



SAMOA

NATIONAL PAYMENT SYSTEM ACT 2014

Arrangement of Provisions

PART 1 PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application

PART 2 POWERS AND DUTIES OF THE CENTRAL BANK

4. General powers
5. Operational role of the Central Bank
6. Cooperation with other authorities
7. National Payment System Committee

PART 3 LICENSING OF SERVICES AND SYSTEMS

8. Prohibition
9. Power to issue licence
10. Application for licence
11. Registration instead of licence
12. Licences non-transferable
13. Renewal of licence
14. Conditions of licence
15. Right to be heard

PART 4 OVERSIGHT

16. Standards, criteria and directives
17. Power to enter and inspect
18. Rules of systems
19. Access to systems
20. Outsourcing of activities
21. Agents
22. Liability for acts of agents, employees, etc.
23. Legislation on anti-money laundering or terrorist financing
24. Retention of records
25. Access to information and disclosure
26. Fees and charges

PART 5 SETTLEMENT, NETTING AND FINALITY OF PAYMENT

27. Settlement of accounts
28. Finality of payment
29. Collateral for payment and settlement obligation

**PART 6
WINDING-UP AND
ADMINISTRATION**

30. Central Bank to be notified of winding-up
31. Prohibition
32. Winding-up or administration of participant not to affect finality
33. Rules of the Central Bank and licensed systems to bind liquidators
34. Preservation of rights
35. Conflict of laws

**PART 7
CHEQUES, ELECTRONIC
FUND TRANSFERS AND
ELECTRONIC MONEY**

36. Cheque truncation and electronic cheque image presentment
37. Powers of Central Bank
38. Customers to be notified on fees
39. Terms of transfers
40. Issuance of electronic money

**PART 8
MISCELLANEOUS**

41. Administrative penalties
42. Offences
43. Settlement of disputes
44. Exemption from liability
45. Regulations and directives
46. Saving and transition

NATIONAL PAYMENT SYSTEM ACT 2014

2014 **No. 4**

AN ACT to regulate a national payment system and for related purposes.

[Assent and Commencement date: 07 April 2014]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the National Payment System Act 2014.

(2) This Act commences on the date of assent by the Head of State.

2. Interpretation – In this Act, unless the context otherwise requires:

“bank” has the same meaning in the Central Bank of Samoa Act 2015;

“Central Bank” means the Central Bank of Samoa established under the Central Bank of Samoa Act 2015;

“central counter-party” means an entity that is the buyer to a seller and the seller to a buyer in a settlement system;

“central securities depository”:

(a) means an entity—

(i) in whose register securities are immobilised, and enabling securities transactions to be finally processed by book-entry (securities can be held either in electronic or physical form); and

(ii) that can provide custodial and asset services; and

(b) includes the Central Bank.

“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 specified by the Central Bank or any other authority;

“clearing”:

(a) means the process of transmitting, reconciling or confirming funds or securities transfer instructions prior to settlement; and

(b) includes the netting of instructions and the establishment of final positions for settlement;

“clearing house”:

(a) means an entity that provides clearing or settlement services for a system; and

(b) includes the Central Bank;

“clearing system”:

(a) means a set of procedures whereby participants present and exchange information relating to the transfer of funds or securities to other participants through a centralised system or at a single location; and

(b) 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 if so terminated the termination value becomes due and payable;

“collateral” means an asset that is delivered by the collateral provider to secure an obligation to the collateral taker, that may take different legal forms, such as title transfer or pledge;

“Committee” means the National Payment System Committee established by section 7;

“credit card” means a card that authorises the person named on it to charge goods or services to the account of an account holder on credit basis subject to repayment over a period of time;

“credit transfer”:

(a) means the series of transfers, beginning with the payer’s payment order, made for the purpose of making payment to the payee; and

(b) 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 card” means a card or an access method by which money is automatically deducted from an account to pay for goods or services purchased;

“debit transfer”:

(a) means a 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; and

(b) includes a payment order issued by the payee’s bank or payment service provider, or an intermediary intended to carry out the payee’s order;

