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NASSAU

20<sup>th</sup> March, 2012

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No. 7 of 2012

**PAYMENT SYSTEMS ACT, 2012**

**AN ACT TO PROVIDE FOR THE REGULATION AND OVERSIGHT  
BY THE CENTRAL BANK OF THE BAHAMAS OF PAYMENT  
SYSTEMS AND PAYMENT INSTRUMENTS; THE ESTABLISHMENT  
AND PUBLICATION BY THE CENTRAL BANK OF A NATIONAL  
PAYMENT SYSTEM POLICY AND FOR CONNECTED MATTERS**

[Date of Assent – 19<sup>th</sup> March, 2012]

Enacted by the Parliament of The Bahamas

**PRELIMINARY**

**1. Short title and commencement.**

- (1) This Act may be cited as the Payment Systems Act, 2012.
- (2) This Act shall come into force on a date to be appointed by the Minister by notice published in the Gazette.

**2. Interpretation.**

In this Act —

- “approved system” means a domestic payment system granted approval by the Central Bank under section 8;
- “bill of exchange” has the same meaning as stated in section 3 of the Bills of Exchange Act (*Ch. 335*);
- “Central Bank” and “Bank” respectively means the Central Bank of The Bahamas, established under section 3 of the Central Bank Act;
- “Central Bank Act” means the Central Bank of The Bahamas Act (*Ch. 351*);
- “central counter-party” means a company, corporation, association, partnership, agency or other entity in a payment system which is interposed between the participants and which acts as the exclusive

counter-party of these institutions with regard to their transfer orders;

“cheque” means a bill of exchange drawn on a banker payable on demand;

“clearing” means the process of transmitting, reconciling and, in some cases, confirming transfer orders or security transfer instructions prior to settlement and may include the netting of instructions and the establishment of final positions for settlement;

“clearing-house” means a company, corporation, association, partnership, agency, organisation or other entity or person that provides clearing or settlement services for a payment system but does not include the Central Bank;

“Committee” means the National Payments Committee;

“designated system” means any domestic payment system liable to pose a risk of systemic disruption or adversely affect the public interest and designated by the Bank pursuant to section 16;

“existing payment system” means a payment system operating at the time of the commencement of this Act;

“financial collateral” means —

- (a) cash or cash equivalents, including negotiable instruments and demand deposits;
- (b) securities, including a securities account, a securities entitlement, or a right to acquire securities;
- (c) a futures agreement or futures account, subject to an interest, right or title transfer securing payment or performance of an obligation in respect of a financial contract;

“indirect participant” means a financial institution for which transfer orders are capable of being affected through a designated system pursuant to a contractual relationship with a participant;

“insolvency proceedings” means any collective measures provided for in any applicable law —

- (a) to wind-up or to re-organise a participant, whether voluntarily or involuntarily; or
- (b) to suspend the business of a participant, where such measures involve the suspension of, or the imposition of limitations on, transfer orders and payments;

“Minister” means the Minister of Finance;

“National Payments Committee” and “Committee” respectively means the advisory body to the Bank established under section 7;

“national payment system” means the system referred to in section 5(1) (c) of the Central Bank Act comprising the rules and procedures governing the establishment and operation of payment systems

within The Bahamas and their oversight by the Central Bank and the oversight of payment instruments by the Central Bank;

“netting” means the conversion into one net claim or net obligation of claims and obligations resulting from transfer orders which a participant either issues to, or receives from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

“overseas regulatory authority” means an authority in a country or territory outside The Bahamas which exercises functions corresponding to any functions of the Bank;

“participant” means any person, excluding the Bank, who is recognised in the rules of a payment system as being eligible to settle payments through the system with other participants but does not include a user or customer of a participant who instructs or receives payment over the system;

“payment” means the payer's transfer of a monetary claim on a party acceptable to the beneficiary;

“payment instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise execute payment transactions;

“payment system” means a formal arrangement with common rules and standardised arrangements for the execution of transfer orders between participants, including a clearing house, the settlement of payments relating to securities, or for the processing, clearing, or settling of payment transactions or payment messages between —

- (a) three or more participants; or
- (b) two or more participants provided the formal arrangement between these participants is designated by the Bank as a payment system pursuant to section 16;

“payment transaction” means any act initiated by the payer or the payee of placing, transferring or withdrawing funds irrespective of any underlying obligations between the payer and the payee and includes payment messages;

“Policy” means the national payment system policy referred to in section 6;

“regulatory laws” means the Banks and Trust Companies Regulation Act (*Ch. 316*);

“securities” means transferable securities traded on a local stock exchange authorised under the Securities Industry Act and or Regulations (*Ch. 363*);

“settlement” means an act that discharges obligations in respect of funds or securities transfers between two or more parties;