

No. **10** of 2013.

*National Payments System Act 2013.*

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***National Payments System Act 2013.***

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No. of 2013

AN ACT

entitled

***National Payments System Act 2013.***

Being an Act to establish the National Payment System and to empower the Central Bank to regulate and oversee the National Payment System and for related purposes,

MADE by the National Parliament.

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely –

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of assembly and association conferred by Section 47; and
- (c) the right of freedom of employment conferred by Section 48(1); and
- (d) the right to freedom of privacy conferred by Section 49,

of the *Constitution*, is a law that is made for the purpose of giving effect to the public interest in public safety, public order and public welfare.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears –

“bank” means a bank within the meaning of the *Banks and Financial Institutions Act 2000*;

“book entry collateral” means financial instruments and precious metals provided under a financial collateral arrangement, title to which is evidenced in entries in a relevant account maintained by or on behalf of a participant;

“cash” means money credited to an account in any currency, or similar claims for the repayment of money such as money market deposits;

“Central Bank” means the Bank of Papua New Guinea;

“central counter-party” means a corporation, association, partnership, agency or other service provider or person in a system with whom all participants’ transfer orders are netted to produce a single amount owed by each participant and the central counter-party;

“central securities depository” means an entity in whose register are immobilized financial instruments and enabling financial instruments transactions to be finally processed by book-entry;

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- “clearing house” means a corporation, association, partnership, agency or other entity, organization or person that provides clearing or settlement services for a system;
- “clearing system” means a system transmitting, reconciling and confirming Financial Instruments transfer instructions prior to settlement;
- “close-out netting provision” means a provision of a financial collateral arrangement, or any arrangement of which a financial collateral arrangement forms a part, by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise –
- (a) the obligations of the parties are accelerated to be immediately due and expressed as an obligation to pay an amount representing their estimated current value; or
  - (b) the obligations are terminated and replaced by an obligation to pay an amount representing their estimated current value; or
  - (c) an account is taken of what is due from each party to the other in respect of the obligations and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party;
- “collateral provider” means a person or an entity providing financial collateral under a title transfer arrangement or a pledge;
- “collateral taker” means a person or an entity being provided with financial collateral under a title transfer arrangement or a pledge;
- “designated system” means a system designated as such in accordance with Section 7;
- “electronic transaction” means a transaction that is created, generated, sent, communicated, received or stored by electronic means;
- “enforcement event” means an event of default or any similar event as agreed between the parties, which upon occurrence under the terms of a financial collateral arrangement or by operation of law, the collateral taker is entitled to realise financial collateral or a close-out netting provision comes into effect;
- “enforcement procedures” in relation to protection of Settlement Accounts means attachment or seizure;
- “financial collateral” means cash, financial instruments or precious metals;
- “financial collateral arrangement” means a title transfer arrangement or a security interest -
- (a) whether or not it is covered by a master agreement or general terms and conditions; and
  - (b) which applies to financial collateral;
- “financial institutions” means –
- (a) those entities licensed as financial institutions under the ***Bank and Financial Institutions Act 2000***; and
  - (b) savings and loan societies under the ***Savings and Loan Societies Act 1995***;
- “financial instruments” means –
- (a) shares in companies and other securities equivalent to shares in companies; and
  - (b) bonds and other forms of debt instruments, if these are negotiable on the capital market; and
  - (c) any other securities which –

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- (i) give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange; or
- (ii) give rise to a cash settlement, payment instruments and units in collective investment undertakings, money market instruments and claims;

“insolvency proceedings” means any collective measure prescribed in the laws of Papua New Guinea or another country either to wind up a person or entity or to reorganise it, where that measure involves the suspending of, or imposing limitations on transfers or payments in Papua New Guinea;

“issuer of payment instruments” means any entity which provides payment instruments to users for the purpose of making payments or transmitting money;

“money remittance” means a payment service where funds are received from an originator (payer) without any accounts being created in the name of the originator or the beneficiary (payee), for the sole purpose of transferring a corresponding amount to –

- (a) a beneficiary; or
- (b) another payment services provider acting on behalf of the beneficiary and such funds are received on behalf of, and made available to the beneficiary;

“netting” means the conversion into one net claim or one net obligation of claims and obligations with the result that –

- (a) only a net claim can be demanded; or
- (b) one net obligation of claims and obligations with the result that a net obligation be owed;

“notification” or “to notify” means to notify or the act of informing by a registered letter;