“directives” means any directives, orders or guidelines issued under section 45(2);

“electronic money” means electronically, including magnetically or in any other tangible or intangible device (such as a subscriber identity module (SIM) card or a

software), stored monetary value as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions and which is accepted as a means of payment by persons other than the issuer;

“electronic presentment of cheques” means the electronic transmission, by an institution authorised to draw a cheque, of an image and payment information of the cheque, to the payee institution on whom it is drawn;

“electronic funds transfer”:

(a) means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a bank to debit or credit an account maintained with that bank through electronic means; and

(b) includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfers initiated by telephone, internet, card or other devices;

“financial institution” has the same meaning as “non-bank person or institution” as defined in the Financial Institutions Act 1996;

“gross settlement” means the settlement of funds or securities transfer instructions that occurs individually on an instruction-by-instruction basis;

“licence”:

(a) means a licence granted under Part 3; and

(b) includes a bank when providing payment services; and

(c) “licensee” has a corresponding meaning;

“multilateral netting” means an arrangement among 3 or more parties to net their obligations;

“National Payment 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:

(a) those processing securities, arrangements and procedures associated to those systems and services, and payment service providers; or

(b) 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 Samoa;

“net settlement” means a settlement procedure in which final settlement of transfer instructions occurs on a net basis at one or more discrete, pre-specified times during the processing day;

“net termination value” means the net amount obtained after setting off or otherwise netting the obligations between the parties in accordance with settlement rules issued by the Central Bank or a netting arrangement entered into between the parties;

“netting” means the determination of the net payment obligations or the determination of the net termination value of settlement obligations between 2 or more system participants within a system;

“netting arrangement”:

(a) means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation; and

(b) includes any or more of the following —

- (i) bilateral netting;
- (ii) multilateral netting;
- (iii) netting by novation;
- (iv) close-out netting;
- (v) payments netting.

“netting by novation” means a netting arrangement of the parties to a series of transactions where an account of amounts due is kept and the rights and obligations of the parties to the account are continuously extinguished and replaced by a new single amount payable by 1 party to the other;

“operator” means the Central Bank or a licensee of a system;

“participant” means a party to a system who is recognised in the rules of a system as eligible to exchange, clear and settle through the system with other participants either directly or indirectly (a direct participant is a participant in a system who is responsible for the settlement of its own payments, those of its customers and those of the indirect participants on whose behalf it is settling);

“payment card”:

- (a) means a card, coupon book, or other device, including a code or any other means of access to an account, that may be used to obtain money or to make payment; and
- (b) includes a debit card, credit card or stored-value card.

“payment instrument”:

- (a) means an instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to make payment or transfer money; and
- (b) includes, but not limited to, cheques, funds transfers initiated by a paper or paperless device (such as automated teller machines, points of sale, internet, telephone, mobiles), payment cards, including those involving storage of electronic money;

“payment services provider” or “provider” means an entity licensed to provide payment services;

“payment services”:

- (a) means services enabling —
 - (i) cash deposits and withdrawals;
 - (ii) execution of payment transactions;
 - (iii) issuing or acquisition of payment instruments;
 - (iv) the provision of remittance services;
 - (v) any other services functional to transfer money; and
- (b) includes the issuance of electronic money and electronic money instruments; but
- (c) does not include solely online or telecommunication services or network access;

“payment system” means a system or arrangement to process, clear or settle funds;

“real-time gross settlement” means a settlement that effects final settlement of funds, payment obligations and book entry of securities and instruments on a real-time transaction-by-transaction basis as they occur during operating hours in a processing day;

“remittance service” means a financial service that accepts cash or other payment instruments (including e-money instruments) in one (1) location and pays a corresponding

sum in cash or other form to a beneficiary in another location by means of a communication, a message, transfer or through a clearing network to which the money transfer service belongs;

“settlement” means the act of discharging obligations by transferring funds or securities between two (2) or more parties;

“settlement agent” means a company providing accounts for participants to hold funds and to settle transactions between participants;

“settlement rules”:

(a) means the rules, however established, that provide the basis upon which payment obligations are calculated, netted or settled; and

(b) includes —

(i) rules for the taking of action if a participant is unable or likely to become unable to meet its obligations to a payments system, clearing house, central counter-party or other participants; and

(ii) settlement of obligations from securities.

