



# **PAYMENT SYSTEMS BILL 2020**

**(NO. 1 OF 2020)**





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(NO. 1 OF 2020)

A

BILL

Entitled

AN ACT TO PROVIDE FOR PAYMENT SYSTEMS, AND FOR RELATED PURPOSES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

# PAYMENT SYSTEMS BILL 2020

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# PAYMENT SYSTEMS BILL 2020

## PART 1 PRELIMINARY MATTERS

### 1 Short title

This Act may be cited as the *Payment Systems Act 2020*.

### 2 Commencement

This Act commences on the day appointed by the Minister by notice in the Gazette, and 1 or more notices may be given appointing different dates for different provisions.

### 3 Definitions

In this Act:

**“bank”** has the same meaning as in section 2(1) of the *Financial Institutions Act 1998*;

**“Central Bank”** means the Central Bank established under the *Central Bank of Solomon Islands Act 2012*;

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

**“clearing”** means the process of any or all of transmitting, reconciling, and confirming transfer instructions before settlement; and includes the netting of transfer instructions and the establishment of final positions for settlement; and **“clear”** has a corresponding meaning;

**“clearing house”** means an entity that provides clearing or settlement services for a system, including the Central Bank;

**“clearing system”** has the meaning given to it in section 6;

**“consumer”**, in relation to the provision of a payment service, means the person who contracts with the provider for the provision of the service;



**“Court”** means the High Court of Solomon Islands;

**“document”** means a document in any form, and includes:

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape recorder, computer, or other device; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

**“electronic money”** means monetary value represented by a claim on the issuer that is:

- (a) stored electronically, including magnetically, or in any other tangible or intangible device (such as a SIM card or a software); 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;

**“financial institution”** means a financial institution that is licensed under the *Financial Institutions Act 1998*;

**“information”** includes information (whether or not in its original form) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech;

**“insolvency”** means an insolvency in any form, whether corporate or personal, and includes an insolvency proceeding;

**“insolvency administrator”** means the person who is appointed to administer an insolvency, such as a liquidator, an assignee, a trustee, a receiver, an administrator, or a statutory manager;

**“insolvency proceeding”** means any proceeding arising out of an insolvency, such as liquidation, bankruptcy, receivership, voluntary

administration, or statutory management;

***“intraday credit”*** means credit extended and reimbursed within a single business day;

***“in-house payment system”*** has the meaning given to it in section 5(3);

***“licence”*** means a licence for the operation of a payment system or the provision of a payment service;

***“licence holder”*** means the holder of a licence issued under this Act;

***“Minister”*** means the Minister responsible for finance;

***“national payment framework”*** has the meaning given to it in section 8;

***“netting”*** means the conversion into 1 net claim or obligation, or the set-off, of claims and obligations that result from transfer instructions that a participant or participants either issue to, or receive from, 1 or more other participants (with the result that only a net claim can be demanded or a net obligation can be owed):

- (a) whether on a bilateral or a multilateral basis; and
- (b) whether or not through the interposition of an operator of the settlement system or a central counterparty; and
- (c) whether or not the obligations or claims constitute mutual credits, mutual debts or other mutual dealings; and
- (d) whether or not the obligations or claims are denominated in Solomon Islands currency;

***“operator”***, in relation to a payment system, means the operator of the payment system;

***“participant in a payment system”*** means a party that, in relation to a payment system, is entitled under the rules of the system to transfer, clear or settle funds or securities with other participants in the same system, whether directly or indirectly;

**“payment instrument”** means a personalised device or agreed set of procedures used by the user of a payment service to initiate a payment order;

**“payment order”** means an instruction to the provider of a payment service requesting the execution of a payment transaction;

**“payment service”** has the meaning given to it in section 9;

**“payment system”** has the meaning given to it in section 5;

**“payment transaction”** means an act, initiated by the user of a payment service, of placing, transferring or withdrawing funds;

**“prescribed”** means prescribed by regulations made under this Act, and **“prescribe”** has a corresponding meaning;

**“provider”**, in relation to a payment service, means the provider of the payment service;

**“regulations”** or **“the regulations”** means regulations made by the Central Bank under this Act, and **“by regulation”** has a corresponding meaning;

**“settle”** means to discharge an obligation or obligations by the transfer of funds or securities between 2 or more parties; and **“settlement”** has a corresponding meaning;

**“settlement rules”** means the rules of a settlement system relating to settlement;

**“settlement system”** has the meaning given to it in section 7;

**“system”** includes a payment, clearing or settlement system;

**“transfer instructions”** means instructions for the transfer of funds or securities;

**“working day”** means a day of the week that is not:

- (a) Saturday or Sunday; or
- (b) a day that is defined as, or declared to be, a public holiday under any Act.

