

# EXTRAORDINARY FIJI ISLANDS GOVERNMENT GAZETTE SUPPLEMENT

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## RESERVE BANK OF FIJI ACT (CAP. 210)

### RESERVE BANK (PAYMENT AND SETTLEMENT SYSTEMS OVERSIGHT) REGULATIONS 2004

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In exercise of the powers conferred upon it by Section 9(2)(b) of the Reserve Bank of Fiji Act, and with the approval of the Minister, the Board makes these Regulations—

#### *Citation*

1. These Regulations may be cited as the Reserve Bank (Payment and Settlement Systems Oversight) Regulations 2004.

#### *Interpretation*

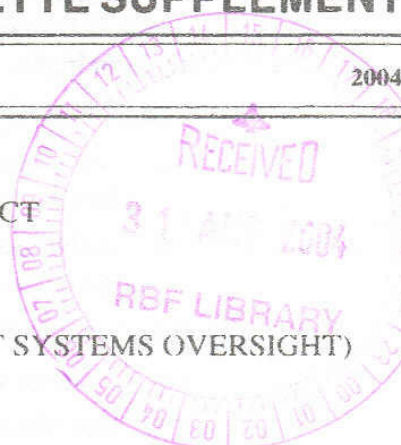
2. In these Regulations, unless the context otherwise requires—

“contact person” is the name or title of a person to whom notices relating to a designation under these Regulations must be given;

“designated payment system” is a payment system designated under paragraph 4;

“netting” means the conversion into one net claim or obligation, or the set off, of different claims or obligations between participants in a payment system that results from the issue and receipt of payment instructions involving two or more participants in the payment system or that is otherwise provided for under the rules of the payment system—

- (a) whether on a bilateral or multilateral basis; and
- (b) whether or not through the interposition of an operator of the payment system; and
- (c) whether or not the obligations or claims comprise mutual credits, mutual debts, or other mutual dealings; and
- (d) whether or not the obligations or claims are denominated in Fiji currency;



“operator” in relation to a payment system means a clearinghouse, settlement agent, or any other person that provides clearing, settlement or processing services to participants in that system;

“participant” in relation to a payment system means—

- (a) a person that participates in that system in accordance with the rules of that system; and
- (b) in the case of a designated payment system, includes the operator of that system if the designation of the same so provides;

“payment instruction” means an instruction by a participant in a payment system—

- (a) made in accordance with the rules of that system; and
- (b) that results or is intended to result in one or more settlements being affected;

“settlement” means—

- (a) the making of a payment—
  - (i) that is done in accordance with a payment instruction; and
  - (ii) that is on a gross basis or uses netting; and
  - (iii) whether by way of book entry on the accounts of a central bank or the operator of a designated payment system or otherwise; or
- (b) any other act that discharges a payment obligation in accordance with a payment instruction by duly authorised personnel.

#### *Oversight of Payment and Settlement Systems*

3.—(1) The Reserve Bank may, by notice in writing to operators of payment systems, or any persons who are wholly or partly responsible for the operation of payment systems, or participants in payment systems, require such persons to supply any information or data relating to such systems. Such notices may specify the periods for which information or data is required to be supplied and the deadline for and place of supply. Such notices may be varied, revoked or amended by the Reserve Bank.

(2) A person, who without lawful justification or excuse fails to supply information or data in compliance with a requirement of the Reserve Bank or supplies misleading or false information or data, commits an offence.

(3) The Reserve Bank may require information or data supplied to be audited. Failure to audit pursuant to such request shall be an offence against these Regulations.

(4) The Reserve Bank may in turn disclose information or data supplied to it if same is publicly available, if disclosure is required for purposes of the Reserve Bank’s exercise of its powers or functions, if disclosure is required to other central Banks exercising similar functions to those of the Reserve Bank, or to any person who or which in the opinion of the Reserve Bank has a proper interest in receiving same.