“operator” means the entity that is in charge of the operation or administration of a System;

“participant” means a member of a system, including its operator;

“payment instruments” means cheques, drafts, money orders, credit, debit and stored-value cards, traveller’s cheque or any other instrument or device, tangible or intangible, by which a person can make payments or transmit money, but does not include banknotes and coins;

“payment services provider” means any entity providing payment services;

“payment services” means -

- (a) services enabling cash deposits and withdrawals; or
- (b) execution of payment transactions; or
- (c) issuing and acquisition of payment Instruments, money remittances; and
- (d) any other services functional to the transfer of money, but does not include the provision of solely online or telecommunication services or network access;

“payment system” means a formal arrangement or a framework which is binding between three or more participants, at least one of which is a bank or a financial institution, with common rules and standardised arrangements for the processing, clearing and settlement of payment obligations or payment messages;

“relevant account” means in relation to book entry collateral, the register or account –

- (a) which is maintained by the collateral taker; and

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- (b) where the entries are made,  
and the book entry collateral provided to the collateral taker;
- “securities settlement system” means a formal arrangement between three or more participants, with common rules and standardised arrangements for the settlement of financial instruments;
- “settlement” means the act of discharging obligations by transferring funds, securities or financial instruments between two or more parties;
- “settlement account” means an account in the books of a settlement agent used –
  - (a) to hold money and financial instruments; and
  - (b) to settle transfer orders between participants in a system;
- “settlement agent” means an entity which provides to participants of systems settlement accounts through which transfer orders and credits within the systems are settled;
- “system” means a payment system, a clearing system or a securities settlement system;
- “systemic risk” means the risk that the failure of one participant in a system or financial markets generally, to meet its required obligations will cause other participants or financial institutions to be unable to meet their obligations (including settlement obligations in a system) when due;
- “title transfer arrangement” means arrangements or agreements under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or covering the performance of guaranteed obligations;
- “transfer order” means –
  - (a) any instruction by a participant to a system to place at the disposal of a recipient an amount of money by means of a book entry or electronic transfer on the settlement account of a participant; or
  - (b) any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system; or
  - (c) an instruction by a participant to a system to transfer the title to or interest in financial instruments by means of a book entry on a register, or otherwise;
- “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 or the corresponding electronic information.

## **PART II. – FUNCTIONS AND POWERS ETC., OF THE CENTRAL BANK.**

### **3. POWERS OF THE CENTRAL BANK .**

- (1) The Central Bank shall –
  - (a) exercise regulatory and oversight powers over –
    - (i) the national payments system as a whole; and
    - (ii) any specific system, payment services provider or payment instrument partially operating in the country; and
  - (b) ensure that users of payment services and instruments are treated fairly and transparently,

for the purpose of –



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- (c) implementing Section 7(c) of the *Central Banking Act 2000*; and
  - (d) promoting the general stability and effective implementation of the financial system in Papua New Guinea.
- (2) The powers under Subsection (1) shall include the following:
  - (a) formulate and adopt a national payments system policy directed to the accomplishment of the principles established under Subsection (1) and in conformity with international standards; and
  - (b) formulate general or specific rules or guidelines; and
  - (c) give a licence to payment service providers, operators and issuers of payment instruments under specified conditions; and
  - (d) designate a system as one involving systemic risk; and
  - (e) establish and perform control and audit procedures.
- (3) The Central Bank may provide facilities for –
  - (a) payment, clearing and securities settlement systems; and
  - (b) the operators and participants of the payment, clearing and securities settlement systems.
- (4) The Central Bank, in implementing the national payments system may –
  - (a) establish, own, operate and participate in the ownership or operations of payment, clearing, securities settlement systems and clearing houses; and
  - (b) hold cash accounts for operators and participants, which may be used for the settlement within payment, clearing and securities settlement systems; and
  - (c) hold securities on accounts for operators and participants, which may be used for the settlement within clearing and securities settlement systems; and
  - (d) extend intraday credit in the form of cash or securities against adequate collateral as determined from time to time by the Central Bank to banks and financial institutions or entities that are participating in payment, clearing and securities settlement systems; and
  - (e) act as a central securities depository.
- (5) Adequate collateral under Subsection (4)(d) must be granted to the Central Bank in the form of a pledge or a transfer of title arrangement and a repurchase agreement.
- (6) The Central Bank shall have all the powers of a natural person to do, in Papua New Guinea or elsewhere, all things necessary or convenient to be done for or in connection with the achievement of its functions under this Act.
- (7) In case of conflict between this Act and any other Act, the provisions of this Act shall prevail.

