

NATIONAL PAYMENT SYSTEM ACT 2021
(ACT NO. 4 OF 2021)

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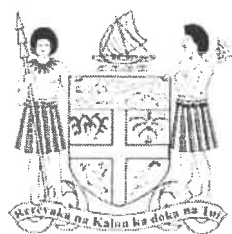
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SCHEDULE—CONSEQUENTIAL AMENDMENTS

ACT NO. 4 OF 2021

I assent.

A handwritten signature in black ink.

J. K. KONROTE
President

[12th February 2021]

AN ACT

TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL PAYMENT SYSTEM AND FOR ITS REGULATION, OVERSIGHT AND SUPERVISION BY THE RESERVE BANK OF FIJI AND FOR RELATED MATTERS

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the National Payment System Act 2021.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“adequate collateral” means securities issued for the purposes of providing liquidity to payment system participants as determined by the Reserve Bank;

“agent” means a person that has been contracted by a payment service provider to provide a payment service on behalf, and in the name, of the payment service provider in the manner specified in this Act;

- “bank” has the meaning given in section 2(1) of the Banking Act 1995;
- “bilateral netting” means an arrangement between 2 parties to net their respective obligations to each other;
- “central counter-party” means an entity that is the buyer to every seller and the seller to every buyer in a settlement system;
- “central securities depository” means an entity that holds securities, and in which securities transactions are processed and settled by book-entry or dematerialisation;
- “clearing” means the process of transmitting, reconciling or confirming funds or securities transfer instructions prior to settlement, and includes the netting of instructions and the establishment of final positions for settlement;
- “clearing house” means an entity that provides clearing or settlement services for a system, including the Reserve Bank;
- “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;
- “Council” means the National Payment System Council established under section 9;
- “credit card” means a card that indicates that the holder of the card has been granted a line of credit enabling the holder to make purchases or withdraw cash up to a prearranged ceiling and where the credit granted may be settled in full by the end of a specified period or may be settled in part with the balance taken as extended credit;
- “debit card” means a card that enables the holder of the card to directly charge purchases to funds on the holder’s account at a financial institution;
- “dematerialisation” means the issuance and recording of securities in electronic format;
- “electronic funds transfer” means any transfer of funds initiated by a person by way of instruction, authorisation or order to a bank to debit or credit an account maintained with that bank through electronic means, and includes point of sale transfers, automated teller machine transactions, direct deposits and the withdrawal of funds and transfers initiated by telephone, mobile network operators, internet, card or other devices;
- “electronic money” means electronically, including magnetically, stored monetary value as represented by a claim on the issuer, which is issued on the receipt of funds for the purpose of making payment transactions

and which is accepted as a means of payment by the person to whom the payment is being made to;

“electronically truncated cheque” means a cheque that is truncated during the course of a clearing cycle, immediately on the generation of an electronic image with essential features for transmission in a secure system, substituting the physical movement of the cheque;

“final” means irrevocable and unconditional;

“financial institution” has the meaning given in section 2(1) of the Banking Act 1995;

“Government securities” means any securities issued by the Government under the Financial Management Act 2004;

“Governor” means the Governor of the Reserve Bank appointed under section 153(4) of the Constitution of the Republic of Fiji;

“intraday credit” means credit extended for a period of less than one business day;

“licensee” means a person licensed to operate a payment system or provide a payment service in accordance with section 15;

“Minister” means the Minister responsible for finance;

“multilateral netting” means an arrangement among all parties in a system to net their obligations;

“national payment system” means the whole of the services that are associated with sending, receiving and processing orders of payment or transfers of money in domestic or foreign currencies, the issuance and management of payment instruments, payment, clearing and settlement systems, including those processing securities, arrangements and procedures associated with those systems and services, and payment service providers, including an operator of a system, participants, and any third party acting on behalf of them, either as an agent or by way of outsourcing agreements, whether operating entirely or partially in Fiji;

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

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

“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 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;
- “operator” means the Reserve Bank or any other entity licensed by the Reserve Bank to operate a payment system;
- “outsourcing” means a licensee’s use of a third party to perform activities on a continuing basis that would normally be undertaken by the licensee;
- “participant” means a person recognised in the rules of a system as eligible to exchange, clear and settle, either directly or indirectly, with other participants through the system;
- “payment card” means any card, coupon book or other means of access to an account, including a code, that may be used to obtain money or to make payment, and includes a debit card, credit card and stored-value card;
- “payment instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment or transfer money, including cheques, a funds transfer initiated by any paper or paperless device such as an automated teller machine or a payment terminal at the point of sale, the Internet, a telephone, a mobile or a payment card, including any instrument involving the storage of electronic money;
- “payment service” means a service enabling cash deposits or withdrawals, the execution of payment transactions, the issuance or acquisition of payment instruments and any other service functional to the transfer of money, including the issuance of electronic money, electronic money instruments and electronic money services provided by a mobile network and other operators, but does not include the provision of solely online or telecommunication services or network access;
- “payment service provider” means an entity providing a payment service;
- “payment system” means any system or arrangement for the processing, clearing or settlement of funds, but does not include—
- (a) a clearing house recognised under any other written law;
 - (b) an in-house system operated by a person solely for the person’s own administrative purposes that does not transfer, clear or settle funds for third parties; and
 - (c) such other systems or arrangements as may be prescribed under this Act or any regulations made under this Act;

