

ACT

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THE PAYMENT SYSTEMS ACT, 2009

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SIGNED this *14th day of May, 2009*

DR. ERNEST BAI KOROMA,
President.



No. 3



2009

Sierra Leone

THE PAYMENT SYSTEMS ACT, 2009.

Short title.

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

[

] Date of commencement.

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

PART I—PRELIMINARY

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

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

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

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

“Central Bank” means the Bank of Sierra Leone;

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

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

“clearing system” means a set of procedures whereby financial institutions present and exchange information relating to the transfer of funds, securities or other financial instruments to other financial institutions through a centralised system or at a single location and includes mechanisms for the calculation of participants’ positions on a bilateral or multilateral basis with a view to facilitating the settlement of their obligations;

“Court” means the High Court;

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

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

“financial institution” includes—

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

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

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

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

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

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

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

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

“netting arrangement” means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation and includes bilateral

netting, multilateral netting, netting by novation, close-out netting, payments netting or a combination of any of these;

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

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

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

“close-out netting” means a netting arrangement under which, following the occurrence of certain events specified by the parties to the arrangement, all or any of the transactions referred to in the netting arrangement may be terminated, and where so terminated the termination value becomes due and payable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART II—ESTABLISHMENT AND SUPERVISION OF PAYMENT SYSTEMS

Power to establish and designate pay-ment and other systems, etc.

2. (1) The Central Bank may—
- (a) establish and operate payment, funds transfer, clearing and settlement systems, subject to such rules as it may prescribe;
 - (b) subject to this Act, designate and supervise any other payment, funds transfer, clearing and settlement systems.
- (2) Subject to subsection (3), the Central Bank may designate different clearing and settlement systems—
- (a) in respect of different classes of financial institutions; and
 - (b) for the clearing and settlement of different classes of obligations.
- (3) The Central Bank shall not designate a clearing and settlement system unless it is satisfied that—
- (a) only financial institutions and the Central Bank are permitted to become participants in the system;
 - (b) the system fairly represents the interests of all financial institutions that are or will become participants in the system;
 - (c) the Central Bank will be able to adequately supervise the system and the activities of its participants to ensure compliance with this Act and any other relevant enactment; and

- (d) the constitution and any rules governing the system are fair, equitable and transparent and make adequate provision-
 - (i) for admitting financial institutions into the system as participants, and regulating and terminating their participation;
 - (ii) for controlling its participants' use of clearing and settlement systems or operations;
 - (iii) for appointing a management body or committee or representatives of the participants, to organise and manage the system;
 - (iv) for appointing a system operator to provide clearing processing services to or on behalf of participants;
 - (v) stipulating the criteria based on which a participant may be authorised to introduce any person to provide payment services; and
 - (e) the management body has ensured provision of a contingency plan in support of the operational clearing and settlement system.
- (4) Notwithstanding subsection (3), the Central Bank shall prescribe the criteria for the designation of a clearing and settlement system.
- (5) A designation under paragraph (b) of subsection (1)-

- (a) shall be in writing addressed to the management body of the system or such persons as the Central Bank may reasonably believe are the operators of that system; and
- (b) has effect until it is revoked.

Revocation of a designation.

3. (1) The Central Bank may revoke the designation of a system if in the opinion of the Bank, the system is no longer in the public interest or the system no longer fairly represents the interests of all financial institutions that are or should become participants in that system.

(2) The Central Bank may revoke the designation of a system if it appears to the Bank that—

- (a) the issuer has contravened or is contravening any of the provisions of this Act;
- (b) the issuer has contravened any restrictions, limitations or conditions of the approval;
- (c) the issuer has failed to comply with any guidelines, circular, standards or notices issued by the Bank;
- (d) the issuer has ceased issuing the designated payment instruments for any continuous period of six months; or
- (e) the issuer goes into liquidation or is wound up or is otherwise dissolved.

(3) The revocation of the designation of a system shall be by notice in writing and shall be published in the *Gazette*.

Constitutions of designated systems, etc.

4. (1) The constitution and rules governing the establishment and operation of every designated system together with all amendments to such constitution and rules shall be kept at—

- (a) the Central Bank; and
- (b) the head office, in Sierra Leone, of every designated system,

and shall be open for inspection by members of the public at all times during normal business hours.

(2) Any amendment to the constitution or rules governing a designated system shall have no effect until approved by the Central Bank.