#### **4. PRINCIPLE OF LICENSING.**

- (1) A person or entity shall not –
  - (a) act as a payment services provider; or
  - (b) establish or operate a system; or

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(c) issue payment instruments or partially operate in Papua New Guinea, unless he has obtained a licence for this purpose from the Central Bank.

(2) The Central Bank shall specify the detailed licensing criteria and procedures for the relevant payment services providers and operators of systems.

(3) The Central Bank may substitute the requirement of licensing with registration when the activity of a specific category of payment services providers –

- (a) does not involve specific risks for the market; or
- (b) would strongly compromise competitiveness.

(4) The measures under Subsection (3) shall not generate discrimination among payment services providers offering the same services.

(5) Banks and financial institutions providing payment services or issuing payment instruments under the ***Banks and Financial Institutions Act 2000*** are exempted from the requirement to obtain a licence from the Central Bank under this Act.

(6) Notwithstanding Subsection (5) and unless provided by the Central Bank, banks and financial institutions under Subsection (5) are subject to any relevant oversight requirements imposed by the Central Bank.

(7) A person who contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100, 000.00 or imprisonment for a term not exceeding two years, or both.

### **5. LICENSING AND REGISTRATION CRITERIA.**

(1) The Central Bank shall specify the detailed licensing criteria and procedure for respective entities that are –

- (a) providing payment services; or
- (b) establishing or operating a system; or
- (c) issuing payment instruments in Papua New Guinea.

(2) In addition to the services under Subsection (1)(a), (b) and (c), the entities shall provide -

- (a) initial and on-going capital; or
- (b) liquidity requirements; or
- (c) alternative forms of guarantees, as deemed to be appropriate to protect users and the market from risk and avoid distortions in the offering of the relevant services.

(3) The Central Bank may require one or more of the services under Subsection (2) when dealing with licensing and registration criteria.

### **6. WITHDRAWAL OR SUSPENSION OF THE LICENCE.**

(1) The Central Bank may withdraw or suspend the licence granted to an operator, a payment services provider or an issuer of payment instruments at any time if –

- (a) the operator has not commenced to operate the system, the payment services provider has not initiated its activities or the issuer of payment

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- instruments has not issued payment instruments within 12 months of the date on which the licence was granted to them; or
- (b) the operator has ceased operating the system, the payment services provider has ceased its activities or the issuer of payment instruments has ceased to issue payment instruments for a period of more than one month; or
  - (c) the operator, the payment services provider or the issuer of payment instruments has obtained the approval of the Central Bank through incorrect statements or any other irregular means; or
  - (d) the applicable licensing criteria are no longer met; or
  - (e) the operation of the system, the provision of the payment services or the issuance of the payment instrument endangers the stability of the payment or financial system in Papua New Guinea; or
  - (f) the entity owning or operating the system, providing payment services or issuing the payment instruments becomes the subject of insolvency proceedings; or
  - (g) if in the opinion of the Central Bank, the System is no longer in public interest or the system no longer represents the interest of the participants.

(2) The Central Bank shall, immediately after its decision on the withdrawal or suspension of the licence, notify its decision to the operator, the payment services provider or the issuer of payment instruments.

(3) The Central Bank shall, immediately after the withdrawal or suspension of the licence, publish a notice to that effect in the National Gazette and in at least one newspaper circulating generally in Papua New Guinea.

### **7. DESIGNATION OF A SYSTEM.**

(1) Where the Central Bank is of the opinion that a system may be operated in a manner as to pose a systemic risk, it may designate it as a designated system for the purposes of this Act.

(2) The Central Bank shall, in writing, notify the operator of a designated system of the designation and shall cause a copy of the designation to be published in the National Gazette and in at least one newspaper circulating generally in Papua New Guinea.

(3) The Central Bank may enter into an agreement with the operator of or participant in a designated system, or both, in respect of –

- (a) netting arrangements; and
- (b) risk-sharing and risk-control mechanisms; and
- (c) certainty of settlement and finality of payment; and
- (d) the nature of financial arrangements among participants; and
- (e) the operational systems and financial soundness of the system; and
- (g) inter-fee policies; and
- (h) such other matters pertaining to systemic risk as may be agreed on by the parties to the agreement.