“settlement system” means a system established and operated by the Central Bank or any other system for the discharge of payment obligations as well as of settlement of obligations in securities;

“systemic risk” means the risk that relates to the inability of a participant to meet its obligations in a system as the obligation become due or a disruption to the system that could, for whatever reason, cause other participants to be unable to meet their obligations as they become due;

“truncation” means a settlement process in which the physical transfer of a paper based payment instrument is substituted by the exchange and storage of its image and the corresponding electronic information;

“truncated cheque” means a cheque which is truncated during the course of a clearing cycle by a clearing house whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

3. Application – This Act applies to a system that operates partly in Samoa and partly in another country.

PART 2
POWERS AND DUTIES OF
THE CENTRAL BANK

4. General powers—(1) Without affecting its powers under the Central Bank of Samoa Act 2015, the Central Bank has the power to regulate and oversee the National Payment System for the purposes of this Act.

(2) For the purposes of subsection (1), the Central Bank has the following powers:

- (a) to formulate, monitor and review policies on the National Payment System;
- (b) to license payment services providers and operators of systems pursuant to this Act and any further implementing measure;
- (c) to determine general or individual conditions, standards, rules or procedures under this Act and any further implementing measure regarding a licensee and its activities and to ensure that conditions, standards, rules or procedures are applied;
- (d) to act as a forum to consider any policy and mutual interest about the National Payment System;
- (e) to perform other functions on payment, clearing or settlement systems or issuing of payment instruments.

5. Operational role of the Central Bank – (1) The Central Bank may provide facilities for payment, clearing and settlement systems, their operators or their participants.

- (2) For the purposes of subsection (1), the Central Bank may:
- (a) establish, own, operate or participate in the ownership or operation of payment and clearing and settlement systems;
 - (b) act as a central counter-party 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 intra-day credit, as determined by the Central Bank, to entities that are participating in payment, clearing and settlement systems (and as such, adequate collateral must be granted to the Central Bank); and
- (f) act as a central securities depository.

6. Cooperation with other authorities – (1) The Central Bank may:

- (a) cooperate with other public authorities engaged in the regulation and supervision of financial institutions and other entities directly or indirectly involved in payment services and financial institutions operation in Samoa; 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 Central Bank may conclude memoranda of understanding.

7. National Payment System Committee – (1) The Central Bank may establish a National Payment System Committee pursuant to subsection (3).

(2) The objective of the Committee is to advise the Central Bank on the following:

- (a) the regulation and oversight of the National Payment System;
- (b) on the operational and technical standards;
- (c) any other matters affecting payment services and the clearing and settlement of payments and securities.

(3) The Central Bank may, by directives:

- (a) set out the composition and number of members of the Committee;
- (b) establish the charter of the Committee and its scope of activities; and
- (c) set out any other matter to give effect to or for the purpose of this section.

- (4) The Committee must:
- (a) provide for the establishment and the terms of any advisory sub-committee or working group to deal with various aspects of the National Payment System;
 - (b) enable the Central Bank, when discharging its responsibilities, to adequately monitor the affairs of licensees and participants; and
 - (c) support the working of the Central Bank by promoting appropriate contractual and other general measures by the market.

PART 3 LICENSING OF SERVICES AND SYSTEMS

8. Prohibition – (1) A person must not provide payment services or operate a system unless the person is licensed under this Part.

(2) A bank providing payment services under the Financial Institutions Act 1996 is not required to obtain a licence to provide payment services or issue new payment instruments under this Act.

- (3) However, a bank must:
- (a) comply with operational, reporting and disclosure requirements set by directives;
 - (b) be subject to oversight requirements for licensees; and
 - (c) obtain a licence to operate a system.