“person” means any natural person or entity carrying on business, and includes a corporation, partnership, cooperative, association, the State, any department or agency of the State, any foreign State, any department or agency of a foreign State and any other entity;

“Reserve Bank” means the Reserve Bank of Fiji established under section 3 of the Reserve Bank of Fiji Act 1983;

“securities” means—

- (a) Government securities;
- (b) statutory corporation securities;
- (c) bonds and issues of the Reserve Bank;
- (d) shares, debentures or an interest in a managed investment scheme, whether listed or not; and
- (e) any other interests designated as securities by policy of the Reserve Bank;

“settlement” means the act of discharging obligations by transferring funds or securities between 2 or more persons;

“settlement agent” means an entity providing accounts for the participants in a system to hold funds and to settle transactions between the participants;

“settlement rules” means the rules, however made, that provide the basis on which payment obligations are calculated, netted or settled, and includes rules for the taking of action in the event that a participant is unable or likely to become unable to meet its obligations to a payment system, clearing house, central counter-party or other participant and the settlement of obligations from securities;

“settlement system” means a system established and operated by the Reserve Bank or any other system for the discharge of payment obligations and the settlement of obligations in relation to securities;

“statutory corporation” means a body corporate established under any written law, other than a law relating to the formation of companies;

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

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

Application

3. This Act applies to all systems, operators of a system and payment service providers operating wholly or partially in Fiji.

*Objectives***4.** The objectives of this Act are to—

- (a) empower the Reserve Bank to develop and implement a national payment system framework to promote the stability, safety, efficiency and competitiveness of the Fijian financial system;
- (b) foster transparency, ensure the interoperability of systems and guarantee fair access to systems, the effective protection of the users of payment services and the existence of a competitive environment favouring financial inclusion;
- (c) provide for the regulation, oversight and supervision of the national payment system;
- (d) establish the National Payment System Council; and
- (e) provide for matters connected with or incidental to paragraphs (a) to (d).

PART 2—ROLE OF THE RESERVE BANK*Powers***5.** The Reserve Bank has the following powers—

- (a) promote the soundness, safety, efficiency and competitiveness of the national payment system as a whole and of all of its components individually;
- (b) combat liquidity, credit, counter-party, operational, legal and systemic risks and any other risks affecting the reliability of the national payment system, and indirectly the whole financial infrastructure;
- (c) ensure the interoperability and integration of systems;
- (d) guarantee fair access to systems;
- (e) promote financial inclusion; and
- (f) protect the users of payment services.

*Functions***6.—(1)** The Reserve Bank has the following functions—

- (a) develop and implement policies for the modernisation of the national payment system;
- (b) license payment service providers and operators in accordance with this Act, any regulations made under this Act and any policy developed and implemented under paragraph (a);
- (c) determine conditions, standards, rules or procedures in accordance with this Act and any regulations made under this Act and ensure that the conditions, standards, rules and procedures are duly applied;
- (d) determine any further implementing measure regarding any licensed entity and their activities and ensure that the measures are duly applied;

- (e) facilitate the clearing and settlement of securities;
- (f) provide for payment services, including the issuance and management of payment instruments;
- (g) act as a forum for the consideration of matters of policy and mutual interest concerning the national payment system; and
- (h) perform any other function relating to payment, clearing and settlement systems or the issuance of payment instruments, permitting the accomplishment of its functions in accordance with this Act.

(2) The Reserve Bank, with the written approval of the Minister, has the power to delegate to any suitably qualified person any function conferred on the Reserve Bank by this Act and to authorise the suitably qualified person to perform the function.

Operational role of the Reserve Bank

7.—(1) For the purposes of this Act, the Reserve Bank may provide facilities for payment, clearing and settlement systems, their operators or participants.

(2) The Reserve Bank may—

- (a) establish, own, operate and participate in the ownership or operation of payment, clearing and settlement systems;
- (b) act as a central counter-party to participants;
- (c) hold cash accounts for operators of a system and participants, which may be used for the clearing and settlement of transfers into a system;
- (d) hold securities and precious metals on accounts for operators of payment, clearing and settlement systems and their participants, which may be used for the operation of payment, clearing and settlement systems;
- (e) extend intraday credit as determined by the Reserve Bank to entities that are participating in payment, clearing and settlement systems where adequate collateral must be granted to the Reserve Bank;
- (f) act as a central securities depository for Government and statutory corporation securities;
- (g) license a participant to undertake part or all of these functions with the exception of paragraph (e); and
- (h) perform any other operational role relating to payment, clearing or settlement systems, their operators or participants.

Cooperation with other authorities

8.—(1) The Reserve Bank must cooperate with other public authorities engaged in the regulation and supervision of financial institutions and other entities directly or indirectly involved in payment services and their operation in Fiji, and the regulation, monitoring and supervision of capital markets and money markets in Fiji.

(2) The Reserve Bank may cooperate with other monetary authorities and overseers in other jurisdictions and international organisations dealing with the regulation and oversight of payments.

