for the efficient administration of this Act.

Authority to make rules

32. (1) The Central Bank may make rules to give effect to the provisions of this Act, including rules respecting any of the following—

(a) accounts at the Central Bank, including—

(i) access, including access by virtual private network, or

(ii) balances;

(b) conditions for the interconnection to and participation in the payment system, large value electronic funds transfer system or other funds transfer systems or settlement systems operated or designated by the Central Bank;

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(c) features of the cheque clearing system, settlement systems and funds transfer systems;

(d) finality of payment and settlement, netting, loss allocation and apportionment;

(e) bank records and processes, and documents, including electronic documents and signatures;

(f) collateral in all its forms, nature, effectiveness and means of realisation;

(g) payment instruments such as cheques, certified cheques and electronic transfers, including arrangements respecting authenticity and integrity;

(h) security, reliability, identification, authentication and contingency arrangements;

(i) administration;

(j) expenses and fees;

(k) payment system planning;

(l) directives in respect of designated funds transfer systems or designated settlement systems;

(m) establishment of a framework for administration of truncated cheques or cheques held either at the institution of deposit or afterwards;

(n) alternative dispute resolution machinery;

(o) appointment of auditors;

(p) ancillary matters.

(2) Rules made under this section shall be published in the *Gazette*.

(3) The Central Bank may at any time amend or replace rules made under this section and such amendment or replacement shall be published in the *Gazette* or in any other media.

Prudential guidelines

33. The Central Bank may issue to operators and system participants such prudential guidelines as may be necessary for administering the provisions of this Act, including guidelines respecting any or all of the following—

(a) policies, practices and procedures for evaluating financial soundness of operators and participants;

(b) policies, procedures and systems for identifying, monitoring and controlling country risk, institutional risk, market risk, liquidity risk, operational risk and such other risks as the Central Bank shall specify;

(c) liquidity requirements;

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(d) corporate governance;

(e) auditors;

(f) disclosure;

(g) anti-money laundering and combating the financing of terrorism matters.

PART 8

MISCELLANEOUS

Offences and penalties

34. (1) Any person who contravenes any provision of this Act, where the provision does not expressly create an offence, commits an offence and is liable on summary conviction to a fine of $100,000.

(2) Any person who commits an offence under this Act for which no penalty is otherwise provided is liable on summary conviction to a fine of $100,000.

Act binds the Crown

35. This Act binds the Crown.

Citation

36. This Act may be cited as the Payment System Act, Revised Statutes of Anguilla, Chapter P18.

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SCHEDULE

(Section 9)

NETTING ARRANGEMENT ESTABLISHED BY THE CENTRAL BANK

1. Notwithstanding any other law—

(a) in a netting arrangement obligations may be terminated, termination values may be calculated and a net amount may become payable and be paid in accordance with the netting arrangement;

(b) paragraph (a) applies despite—

(i) any disposal of rights that may be netted under the netting arrangement,

(ii) the creation of any encumbrance or other interest in relation to those rights, or

(iii) the operation of any encumbrance or any other interest in relation to such rights, in contravention of the netting arrangement.

2. For the purposes of any law, the assets and liabilities of a party to the netting arrangement shall include any net obligation owed to another party under the netting arrangement and does not include obligations terminated under the netting arrangement.

3. Notwithstanding any other law, if a system participant goes into insolvency or bankruptcy—

(a) the bankrupt or insolvent party may do anything permitted or required by the netting arrangement in order to net obligations incurred before or on the day on which the bankruptcy or insolvency order is made;

(b) subject to section 4, the obligations that are or have been netted under the netting arrangement are to be disregarded in the bankruptcy or insolvency;

(c) any net obligation owed by the bankrupt or insolvent party under the netting arrangement that has not been discharged is provable in the bankruptcy or insolvency;

(d) any net obligation owed to the bankrupt or insolvent party under the netting arrangement that has not been discharged may be recovered by the receiver or administrator for the benefit of creditors; and

(e) the netting and any payment made by the party under the netting arrangement to discharge a net obligation is not to be voidable in the bankruptcy or insolvency.

4. Where—

(a) a party to a netting arrangement becomes bankrupt or insolvent;

(b) an obligation owed by the bankrupt or insolvent party to another party to the netting arrangement has been netted under the netting arrangement; and

(c) a direct payment by the bankrupt or insolvent party owing the obligation to the other party would have been voidable in accordance with bankruptcy or insolvency proceedings if it had been made to settle the obligation on the day the netting occurred;

the receiver or administrator may recover from the bankrupt or insolvent party for the benefit of creditors an amount equal to the amount of the obligation.

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