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**PAYMENT SYSTEMS AND SERVICES
BILL 2025**

PAYMENT SYSTEMS AND SERVICES BILL 2024

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**AN ACT TO PROVIDE FOR THE REGULATION AND
OVERSIGHT OF PAYMENT SYSTEMS, PAYMENT
SERVICES AND INSTITUTIONS WHICH CARRY ON
PAYMENT SERVICE AND ELECTRONIC MONEY
BUSINESS AND TO PROVIDE FOR RELATED MATTERS**

PART I - PRELIMINARY

1. Short Title

This Act may be cited as the Payment Systems and Services Act.

2. Interpretation

In this Act unless the context requires otherwise:

“Agent” means a person who provides agency services to customers on behalf of a principal under an agency agreement;

“Arrangement” means any contract, agreement, plan, procedure or understanding, whether express or implied and whether legally enforceable or not;

“Bank” or “Reserve Bank” is as defined in the National Reserve Bank of Tonga Act;

“Central Counter-Party” (CCP) means an entity that is the buyer to every seller and the seller to every buyer in a Settlement System;

“Central Securities Depository” (CSD) means an entity in whose register securities are immobilized and enabling securities transactions to be finally processed by book-entry. Securities can be held at the CSD either in dematerialized (that is, as electronic records) or physical form. A CSD also provides custodial and asset services;

"Cheque in the electronic form" means a cheque which contains digital representation of the front and back of a paper cheque (cheque image), and is generated, written and signed in a secure system ensuring minimum safety standards as prescribed by the relevant authorities, such as the Reserve Bank;

"Cheque truncation" means the process of removing the original paper cheque from the cheque collection or return process and replacing it with electronic information related to the original cheque;

"Clearing" means the process of transmitting, reconciling and/or confirming funds or securities transfer instructions prior to Settlement and includes the Netting of instructions and the establishment of final positions for Settlement;

"Clearing House" means any entity that provides Clearing and/or Settlement services for a System, including the Reserve Bank;

"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;

"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;

"Customer" in relation to the provision of a payment service, means the person who contracts with the provider of the payment service for the provision of the service;

"Credit Transfer" means the series of transfers, beginning with the payer's payment order, made for the purpose of making payment to the payee. The term includes any payment order issued by the payer's Bank or Payment Service Provider, or an intermediary intended to carry out the payer's payment order;

“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 Payment Service Provider or to the payer own Payment Service Provider. The term 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;

“Electronic money” is monetary value as represented by a claim on its issuer, that is electronically stored in an instrument or device, issued against receipt of funds of an amount not lesser in value than the monetary value issued, accepted as a means of payment by persons other than the issuer, to be withdrawn in cash or any equivalent of cash as established by law, and issued in accordance with this Act;

“Electronic Money Business” means the issuance, transfer, payment and redemption of electronic money, and any other activity permitted under this Act by the Reserve Bank;

“Electronic presentment of cheques” means the electronic transmission, by an institution authorized to draw a cheque and/or cheques drawn by its customers, of an image and/or payment information of the cheque, to the clearing house and payee institution on whom it is drawn;

“Electronic Funds Transfer” means any transfer of funds which is initiated by a person by way of instruction, authorization or order to the financial institution debit or credit an account with the financial institution through electronic means and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfers initiated by telephone, internet, card or other devices;

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

“Financial market infrastructure” (FMI) means a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling or recording payments, securities, derivatives or other financial transactions.

“Gross Settlement” means the Settlement of funds or securities transfer instructions that occurs individually on an instruction by instruction basis;

“Licence” means a licence granted under Part III;

“Licensee” means any operator of a system and any payment service provider to whom a licence is granted under Part III;

“Merchant” means a person that contracts with a payment service provider for accepting payment for goods and services by means of payment instruments;

“Money Remittance” means a Payment Instrument where funds are received from an originator without any accounts being created in the name of the originator or the beneficiary, for the sole purpose of transferring a corresponding amount to a beneficiary or to another Payment Services Provider acting on its behalf, and/or such funds are received on behalf of and made available to the beneficiary.