(3) The Reserve Bank may, for the purpose of cooperating with an entity or authority referred to in subsections (1) and (2), enter into a memorandum of understanding with that entity or authority.

Establishment of the National Payment System Council

9.—(1) This section establishes the National Payment System Council which is to be chaired by the Governor.

(2) There must be at least 4 members of the Council who are to be appointed by the Governor.

(3) When appointing members of the Council, the Governor—

- (a) must ensure that the members represent banks, non-bank payment service providers and other payment system participants; and
- (b) may appoint any other person that the Governor deems appropriate for undertaking the function of the Council.

(4) The Reserve Bank is to act as the secretariat to the Council.

Functions of the Council

10. The function of the Council is to advise the Reserve Bank on the regulation, oversight and supervision of the national payment system, including—

- (a) operational and technical standards;
- (b) clearing and settlement of payments and securities; and
- (c) other matters affecting payment services.

Co-opted members

11.—(1) The Governor may co-opt such persons as necessary to participate in a Council meeting.

(2) A co-opted person must be an expert or have relevant knowledge or experience relating to payment systems to provide advice to the Council.

Proceedings of the Council

12.—(1) The Reserve Bank may issue instructions specifying the procedures and functions of the Council.

(2) The Council must act in accordance with any instruction or direction given to it by the Reserve Bank.

PART 3—LICENSING

Application for licence

13.—(1) Any person seeking to provide a payment service or operate a payment system must apply in writing to the Reserve Bank for a licence to provide the payment service or operate the payment system.

(2) An application made in accordance with subsection (1) must—

- (a) be in the prescribed form;
- (b) be accompanied by the prescribed fee; and
- (c) include any information that the Reserve Bank requires.

Principle of licensing

14.—(1) It is unlawful for a person to provide a payment service or operate a payment system unless the person is licensed by the Reserve Bank.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to—

- (a) in the case of a natural person, a fine prescribed by regulations or imprisonment for a term prescribed by regulations or both; and
- (b) in the case of a body corporate, a fine prescribed by regulations.

Grant, renewal, suspension and revocation of a licence

15.—(1) The Reserve Bank, on being satisfied that the requirements in section 13(2) are complied with, and that an applicant meets the specific criteria prescribed by the Reserve Bank, may grant a licence to the applicant to—

- (a) provide a payment service; or
- (b) operate a payment system,

on such terms and conditions as the Reserve Bank deems necessary.

(2) In order to obtain a licence to provide a payment service or operate a payment system, an applicant may be required to maintain capital levels specified by the Reserve Bank.

(3) The capital levels referred to in subsection (2) are to be determined by the type of service, average value of payments, aggregate value of payments and other factors that the Reserve Bank deems necessary.

(4) If the Reserve Bank refuses to license a person that has applied under section 13(1), the Reserve Bank must record the reasons for the decision and provide a copy of the decision, including the reasons for the decision, to the applicant within 30 days.

(5) A licence granted by the Reserve Bank in accordance with subsection (1) may be renewed by the Reserve Bank on such terms and conditions as the Reserve Bank deems necessary.

(6) A licence granted in accordance with subsection (1) may be suspended or revoked by the Reserve Bank in any of the following circumstances—

- (a) failure by the licensee to comply with any directive issued by the Reserve Bank under this Act, any regulations made under this Act or any other written law;

- (b) if in the opinion of the Reserve Bank, the licensee has ceased to carry on a payment service or has ceased to act as an operator;
 - (c) the licensee does not fully disclose or fails to satisfactorily disclose information required by the Reserve Bank under this Act or any regulations made under this Act;
 - (d) the licensee goes into liquidation, is wound up or otherwise dissolved;
 - (e) the licensee fails to commence business within the time specified by the Reserve Bank;
 - (f) the licensee obtained the licence through the provision of incorrect information to the Reserve Bank or any other irregular means;
 - (g) the licensee no longer meets the applicable criteria for the grant of a licence;
 - (h) the operation of the payment system for which the licence was granted endangers the stability of the payment or financial system in Fiji; and
 - (i) in the opinion of the Reserve Bank, the operation of the payment system is no longer in the public interest or the payment system no longer represents the interests of its participants.
- (7) The Reserve Bank may exempt any person providing a payment service from complying with the licensing requirements under this Act.
- (8) A person exempted by the Reserve Bank under subsection (7) is required to—
- (a) comply with any operational, reporting and disclosure requirements as may be set by the Reserve Bank, and is subject to oversight requirements for licensed entities under this Act and any regulations made under this Act; and
 - (b) where the person is a financial institution that endeavours to operate a payment system, comply with the licensing and registration requirements under this section.
- (9) A licence or any right acquired in accordance with this Act is not transferable except as may be prescribed by the Reserve Bank, and any transfer in contravention thereof is void.
- (10) The Reserve Bank may, for the purposes of this Act, amend any condition of any licence issued under this Act.
- (11) The Reserve Bank must give notice to the licensee of its intention to amend and the reasons for the proposed amendment, and provide the licensee with 15 days to review the proposed amendment.
- (12) The Reserve Bank must, on receipt of any representation from the licensee in relation to the proposed amendment, consider the representation before deciding to confirm or modify the proposed amendment.