#### *Designation of Payment and Settlement Systems*

4.—(1) The Reserve Bank may, by notice declare any payment system to be a designated payment system. The notice must specify—

- (a) the payment system that is the subject of the designation;



- (b) the documents that evidence the rules of that payment system;
- (c) the name or title of a person to whom notices relating to the designation must be given (the contact person); and
- (d) other conditions to which designation is subject.

(2) The rules of a designated payment system are valid and enforceable despite any enactment or law to the contrary. Overriding effect is however limited to rules providing for—

- (a) the basis on which payment instructions are given;
- (b) the basis on which payments are calculated;
- (c) the basis on which settlements are effected; and
- (d) any action to be taken if a participant in the designated payment system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following, namely an operator of a designated payment system, another participant in the designated payment system, or any other party to those rules.

(3) Settlement effected under the rules of a designated payment system must not either in whole or in part be reversed, repaid, recovered, or set aside despite any enactment or law to the contrary.

(4) Subregulation 4(3) shall not operate so as to preclude reversal, repayment, recovery or setting aside in the event that a participant in the designated payment system in respect of which settlement is effected becomes insolvent and settlement is effected after commencement of insolvency, unless settlement is effected within 24 hours of commencement of insolvency and the contact person can show that that contact person did not have notice of commencement of insolvency at the time settlement was effected.

(5) If the rules of any designated payment system provide for netting, any netting under those rules is valid and enforceable notwithstanding any enactment or law to the contrary.

(6) Underlying transactions comprising transactions giving rise to payments or payment obligations (as distinct from payment instructions or settlements in accordance with a designated payment system) shall nevertheless continue to be subject to such enactment or law as same would have been subject to apart from the making of these Regulations.

(7) Nothing in these Regulations shall prevent any person from taking action against another person who or which has acted fraudulently or dishonestly so long as the remedy sought or obtained does not affect the application of the Regulations.

(8) A person who wishes to have a payment system declared as a designated payment system may apply to the Reserve Bank, attaching a copy of the rules of the payment system and any information required by the Reserve Bank and application fee determined by the Reserve Bank.

(9) In considering any application for designation, the Reserve Bank may have regard to any or all of the following—

- (a) the purpose and scope of the payment system;

- (b) the rules of the payment system;
- (c) any laws or regulatory requirements relating to the operation of the payment system and the extent to which the payment system complies with those laws or regulatory requirements;
- (d) the importance of the payment system to the financial system; and
- (e) any other matters the Reserve Bank considers appropriate.

(10) After considering an application for designation, the Reserve Bank may declare a payment system to be a designated payment system. If the request is refused, the Reserve Bank must give notice in writing to the applicant that the Reserve Bank refuses to make the recommendation, and advise reasons for refusal.

(11) The Reserve Bank may vary any designation by varying required documentation evidencing rules of the system, the name and title of contact person, and the identity of the operator. It may also revoke or amend any condition and may revoke the designation itself.

(12) Variation or revocation of designation does not affect settlements that were affected and netting that took place prior to variation or revocation.

(13) In deciding upon variation or revocation the same factors may be taken into account as could be taken into account in acceptance of designation.

(14) Variation or revocation may not occur until the contact person is advised of the reasons for such intended variation or revocation and permitted to make submissions pertaining to it.

(15) The Reserve Bank may by notice in writing require an operator of a designated payment system, a participant or contact person to supply information relating to that system. Such notice may specify the periods for which and form in which information is to be supplied.

(16) If a participant in a designated payment system becomes insolvent or any other participant whose settlements are effected by that participant becomes insolvent, the first participant must as soon as practicable notify that fact to the contact person of the designated payment system.

#### *General Penalty*

5. A person who commits an offence against these Regulations is liable to a fine not exceeding \$400.

S. NARUBE  
Chairman of  
the Board of Directors

Approved this 29th day of July 2004.

J. Y. KUBUABOLA  
Minister for Finance  
and National Planning