“Multilateral Netting” means the offsetting of obligations between or among multiple participants to result in a single net position per participant in a system within the scope of this Act or the determination of the net settlement obligations between the parties which participate in the system;

“National Payments System” means the whole of the services that are associated to sending, receiving and processing of orders of payment or transfers of money in domestic or foreign currencies, issuance and management of Payment Instruments, Payment, Clearing and Settlement Systems, including those processing securities, arrangements and procedures associated to those Systems and Services, and Payment Service Providers, including System 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 Tonga;

“Netting” means the determination of the net payment obligations or the determination of the net termination value of settlement obligations between two or more System Participants within a System;

“Non-bank Financial Institution” is as defined in the National Reserve Bank of Tonga Act and non-bank entities that are licensed by the Reserve Bank under this Act;

“Operator” means the Reserve Bank or any other entity licensed by the Reserve Bank to operate a System;

“Participant” means a party who is recognized in the rules of a System as eligible to exchange, clear and settle through the System with other Participants either directly or indirectly;

“Payment initiation services” (PIS) means all services facilitating the authorization and/or validation of an electronic fund transfer, a card payment or otherwise facilitating the execution of electronic transactions.

“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. These include, but are not limited to, cheques, funds transfers initiated by any paper or paperless device (such as automated teller machines, points of sale, internet, telephone), payment cards, including those involving storage of Electronic Money, and Money Remittances;

“Payment Services” mean services enabling cash deposits and withdrawals, execution of payment transactions, issuing and/or acquisition of Payment Instruments, Money Remittances and any other services functional to the transfer of money. This shall also include the issuance of Electronic Money and Electronic Money instruments. The term does not include the provision of solely online or telecommunication services or network access;

“Payment Service Provider” means a person licensed or authorised under this Act to provide payment service;

“Payment Transaction” means an act, initiated by a payer or on his behalf or by a payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee. This includes also “remote payment transaction”, that is to say a payment transaction initiated via internet or through a device that can be used for distance communication;

“Payment System” means a set of instruments, procedures, and rules for the transfer of funds between or among participants; the system includes the participants and the entity operating the arrangement;

“Real-Time Gross Settlement” (RTGS) means a Settlement System that effects final settlement of funds, payment obligations and book entry of securities and instruments on a real- time transaction-by-transaction basis as these occur during operating hours in a processing day;

“Settlement Agent” means a company providing accounts for the Participants of a System to hold funds and to settle transactions between Participants in the System;

“Settlement System” means a System established and operated by the Reserve Bank or any other licensed entity for the discharge of payment obligations as well as of settlement of obligations in relation to securities;

“Settlement” means the act of discharging obligations by transferring funds or securities between two or more parties in accordance with the terms of the underlying contract;

“System” includes a Payment, Clearing and Settlement system;

“Systemic Risk” means the risk that relates to the inability of a Participant to meet its obligations in a System as they become due or a disruption to the System that could, for whatever reason, cause other Participants in the System to be unable to meet their obligations as they become due;

“Transfer instructions” means instructions for the transfer of funds or securities;

PART II -POWERS AND DUTIES OF THE RESERVE BANK

3. General powers

- (1) Without affecting its powers under the National Reserve Bank of Tonga Act, the Reserve Bank has the power to regulate and oversee the National Payments System for the purposes of this Act.
- (2) For the purposes of subsection (1), the Reserve Bank has the following powers -
 - (a) to define and adopt policies for continuous modernization of the National Payments System;
 - (b) to license Payment Service Providers and Operators of Systems in conformity with the terms of this Act and any further implementing measure;
 - (c) to determine general or individual conditions, standards, rules and/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) to act as a forum for the consideration of matters of policy and mutual interest concerning the National Payments System; and

- (e) to perform any such other functions relating to Payment, Clearing or Settlement Systems or the issuance of Payment Instruments permitting the accomplishment of its functions; and
- (f) such other powers and functions as explicitly granted by this Act.

4. Operational role of The Reserve Bank

- (1) The Reserve Bank may provide facilities for Payment, Clearing and Settlement Systems, their Operators or their Participants.
- (2) For the purposes of subsection (1), the Reserve Bank may:
 - (a) establish, own, operate and participate in the ownership or operation of payment, clearing and settlement 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 on accounts for operators and participants, which may be used for the working of systems;
 - (e) extend intraday credit as determined by the Reserve Bank to entities that are participating in payment, clearing and settlement systems. Adequate collateral must be granted to The Reserve Bank to this end; and
 - (f) act as a central securities depositary for Government securities.