(13) The Reserve Bank may, on application of a licensee, amend any condition of a licence if the Reserve Bank considers the proposed amendment reasonable.

(14) The Reserve Bank may, in the case of a financial institution, substitute the requirement for licensing with registration, if it determines that the financial institution does not pose significant risks for the market or strongly compromise competition.

(15) A financial institution registered under subsection (14) may be required to comply with operational, reporting and disclosure requirements as may be determined by the Reserve Bank, and may be subject to oversight requirements as may be determined by the Reserve Bank.

Rules of systems

16.—(1) Each operator of a system must make rules for the governance, management and operation of the system, including rules for—

- (a) access;
- (b) the management of liquidity, credit and settlement risks;
- (c) the rights and obligations of the operator of the system and the participants in the system;
- (d) determining when a payment instruction and a settlement is final;
- (e) contingency arrangements and operational risk; and
- (f) corporate governance.

(2) The rules made under subsection (1) must comply with the requirements of this Act, any regulations made under this Act or any other written law and any rules, directives or orders issued by the Reserve Bank in this regard.

(3) The Reserve Bank may vary or revoke any rules made under subsection (1), where it considers appropriate to do so, having regard to—

- (a) whether the variation or revocation is in the public interest;
- (b) the interests of the current participants in the system;
- (c) the interests of persons who, in the future, may desire access to the system; and
- (d) any other matter the Reserve Bank considers relevant.

(4) An operator of a system must not cause any change in the system which would affect the structure, operation or administration of the system unless the operator of the system—

- (a) obtains the approval of the Reserve Bank; and
- (b) gives notice of at least 30 days to the participants in the system after the approval of the Reserve Bank.

(5) Notwithstanding subsection (4), the Reserve Bank may, in the interest of monetary policy, financial stability or the public, permit the operator of the system to make any change to a system without giving notice to the participants or require the operator of the system to give notice to the participants for a period as approved by the Reserve Bank.

(6) The Reserve Bank may issue directives in respect of all or any of the matters specified in this section and in the event of a conflict between any rule, instruction, direction or agreement and any directive issued under this section, such directive prevails.

(7) A copy of the rules made under subsection (1) must be made available to the Reserve Bank at the time an application for a licence is lodged and at such other time as requested by the Reserve Bank.

(8) Any person who contravenes this section commits an offence and is liable on conviction to—

- (a) in the case of a natural person, a fine prescribed by regulations or imprisonment for a term prescribed by regulations or both; and
- (b) in the case of a body corporate, a fine prescribed by regulations.

Access to systems

17. The rules on access to systems as provided for in section 16(1)(a) must—

- (a) be objective, non-discriminatory and proportionate;
- (b) not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk; and
- (c) protect the financial and operational stability of the system.

PART 4—OVERSIGHT

General standards and measures of the Reserve Bank

18.—(1) The Reserve Bank may at any time adopt and implement general standards and criteria for the conduct of payment service activities or the operation of systems.

(2) The Reserve Bank may at any time issue directives to payment service providers or operators of a system with respect to governance, management, operations, relations with customers, and relations with systems and any other matter for the efficient administration of this Act.

(3) Any general standards, criteria or directives issued by the Reserve Bank in accordance with this section must be made publicly available before taking effect and take effect on the date of such publication or on such later date as specified.

(4) All payment service providers and operators of a system must comply with and give effect to any general standards, criteria or directive issued by the Reserve Bank in accordance with this section.

(5) Any payment service provider or operator of a system that fails to comply with a directive issued under subsection (2) commits an offence and is liable on conviction to a fine prescribed by regulations.

Power to examine and inspect

19. The Reserve Bank may, where it has reason to believe that it is necessary for the purposes of performing its functions under this Act, examine with or without any prior written notice, the premises, apparatus, equipment, machinery, books or other documents, accounts or transactions of an operator, a payment system participant or payment service provider and any of their offices in or outside of Fiji.

Reporting and disclosure requirements

20. Any payment service provider, operator, participant or other entity that is covered under this Act must provide the Reserve Bank with information and reports on their activities, in accordance with the procedure and with the content and frequency established by the Reserve Bank.

Reserve Bank approval for outsourcing of activities

21.—(1) Where an operator or a payment service provider intends to outsource its operational functions, the operator or payment service provider must provide the Reserve Bank with all relevant information in relation to the proposed outsourcing and seek the prior approval of the Reserve Bank accordingly.

(2) Within 30 days of receipt of all relevant information, the Reserve Bank may approve or reject the outsourcing of activities subject to any conditions the Reserve Bank deems necessary.

Outsourcing

22. The outsourcing of functions by an operator or a payment service provider is not a delegation of their management body's responsibilities under this Act.

Important operational functions

23.—(1) The outsourcing of important operational functions must not be undertaken in such a way as to materially impair the quality of an operator's or payment service provider's internal control or the ability of the Reserve Bank to monitor the operator's or payment service provider's compliance with all the obligations set out in this Act or any regulations made under this Act or notably lower the quality of service that a customer reasonably expects.