(3) The operators of a designated system shall make rules for the discharge or settling of obligations under the system by way of—

- (a) netting;
- (b) set-off; and
- (c) gross settlement,

subject to the approval of the Central Bank.

5. (1) The Central Bank may grant financial and other institutions, access to a Central Bank system where, in its opinion, the participation of those institutions is in the interest of the efficient operation of the system. Access to Central Bank system.

(2) If, in the opinion of the Central Bank, such participation has ceased to be in the interest of the efficient operation of the system, the Bank may, by notice in writing, withdraw access from the institution concerned as of such date as may be specified in the notice.

(3) Subject to section 11, the Central Bank shall not withdraw access without giving the institution concerned a reasonable opportunity to make representations on the matter.

Supervision of designated systems.

6. (1) In supervising a system designated under paragraph (b) of subsection (1) of section 2, the Central Bank shall—

- (a) require information from its operators as to the operation of the system;
- (b) inspect the premises, equipment, computer hardware, software, any communication system, books of accounts and any other document or electronic information relating to the system which it may require;
- (c) require changes to the terms of any rules, agreements or practices pursuant to which the system is operated so as to ensure that the system is operated efficiently and in the public interest;
- (d) require changes to the rules concerning access to the system so as to ensure that the system is operated efficiently and in the public interest;
- (e) exercise such other powers as may be prescribed.

(2) In addition to any mandatory information required by the Central Bank the management body of every designated system and every participant in that system shall provide the Central Bank with such reports, returns and other information as the Central Bank may reasonably require regarding—

- (a) the volumes and values of transfer instructions cleared in the system;
- (b) the volumes and values of the participants' payment and settlement obligations; and

(c) any other information regarding the operation of the system.

(3) The management body of a designated system shall be required to comply with the Central Bank's directions given pursuant to subsection (1).

(4) Information and documents obtained by the Central Bank under this section shall be confidential and treated accordingly, subject to such disclosure as may, in the opinion of the Bank be required in the public interest.

7. (1) The Central Bank may, in writing, determine standards to be complied with by the management body and participants in a designated system if it considers that it is in the public interest to determine the standards . Standards for designated systems.

(2) A standard takes effect on such date as may be specified and continues in force until it is revoked.

(3) The Central Bank may, in writing, vary or revoke a standard.

(4) Subject to subsection (5), the Central Bank shall not determine or vary a standard unless it has first consulted in accordance with section 36.

(5) Subsection (4) shall not apply if—

- (a) the Central Bank considers that there is an urgent need for the determination or variation of the standard; or
- (b) in the case of a variation, the Central Bank considers that the variation is of a minor technical nature.

(6) Where the Central Bank determines a standard or varies or revokes a standard, it shall, as soon as practicable, provide notification under section 37.

(7) A failure to comply with subsection (6) shall not affect the validity of a standard or of the variation or revocation of a standard.

Directions to participants in designated system.

8. (1) The Central Bank may give a direction to a participant in a designated system if the Central Bank considers that the participant has failed to comply with a standard.

(2) The direction—

- (a) may require the participant to take or to refrain from taking a specified action, as the Central Bank considers appropriate having regard to the failure;
- (b) shall be consistent with any applicable standards;
- (c) may indicate the time by which, or the period during which, it is to be complied with;
- (d) shall be given by notice in writing to the participant;
- (e) shall take effect on the day on which it is given or on such later date as may be specified and shall continue in force until it is revoked.

(3) The Central Bank may revoke a direction by notice in writing given to the participant where it considers that the direction is no longer necessary or appropriate.

Prohibition against operation undesignated systems.

9. (1) Subject to subsection (3), no person shall operate or participate in, an undesignated system or a system whose designation has been revoked.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred million leones or to a term of imprisonment not exceeding five years or to both the fine and imprisonment.

(3) Subsection (1) shall not apply to a Central Bank system.

(4) Where the Central Bank has reasonable grounds to believe that a person has contravened subsection (1), it may under a warrant issued by a Magistrate, enter any premises and examine the books, accounts and records of such person.

(5) In the exercise of its powers in subsection (4), the Central Bank may take copies of or extracts from any documents or records examined.

(6) Any person who obstructs the Central Bank in the exercise of the powers conferred by subsection (4) or (5) commits an offence and is liable on conviction to a fine not exceeding twenty-five million leones or to imprisonment for a term not exceeding two years or to both the fine and imprisonment.