5. Cooperation with other authorities

- (1) The Reserve Bank may –
 - (a) cooperate with national and foreign regulatory authorities engaged in the regulation and supervision of financial institutions and other entities directly or indirectly involved in payment systems and/or services; and
 - (b) cooperate with other monetary authorities or international organisations dealing with regulation or oversight of payments.
- (2) For the purposes of subsection (1), the Reserve Bank may conclude memoranda of understanding.

6. National Payments System Advisory Committee

- (1) The Reserve Bank may establish a National Payments System Advisory Committee through regulations.
- (2) The objective of the National Payments System Advisory Committee is to advise the Reserve Bank on the following –
 - (a) regulation and oversight of the National Payments Systems;
 - (b) operational and technical standards; and
 - (c) any other matters affecting payment services and the clearing and settlement of payments and securities.
- (3) The National Payments System Advisory Committee shall consist at least of –
 - (a) the Governor of the Reserve Bank as the chairperson;
 - (b) the Chief Executive Officer of the Ministry of Finance; and
 - (c) members of relevant stakeholders, as determined by the Reserve Bank.

PART III - LICENSING

7. Prohibition

- (1) No person shall provide payment services or operate a system unless such person has been issued a license under this Act.
- (2) Without any prejudice to the powers of the Reserve Bank to impose additional requirements according to circumstances, a person already providing payment services and duly licensed to do so are not required to obtain a new license to provide Payment Services including under this Act.
- (3) Any person under subsection (2) shall:
 - (a) comply with operational, reporting and disclosure requirements as may be set by the Reserve Bank;
 - (b) be subject to oversight requirements for licensed entities under this Act; and
 - (c) be required to obtain a license for the operation of Systems.

8. Power to issue licence

- (1) The Reserve Bank may grant a licence under this Part authorising the licensee to provide payment services or to operate a system under this Act. This includes the possibility to grant temporary licenses under specific conditions.
- (2) The power under subsection (1) includes the power to vary, suspend or revoke the licence.

9. Application for licence

- (1) Any person may apply for a licence under this Act to provide payment services or operate a system, as determined by the Reserve Bank.
- (2) Before a licence is granted, the Reserve Bank may require the applicant to maintain capital adequacy at levels specified by the Reserve Bank to be determined by the type of service, average value of payments, aggregate value and other factors as the Reserve Bank considers necessary.

10. Registration instead of licence

- (1) The Reserve Bank may register the applicant for providing payment services instead of granting a licence if the management of a specific category of payment services does not involve serious risks for the market or would strongly compromise competitiveness.
- (2) The registration must not discriminate among payment services providers offering the same services.

11. Licences non-transferable

- (1) A license or any right acquired under the licence, whether wholly or partly, shall not be transferable except as provided by directives.
- (2) A licence or right transferred in contravention of subsection (1) shall be null and void.

12. Annual Licence Fees

The Reserve Bank may charge and collect a licence fee for each year that a licence is in effect and which shall be paid by the licence holder on the anniversary of the date of the licence being granted.

13. Conditions of licence.

The Reserve Bank may, for the purposes of this Act, vary, amend, suspend or cancel any or impose new conditions of a licence.

14. Revocation of a payment system licence or registration

- (1) The Reserve Bank may revoke a payment system licence or registration where -
 - (a) any other licence or registration related to payment services or issuance of electronic money is revoked under any other law;
 - (b) the payment service provider or electronic money issuer refuses to permit an inspection or provide information required by the Reserve Bank;
 - (c) the payment service provider or electronic money issuer provides false or misleading information for purposes of applying for the licence or registration;

- (d) the payment service provider or electronic money issuer fails to comply with the terms and conditions of the licence or authorisation;
 - (e) the payment service provider or electronic money issuer engages in a pattern of unsafe or unsound practices that –
 - (i) threaten the financial condition of the payment service provider or electronic money issuer; or
 - (ii) is detrimental to the interests of users and other providers.
 - (f) the payment service provider or electronic money issuer is insolvent under any law or as determined by a court of competent jurisdiction;
 - (g) the payment service provider or electronic money issuer ceases to carry on the business of payment services in Tonga or goes into liquidation, is wound up, or is dissolved;
 - (h) the payment service provider or electronic money issuer does not provide payment services or issue electronic money within six months from the date on which the authorisation was given or licence was issued;
 - (i) the payment service provider or electronic money issuer ceases to engage in the payment service or electronic money business for more than six months;
 - (j) the payment service provider or electronic money issuer constitutes a threat to the stability of the payment system by continuing its payment services or electronic money business; or
 - (k) the revocation of the licence or authorisation of that payment service provider or electronic money issuer is desirable to protect the interests of consumers.
- (2) Subsection (1) does not limit the power of the Reserve Bank to take any other action against a payment service provider or an electronic money issuer.
- (3) Where the Reserve Bank proposes to revoke the licence of payment service provider or an authorisation of an electronic money issuer under subsection (1), the Reserve Bank shall –
- (a) give notice in writing to the payment service provider or electronic money issuer;
 - (b) specify the proposed action and the grounds on which the action is proposed to be taken; and