(2) For the purposes of subsection (1), a function that is outsourced is regarded as important if a defect or failure in its performance would materially impair the continuing compliance of an operator or a payment service provider with the requirements of its licence, or its financial performance, or the soundness or the continuity of its services.

(3) The Reserve Bank must ensure that when an operator or payment service provider outsources important operational functions, the operator or payment service provider complies with the following conditions—

- (a) the relationship and obligations of the issuer towards the users of any relevant payment instrument must not be altered;

- (b) the conditions with which the operator or the payment service provider is to comply in order to be licensed and remain so in accordance with this Act must not be undermined; and
- (c) none of the other conditions subject to which the licence was granted may be removed or modified.

Use of agents

24.—(1) Any payment service provider seeking to provide a payment service to a customer through the use of agents must submit an annual application for approval to the Reserve Bank in writing, in the form and manner prescribed by the Reserve Bank, together with the applicable prescribed fee.

(2) A payment service provider must not provide a payment service through the use of agents unless the payment service provider acquires the prior approval of the Reserve Bank for that purpose in accordance with this section.

(3) The Reserve Bank may approve that a payment service provider provides a payment service through the use of agents subject to any conditions the Reserve Bank deems necessary.

(4) A payment service provider must register each of its agents with the Reserve Bank.

(5) An agent of a payment service provider must not provide a payment service for the payment service provider unless the agent has been registered with the Reserve Bank.

(6) The Reserve Bank must maintain a Register of Agents which must be available to the public.

(7) A payment service provider must ensure that its agents inform customers that they are acting as agents of the payment service provider.

(8) Any person who contravenes this section commits an offence and is liable on conviction to—

- (a) in the case of a natural person, a fine prescribed by regulations or imprisonment for a term prescribed by regulations or both; and
- (b) in the case of a body corporate, a fine prescribed by regulations.

Liability

25.—(1) When an operator or a payment service provider relies on a third party for the performance of operational functions or for providing payment services under outsourcing or agency arrangements, the operator or payment service provider must take reasonable steps to ensure that the requirements of this Act, any regulations made under this Act and other relevant written laws, including on anti-money laundering and combating the financing of terrorism, are complied with.

(2) An operator or payment service provider remains fully liable for any act of the operator's or payment service provider's employees, or any agent, branch or entity to which activities are outsourced.

Anti-money laundering and combating the financing of terrorism

26. Any payment service provider, its agents and any operator must comply with the Financial Transactions Reporting Act 2004.

Retention of records

27.—(1) The Reserve Bank in exercise of its functions under this Act, any system participant, operator and payment service provider must retain all records obtained by them during the course of their operation and administration for at least 7 years from the date of the establishment of a record or the completion of the transaction to which the record relates, whichever is later.

(2) The retention of records under subsection (1) may be by electronic means.

Use of customers' information

28. A person who has acquired knowledge in his or her capacity as director, manager, officer, employee or agent of any payment service provider or operator must not disclose to any person any information in respect of a customer except—

- (a) with the written authorisation of the customer or of the customer's legal personal representative;
- (b) for the purpose of the performance of his or her duties under this Act, subject to any applicable Reserve Bank limitations;
- (c) in the course of any winding up of the payment service provider or operator;
- (d) when lawfully required to do so under the provisions of any written law; or
- (e) when ordered by a court of law.

Access to information and disclosure

29.—(1) Any operator of a system, participant and payment service provider must provide any information requested by the Reserve Bank and produce all books, minutes, accounts, cash instruments, securities, vouchers or any document relating to its business or the business of its affiliates for the inspection of any examiner appointed by the Reserve Bank at such time and manner the Reserve Bank specifies.

(2) The information obtained under subsection (1) by the Reserve Bank must not be directly or indirectly disclosed to another person except—

- (a) for the purposes of the performance of one of its functions under this Act;
- (b) where this is necessary to protect the financial integrity, effectiveness or security of the system;
- (c) where this is made to a recipient who is legally authorised to acquire such information;
- (d) where required by a written law;
- (e) when ordered by a court of law; or
- (f) where this is required for the purpose of meeting the Government's obligations under an international agreement.

Audit

30.—(1) The Reserve Bank may conduct an audit or commission an independent auditor to conduct an audit of the accounts, books, documents and other records of an operator of a system and the participants of the system, as well as that of a payment service provider.

(2) An entity subject to an audit in accordance with subsection (1) must assist the Reserve Bank to the extent necessary for the purpose of enabling the Reserve Bank or its auditors to carry out its duties.

Fees and charges

31. The Reserve Bank may, with the approval of the Minister, determine fees or charges for —

- (a) direct and indirect costs incurred in providing its oversight and regulatory services to operators of a system, participants or payment service providers;
- (b) the provision of operational services or infrastructure under section 7; and
- (c) any other purpose as is necessary for the performance of its duties and functions under this Act.

PART 5 — ENFORCEMENT*Administrative actions*

32.—(1) The administrative action provided for in this section may be determined in particular cases by the Reserve Bank.

(2) The action must be based on the severity of the infringement, its effect on systemic risk, the stage at which it was detected, whether it was voluntarily reported by the perpetrator, and what measure is appropriate to remedy or terminate the infringement.