(4) A person who contravenes subsection (1) or a bank that contravenes subsection (3) commits an offence and is liable to a fine not exceeding 100 penalty units.

9. Power to issue licence – (1) The Central Bank may, with or without conditions, grant a licence under this Part authorising the licensee to provide payment services or to operate a system under this Act.

(2) The power under subsection (1) includes the power to vary, suspend or revoke the licence.

10. Application for licence – (1) A person may apply in writing to the Central Bank for a licence under this Part, accompanied by the application fee.

- (2) Before a licence is granted, the Central Bank:
- (a) may require the applicant to maintain capital adequacy at levels specified by the Central Bank to be determined by the type of service, average value of payments, aggregate value and other factors as the Central Bank considers necessary; and
 - (b) must take into account section 40.

11. Registration instead of licence – (1) The Central Bank may register the applicant for offering of payment instruments instead of granting a licence if the management of a specific category of payment instruments does not involve specific risks for the market or would strongly compromise competitiveness.

(2) The registration must not discriminate among payment services providers offering the same instrument.

12. Licences non-transferable – (1) A licence or any right acquired under the licence, whether wholly or partly, must not be transferred to another person except as provided by directives.

(2) A licence or right transferred in contravention of subsection (1) is void.

13. Renewal of licence – A licence may be renewed in any manner and subject to payment of renewal fees or other payments approved by the Central Bank in a directive.

14. Conditions of licence – The Central Bank may, on its own initiative or application by the licensee, vary, amend, suspend or cancel any or impose new, condition of a licence.

15. Right to be heard – (1) If the Central Bank intends, on its own initiative, to suspend or revoke a licence or to exercise a power under section 14, the Bank must serve a notice on the licensee informing the licensee of the reasons for the proposed suspension or revocation or exercise of power and providing the licensee with at least 10 days within which to provide comments.

(2) When any comments are received, the Central Bank must take into account the comments when making its decision.

(3) As an exception to subsection (1), if the Central Bank has reason to believe that there would be systemic risk arising out of

a breach, the Central Bank must immediately suspend the licence and serve a notice required under subsection (1).

PART 4 OVERSIGHT

16. Standards, criteria and directives – (1) The Central Bank may issue directives:

- (a) to 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) to licensees on the governance, management, operations, relations with customers, and relations with systems; or
- (c) on any other matter for the efficient administration of this Act.

(2) The Central Bank must, at least 15 days before commencement of directives, publish the directives in the Savali.

(3) The directives:

- (a) commence on the date of publication in the Savali or on a later date as the Central Bank may specify in the directives; and
- (b) may also be published in the Central Bank's website and a newspaper having wide circulation in Samoa.

17. Power to enter and inspect – (1) The Central 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 authorised operator or issuer of payment instruments;
- (d) any offices of the participant, operator or issuer.

(2) Without limiting subsection (1), the Central Bank may apply to a judge of a District Court for a warrant to enter premises.

18. Rules of systems – (1) An operator must issue the following rules:

- (a) rules for 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;
- (d) rules on corporate governance, access, contingency arrangements and operational risk, rights and liabilities of participants and the system operator.

(2) The rules must comply with this Act and any directives.

(3) The Central Bank may amend, suspend or revoke any rules issued under subsection (1) if 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;
- (d) any other matters the Central Bank considers relevant.

(4) An operator may not change the structure, operation or administration of its system unless:

- (a) the Central Bank has approved the change; and
- (b) the operator gives notice of at least 30 days to the participants after the approval of the Central Bank.

(5) As an exception to subsection (2), the Central Bank may approve the change in the interest of monetary policy, financial stability, or the public interest, subject to any of the following condition:

- (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.

(6) Directives:

- (a) may be issued on any matter in this section; and
- (b) prevail if a rule conflicts with the directives.

19. Access to systems – The rules on access to systems:

- (a) are to be objective, non-discriminatory and proportionate; and
- (b) must 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. Outsourcing of activities – (1) A licensee who intends to outsource its operational functions must, in writing, inform the Central Bank.