(4) The Central Bank shall authorize any relevant changes to any items listed under Subsection (3) before its entry into force.

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### **8. INVESTIGATIVE POWERS OF THE CENTRAL BANK.**

(1) The Central Bank shall request, at any time, from systems, operators, payment services providers, issuers of payment instruments or participants, any statement, document, information, clarification, proof or other useful element deemed appropriate to perform its functions.

(2) The Central Bank shall, at any time, have its own auditors, inspectors or any other person appointed for this purpose to carry out on-site inspections in the premises of systems, operators, payment services providers, issuers of payment instruments and participants.

(3) The persons under Subsection (2) may seize or take a copy of any relevant documents or source of information they deem necessary for the exercise of their functions.

(4) The Central Bank may instruct external auditors of the system, operators, payment services providers, issuers of payment instruments and participants to carry out audits on the Central Bank's behalf, but at the expense of the audited entity.

(5) The external auditors under this section shall co-operate with the Central Bank and may not invoke their professional secrecy against the Central Bank.

### **9. POWERS OF THE CENTRAL BANK TO ISSUE DIRECTIONS.**

(1) The Central Bank may issue directions to systems, operators, payment services providers, issuers of payment instruments and participants to act, or abstain from acting in a certain manner prescribed by the Central Bank in accordance with the *Central Banking Act 2000*.

(2) A person who refuses or fails to comply with a direction given under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100, 000.00 or imprisonment for a term not exceeding two years, or both.

### **10. SYSTEMS OPERATED BY THE CENTRAL BANK.**

(1) This Part does not apply to systems established, owned or operated by the Central Bank.

(2) Notwithstanding Subsection (1), the systems shall comply with the same oversight norms and standards as are imposed on any similar licensed system.

## **PART III. - FINALITY OF PAYMENTS AND PROTECTION OF SYSTEMS.**

### **11. FINALITY OF PAYMENTS AND SETTLEMENTS.**

(1) A system shall specify rules –

(a) to achieve finality in the operations of the system 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.

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- (2) An entry or payment effected under Subsection (1) -
- (a) shall not be revoked, reversed, or set aside by, but without limitation to, insolvency proceedings, or any other similar law; and
  - (b) is not subject to any other law or order of an administrative or judicial authority that operates as a stay.

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

(4) Insolvency proceedings taken against a participant shall not have retroactive effect on the rights and obligations of a participant.

(5) The moment of taking of insolvency proceedings against a participant of a system shall be the moment when the operator of this system is informed of the taking of the insolvency proceedings.

(6) The following matters are enforceable against the liquidator or third parties and shall not be challenged on any ground whatsoever:

- (a) transfer orders, payments and settlements resulting from the transfer orders, which have been entered into a system in accordance with its rules prior to the moment of the taking of the Insolvency Proceedings, even if the payment or settlement took place after the moment of taking of insolvency proceedings; and
- (b) the netting of transfer orders, debts and obligations resulting from the transfer orders when the former have been entered into a system in accordance with its rules prior to the moment of the taking of insolvency proceedings, even if the netting took place after the moment of the taking of insolvency proceeding.

(7) Where it is established 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.

### **12. CREDIT AND DEBIT OF SETTLEMENT ACCOUNT.**

(1) Notwithstanding the taking of insolvency proceedings against a participant in a designated system and subject to Section 11, the system, its operator or the settlement agent may, if authorised under the applicable contractual provisions –

- (a) use the money and financial instruments available on the settlement account of the participant in order to settle outstanding transfer orders; and
- (b) make use of any net debit balance the participant may owe after netting to allow for final settlement of the system.

(2) Notwithstanding the taking of insolvency proceedings against a participant in a designated system, the designated system, its operator or the settlement agent is authorised under the applicable contractual conditions –

- (a) to use credit lines granted to the participant; and
- (b) to realise any collateral provided with the aim to secure the credit lines.

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### **13. INFORMATION MECHANISMS.**

The Central Bank shall specify the detailed information mechanisms relating to the taking of insolvency proceedings against a participant or an operator.

### **14. PROTECTION OF SETTLEMENT ACCOUNTS.**

The balances of settlement accounts held with a system shall not be subject to private enforcement procedures.

### **15. CONFLICT OF LAWS IN A SYSTEM.**

(1) Where insolvency proceedings are taken against a foreign participant, the rights and obligations arising from, or in connection with, the participation of that foreign participant shall be governed exclusively by the laws of Papua New Guinea.