10. (1) Subject to subsection (3), no person other than—

- (a) an operator of or participant in a designated system or the Central Bank system; or
- (b) a person introduced by a participant pursuant to the criteria stipulated in paragraphs (d) and (i) of subsection (3) of section 2,

Prohibition of acceptance of transfer instructions.

shall, as a regular feature of his business, accept a transfer instruction from any other person for the purpose of making a transfer on behalf of that other person to a third party to whom the transfer is due.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million leones or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

- (3) Subsection (1) shall not apply to—
- (a) the Post Office Savings Bank;
 - (b) a person acting as the duly appointed agent of the person to whom the payment is due;
 - (c) the transmission of money or transfer of instructions between companies which are members of the same group of companies; or
 - (d) any person exempted by the Central Bank pursuant to subsection (4);

(4) The Central Bank may by notice in the *Gazette* exempt any person or class of persons from the provisions of subsection (1), if the Bank is satisfied that such an exemption will be in the public interest and will not cause undue risk to any designated system.

(5) For the purposes of paragraph (c) of subsection (3), “group of companies” means companies or other bodies corporate that are related to each other as holding company and subsidiary, or as subsidiaries of the same holding company.

Systemic risk. **11.** (1) If, in the opinion of the Central Bank—

- (a) there is systemic risk; or
- (b) any person is engaged in or is about to engage in any act, omission or course of conduct with respect to the system that may result in systemic risk or is contrary to the public interest in the integrity, effectiveness or security of the system,

the Central Bank may issue a directive in writing requiring the person—

- (i) to cease engaging in the act, omission or course of conduct concerned;

- (ii) to perform such acts as are necessary to remedy the situation as the Central Bank may specify;
or
- (iii) to provide the Central Bank with such information and documents relating to the matters specified in the directive, within such period as the Central Bank may indicate in it.

(2) Any person who fails to comply with a directive issued by the Central Bank pursuant to subsection (1) shall be liable to pay to the Central Bank a penalty of not more than fifty million leones and in the case of non-compliance by a financial institution, every director, chief executive, partner, manager or other officer of that institution who fails to take all reasonable steps necessary to secure compliance by the institution with the directive, shall be liable to pay to the Central Bank a penalty of not more than ten million leones.

(3) In addition to the penalty for non-compliance with its directives, the Central Bank may make an *ex parte* application to the High Court for an order directing a person or any director, chief executive, partner, manager or other officer of a financial institution to comply with the directive in such terms as the court thinks fit.

12. (1) Notwithstanding anything to the contrary in any enactment relating to the retention of records, all records created during the course of operation and administration of a Central Bank system or a designated system shall be retained for a minimum period of six years from the date of each particular record.

Retention of records.

(2) For the avoidance of doubt, records may be kept in any form including microfilm and electronic form.

13. In determining, for the purposes of this Part, if a particular action is or would be in, or contrary to, the public interest, the Central Bank shall have regard to the desirability of payments systems—

Meaning of public interest.

- (a) being, in its opinion,
 - (i) financially safe for use by participants; and
 - (ii) efficient; and
 - (iii) competitive; and
- (b) which, in its opinion, do not materially cause or contribute to increased risk to the financial system.

PART III—TRANSPARENCY

System to be operated transparently.

14. A system shall be operated and administered in accordance with the principles of transparency, so that users are aware of the conditions upon which transfers shall be effected.

Information to actual and prospective customers.

15. Upon request, financial institutions shall make available to their actual and prospective customers in a readily comprehensible form, information on conditions for transfers through the system, including at least the following:—

- (a) an indication of the time needed for the funds to be credited to the account of the beneficiary's institution;
- (b) an indication of the time needed for the funds credited to the account of the institution to be credited to the beneficiary's account;
- (c) details of charges payable by the customer; and
- (d) details of any complaint and redress procedures available to the customer and arrangements for access to them.

16. (1) Unless expressly agreed to the contrary, subsequent to the execution or receipt of a transfer, financial institutions shall supply their customers with clear information in a readily comprehensible form, including at least the following:—

- (a) a reference enabling the customers to identify the transaction;
- (b) the original amount of the transfer; and
- (c) the amount of all charges payable by the customer.