#### **4 Act binds the Crown**

This Act binds the Crown.

## **PART 2 PAYMENT SYSTEMS AND PAYMENT SERVICES**

#### **5 Payment system**

(1) A ***“payment system”***:

- (a) is a system or arrangement for the transfer, clearing, or settlement of funds or securities; and
- (b) includes a clearing system and a settlement system; and
- (c) includes the provision of payment services.

(2) However, for the purposes of this Act, a payment system does not include:

- (a) a payment system operated by a clearing house that is recognised by any other law applicable to Solomon Islands; or
- (b) an in-house payment system; or
- (c) a payment system that is excluded by any other law applicable to Solomon Islands from the operation of this Act.

(3) An ***“in-house payment system”*** is a payment system that:

- (a) is operated solely for the operator’s internal administrative purposes; and
- (b) accordingly does not involve the transfer, clearing, or settlement of funds or securities for any other person.

#### **6 Clearing system**

A ***“clearing system”***:

- (a) is a system for presenting and exchanging at a single location information relating to the transfer of funds or securities; and

- (b) may include a mechanism for calculating the position of a participant in the system on a bilateral or multilateral basis.

## **7 Settlement system**

A “**settlement system**” is a system:

- (a) for settling payment obligations; and
- (b) for settling obligations in relation to securities.

## **8 National payment framework**

The “**national payment framework**” means the whole of the services in Solomon Islands that are associated with:

- (a) the sending, receiving and processing of orders of payment or transfer of money in domestic or foreign currencies; and
- (b) the issuance and management of payment instruments; and
- (c) payment, clearing and settlement systems, including those processing securities; and
- (d) the arrangements and procedures associated with those systems and services; and
- (e) payment service providers including system operators, participants in payment systems and any third parties acting on behalf of them, either as an agent or by way of outsourcing arrangements, whether entirely or partially operating inside Solomon Islands.

## **9 Payment services**

A “**payment service**” is a service enabling any of the following:

- (a) making cash deposits and withdrawals;
- (b) the issue or acquisition of payment instruments;
- (c) effecting remittances;
- (d) any other service related to the transfer of money (including the issue of electronic money but excluding the provision of

solely online or telecommunication services, or network access).

## **10 How payment systems are regulated**

A payment system is regulated through:

- (a) the requirement that a payment system operator or a provider of payment services must be licensed; and
- (b) the requirement that a payment system operator or provider of payment services must comply with this Act, the regulations, any directions or guidelines given or issued by the Central Bank, and licence conditions or restrictions; and
- (c) supervision by the Central Bank exercising its powers and functions under this Act and the regulations.

## **PART 3 ROLE OF CENTRAL BANK**

### **11 Central Bank has dual regulatory and operational role**

The Central Bank has:

- (a) the regulatory role set out in sections 12 and 13; and
- (b) the operational role set out in section 14.

### **12 Central Bank responsible for regulating and overseeing national payment framework**

- (1) The Central Bank is responsible for the regulation and oversight of the national payment framework as a whole and any of its components.
- (2) The Central Bank must regulate and oversee the national payment framework:
  - (a) primarily, to ensure its safety and efficiency; and
  - (b) otherwise, to advance the public interest in the proper functioning of payment systems, and in particular:
    - (i) the public interest in the promotion of competition in the

market for payment services; and

- (ii) the protection of consumers of payment services.

### **13 Functions of Central Bank in regulating and overseeing national payment framework**

For the purposes of regulating and overseeing the national payment framework, the Central Bank has the following functions:

- (a) to formulate policies for the continuous modernisation of the national payment framework;
- (b) to license payment systems operators and payment services providers;
- (c) to establish terms, conditions, and restrictions that apply individually or collectively to licences issued under this Act;
- (d) to monitor and enforce compliance with:
  - (i) this Act; and
  - (ii) the terms, conditions and restrictions that apply individually or collectively to licences issued under this Act;
- (e) to take all steps to promote and facilitate the work of the advisory council established under section 16;
- (f) to perform such other functions relating to payment, clearing, or settlement systems that are necessary for or ancillary to the regulation of those systems;
- (g) in accordance with this Act, to make regulations and issue directives for the operation of payment systems and the provision of payment services.