(2) Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of internal control of the licensee and the ability of the Central 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 licence; or
- (b) the licensee's financial performance, or the soundness or the continuity of its services.

(4) The Central Bank must ensure that the outsourcing complies with the following conditions:

- (a) the outsourcing will 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 are not to be altered;
- (c) the conditions with which the licensee is to comply with the licence are not to be undermined; and
- (d) no other condition of the licence is to be amended, suspended or revoked.

21. Agents – (1) A person who intends to provide payment services, in particular when linked to a payment instrument, to customers through an agent must communicate the following information to the Central Bank:

- (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 directors and persons responsible for the management of the agent to be used in the provision of the services and evidence that the directors are fit and proper persons.
- (2) When the Central Bank receives the information under subsection (1), the Bank:
- (a) if, before listing the agent in the register, it considers that the information provided is incorrect, may take further action to verify the information;
 - (b) if, after taking action to verify the information, not satisfied that the information provided under subsection (1) or paragraph (a) is correct, must refuse to list the agent in the register; and
 - (c) if satisfied that the information provided under subsection (1) or paragraph (a) is correct, must list the agent in a register.
- (3) An agent must not carry out an activity under the agency before being listed in the register.
- (4) The principal must ensure that its agent informs customers about the agency and the principal.
- (5) The register must be available to the public for inspection.

22. Liability for acts of agents, employees, etc.– (1) A licensee who relies on third parties to perform its operational functions must take reasonable steps to ensure that the third party complies with this Act.

(2) A licensee is liable for the acts of its employee, agent, branch or entity to which activities are outsourced.

23. Legislation on anti-money laundering or terrorist financing – (1) A licensee must comply with:

- (a) legislation on anti-money laundering and terrorist financing; and
 - (b) any directives on paragraph (a).
- (2) The licensee must ensure that a third party acting on the licensee's behalf or the licensee's employees or agents comply with subsection (1).

24. Retention of records – (1) The Central Bank (for its operational functions), a participant or a licensee must retain all records obtained during the course of its operations and administration for seven (7) years from the date of creating the records.

(2) Records under subsection (1) may be retained by electronic means under the Electronic Transactions Act 2008.

25. Access to information and disclosure – (1) A licensee or participant must:

- (a) on written request, provide any information; and
- (b) produce all books, minutes, accounts, cash instruments, securities, vouchers or any documents relating to its business or the business of its agents or other entities,

for inspection by an examiner appointed by the Central Bank at a time and manner specified by the Central Bank or the examiner.

(2) However, the Central Bank or the examiner must not disclose to another person any information obtained under subsection (1) except for any of the following:

- (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 authorised to get the information;
- (d) if ordered by a court;
- (e) if it is required to meet Samoa’s obligations under any international agreement entered by it.

(3) The Central Bank may conduct audits or appoint an independent auditor to conduct an audit of the accounts, books, documents and other records of the operator and its participants or a provider.

(4) The operator or provider must assist the Central Bank to the extent necessary for the purpose of subsection (3).

(5) In this section, “auditor” means a public accountant who practises under a certificate of public practice issued under the Samoa Institute of Accountants Act 2006.

26. Fees and charges – The Central Bank may, by directives and published in the Savali, impose fees or charges:

- (a) to defray its direct and indirect costs incurred in providing its oversight and regulatory services, to licensees and participants; or
- (b) for operational services or infrastructure under section 5.

PART 5
SETTLEMENT, NETTING AND
FINALITY OF PAYMENT

27. Settlement accounts – (1) A participant must:

- (a) open and maintain settlement accounts on the books of the Central Bank or a licensed settlement system operator, including the maintenance of minimum balances, on conditions specified by the Central 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 is appointed under subsection (1)(b), the participant must, before any obligation is settled by the settlement agent on the participant's 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 the participant's settlement agent must give to the operator written notice of at least 7 days before the date of termination.

28. Finality of payment – (1) A system must specify rules:

- (a) to 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) to establish irrevocability of orders once entered into the system, unless special conditions apply.
- (2) An entry or payment effected under subsection (1):
- (a) must 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.