- (c) give the payment service provider or electronic money issuer an opportunity to make a written presentation within the days specified in the notice.
- (4) After the expiry of the notice period and considering the representations made by the payment service provider or electronic money issuer, the Reserve Bank may
 - (a) decide whether to take the proposed action; or
 - (b) vary the proposed action as the Reserve Bank considers appropriate; and
 - (c) communicate the decision of the Reserve Bank to the payment service provider or electronic money issuer.
- (5) Where the Reserve Bank revokes the licence or registration of a payment service provider or an electronic money issuer, that payment service provider or electronic money issuer shall cease to carry on the payment service business and surrender the licence or registration to the Reserve Bank.
- (6) A payment service provider or electronic money issuer shall arrange to pay customers all their electronic moneys held, within ten days, upon a revocation of the licence or registration.
- (7) A payment service provider or electronic money issuer who contravenes subsection (6), is liable to pay to the Reserve Bank an administrative penalty of \$10,000 within ten days of the contravention and an additional penalty of \$1,000 for each day that the contravention continues.

15. Publication of notice of revocation

Where a licence or registration is revoked under section 14, the Reserve Bank shall—

- (a) as soon as possible, publish a notice of revocation in the Gazette and in a national media outlet and on the website of the Reserve Bank; and
- (b) take any other steps necessary to inform the general public of the revocation.

PART IV – OVERSIGHT

16. Standards, Criteria and Directives

- (1) The Reserve Bank may at any time –
 - (a) adopt general standards and criteria for the conduct of Payment Services activities or the operation of Systems, either generally addressing the totality of entities or a specific category; or
 - (b) address any other matter for the efficient administration of this Act.
- (2) The Reserve Bank shall, within 15 days before the entry into force of a measure, publish such measure on the Reserve Bank's website.
- (3) Without prejudice to the provisions (1) and (2), the Reserve Bank may, from time to time, issue such directions/guidelines, as it may consider necessary for safe and efficient operations of payment systems generally or with reference to any particular payment system.

17. Powers to carry out audit and inspection

- (1) The Reserve Bank may, for the purpose of carrying out its functions under this Act, conduct or get conducted audits and inspections of a payment system or participants thereof and payment service provider, and it shall be the duty of the operator, participants and provider to assist the Reserve Bank to carry out such audit or inspection, as the case may be.
- (2) The Reserve Bank may, where it is of the opinion that it is necessary for the purposes of carrying out its functions and duties under this Act, enter and inspect or examine any of the following, with or without any prior written notice –
 - (a) any business, premises, apparatus, equipment or machinery;
 - (b) any books, documents, accounts or transactions of a payment system participant;
 - (c) an authorized operator or issuer of payment instruments;

(d) any offices of the participant, operator or issuer.

18. Rules of Systems

- (1) An operator shall issue the following rules –
 - (a) on the governance, management and operations of its system;
 - (b) minimum rules on management of liquidity, credit and settlement risk;
 - (c) rules determining the time when a payment instruction and a settlement is final and irrevocable; and
 - (d) rules on corporate governance, access, contingency arrangements and operational risk, rights and liabilities of participants and the system operator.
- (2) The rules shall comply with this Act and any directives issued.
- (3) The Reserve Bank may amend, suspend or revoke any rules issued under subsection (1), where it considers appropriate to do so, having regard to any of the following:
 - (a) whether the variation or revocation would be in the public interest;
 - (b) the interests of the current participants;
 - (c) the interests of persons who, in the future, may desire access to the system; and
 - (d) any other matters the Reserve Bank considers relevant.
- (4) An operator may not change the structure, operation or administration of the System without:
 - (a) the approval of the Reserve Bank; and
 - (b) the operator gives 30 days notice to the participants of the system after the approval of the Reserve Bank.
- (5) Notwithstanding subsection (2), the Reserve Bank may approve the change in the interest of monetary policy, financial stability, or the public interest, subject to the following conditions –
 - (a) the notice under subsection 4(b) is not required to be given; or

(b) the notice is to be given for a period of less than 30 days.