(2) Where insolvency proceedings are taken against a domestic participant in a foreign system, the rights and obligations arising from, or in connection with, the participation of that participant in the system shall be governed exclusively by the laws governing that foreign system.

## **PART IV. - COLLATERAL ARRANGEMENTS.**

### **16. SCOPE OF APPLICATION OF THIS PART.**

This Part applies to all forms of financial collateral arrangements for the purposes of the sound working of a system, which secure all present, future, actual, contingent or prospective obligations owed to the collateral taker or his principal by –

- (a) the collateral provider; or
- (b) another person.

### **17. FINANCIAL COLLATERAL ARRANGEMENTS.**

(1) Title transfer arrangements are binding on third parties and the liquidator, and may take effect in accordance with the terms of an insolvency proceeding.

(2) Financial collateral arrangements become valid between parties and third parties once the financial collateral is –

- (a) delivered, transferred, held or registered; or
- (b) otherwise designated to be in possession or under the control of the collateral taker.

### **18. VALIDITY OF CLOSE-OUT NETTING PROVISIONS.**

Close-out netting provisions are binding on third parties and the liquidator and shall take effect immediately without prior notice or approval of any court notwithstanding –

- (a) the taking of insolvency proceedings in respect of the collateral provider, the debtor, the collateral taker or the creditor; and
- (b) any purported cession, encumbrance, assignment, judicial or other attachment or disposition in respect of the rights which are subject to the close-out netting provisions.

### **19. PROTECTION OF FINANCIAL COLLATERAL ARRANGEMENTS.**

(1) Financial collateral arrangements may –

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- (a) contain an obligation to provide financial collateral or additional financial collateral to reflect changes in –
  - (i) the value of the financial collateral; or
  - (ii) the amount of the guaranteed obligations; or
- (b) contain a right to withdraw financial collateral through substitution or exchange.

(2) Deliveries of financial collateral under Subsection (1) are valid and enforceable against third parties and the liquidator, and may not be challenged on any ground whatsoever.

### **20. REALISATION OF PLEDGED FINANCIAL COLLATERAL.**

(1) On the occurrence of an enforcement event, and despite the taking of insolvency proceedings in respect of the pledgee or pledge, the pledgee shall immediately realise in the following manner, without prior notice and intervention of any court, public officer or other person, any financial collateral provided under, and subject to the terms agreed in the pledge :

- (a) financial instruments by sale and setting off their value against or applying their value in discharge of the guaranteed obligations; and
- (b) cash by setting off the amount against or applying it in discharge of the guaranteed obligations.

(2) No prior approval by the court or any other formality is required for enforcement under Subsection (1).

### **21. PRIORITY RIGHT OF PLEDGE.**

The creditor has a first ranking priority right over financial collateral pledged in his favour.

### **22. NON-RETROACTIVE EFFECT OF INSOLVENCY PROCEEDINGS.**

The provision of financial collateral shall not be declared void on the taking of insolvency proceedings where, prior to or on the day of the taking of insolvency proceedings, the collateral taker was unaware of the taking of insolvency proceedings.

### **23. LAW ON BOOK ENTRY COLLATERAL.**

(1) Matters arising under this Part in relation to book entry collateral shall be governed by the law of the country in which the relevant account is maintained.

(2) The reference to the law of a country is a reference to its domestic law, notwithstanding any rule under which, in dealing with the matters arising, reference should be made to the law of another country.

(3) When a conflict between this section and Subsection (19(2)) arises, this section shall prevail.

## **PART V. - ELECTRONIC MEANS OF TRANSFER AND EVIDENCE.**

### **24. ADMISSIBILITY OF ELECTRONIC AND OPTICAL EVIDENCE.**

(1) The existence, content and timing of any transfer order, its entry into a system and its execution shall be admissible evidence in all cases, be it civil, commercial, criminal or administrative.

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(2) Subsection (1) applies where the transfer order is made towards any participants or third parties in writing or through a durable medium to ensure its traceability in an electronic, optical form or the printout of the electronic or optical document.

### **25. ADMISSIBILITY OF ELECTRONIC AND OPTICAL ARCHIVES.**

The archives of the system, operator, payment services provider, issuer of payment instruments or participant may be held in the form of a durable medium to ensure their traceability in an electronic, optical form or the printout of the electronic or optical document.