(3) The Reserve Bank may take one or more of the following administrative actions with respect to an operator of a system, participant, its managers or employees if the Reserve Bank determines that one or more of these entities has committed an infringement consisting of the violation of a provision of this Act, any regulations made under this Act or any measure of the Reserve Bank issued pursuant to this Act —

- (a) issue written warnings;
- (b) issue written directives to cease and desist from such infractions and to undertake remedial action; and
- (c) issue written directives to perform any such acts as are necessary to comply with the provisions of this Act, any regulations made under this Act or any measure of the Reserve Bank issued pursuant to this Act.

Fixed penalty notice

33.—(1) Subject to this section, where the Reserve Bank has reason to believe that a person has committed an offence under this Act, the Reserve Bank may institute proceedings in respect of the alleged commission of the offence by issuing that person with a fixed penalty notice.

(2) A fixed penalty notice issued under subsection (1) must—

- (a) name the person to whom the fixed penalty notice is issued;
- (b) specify the particulars of the offence;
- (c) specify the fixed penalty that the person named on the fixed penalty notice is required to pay; and
- (d) specify any other information prescribed by regulations.

(3) Nothing in this section is taken to prevent the institution of proceedings under any provision of this Act.

Regulations for the issuance of fixed penalty notices

34. The Minister may, in consultation with the Reserve Bank, make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of fixed penalty notices under section 33, including—

- (a) the offences for which fixed penalty notices may be issued;
- (b) the fixed penalties for prescribed offences;
- (c) the manner, form and timeframes for which fixed penalty notices are to be issued;
- (d) the actions a person may undertake on receipt of a fixed penalty notice; and
- (e) the penalties that a person to whom a fixed penalty notice may be liable to.

Obstruction of officers

35. If a director, manager or employee of an operator of a system or participant—

- (a) obstructs the proper performance of an auditor in accordance with this Act or inspection of the Reserve Bank by an inspector duly authorised by the Reserve Bank;
- (b) damages, destroys, alters or falsifies accounts, books or records of an operator of a system or participant; or
- (c) with intent to deceive, makes false entries or fails to enter material items in the accounts of a system,

he or she commits an offence and is liable on conviction to a fine prescribed by regulations or imprisonment for a term prescribed by regulations or both.

PART 6—SETTLEMENT, NETTING AND FINALITY OF PAYMENT

Settlement accounts

36.—(1) Every participant in a system must—

- (a) open and maintain settlement accounts on the books of the Reserve Bank or an operator of a settlement system, including the maintenance of minimum balances, on such terms and conditions as the Reserve Bank or the operator of a settlement system may specify; or

- (b) appoint another participant which has opened a settlement account as a settlement agent to settle all obligations due from the first mentioned participant to any other participant arising out of each day's clearing.

(2) Where a participant appoints a settlement agent under subsection (1)(b), the participant must, before any obligation is settled by the settlement agent on the participant's behalf, give the operator of a settlement system notice in writing of the appointment, accompanied by a written confirmation from the settlement agent of such appointment.

(3) Any participant who intends to terminate the appointment of a settlement agent must notify the operator of a settlement system and the Reserve Bank in writing at least 7 business days before the date of termination of such appointment.

Finality of payments

37.—(1) A system must specify the rules to achieve final settlement in its operations, in accordance with the provisions of this Act and as prescribed by any regulations, rules or directives issued by the Reserve Bank and includes rules establishing the irrevocability of orders once these have entered into the system, unless special conditions apply.

(2) The entry or payment that has been effected in terms of subsection (1) must not be revoked, reversed, or set aside, including, without limitation, by insolvency or bankruptcy proceedings or any other written law similar in purpose and effect and is not subject to any written law or order of an administrative or judicial authority that operates as a stay of that payment.

Collateral for payment and settlement obligation

38.—(1) The rights and remedies of an operator, a participant, a clearing house, a central counter-party and any other third party to a system or the Reserve Bank with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in the system must not be affected by insolvency or bankruptcy proceedings or any other written law similar in purpose and effect.

(2) The rights and remedies mentioned in subsection (1) must not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

PART 7—WINDING UP AND ADMINISTRATION OF AN OPERATOR OF A SYSTEM OR PARTICIPANT

Reserve Bank to be notified of winding up

39. Where an operator of a system or a participant is wound up or placed in a scheme of administration, the operator of the system or participant at whose instance the winding up or the administration order or the decision, as the case may be, is issued, must within 7 days lodge a copy of the order or decision with the Reserve Bank.

Prohibition

40. An operator of a system or a participant against which a winding up application or scheme of administration has been lodged or decision for voluntary dissolution is

made is prohibited from operating or participating in any system until such application or scheme is disposed of or finally determined.

Winding up or administration of participant not to affect finality

41. Notwithstanding anything to the contrary in any written law relating to insolvency or bankruptcy, the winding up or the opening of a scheme of administration of a participant in a system does not affect the finality or irrevocability of any entry or payment which became final and irrevocable in terms of section 37 before the copy of the relevant order or decision was lodged with the Reserve Bank.