19. Access to Systems

- (1) The rules on access to Systems shall –
- (a) be objective, non-discriminatory and proportionate; and
 - (b) not inhibit access more than is necessary to safeguard against settlement risk, operational risk, business risk or other risk and to protect the financial and operational stability of the Payment System.

20. Access to payment accounts

- (1) Payment service providers may access payment account services on an objective, non-discriminatory and proportionate basis and such access must be sufficiently extensive as to allow payment service providers to provide payment services in an unhindered and efficient manner.
- (2) The entity managing the payment account must provide the Reserve Bank with reasons for any rejection of access requests as outlined in subsection (1). The reasons must be duly motivated and submitted in a timely manner.

21. Outsourcing of activities

- (1) A licensee who intends to outsource operational functions shall inform the Reserve Bank in writing.
- (2) Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of the internal controls of the licensee and the ability of the Reserve Bank to monitor the licensee's compliance with the licensee's obligations under this Act.
- (3) In subsection (2), an operational function is important if a defect or failure in its performance would materially impair –
 - (a) the continuing compliance of the licensee with the requirements of its license; or
 - (b) the licensee's financial performance; or

- (c) the soundness or the continuity of its services.
- (4) The licensed entities shall ensure that the outsourcing complies with the following conditions -
- (a) the outsourcing shall not result in the delegation by senior management of its responsibility;
 - (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 licensee is to comply in order to be licensed and remain so in accordance with this Act shall not be undermined;
 - (d) no other conditions of the licence shall be amended, suspended or revoked;
 - (e) the Reserve Bank to have access to the infrastructure of the outsourced entities for the activities / functions that have been outsourced; and
 - (f) any other conditions that the Reserve Bank may specify.

22. Agents

- (1) A person who intends to provide payment services to customers through an agent shall inform the Reserve Bank in writing the following information:
 - (a) the name and address of the agent;
 - (b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligations in relation to money laundering and terrorist financing; and
 - (c) the identity of persons responsible for the management of the agent to be used in the provision of the services and evidence that they are fit and proper persons.
- (2) An agent shall not carry out an activity under the agency before being listed in the register.
- (3) The principal shall ensure that its agent informs customers about the agency

and the principal.

- (4) The register shall be available to the public for inspection.

23. Liability for acts of agents, employees, etc.

- (1) A licensee who relies on third parties for the performance of operational functions shall take reasonable steps to ensure that the third party complies with this Act.
- (2) A licensee is liable for the acts of their employees, or any agent, branch or entity to which activities are outsourced.

24. Legislation on anti-money laundering or terrorist financing.

- (1) A licensee shall comply with –
 - (a) legislation, regulations and guidelines adopted by the Reserve Bank on anti-money laundering and terrorist financing; and
 - (b) any directives issued in pursuant to subsection (1)(a).
- (2) The licensee shall ensure that a third party acting on the licensee's behalf or the licensee's employees or agents comply with subsection (1).

25. Retention of Records

- (1) The Reserve Bank in its operational functions and a participant or a licensee shall retain all records obtained during the course of their operation and administration for 7 years from the date of the creation of a record.
- (2) The records may be retained in an electronic form or any other form determined by the Reserve Bank.

26. Access to information and Disclosure

- (1) A licensee or participant shall –
 - (a) provide any information requested by the Reserve Bank; and
 - (b) produce all books, minutes, accounts, cash instruments, securities, vouchers or any documents relating to its business or the business of its affiliates, for the inspection of any examiner appointed by the Reserve Bank at such time and

manner the Reserve Bank or the examiner specifies.

(2) The Reserve Bank or the examiner shall not disclose to another person any information obtained under subsection (1) except -

- (a) for the purposes of this Act;
- (b) if it is necessary to protect the financial integrity, effectiveness or security of the System;
- (c) if it is made to a recipient who is legally authorized to get such information;
- (d) if ordered by any court of competent jurisdiction in Tonga; or
- (e) if it is required for the purpose of meeting obligations which Tonga entered into under international agreements.

(2) The Reserve Bank may commission independent auditors to conduct an audit of the accounts, books, documents and other records of an operator and its participants or a provider.

(3) The operator or provider shall assist the Reserve Bank to the extent necessary for the purpose of subsection (2).