### **14 Central Bank may provide operational facilities**

The Central Bank may do any of the following things for the purpose of enabling a party to operate or participate in a payment system:

- (a) establish 1 or more payment systems;
- (b) own, or participate in the ownership of, 1 or more payment systems;
- (c) operate, or participate in the operation of, 1 or more payment systems;
- (d) act as a central counter-party in a payment system;
- (e) for the purpose of clearing and settling funds, hold cash accounts for the operator and participants in a payment system;
- (f) for the purpose of clearing and settling securities, hold securities accounts for the operator and participants in a payment system;
- (g) subject to taking adequate collateral, extend intraday credit to participants in a payment system;
- (h) for the purpose of the operation of a payment system, hold securities accounts;
- (i) act as a central securities depository for Government securities or corporate securities, or both.

## **15 Central Bank may cooperate with other regulators**

- (1) The Central Bank may cooperate with:
  - (a) any other regulator of financial institutions or of other entities directly or indirectly involved in payment systems operating in Solomon Islands; and
  - (b) any other regulator of capital or securities markets in Solomon Islands; and
  - (c) international monetary authorities and other organisations responsible for the regulation and supervision of payments.
- (2) For the purpose of cooperation, the Central Bank may enter into a memorandum of understanding with a regulator referred to in subsection (1).



## **16            Advisory council**

- (1) The Central Bank may by regulation establish an advisory council for the purpose of advising the Central Bank as to the regulation and oversight of the national payment framework in Solomon Islands.
- (2) The advice of the council may include (but is not limited to) advice relating to setting operational and technical standards for payment systems.
- (3) Regulations establishing the council may prescribe:
  - (a) the composition of the council; and
  - (b) matters on which the council is competent to advise; and
  - (c) the procedure that the council must follow; and
  - (d) any other matter relevant to the functions and work of the council.

## **PART 4            LICENSING**

### **17            Restrictions on operating payment system or providing payment service**

- (1) A person must not operate a payment system or provide a payment service unless that person is licensed under this Act.
- (2) Subsection (1) does not apply to the Central Bank.
- (3) Subsection (1):
  - (a) does not apply to a financial institution that is licensed under the *Financial Institutions Act 1998* to the extent that the financial institution provides a payment service; but
  - (b) does apply if the financial institution operates a payment system.
- (4) A person who contravenes subsection (1) commits an offence.

Maximum penalty:        2 million penalty units or imprisonment for

20 years, or both

## **18 Application for licence**

- (1) An application for a licence under this Act must:
  - (a) be in the prescribed form or the form otherwise approved by the Central Bank; and
  - (b) contain or be accompanied by the information required by the form or otherwise prescribed; and
  - (c) be accompanied by the prescribed fee; and
  - (d) be filed with the Central Bank by an officer or agent of the applicant.
- (2) Before determining an application for a licence, the Central Bank may require that the application be supplemented by such documents or other information as the Central Bank considers necessary for assessing the suitability of the applicant for the grant of a licence.

## **19 Criteria for issue of licence**

- (1) The Central Bank may issue a licence under this Act for the operation of a payment system or the provision of a payment service if the Central Bank is satisfied as to the following:
  - (a) the applicant is a company incorporated or otherwise registered under the *Companies Act 2009*;
  - (b) the applicant meets the capital adequacy requirements that:
    - (i) are prescribed for the issue of a licence; or
    - (ii) are otherwise specified by the Central Bank as a condition of the licence;
  - (c) the applicant has suitable and sufficient technical and organisational skills for the operation of a payment system or the provision of a payment service;
  - (d) the applicant has in place proper procedures and mechanisms

for maintaining internal controls and for managing risk;

- (e) the applicant has in place proper procedures and mechanisms for:
    - (i) keeping client funds separate and identifiable at all times; and
    - (ii) preventing commingling of client funds at any time with the funds of third parties; and
    - (iii) insulating client funds against the claims of other creditors of the applicant, particularly in the event of insolvency;
  - (f) the applicant has a detailed strategy and business plan based on realistic financial projections for the following 5 years;
  - (g) the board and management of the applicant are fit and proper persons for their positions;
  - (h) the applicant protects against credit and liquidity risk at the time of the settlement of orders accepted by the system;
  - (i) the issue of the licence is:
    - (i) consistent with the maintenance of financial stability in Solomon Islands; and
    - (ii) in the public interest;
  - (j) the applicant satisfies any other criteria that may be prescribed from time to time.
- (2) At its discretion, the Central Bank may determine in a particular case that 1 or more of the minimum criteria are satisfied by the imposition of conditions or restrictions as terms of the licence.
- (3) At its discretion, and after taking into account the factors set out in subsection (4), the Central Bank may specify as, a condition of a licence, capital adequacy requirements that differ from those prescribed.
- (4) The factors that the Central Bank may take into account for the

purposes of subsection (3) are:

- (a) the type of payment system that is to be operated; and
- (b) the type of payment service that is to be provided; and
- (c) the volume and value of payments likely to be processed in the payment system; and
- (d) any other relevant factor.