Rules of the Reserve Bank and systems to bind liquidators

42.—(1) If a participant in a system is wound up or placed in administration or otherwise declared insolvent by a court, any provision contained in a written netting arrangement to which the participant is a party or any netting rules and practices applicable to the system, are binding upon the liquidator or administrator, as the case may be, of the participant concerned in respect of any payment or settlement obligation which—

- (a) has been determined through netting prior to the issue of the winding up or arrangement order, as the case may be; and
- (b) is to be discharged on or after the date of the winding up or arrangement order or discharge of which was overdue on the date of the winding up or scheme of administration order, as the case may be.

(2) Subsection (1) applies notwithstanding anything to the contrary in any other written law.

Preservation of rights

43. This Part does not restrict or preclude any person from enforcing his or her rights under the law in so far as it does not affect the finality of any payment instruction or settlement or the validity and enforceability of a netting arrangement under this Part.

Governing laws

44.—(1) In the event of insolvency of a foreign participant in a system licensed under this Act, the rights and obligations of the foreign participant arising from, or in connection with, the participation of that foreign participant are governed by the laws of Fiji.

(2) The rights and obligations arising from, or in connection with, the participation of a domestic participant in a foreign system are governed by the laws governing that foreign system.

PART 8—CHEQUES

Electronically truncated cheque and electronic cheque image presentment

45.—(1) A bank may present a cheque for payment to the person on whom it is drawn by notifying the person of its essential features by electronic means, electronic truncated cheque or otherwise by scanned image of the same electronic cheque image, instead of by presenting the cheque itself.

(2) If a cheque is presented for payment under this section, presentment does not have to be made at the proper place or at a reasonable hour on a business day.

(3) If, before the close of business on the next business day following presentment of a cheque under this section, the bank on whom the cheque is drawn requests the bank by whom the cheque was presented to present the cheque itself—

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

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

(5) Where presentment of a cheque is made under this section, the bank which presented the cheque and the bank on whom it is drawn are 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;
- (b) the code which identifies the bank on whom the cheque is drawn;
- (c) the account number of the drawer of the cheque;
- (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 electronic cheque images in conformity with this section are admissible evidence in all cases, whether civil, commercial, criminal or administrative.

PART 9—ELECTRONIC FUNDS TRANSFERS AND ELECTRONIC MONEY

Payment orders and money transfers executed by electronic messages

46. In accordance with any other relevant written law on electronic transactions, the Reserve Bank may implement regulations, instructions or other relevant measures within its powers to cover specific issues on payment orders and money transfers executed by electronic messages, including, when deemed relevant, the protection of users of electronic payment instruments, and such regulations, instructions and measures must complement those of this Act.

Transparency of fees

47.—(1) The regulations, instructions and measures implemented by the Reserve Bank under section 46 must require any payment service provider that charges a fee on any customer for executing an electronic funds transfer, to provide notice in accordance with subsections (2) and (3) to the customer of the fact that—

- (a) a fee is being charged; and
- (b) the amount of the fee.

(2) The notice required under subsection (1) with respect to any fee must be placed at a prominent and conspicuous location at which the customer initiates the electronic funds transfer.

(3) The notice required under subsection (1) with respect to the charging of any fee must be in the form approved by the Reserve Bank.

(4) A fee must not be charged in connection with any electronic funds transfer initiated by a customer for which a notice is required under subsection (1), unless the customer is notified in accordance with subsections (2) and (3) and the customer elects to continue in the manner necessary to effect the transaction after being notified.

Terms and conditions of transfers

48.—(1) The terms and conditions of electronic funds transfers involving a customer's account must be disclosed by a bank or other payment service provider in a manner clearly understood by the customer, at the time the customer contracts for an electronic funds transfer service, in accordance with the instructions of the Reserve Bank.

(2) The disclosures must include the following—

- (a) the extent of the customer's liability for unauthorised electronic funds transfers and notice of the advisability of prompt reporting of any loss, theft, or unauthorised use of a payment card, access code or other means of access;
- (b) the contact information of the person to be notified in the event the customer believes that an unauthorised electronic funds transfer has been or may be effected;
- (c) the procedures to verify that the customer had made the notification under paragraph (b) and when such notification was made;
- (d) the maximum execution time for any kind of payment to be executed;
- (e) the kind and nature of electronic funds transfers which the customer may initiate, including any limitations on the frequency or amount of such transfers;
- (f) any fees or charges for electronic funds transfers or for the right to make such transfers;
- (g) the customer's right to stop payment of a preauthorised electronic funds transfer and the procedure to initiate such a stop payment order;

- (h) a summary of the error resolution procedures and the customer's rights;
- (i) the payment service provider's liability to the customer;
- (j) the circumstances under which the bank or other payment service provider may in the ordinary course of business disclose information concerning the customer's account to third parties;
- (k) a notice to the customer that a fee may be charged if the customer initiates a transfer from an automated teller machine or other electronic terminal that is not part of the network of the issuer of the payment card or other means of access; and
- (l) the customer's right to receive any other relevant information concerning the payment service.