27. Fees and charges

The Reserve Bank may impose charges or fees by directives –

- (a) to defray its direct and indirect costs incurred in providing its oversight and regulatory services, to licensees or participants;
- (b) for operational services or infrastructure under section 4.

28. Access to Account Information for Innovative Services

- (1) Payment service providers shall have access to account information necessary for the provision of innovative services, including but not limited to payment initiation services, provided the payment account is accessible online and the payment service user has given explicit consent.
- (2) Standards and conditions for the provision of payment initiation services and for access to information shall be regulated by the Reserve Bank.

PART V - SETTLEMENT, NETTING AND FINALITY OF PAYMENT

29. Settlement Accounts

- (1) A participant shall:
 - (a) open and maintain settlement accounts with the Reserve Bank, for settlement purposes, including the maintenance of minimum balances, on conditions specified by the Reserve Bank or operator; 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) If a settlement agent under subsection 1(b) is used, the participant shall, before any obligation is settled by the settlement agent on his behalf, give the operator written notice of the appointment, accompanied by a written confirmation from the settlement agent of the appointment.
- (3) A participant who intends to terminate the appointment of his settlement agent, shall give to the operator written notice of at least 7 days before the date of termination.

30. Finality of payment

- (1) A system shall specify rules to –
 - (a) achieve finality in the operations of the system, pursuant to this Act and as prescribed by any rules, regulations or directives issued under this Act; and
 - (b) establish irrevocability of orders once these have entered into the system, unless special conditions apply.
- (2) The entry of a payment order into a system or payment effected under subsection 1 shall –
 - (a) not be revoked, reversed, or set aside, including, without limitation, by insolvency or bankruptcy proceedings or any other law similar; and

(b) is not subject to any other law or order of an administrative or judicial authority that operates as a stay of that payment.

31. Collateral for payment and settlement obligation

- (1) The rights and remedies of an operator, a participant, a clearing house, a central counter-party and any other third party into the system or the Reserve Bank to collateral granted to it as security for a payment or the performance of an obligation incurred in a system –
- a. are not affected by insolvency or bankruptcy proceedings or any other law similar; and
 - b. in particular, 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.
- (2) Further to what is established at 32(1), as for the collateral provided by the system participants towards their settlement or other obligations, the part held in excess to the system shall be returned to the participant concerned.

PART VI - WINDING UP AND ADMINISTRATION

32. The Reserve Bank to be notified of winding up

An operator or a participant that is wound up or placed in a scheme of administration shall immediately lodge within 2 working days of the date of the order or decision with the Reserve Bank a copy of the order or decision.

33. Prohibition

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 shall not operate or participate in the system until such application or scheme is disposed of or finally determined.

34. Winding up or administration of participant not to affect finality

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 of a payment order into a system or payment which became final and irrevocable under section 30 of this Act before the copy of the winding-up order or administration decision was lodged with the Reserve Bank.

35. Rules of the Reserve Bank and licensed systems to bind liquidators

- (1) Notwithstanding any other law, if an institution participating in a system is wound up or placed in liquidation 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:
 - (a) which has been determined through netting prior to the issue of the winding-up or arrangement order; and
 - (b) which 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.
- (2) Section 36(1) shall also apply to any written provision contained in the system rules as settlement, including on a gross settlement basis.

36. Prudential Standards on Segregation and Protection of Deposits

- (1) The Reserve Bank shall issue prudential standards and directives to ensure the segregation and protection of customer deposits held by payment service providers and electronic money issuers;
- (2) The prudential standards issued under subsection (1) may include, but are not limited to, the following –
 - (a) requirements for the segregation of customer deposits from the proprietary assets of the payment service provider or electronic money issuer;
 - (b) specifications on the types of accounts or instruments in which segregated deposits must be held;

- (c) measures to ensure that segregated deposits are protected from claims by creditors of the payment service provider or electronic money issuer in the event of insolvency;
 - (d) reporting and disclosure requirements to ensure transparency and compliance with segregation and protection measures;
 - (e) procedures for the Reserve Bank to monitor and enforce compliance with the prudential standards and directives issued under this section.
- (3) Payment service providers and electronic money issuers shall comply with all prudential standards and directives issued by the Reserve Bank under this section;
- (4) The Reserve Bank may conduct inspections and audits to ensure compliance with the prudential standards and directives issued under this section;
- (5) Any failure to comply with the prudential standards and directives issued under this section shall result in penalties as determined by this Act, including but not limited to fines, suspension or revocation of licences, and other remedial actions.