(2) Where the originator has specified that the charges for a transfer are to be wholly or partly borne by the beneficiary, the originator shall be informed thereof by the beneficiary's institution.

PART IV—MINIMUM OBLIGATIONS

17. Notwithstanding the minimum obligations applicable to a transfer through a system, as specified in this Part, parties may assume greater obligations either through agreement, or through the operation of rules of the system concerned.

18. (1) The originator's institution shall execute a transfer within the time limit agreed with the originator, or in the absence of express agreement, within the standard time limit applicable to the system.

(2) Where the agreed time limit is not complied with, the originator's institution shall compensate the originator by a payment of interest calculated by applying the 91-day treasury bill discount rate to the amount of the transfer for the period from the end of the agreed time limit to the date on which the funds are credited to the account of the beneficiary's institution.

(3) Where non-execution of a transfer within the agreed time limit is attributable to an intermediary institution, that institution shall be required to reimburse the originator's institution in respect of any compensation paid to the originator.

Availability of funds from transfer.

19. (1) The beneficiary's institution shall make the funds resulting from a transfer available to the beneficiary within the time limit agreed with the beneficiary or in the absence of express agreement, within the standard time limit applicable to the system.

(2) Where the agreed time limit is not complied with, the beneficiary's institution shall compensate the beneficiary by a payment of interest calculated by applying the 91-day treasury bill discount rate to the amount of the transfer for the period from the end of the agreed time limit to the date on which the funds are credited to the beneficiary's account.

Delay attributable to originator or beneficiary.

20. No compensation shall be payable pursuant to sections 18 and 19 where the originator's institution or, as the case may be, the beneficiary's institution can establish that the delay is attributable to the originator or, as the case may be, the beneficiary.

Other rights of persons participating in execution of transfers.

21. Sections 18 and 19 shall not prejudice any other rights available to persons participating in the execution of the transfer.

Obligation to execute and transfer full amount.

22. (1) The originator's institution, any intermediary institution and the beneficiary's institution shall each be obliged to execute any transfer for the full amount thereof, unless the originator has specified that the costs of the transfer are to be borne wholly or partly by the beneficiary.

(2) Subsection (1) shall not prejudice any rights of the beneficiary's institution to charge the beneficiary for the administration of his account.

(3) This section is subject to any contrary provision in the rules of the system concerned.

23. (1) Subject to subsection (3), if after a transfer has been accepted by the originator's institution, the relevant amount is not credited to the account of the beneficiary's institution, then without prejudice to any other claim which may be made, the originator's institution shall refund to the originator the amount of the transfer plus interest calculated by applying the 91-day treasury bill discount rate to the amount of the transfer for the period between the date of the transfer and the date of the refund, and the charges relating to the transfer paid by the originator.

Refund in the event of non-execution.

(2) If the transfer has been made using an intermediary institution, the institution which has accepted the transfer shall reimburse the originator's institution against its liability under subsection (1), and in the event that the intermediary institution itself used another intermediary institution, it shall be reimbursed by that institution accordingly.

(3) If the transfer was not completed because of an error or omission in the instructions given by the originator to his institution or because of non-execution of the transfer by an intermediary institution expressly chosen by the originator's institution and any other institutions involved shall be to use its best endeavours to obtain a refund of the amount of the transfer, and may be subject to charges for the expenses incurred in connection therewith.

PART V—FINALITY IN OPERATIONS

24. (1) A system shall specify the principles applicable to achieve finality in its operations as provided for in this Part.

Principles to achieve finality in operations.

(2) The final discharge of any indebtedness between participants in a clearing and settlement system shall take place through the Central Bank system.

(3) Subject to this section and notwithstanding any enactment to the contrary, a payment or transfer which is effected in accordance with a designated system or the Central Bank system and which is intended to settle—

- (a) the payment obligations or settlement obligations of a participant in the system pursuant to a payment or settlement instruction as the case may be; or
- (b) what are believed by the person making the payment or transfer to be the payment obligations of a participant in the system,

shall be final and irrevocable and shall not be reversed or set aside for any reason whatsoever.

(4) Where it is established subsequently that any amount, right or property already paid or transferred was not in fact due, it shall constitute a fresh debt owed by the payee or transferee, as the case may be, to the person who made the payment or transfer.