### **26. REGULATION OF ELECTRONIC MEANS OF TRANSFER.**

To implement this Act and any other relevant laws on electronic transactions, the Central Bank shall promulgate orders, guidelines or other relevant measures within its powers to –

- (a) cover specific issues on payment orders and money transfers executed by electronic messages; and
- (b) protect users of electronic payment instruments.

### **27. 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 it of its essential features by electronic means or otherwise by sending a scanned image of the same instead of presenting the cheque itself.

(2) If a cheque is presented for payment under this section, presentment 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 shall be disregarded; and
- (b) this section shall not apply in relation to the subsequent presentment of the cheque.

(4) A request under Subsection (3) for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.

(5) Where presentment of a cheque is made under this section, the bank who presented the cheque and the bank on whom it is drawn shall be subject to the same duties in relation to 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) the serial number of the cheque; and
  - (b) the code which identifies the bank on whom the cheque is drawn; and
  - (c) the account number of the drawer of the cheque; and
  - (d) the amount of the cheque as entered by the drawer of the cheque; and
  - (e) the date of the cheque as entered by the drawer of the cheque.

(7) Electronically truncated cheques and cheque images in conformity with this section shall be admissible evidence in all cases, be it civil, commercial, criminal or administrative.



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### **PART VI. - ELECTRONIC MONEY.**

#### **28. ELECTRONIC MONEY.**

(1) No person, other than a Bank, may issue electronic money without having obtained a licence from the Central Bank.

(2) For the purposes of this section, “electronic money” means monetary value represented by a claim on the issuer, which is –

- (a) stored electronically; and
- (b) issued on receipt of funds for the purpose of making payment transactions; and
- (c) accepted as a means of payment by persons other than the issuer.

(3) Subject to Subsection (1), the Central Bank shall prescribe –

- (a) the category of persons which may issue electronic money; and
- (b) the requirements and criteria applicable to the persons under Paragraph (a).

(4) The Central Bank may –

- (a) impose terms and conditions as it deems fit on any person licensed to issue electronic money; or
- (b) issue directions to persons licensed to issue electronic money as the Central Bank deems fit; or
- (c) revoke a licence to issue electronic money if the person –
  - (i) fails to meet the prescribed category, requirements or criteria; or
  - (ii) is in breach of any terms and conditions imposed or directions and compliance directions issued by the Central Bank.

(5) A person who contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100, 000.00 or imprisonment for a term not exceeding two years, or both.

### **PART VII. – NATIONAL PAYMENT COUNCIL.**

#### **29. ESTABLISHMENT OF A NATIONAL PAYMENTS COUNCIL.**

(1) The Central Bank shall establish a National Payments Council.

(2) The Council shall be an advisory body to the Central Bank representing all major players in the market and relevant public bodies.

(3) The Secretariat of the Council shall be entrusted to the Central Bank and the Governor of the Central Bank shall be its Chairman.

(4) The Council shall conduct its meetings once a month.

**PART VIII. – LEGAL PROCEEDINGS.**

**30. GENERAL PENALTY.**

(1) A person who contravenes any provision of this Act, or any regulations or directions made under this Act, is guilty of an offence.

(2) A person who commits an offence against this Act, for which there is no specific penalty provided, is liable to a penalty of -

- (a) a fine not exceeding K500,000.00; or
- (b) a term of imprisonment not exceeding five years; or
- (c) both a fine not exceeding the amount specified in Subsection (2)(a) and a term of imprisonment not exceeding the term specified in Subsection (2)(b).

(3) Where an offence against this Act is of a continuing nature, a person who is found guilty of that continuing offence is liable to a further default penalty of a fine, in addition to that prescribed in Subsection (2), not exceeding K5,000.00 per day for each day that the offence continues.

**31. PROSECUTION.**

(1) The Central Bank may –

- (a) prosecute a person who commits an offence against this Act; or
- (b) commence a civil action against a person for any form of civil relief which is available in respect to the matters constituting the offence.

(2) Any prosecution or action commenced by the Central Bank in relation to an offence committed under this Act shall be heard by the National Court.

(3) Notwithstanding Section 524 of the *Criminal Code Act* (Chapter 262), following a committal for an offence under this Act, the Central Bank shall –

- (a) present an indictment against the accused; and
- (b) a copy of the indictment shall be served on the Public Prosecutor; and
- (c) the Public Prosecutor may withdraw the indictment within 14 days of service of the indictment on him.

