

# ACT

## *Supplement to the Sierra Leone Gazette Vol. CXL, No. 25* *dated 4th June, 2009*

### THE PAYMENT SYSTEMS ACT, 2009

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SIGNED this *14th day of May, 2009*

DR. ERNEST BAI KOROMA,  
*President.*



No. 3



**Sierra Leone**

**2009**

**THE PAYMENT SYSTEMS ACT, 2009.**

Short title.

**Being an Act to provide for the establishment, operation, designation and supervision of electronic and other payments, clearing and settlement systems, the rights and obligations of transacting and intermediating parties and for other related matters.**

[

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

## PART I—PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise require—

“access” means the eligibility or entitlement of a person to become a participant in a system as a user of that system;

“beneficiary” means the final recipient of a transfer for whom the corresponding funds are made available in an account to which the person has access;

“bilateral netting” means an arrangement to net obligations between two parties;

“Central Bank” means the Bank of Sierra Leone;

“Central Bank system” means a payment, funds transfer, clearing or settlement system established pursuant to paragraph (a) of subsection (1) of section 2;

“clearing” means the process of transmitting, receiving or confirming transfer instructions regarding funds, securities or other financial instruments prior to settlement and includes the netting of instructions and the establishment of final positions for settlement;

“clearing system” means a set of procedures whereby financial institutions present and exchange information relating to the transfer of funds, securities or other financial instruments to other financial institutions through a centralised 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;

“Court” means the High Court;

“designation” means a written notification made under subsection (2) of section 2 addressed to such persons as the Central Bank may reasonably believe to be the operators of a system which, in the opinion of the Central Bank, is in the public interest that it should supervise under this Act, and “designate” shall be construed accordingly;

“finality” means the confirmation, explicitly or implicitly, that a payment or settlement is irreversible and irrevocable;

“financial institution” includes—

- Act No. 10 of 2000.
  - (a) a deposit-taking institution holding a valid licence under the Banking Act, 2000;
- Act No.7 of 2001.
  - (b) a financial institution holding a valid licence under the Other Financial Services Act, 2001;
  - (c) the following institutions: –
    - (i) the Central Bank;
    - (ii) venture capital funding companies;
    - (iii) credit and friendly societies;
    - (iv) the West Africa Monetary Agency;
    - (iv) the West Africa Bankers Association;
    - (v) the National Social Security and Insurance Trust.

“funds” includes notes and coins issued by the Central Bank, cheques, bank drafts, bankers acceptance or an instruction for the electronic movement or payment of funds through a financial intermediary, a designated system or the Central Bank system;

“group of companies” means companies or other bodies corporate that are related to each other as holding company and subsidiary, or as subsidiaries of the same holding company;

“gross settlement” means the settlement of transfer instructions on an instruction by instruction basis;

“intermediary institution” means an institution which is neither that of the originator nor that of the beneficiary and which participates in the execution of a transfer;

“management body” in relation to a designated system, means a body responsible for organizing, operating and managing a designated system;

“multilateral netting” means an arrangement among three or more parties to net their obligations;

“netting” means the determination of the net payment obligations or entitlements between two or more institutions participating in a system within the scope of this Act or the determination of the net settlement obligations or entitlements between two or more institutions participating within such system, and “netting provisions”, “netting agreements”, “netting rules” and “netting practices” shall be construed accordingly;

“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 any of these;

“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;

“payment netting” means a netting arrangement where on any day on which amounts are due between the parties in respect of one or more transactions, the party with the higher gross payment obligation is obligated to pay to the other party the net amount of the gross payment obligations of the parties;

“penalty units” means an amount of money equal to the amount obtained by multiplying the amount of penalty units with a fixed sum as determined from time to time;

“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;

“obligation” means a duty imposed by contract or law arising from the clearing of transfer instructions through a clearing system or the submission of transfer instructions to a settlement system, or both;

“operator” means any person, acting alone or under an arrangement with another person, responsible for the rules, procedures and operation of a payment system but excludes such persons as may be prescribed;

“originator” means a person who orders the making of a transfer to a beneficiary;

“participant” means any person who is permitted by the rules governing the payment system to send payment or settlement instructions to a payment system and is bound by the rules governing that payment system;

“payment instruction” or “settlement instruction” includes an instruction to transfer, clear or settle transactions in funds or securities, as the case may be;

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

“payment system” means any system or arrangement for the transfer, clearing or settlement of funds or securities, but excludes—

- (a) a payment system operated by the Central Bank;
- (b) a clearing house recognised under any enactment;
- (c) an in-house payment system operated by a person solely for his own administrative purposes that does not transfer, clear or settle funds or securities for third parties;

- (d) such other systems or arrangements as may be prescribed;

“settlement” means the act of discharging obligations by transferring funds, securities or financial instruments between two or more parties;

“settlement system” means a system used to facilitate the settlement of transfer instructions regarding payments, securities or other financial instruments;

“system” includes a payment, funds transfer, clearing and settlement system;

“systemic risk” means the risk that the failure of one or more participants in a system to meet their payment or settlement obligations may cause other participants to be unable to meet their obligations when due;

“transfer” means the sending of funds, securities or other financial instruments or a right relating to funds, securities or other financial instruments from one party to another party by—

- (a) conveyance of funds or physical instruments;
- (b) accounting entries on the books of a financial intermediary; or
- (c) book entry movements of funds or physical instruments through a designated system or the Central Bank system;

“transfer instruction” means an order or electronic message requesting the movement of funds, securities or other financial instruments or a right relating to funds, government securities or other financial instruments from one party to another;