## **20 Determination of application**

- (1) The Central Bank must determine an application for a licence within 60 working days after the application is complete.
- (2) For the purposes of subsection (1), an application is complete when:
  - (a) the applicant has filed with the Central Bank an application that complies in all respects with section 18(1); and
  - (b) the Central Bank has received all supplementary documents or other information that the Central Bank has required from the applicant under section 18(2).
- (3) In determining an application for a licence, the Central Bank may:
  - (a) accept the application; or
  - (b) accept the application but subject to the imposition of conditions or restrictions as terms of the licence; or
  - (c) reject the application.
- (4) If the Central Bank rejects the application, the Central Bank must without delay notify the applicant in writing, giving reasons for the rejection.

## **21 Conditions, restrictions or endorsement as terms of licence**

- (1) The Central Bank may impose such conditions or restrictions as terms of a licence as the Central Bank considers prudent for the management of the risks of failure by the licence holder and loss of client funds.

- (2) The Central Bank may endorse a licence for the issue of electronic money under section 64, and the conditions set out in section 65 are conditions of that licence for the purposes of this Act except section 22.
- (3) A licence holder that fails to comply with a licence condition or restriction commits an offence.

Maximum penalty: 1 million penalty units or imprisonment for 10 years, or both

## **22 Central Bank may amend licence condition, restriction or endorsement**

- (1) The Central Bank may at any time during the term of a licence amend a condition, restriction, or endorsement of the licence if the Central Bank is satisfied that the licence condition, restriction, or endorsement is no longer adequate or appropriate for its purpose.
- (2) The Central Bank may amend the condition, restriction, or endorsement by way of alteration, substitution, addition, omission, or other modification.
- (3) The Central Bank must not amend a condition, restriction, or endorsement unless the Central Bank has first:
  - (a) given the licence holder written notice of the amendment and the reasons for it; and
  - (b) allowed the licence holder a reasonable opportunity to make submissions in response to the notice; and
  - (c) taken those submissions into account.
- (4) The Central Bank must give the licence holder written notice of the amendment in its final form, and the amendment is not effective until the licence holder has received that notice.

## **23 Duration of licence**

- (1) A licence may be issued for:
  - (a) a specified term; or

- (b) an unspecified term.
- (2) The Central Bank may:
  - (a) renew a licence under section 24; or
  - (b) suspend a licence under section 27; or
  - (c) cancel a licence under section 28.

## **24        Renewal of licence**

- (1) The Central Bank may renew a licence:
  - (a) if the Central Bank is satisfied that the criteria for the issue of a licence to the applicant continue to be met; and
  - (b) on payment of the prescribed fee (if any) for renewal.
- (2) On renewal, the Central Bank may vary:
  - (a) the terms and conditions to which the licence is subject; and
  - (b) any endorsement of the licence; and
  - (c) the duration of the licence.

## **25        Notice of issue or renewal of licence**

Without delay after issuing or renewing a licence, the Central Bank must:

- (a) give notice of the issue or renewal of the licence in the *Gazette*; and
- (b) publish the notice on its Internet website.

## **26        Licence is non-transferable**

- (1) A licence, including any right arising under the licence, is not transferable except to the extent, and in the circumstances, prescribed.
- (2) The purported transfer of a licence or a right arising under it in contravention of subsection (1) is void and of no effect.

## **27        Suspension of licence**

- (1) The Central Bank may suspend a licence on written notice to the licence holder.
- (2) The Central Bank may suspend a licence if the Central Bank considers that:
  - (a) there may be a ground for cancelling the licence; or
  - (b) client funds are at risk; or
  - (c) the licence holder has committed or is committing or is likely to commit an offence.
- (3) The Central Bank may suspend a licence for a period not exceeding 30 working days.

## **28        Cancellation of licence**

- (1) The Central Bank may cancel a licence on 1 or more of the grounds set out in subsection (2) after following the applicable procedure set out in section 29.
- (2) The grounds for the cancellation of a licence are:
  - (a) the licence holder has ceased to meet the minimum criteria for the issue of a licence; or
  - (b) the licence holder has failed to comply with this Act, the regulations, a direction or notice given by the Central Bank, or a condition or restriction imposed as a term of its licence; or
  - (c) the licence was issued on the basis of materially false or misleading information or documents; or
  - (d) the licence holder has ceased to operate a payment system or to provide payment services, as the case may be; or
  - (e) the operation of a payment system or the provision of a payment service by the licence holder is fraudulent or reckless; or
  - (f) the licence holder has committed or is committing or is likely to

commit an offence; or

- (g) the licence holder has requested the Central Bank in writing to cancel its licence; or
- (h) the licence holder has been liquidated or dissolved or has otherwise ceased to exist.