(4) Where a legal action is taken by or against the Central Bank under this Act –

- (a) the Court may award costs against any party or claimant other than the Central Bank; and
- (b) the costs may be recovered by the Central Bank as a debt to the Central Bank.

(5) Where an action is taken by the Central Bank under this Act, the Court may, on application by the Central Bank, whether as interlocutory or final relief, order a person to cease any activity until further order.

(6) Any order made by the Court under Subsection (5) shall be made on condition that the Central Bank is not responsible for any loss of income or profit which may be incurred by the enterprise as a consequence of that order.

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- (7) Any fine to be paid by a person as a result of a legal action taken by the Central Bank –
- (a) shall be paid to the Central Bank; and
  - (b) in addition to any other remedy, may be recovered by the Central Bank as a debt to the Central Bank.

### **32. INJUNCTIONS AND OTHER ORDERS.**

(1) Where the Central Bank or the Public Prosecutor apply for an injunction or any other orders, the Court may, where it deems appropriate, grant the injunction or orders after it is satisfied that –

- (a) there is a reasonable likelihood that a person will contravene this Act; or
- (b) a person has been found guilty of the contravention; or
- (c) there is a reasonable likelihood that the contravention will continue or be repeated.

(2) Where there is a reasonable likelihood that a person will contravene this Act under Subsection (1)(a), the Court may grant an injunction restraining him from disposing of or otherwise dealing with any of his assets while the suspected contravention is investigated.

### **33. POWERS TO ADOPT OTHER SANCTIONS.**

In addition to powers recognised under Sections 4, 9, 28, 30, 31 and 32, the Central Bank shall specify sanctions of an administrative nature to be imposed if the operator, payment service provider, issuer of payment instruments or participant does not comply with this Act.

## **PART IX. - IMPLEMENTATION.**

### **34. IMPLEMENTATION POWERS OF THE CENTRAL BANK.**

(1) The Central Bank may issue any measure permitted by law, orders, directions or guidelines to implement this Act.

- (2) The Central Bank shall cooperate with –
- (a) public authorities engaged in the regulation and supervision of financial institutions and other entities directly or indirectly involved in payment services in Papua New Guinea; and
  - (b) public authorities which regulate, monitor and supervise capital markets in the country; and
  - (c) any other relevant public authorities.
- (3) The Central Bank is entitled to conclude memoranda of understanding.

## **PART X. – MISCELLANEOUS.**

### **35. TRANSITION.**

- (1) With the exception of the Central Bank, every –
- (a) operator of a system; and
  - (b) entity providing payment services or issuing a payment instrument; and

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(c) entity under an outsourcing agreement in conformity with the *Banking and Financial Institutions Act 2000*, shall within three months as of the commencement of this Act submit to the Central Bank all documents and information required by the Central Bank.

(2) Issuers of payment instruments which, at the commencement of this Act –  
(a) hold a licence under the *Banking and Financial Institutions Act 2000*; and  
(b) are authorised to issue or administer means of payment under this Act, shall, within one month of the commencement of this Act, provide the Central Bank with a detailed description of the payment instruments that they are issuing at that time.

**36. APPLICATION OF BANKS AND FINANCIAL INSTITUTIONS ACT 2000.**

The requirements of this Act in relation to a bank are in addition to and not in derogation of or substitution for the requirements of the *Banks and Financial Institutions Act 2000*, but in the case of a conflict between a provision of this Act and a provision of the *Banks and Financial Institutions Act 2000*, the provision of this Act shall prevail.

**37. APPLICATION OF BILLS OF EXCHANGE ACT (CHAPTER NO. 250).**

The requirements of this Act in relation to a bank are in addition to and not in derogation of or substitution for the requirements of the *Bills of Exchange Act* (Chapter No. 250), but in the case of a conflict between a provision of this Act and a provision of the *Bills of Exchange Act* (Chapter No. 250), the provision of this Act shall prevail.


**38. APPLICATION OF THE COMPANIES ACT 1997.**

In the case of a conflict between a provision of this Act and a provision of the *Companies Act 1997*, the provision of this Act shall prevail.

I hereby certify that the above is a fair print of the *National Payments System Act 2013* which has been made by the National Parliament.

  
Clerk of the National Parliament.  
19 SEP 2013

I hereby certify that the *National Payments System Act 2013* was made by the National Parliament on 19<sup>th</sup> July, 2013 by an absolute majority in accordance with the *Constitution*.

  
Speaker of the National Parliament.  
19 SEP 2013