37. Preservation of rights

A person has the right to enforce any 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.

38. Conflict of laws

- (1) For the insolvency of a foreign participant, the rights and obligations of the foreign participant to Settlement shall be governed by the laws of Tonga.
- (2) The rights and obligations of a domestic participant in a foreign system shall be governed by the law of the country of the foreign system.

PART VII – ELECTRONIC BANKING AND FUNDS TRANSFER

39. Cheque truncation and electronic cheque presentment

- (1) A bank may present cheques for payment through electronic means, including cheque truncation and electronic cheque presentment, as regulated by prudential standards set by the Reserve Bank;
- (2) The essential features of a cheque required for electronic presentment shall be defined and regulated by the Reserve Bank through prudential standards; and
- (3) The duties and responsibilities of banks in the collection and payment of electronically presented cheques shall be governed by prudential standards issued by the Reserve Bank.

40. Powers of the Reserve Bank

When implementing this Act, and pursuant to any other relevant laws on electronic transactions, the Reserve Bank may issue directives on payment orders and money transfers executed by electronic messages, including, when deemed relevant, protection of users of electronic payment instruments and shall complement those of this Act and shall not conflict thereof.

41. Customers to be notified on fees

- (1) Directives issued under section 37 shall require a provider who imposes a fee on its customers for electronic transfer to provide written notice of fees to the customers on the fees imposed.
- (2) The notice of fees shall –
 - (a) be posted at a prominent and conspicuous location at which the customer initiates the electronic fund transfer; and
 - (b) state that the fees are determined by the Reserve Bank.
- (3) A fee shall not be imposed on an electronic fund transfer initiated by a customer for whom a notice is required under subsection (1), unless the customer is

aware of the notice posted under subsection 2 and elects to continue with the transaction.

42. Terms of transfers

- (1) The terms and conditions of electronic fund transfers involving a customer's account shall be disclosed by a bank or other payment service provider in a manner and language clearly understood by the customer, at the time the customer contracts for an electronic fund transfer service, pursuant to any directives.
- (2) A disclosure shall include the following, namely:

- (a) the customer's liability for unauthorised electronic fund transfers and notice of the advisability of prompt reporting of any loss, theft, or unauthorised use of a card, access code or other means of access;
 - (b) the telephone number of the person to be notified in the event the customer believes that an unauthorised electronic fund transfer has been or may be effected;
 - (c) the kind and nature of electronic fund transfers which the customer may initiate, including any limitations on the frequency or amount of the electronic fund transfers;
 - (d) any charges for electronic fund transfers or for the right to make such transfers;
 - (e) the customer's right to stop payment of a preauthorised electronic fund transfer and the procedure to initiate such a stop payment order;
 - (f) the customer's right to receive information of electronic fund transfers;
 - (g) the bank or other payment service provider's liability to the customer;
 - (h) the circumstances under which the bank or other payment service provider will in the ordinary course of business disclose information concerning the customer's account to third parties; and
 - (i) a notice to the customer that a fee may be imposed if the customer initiates a transfer from a terminal that is not operated by the issuer of the card or other means of access.
- (3) A bank or other payment service provider shall notify a customer in writing or by other means in any directives, at least twenty one (21) days prior to the effective date of any material change in any term of the customer's account to be disclosed, unless the change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a customer's account.

43. Issuance of Electronic Money

In addition to the licensing requirements for a provider under Part III, the following conditions apply to a provider of a payment service whose licence is endorsed for the issue of electronic money:

- a. the electronic money service shall not include the provision of credit;
- b. electronic money must be issued in exchange for the equivalent of Tongan Pa'anga or highly liquid assets acceptable by the Reserve Bank;
- c. electronic money providers shall provide statistics on electronic money loaded and redeemed values in their periodic financial statements, and the scheme should also be able to provide sufficient and reliable information to the Reserve Bank to monitor and control the quantity and velocity of electronic money supply in the economy;
- d. clearing and settlement mechanisms shall facilitate provision of final settlement after a payment instruction has been entered in the banking system, according to time limits imposed under any directives;
- e. issuers shall be obliged to redeem electronic money value in Reserve 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.