(5) If the Central Bank considers that the making of a payment or transfer referred to in subsection (3) is likely to result in systemic risk, the Central Bank may, by written notice to the participants concerned prohibit the making of the payment or transfer, if it has not already been made.

(6) Where the Central Bank has prohibited the making of a payment or transfer pursuant to subsection (5), any transfer effected in contravention of the prohibition shall be void.

(7) Notwithstanding any enactment to the contrary, no order of any court shall operate as a stay of any payment or transfer which is required to be made in accordance with a designated system or the Central Bank system and which is intended to settle—

- (a) the payment obligations or settlement obligations of a participant in the system; or
- (b) what are believed, by the person who is required to make the payment or transfer, to be the payment obligations or settlement obligations of a participant in the system.

25. (1) A transfer is executed at the time specified in the rules of the system concerned. Irrevocability of transfer.

(2) Once executed, a transfer is irrevocable, without prejudice to any remedies that may exist to recover an equivalent amount of the transfer in the case of fraud, mistake or similar vitiating factors.

26. (1) Subject to the rules of the system concerned, the discharge of settlement obligations between institutions participating in the system is effected by means of entries to accounts maintained with the Central Bank for settlement purposes. Effecting of discharge of settlement obligation.

(2) Such settlement is final and irrevocable, and shall not be reversed or set aside.

27. (1) In the event that a participant fails to settle, collateral security shall immediately be called to settle the obligation. Consequence of failure to settle obligation.

(2) The rights and remedies of a participant in a Central Bank system or a designated system in respect of collateral granted to it as security for a payment or the performance of an obligation incurred in a Central Bank system or designated system shall not be the subject of any stay provisions or other court order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

28. Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy, any asset of a participant in a Central Bank system or a designated system which was provided— Collateral for payment and settlement obligations.

- (a) to the Central Bank as security in respect of its payment or settlement obligations; or
- (b) to the operators of a designated system as security in respect of its payment or settlement obligations,

prior to the issue of any order for the winding up or administration of that institution may be utilised by the Central Bank, or as the case may be, by the operators of the designated system, to the extent required for the discharge of those payment or settlement obligations.

Admissibility of evidence.

29. (1) Without prejudice to any rules by which it might otherwise be admissible in any court, information as to any transfer through a system which is contained in any document, computer print-out, hard copy, microfilm, floppy or hard disc, or any other electronic media or form, shall be admissible as evidence of or relating to the transfer concerned.

(2) Photographic images such as film, microfilm, microfiche or computer images of original documents such as cheques or other payment instruments, securities, certificates of deposits, account ledgers and government securities shall be admissible as *prima facie* evidence of the matters or transactions of the original instrument, on proof being given on affidavit.

(3) Payment instructions, messages and funds transfers that are initiated, processed and executed through electronic means including electronic signatures shall be admissible as *prima facie* evidence of the matters or transactions of the original instrument, on proof being given on written affidavit.

(4) The entries in ledgers, cash books and other books of account of any financial institution whether captured manually by handwriting or computerised shall be *prima facie* evidence of the matters, transactions and accounts recorded in them on proof being given on affidavit by a director, chief executive, partner, manager or other officer of such financial institution or by evidence that such manual or computerised ledgers, cash books and other books of account are or have been the ordinary books of account of the financial institution and that—

(a) the entries have been made in the usual and ordinary course of business;

(b) and that the books are in or come immediately from the custody of the financial institution.

(5) A document purporting to be signed by or on behalf of the Central Bank and stating—

(a) that any system is or is not a designated system; or

(b) that any financial institution is or is not a participant in any designated systems or Central Bank system,

shall be admissible in any proceedings in any court on its production by a person authorized in that behalf and shall be *prima facie* evidence of the facts stated in it.

PART VI—WINDING UP AND ADMINISTRATION OF PARTICIPANTS IN CENTRAL BANK AND DESIGNATED SYSTEMS

30. Where a participant in a Central Bank system or a designated system is wound up or placed in administration, the person at whose instance the winding up order or the administration order, as the case may be, was issued, shall lodge a copy of the order with the Central Bank.

Central Bank to be notified of winding up, etc.

31. Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy, the winding up or administration of a participant in a Central Bank system or a designated system shall not affect the finality or irrevocability of any payment or transfer which became final and irrevocable in terms of Part V before the copy of the relevant order was lodged with the Central Bank.

Winding up or administration of participant not to affect finality of prior settlement.