(3) A bank or other payment service provider must notify a customer in writing or such other means as may be prescribed, at least 21 days prior to the effective date of any material change in any term or condition of the customer's account required to be disclosed, unless such change is immediately necessary to maintain or restore the security of an electronic funds transfer system or a customer's account.

Issuance of electronic money

49.—(1) In addition to general requirements established by this Act for obtaining a licence as a payment service provider, for the issuance of electronic money, at a minimum an applicant must prove that the following conditions are met—

- (a) the provision of electronic money must not include the provision of credit or lending;
- (b) electronic money must be issued in exchange for the equivalent of Fijian dollars or highly liquid assets acceptable by the Reserve Bank;
- (c) electronic money providers must provide statistics on electronic money loaded and redeemed values in their periodic financial statements;
- (d) the scheme must be able to provide sufficient and reliable information to the Reserve Bank to monitor and control the quantity and velocity of the electronic money supply in the economy;
- (e) clearing and settlement mechanisms must facilitate the provision of final settlement not more than 24 hours after a payment instruction has been initiated;
- (f) issuers are obliged to redeem electronic money value in Fijian dollars, at par, on request;
- (g) the management of the underlying float and the redemption of the electronic money value by the issuer to the holder must be clearly defined; and
- (h) issuers are obliged to open custodian accounts with banks to the benefit of customers and to ensure traceability of money of each of their customers.

(2) The Reserve Bank has the power to add conditions to the provision of electronic money, including, if deemed appropriate, specific capital or own funds requirements, by way of regulations.

PART 10—MISCELLANEOUS

Dematerialisation of Government and statutory corporation securities

50.—(1) Every Government and statutory corporation security must be issued as a dematerialised security.

(2) Any Government or statutory corporation security issued before the commencement of this subsection must be dematerialised within 12 months from the commencement of this subsection.

(3) The legal title to any Government or statutory corporation security issued before, on or after the commencement of this subsection must be acquired, evidenced and transferred electronically and without a written instrument in accordance with the Electronic Transactions Act 2008.

(4) On or after the commencement of this subsection, the payment of interest on a dematerialised Government or statutory corporation security must be effected by electronic means and in accordance with the provisions of this Act and any regulations made under this Act.

Customer complaints

51.—(1) Any customer whose financial transaction is routed through a payment system may, if the customer is aggrieved, lodge a written complaint with the customer's payment service provider.

(2) A payment service provider that receives a complaint under subsection (1)—

- (a) may request any information related to the customer's financial transaction from the Reserve Bank or another participant; and
- (b) must address the customer's grievance in accordance with the relevant complaints management policy.

Settlement of disputes by arbitration

52. Any dispute by an operator of a system, participant or payment service provider concerning any matter arising under this Act must be submitted to arbitration in accordance with the Arbitration Act 1965.

Protection for acts done in good faith

53. The Reserve Bank or officers, employees or agents of the Reserve Bank are not liable for anything done in good faith pursuant to this Act.

Consequential amendments

54.—(1) The Acts and regulations listed in the Schedule are amended as set out in the Schedule.

(2) The requirements of this Act in relation to the national payment system are in addition to and not in derogation of, or substitution for the requirements of other written laws, but in the case of a conflict between a provision of this Act and a provision of another written law, the provision of this Act prevails.

Transitional

55.—(1) Any bank, operator of a system or participant, or administrator of such bank, operator or participant conducting business on the commencement of this section must conform their organisation, administration and operations to the requirements of this Act, within 12 months from the commencement of this section.

(2) Any bank, operator of a system or participant, or administrator of such bank, operator or participant whose—

- (a) organisation;
- (b) administration; or
- (c) operations,

does not conform to the requirements of any directive issued by the Reserve Bank pursuant to this Act or any regulations made under this Act must conform to the requirements of the directive within the time period to be specified by such directive.

Regulations

56.—(1) The Minister may, in consultation with the Reserve Bank, make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Minister may, in consultation with the Reserve Bank, make regulations to prescribe the following—

- (a) how a payment system achieves final settlement in its operations;
- (b) the execution of payment orders and money transfers by electronic messages;
- (c) the specific criteria for granting a licence to provide a payment service or operate a payment system;
- (d) any matter relating to the dematerialisation of securities and the operations of a central securities depository; and
- (e) penalties not exceeding a fine of \$1 million or imprisonment for a term not exceeding 10 years or both.

SCHEDULE
(Section 54(1))

CONSEQUENTIAL AMENDMENTS

Companies Act 2015

1. The Companies Act 2015 is amended in section 3 in the definition of “central depository” before “listed securities” wherever it appears, by inserting “Government securities and”.

Electronic Transactions Act 2008

2. The Electronic Transactions Act 2008 is amended in the Schedule by deleting paragraph (1)(b).

Fiji Interchange Network (Payments) Act 2017

3. The Fiji Interchange Network (Payments) Act 2017 is repealed.

Investment in Fiji Government Securities Act 1963

4. The Investment in Fiji Government Securities Act 1963 is repealed.

Reserve Bank (Payment and Settlement Systems Oversight) Regulations 2004

5. The Reserve Bank (Payment and Settlement Systems Oversight) Regulations 2004 is revoked.

Passed by the Parliament of the Republic of Fiji this 11th day of February 2021.