PART VIII - MISCELLANEOUS

44. Administrative penalties

- (1) Notwithstanding any offence provision of this Act, the Reserve Bank may impose administrative penalties under this section on a licensee or participant or the licensee's manager, employee or agent who contravenes a provision of this Act or a directive.
- (2) The action taken under subsection (1) shall be based on the following:
 - (a) the seriousness of the breach and its effect on systemic risk;

- (b) the stage at which the contravention was detected;
whether the contravention was voluntarily reported by the offender;
 - (c) the appropriate measure to stop the contravention.
- (3) The Reserve Bank may, in writing, issue the following remedies - :
- (a) written warning; or
 - (b) written order to cease and desist from the breach and to undertake remedial action; or
 - (c) written order to perform any act necessary to comply with the order; or
 - (d) suspend temporarily or dismiss any manager, employee or agent of the licensee; or
 - (e) suspend or revoke the license or authorization to a participant; or
 - (f) impose a fine not exceeding \$10,000 for each day that the breach continues from the date of the order.
- (4) Before imposing a remedy under subsection (3), the Reserve Bank shall issue a written notice to the offender setting out the facts of the breach and a specified time in which the offender shall respond to the allegation.
- (5) Notwithstanding subsection (4), the Reserve Bank may immediately impose a penalty under subsection (3) if the Reserve Bank has issued a notice under section 14(3) and is satisfied that the breach has caused or likely to cause a serious risk to the National Payment System
- (6) Any person aggrieved by an order made by the Reserve Bank under this section may make an appeal to the Office of the Ombudsman whose decision shall be final and shall not automatically affect a suspension of any decision taken or measure imposed by the Reserve Bank.

45. Offences and Penalties

- (1) A licensee, participant or any other person who contravenes a provision or requirement of this Act commits an offence.
- (2) A director, manager, employee or agent of a licensee or participant commits an offence who:
 - (a) obstructs a person when carrying a function, duty or power under this Act;

- (b) damages, destroys, alters or falsifies accounts, books or records of a licensee or participant; or
 - (c) with intent to deceive, makes false entries or fails to enter material items in the accounts of a system;
- (4) A person convicted of an offence under subsection (1) or (2) is liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 25 years or to both.

46. Settlement of disputes by arbitration

- (1) The system provider, in its rules or regulations, shall make provision for creation of panel of participants who are not parties to the dispute to decide the disputes between system participants;
- (2) Any dispute arising between any system participant and the system provider or between system providers or where any of the system participants is not satisfied with the decision of the panel referred at (1) above, the dispute shall be referred to the Reserve Bank.
- (3) Dispute referred to the Reserve Bank for adjudication under subsection (2) shall be disposed of by an officer of the Reserve Bank generally or specially authorised in this behalf and the decision of the Reserve Bank shall be final and binding.
- (4) Notwithstanding the right of an operator and a participant to take a matter before the courts, an operator and a participant may refer any dispute under arbitration.

47. Dishonour of payment instruction

- (1) A cheque shall be considered dishonoured if it is returned unpaid by the bank on which it is drawn due to insufficient funds, a stop payment order, or any other valid reason as determined by the bank;
- (2) The drawer of a dishonoured cheque shall be notified promptly, and the bank shall provide the reason for the dishonour;
- (3) An electronic payment instruction shall be considered dishonoured if it is not

executed due to insufficient funds, incorrect details, or any other valid reason as determined by the payment service provider;

- (4) The payer shall be notified promptly of the dishonour, and the payment service provider shall provide the reason for the dishonour;
- (5) The Reserve Bank shall establish and regulate the procedures and penalties for handling dishonoured payment instructions through prudential standards.

48. Exemption from liability

No director, officer or employee of the Reserve Bank or any person including a person previously holding such position, acting under direction of the Reserve Bank shall be personally liable for an act or default of the Reserve Bank done or omitted to be done in good faith and without gross negligence in the course of the operations of the Reserve Bank.

49. Regulations and directives

- (1) The Minister, on the advice of the Board of Directors of the Reserve Bank and with the consent of Cabinet, shall make regulations necessary for giving effect to and carrying out the purposes of this Act.
- (2) Without limiting subsection (1), the Reserve Bank may issue directives, orders or guidelines necessary to give effect to the functions, duties and powers of the Reserve Bank under this Act and shall be consistent with this Act and regulations

50. Transitional Provisions

- (1) In conformity with Section (7), at the commencement of this Act, a directive may be issued:
 - (a) to regulate entities already providing payment services and duly licensed to do so to make them comply with this Act; and
 - (b) to deal with any other transitional matter.