Rules of Central Bank and designated systems to bind liquidators, etc.

32. (1) This section shall apply notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy.

(2) If an institution participating in a Central Bank system or a designated system is wound up or placed in administration or otherwise declared insolvent by a court, any provision contained in a written netting agreement to which that institution 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 institution 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 administration order, as the case may be; and
- (b) which is to be discharged on or after the date of the winding-up or administration order or discharge of which was overdue on the date of the winding-up or administration order, as the case may be.

Priority of certain instructions on winding up of participants.

33. (1) Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy, but subject to this section, where a participant in a Central Bank system or a designated system is being wound up the following items shall be paid from the participant's estate, in the following order:—

- (a) undelivered transfer instructions, other than priority transfer instructions, that were drawn on the participant and cleared through the system before the making of the winding up order; and
- (b) undelivered priority transfer instructions that were drawn on the participant and cleared through the system before the making of the winding up order,

and shall rank in preference above any other unsecured claim against the estate.

(2) No payment or transfer shall be made pursuant to subsection (1) in preference to any other claim against an estate unless a request for such payment has been made within forty five days after the making of the winding up order in regard to the participant concerned.

(3) Subsection (1) shall not be construed as permitting a transfer instruction to be satisfied in preference to any other claim against an estate, where the instruction was—

- (a) certified by the participant concerned; or
- (b) in the case of a priority payment instruction, was issued by the participant concerned,

with a view to giving the drawee of the instruction a preference over the participant's other creditors.

PART VII—RESOLUTION OF DISPUTES

34. (1) This Part applies to a dispute between two or more participants in a designated system that arises out of or that is otherwise connected with that system. Disputes to which this Part applies.

(2) The provisions of this Part shall not apply to a dispute falling within section 11.

35. (1) The Central Bank may arrange for a dispute to which this Part applies to be settled by mediation in accordance with this section. Resolution of disputes.

(2) The Central Bank may exercise the power conferred upon it under subsection (1) if—

- (a) it considers that the dispute raises issues related to—
 - (i) the financial safety of a system for participants;
 - (ii) the efficiency of a system;
 - (iii) the competitiveness of a system; or
 - (iv) risk to the financial system; and
- (b) the parties to the dispute agree to the Central Bank arranging the mediation.

(3) The mediation shall be conducted by the Governor of the Central Bank, or by a person appointed in writing by the Governor for that purpose.

(4) The person conducting a mediation shall not be subject to any action, claim or demand by or liable to, any person in respect of anything done or omitted to be done, in good faith in connection with the mediation.

(5) Mediation as contemplated in subsection (1) means a process whereby—

- (a) the mediator and the participants concerned discuss the dispute at a meeting attended by all of them;
- (b) the participants concerned following such meeting attempt to settle the dispute by consensus;
- (c) the participants concerned share the mediator's costs equally.

(6) The fact that the dispute is being or has been referred to mediation does not affect either participant's legal rights and does not prevent a party to the dispute from bringing an action in a court in connection with the dispute.

PART VIII – MISCELLANEOUS

Obligation to consult.

36. (1) Where the Central Bank proposes to determine or vary a standard, it shall, before taking such action—

- (a) cause a notice to be published in the *Gazette*—
 - (i) advising of the proposed action;
 - (ii) summarising its purpose and effect; and
 - (iii) inviting participants in a system and members of the general public to make submissions within a specified time to the Central Bank on the proposed action; and
- (b) consider any submissions that are received within that time limit.

(2) Sub-section (1) does not apply to a proposed determination or variation of a standard pursuant to subsection (5) of section 7.

37. (1) Upon the determination or variation of a standard, the Central Bank shall— Obligation to notify.

- (a) cause a notice to be published in the *Gazette*—
 - (i) advising of the action;
 - (ii) summarising its purpose and effect; and
- (b) take reasonable steps to ensure that the participants in the system concerned are informed of the action.

(2) Upon the revocation of a standard, the Central Bank shall—

- (a) cause a notice advising of the revocation to be published in the *Gazette*; and
- (b) take reasonable steps to ensure that the participants in the system concerned are informed of the action.

38. Where, under this Act, the Central Bank is required or permitted to publish notice of a matter in the *Gazette* or to take particular action by notice published in the *Gazette*, the Central Bank may also publish notice of the matter or of the taking of the action, in any other way it considers appropriate, including by electronic means. Delegation of functions or powers.