29. Collateral for payment and settlement obligation— The rights and remedies of an operator, a participant, a clearing house, a central counter-party and any other third party into a system or the Central 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 similar law; 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 on the collateral.

PART 6

WINDING-UP AND ADMINISTRATION

30. Central Bank to be notified of winding-up— An operator or a participant that is wound-up or placed in scheme of arrangement must immediately lodge within 2 working days of the date of the order or decision lodge with the Central Bank a copy of the order or decision.

31. Prohibition— An operator or participant against which a winding-up application or scheme of administration has been lodged or decision for voluntary dissolution is made must not operate or participate in the system until the application or scheme is disposed of or finally determined.

32. Winding-up or administration of participant not to affect finality— As an exception to the legislation on insolvency or bankruptcy, the winding-up or the opening of scheme of administration of the participant must not affect the finality or irrevocability of an entry or payment which became final and irrevocable under section 28 before the copy of the winding-up order or administration decision was lodged with the Central Bank.

33. Rules of the Central Bank and licensed systems to bind liquidators – As an exception to any other law, if an institution participating in a system is wound-up or placed in administration or 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 of the participant on a 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.

34. 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.

35. Conflict of laws – (1) For the insolvency of a foreign participant, the rights and obligations of the foreign participant to settlement are governed by the laws of Samoa.

(2) The rights and obligations of a domestic participant in a foreign system are governed by the law of the country of the foreign system.

PART 7 CHEQUES, ELECTRONIC FUND TRANSFERS AND ELECTRONIC MONEY

36. Cheque truncation and electronic cheque image presentment – (1) A bank may present a cheque for payment to the bank on whom it is drawn by notifying the bank of its essential features by electronic or other means, instead of physically presenting the cheque.

(2) A cheque presented for payment under this section need not be made at the proper place or at a reasonable hour on a business day.

(3) If, before the close of business on the next business day following presentment of a cheque under this section, the bank on

whom the cheque is drawn requests the bank by whom the cheque was presented to present the cheque itself:

- (a) the presentment under this section must be disregarded; and
- (b) this section does not apply to the subsequent presentment of the cheque.

(4) A request under subsection (3) does not constitute dishonour of the cheque by non-payment.

(5) If a cheque is presented under this section, the bank that presented the cheque and the bank on which it is drawn have the same duties on the collection and payment of the cheque as if the cheque itself had been presented for payment.

(6) For the purposes of this section, the essential features of a cheque are:

- (a) its serial number; and
- (b) the code of the bank on whom the cheque is drawn; and
- (c) the account number of its drawer; and
- (d) the amount entered on the cheque.

37. Powers of Central Bank – (1) Enforceability and evidentiary value of electronic transfers and records must be granted under the Electronic Transactions Act 2008.

(2) When implementing this Act and pursuant to the Electronic Transactions Act 2008, directives may cover specific issues on payment orders and money transfers executed by electronic messages, including, when considered relevant, protection of users of electronic payment instruments.

38. Customers to be notified on fees – (1) Directives under section 37 must require a provider who imposes fees on its customers for electronic transfers to provide a written notice of fees to the customers on the fees imposed.

(2) The notice of fees must:

- (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 Central Bank.

(3) A fee must not be imposed on any 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.

39. Terms of transfers – (1) The terms and conditions of electronic fund transfers involving a customer's account must 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 must 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 if 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 electronic fund transfers;
- (e) the customer's right to stop payment of a pre-authorised electronic fund transfer and the procedure to initiate 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;
- (i) a notice to the customer that a fee may be imposed if the customer initiates a transfer from an automatic teller machine or other electronic terminal that is not operated by the issuer of the card or other means of access.

(3) A bank or other payment service provider must notify a customer in writing or by other means provided in any directives,

at least 21 days prior to the effective date of any material change in any term of the customer's account required 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.