39. (1) The Central Bank may in writing, delegate all or any of its functions or powers under this Act to a person who holds any of the following offices:— Power to delegate.

- (a) Governor of the Central Bank;
- (b) Deputy Governor of the Central Bank;
- (c) Head of a department of the Central Bank.

(2) The Governor of the Central Bank may in writing, delegate any of the Governor's functions or powers under this Act to a person who holds any of the following offices:—

- (a) Deputy Governor of the Central Bank;
- (b) Head of a Department of the Central Bank;

40. (1) Subject to subsections (2) and (3), no person being— Preservation of secrecy.

- (a) an officer or employee of the Central Bank; or
- (b) an officer, employee or member of a management body,

shall disclose any information which he has acquired in the performance of his functions under this Act or the constitution or rules of any system and which relates to the affairs of a participant in a system.

(2) The Central Bank may disclose any information where in its opinion, disclosure is reasonably necessary to protect the integrity, effectiveness or security of a system.

(3) Subsection (1) shall not apply to—

- (a) any disclosure made by the person concerned—
 - (i) in the performance of his functions under this Act;
 - (ii) under the constitution or rules of any system;
 - (iii) when required to do so by order of a court; or
 - (iv) when required to do so under any other enactment; or
- (b) the disclosure of information that is generally known to members of the public or to a substantial section of the public.

(4) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding Le15,000,000 or to a term of imprisonment not exceeding two years or to both the fine and imprisonment.

Use of confidential information for personal gain.

41. (1) Any officer or employee of the Central Bank or officer, employee or member of a management body, who for personal gain makes use of any information acquired—

- (a) in the performance of his functions under this Act; Or
- (b) under the constitution or rules of any system, and

which relates to the affairs of a particular participant in a system commits an offence and shall be liable on conviction to a fine not exceeding Le25,000,000 or an amount twice the value of his gain, whichever is the greater or to a term of imprisonment not exceeding two years or to both the fine and imprisonment.

(2) In any proceedings for an offence under subsection (1), it shall be a defence for the person charged to prove that the information used was generally known to the members of the public or to a substantial section of the public.

42. (1) Any person who knowingly draws or issues a cheque or other payment instrument against which there are insufficient funds in his account at a financial institution on which the cheque or other payment instrument is drawn commits an offence and shall on conviction be liable to a fine not exceeding three times the value of the cheque or other payment instrument or to a term of imprisonment not exceeding six months.

Issue of cheques against insufficient funds

(2) The fact that the cheque or other payment instrument is returned unpaid with the words “insufficient funds” or other words to that effect shall be *prima facie* evidence that the drawer had insufficient funds in the account against which the cheque or other payment instrument was drawn.

43. (1) Except as otherwise provided in this Act, any person who contravenes any provision of this Act or regulation made under this Act or anything prescribed or directives made or given under this Act commits an offence and shall be liable on conviction to a fine not exceeding Le100,000,000 or to imprisonment for a term not exceeding five years or to both the fine and imprisonment.

General offence and penalty.

(2) Except as otherwise provided in this Act, where an offence is committed by a body of persons—

- (a) in the case of a body corporate, any person who at the time the offence was committed was a director, manager or other officer of that body corporate; or
- (b) in the case of a firm, every person who at the time the offence was committed was a partner or officer of that firm,

shall be deemed to have committed that offence and shall be proceeded against and punished on conviction under the provisions of this Act.

(3) In any proceedings for an offence under this Act, it shall be a defence for the person charged to prove that -

- (a) the offence was committed without his knowledge or consent; or
- (b) he took all reasonable precaution and exercised all due diligence to prevent the commission of the offence.

Protection
for acts done
in good faith.

44. No suit or other legal proceeding shall lie against the Central Bank or officer, employee or agent of the Central Bank or against any director, officer, employee or member of a financial institution or any other person in respect of anything done in good faith pursuant to this Act.

Regulations

45. The Central Bank may by statutory instrument, make regulations—

- (a) prescribing matters required or permitted to be prescribed by this Act; or
- (b) for the effective implementation of this Act.

Passed in Parliament this *7th* day of *May*, in the year of our Lord two thousand and Nine.

VICTOR A. KAMARA,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

VICTOR A. KAMARA,
Clerk of Parliament.