40. Issuance of electronic money – In addition to the licensing requirements for a provider under Part 3, an applicant must prove that the following conditions are met:

- (a) the electronic money must not include the provision of credit;
- (b) electronic money products denominated in Samoan tala are to be treated as sight deposits, and the electronic money must be issued in exchange for the equivalent of Samoa tala or highly liquid assets acceptable by the Central Bank;
- (c) electronic money providers must 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 Central Bank to monitor and control the quantity and velocity of electronic money supply in the economy;
- (d) clearing and settlement mechanisms must facilitate rapid provision of final settlement after a payment instruction has been initiated in the banking system, according to time limits imposed under any directives;
- (e) issuers must be obliged to redeem electronic money value in Central 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 must be clearly defined.

PART 8 MISCELLANEOUS

41. Administrative penalties – (1) Without affecting any offence provision of this Act, the Central Bank may impose administrative penalties under this section for an infringement by

a licensee or participant or the licensee's manager, employee or agent of a provision or requirement of this Act or of a directive.

(2) The action taken under subsection (1) must be based on the following:

- (a) the seriousness of the breach and its effect on systemic risk;
- (b) the stage at which the infringement was detected;
- (c) whether the infringement was voluntarily reported by the perpetrator;
- (d) the appropriate measure to stop the infringement.

(3) Before imposing a remedy under subsection (4), the Central Bank must issue an infringement notice (in a form approved by it) to the offender setting out the facts of the breach and a specified time of at least 10 working days in which the offender must response to the allegation.

(4) The Central Bank may, in writing, issue the following remedies:

- (a) a warning;
- (b) an order to cease and desist from the breach and to undertake remedial action;
- (c) an order to perform any act necessary to comply with the order;
- (d) suspend temporarily or dismiss any manager, employee or agent of the licensee; or
- (e) suspend or revoke the licence or the authorisation to a participant; or
- (f) impose a penalty not exceeding 100 penalty units a day for each day that the breach continues from the date of the order.

(5) As an exception to subsection (3), the Central Bank may immediately impose any penalty under subsection (4) if the Central Bank has issued a notice under section 15(3) and is satisfied that the breach has caused or likely to cause a serious systemic risk to the National Payment System.

(6) The following decisions may be appealed on question of law to the Supreme Court:

- (a) a decision to dismiss under subsection (4)(d);
- (b) a decision to revoke the licence or authorisation under subsection (4)(e);
- (c) a decision to impose a penalty under subsection (4)(f);
or

(d) a decision to impose a penalty under subsection (5).

42. Offences - (1) A licensee, participant or any other person who contravenes a provision or requirement of this Act commits an offence.

(2) The 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.

(3) A person convicted of an offence under subsection (1) or (2) is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years.

43. Settlement of disputes – Without affecting 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 this Act for arbitration under the Arbitration Act 1976.

44. Exemption from liability – The Central Bank or officers, employees or agents of or any other person engaged under this Act by the Central Bank is not liable for anything done in good faith when carrying the functions, duties and powers under this Act.

45. Regulations and directives – (1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act.

(2) Without limiting subsection (1), the Central Bank may issue directives, orders or guidelines necessary to give effect to the functions, duties and powers of the Central Bank under this Act.

(3) Directives must be consistent with this Act and regulations.

46. Saving and transition – (1) At the commencement of this Act, a bank, operator, provider, participant or administrator that requires a licence or other authority under this Act continues

as if it were licensed or authorised under this Act but must, within 6 months from the commencement of this Act, obtain the licence or authority.

(2) At the commencement of this Act, a directive may be issued:

(a) to deal with the organisation, administration or operation of bank, operator, provider, participant or administrator in order to comply with this Act; and

(b) to deal with any other saving or transitional matter.

(3) A bank, operator, provider, participant or administrator must comply with a directive given under subsection (2).

REVISION NOTES 2014 - 2015

This is the official version of this Act as at 31 December 2015.

This Act has been revised by the Legislative Drafting Division in 2014 – 2015 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

There were no amendments made to this Act since its enactment.



Tuatagaloa Aumua Ming Leung Wai
Attorney General of Samoa

*This Act is administered by
the Central Bank of Samoa.*