## **29 Procedure for cancellation**

- (1) For the cancellation of a licence on a ground specified in section 28(2)(a) to (f), the Central Bank must first give the licence holder a notice (an ***“intention to cancel notice”***) that complies with subsection (2).
- (2) The intention to cancel notice must:
  - (a) be in writing; and
  - (b) state that the Central Bank intends to cancel the licence holder’s licence; and
  - (c) set out the Central Bank’s reasons for cancellation; and
  - (d) give the licence holder the opportunity to make submissions to the Central Bank within a period that is not less than 10 working days after the date of the notice.
- (3) If, after considering any submissions that are made, the Central Bank determines to proceed with cancellation on a ground specified in section 28(2)(a) to (f), the Central Bank may cancel the licence by giving the licence holder a cancellation notice that complies with subsection (4).
- (4) A cancellation notice:
  - (a) must be in writing; and
  - (b) must state that the licence is cancelled; and
  - (c) takes effect on the date of the notice or on any later date specified in the notice; and
  - (d) must be published in the Gazette and on the Central Bank’s



Internet website.

- (5) For the cancellation of a licence on a ground specified in section 28(2)(g) or (h):
  - (a) the Central Bank may cancel the licence by notice to the licence holder or by publication of the notice in the Gazette; and
  - (b) cancellation of the licence takes effect on the date of the notice or on any later date specified in the notice.

## **PART 5                    PAYMENT SYSTEM RULES**

### **30                    Payment system must have rules**

- (1) The operator of a payment system must ensure that there are written rules providing for the governance, management and operation of the payment system.
- (2) A payment system must not commence in operation unless the Central Bank has first approved its rules.
- (3) The operator of a payment system that commences in operation without rules approved by the Central Bank commits an offence.

Maximum penalty:        1 million penalty units or imprisonment for  
                                         10 years, or both

### **31                    Content of payment system rules**

- (1) The rules of a payment system must comply with:
  - (a) the requirements of this Act; and
  - (b) any regulations prescribing the form and content of the rules; and
  - (c) any applicable directive or guideline given or issued by the Central Bank.
- (2) The rules of a payment system must at a minimum provide for all of the following:

- (a) management of liquidity, credit, and settlement risk;
  - (b) determining the time when a payment instruction and a settlement are final;
  - (c) corporate governance;
  - (d) criteria for access to the payment system;
  - (e) grounds for the suspension or exclusion of participants from the payment system;
  - (f) contingency arrangements and management of operational risk;
  - (g) the rights and liabilities of participants;
  - (h) the rights and liabilities of the operator;
  - (i) (if applicable) netting and finality of payment;
  - (j) any other prescribed matter.
- (3) The rules of a payment system relating to access to the system:
- (a) must be objective, non-discriminatory and proportionate; and
  - (b) must not be more restrictive than is necessary to safeguard against risks such as:
    - (i) credit, liquidity and systemic risks; and
    - (ii) settlement risks; and
    - (iii) the risk that defects or deficiencies in information systems or internal controls could result in unexpected losses.

## **32 Central Bank may vary or revoke rule**

- (1) The Central Bank may vary or revoke a rule of a payment system if it considers that the variation or revocation is necessary for the proper and efficient operation of the payment system.
- (2) In determining whether the variation or revocation of a rule is

necessary, the Central Bank must have regard to:

- (a) whether the variation or revocation is in the public interest; and
  - (b) the interests of the participants in the payment system; and
  - (c) the interests of potential participants who may desire access to the payment system in the future; and
  - (d) any other matter that the Central Bank considers relevant.
- (3) A rule is varied or revoked under this section by the Central Bank giving written notice to the operator of the payment system.
  - (4) The variation or revocation takes effect on the date specified in the Central Bank's notice, but that date must not be less than 5 working days after the date of receipt of the notice by the operator.

### **33      Restriction on operator's change to payment system**

- (1) The operator of a payment system must not do either of the following things without first complying with subsection (2):
  - (a) vary or revoke a rule of the payment system; or
  - (b) cause a change in the payment system that affects the structure, operation, or administration of the payment system.
- (2) To make a rule change or a system change, the operator of a payment system must first:
  - (a) obtain the written approval of the Central Bank to the change; and
  - (b) having obtained Central Bank approval, give written notice of the change to each participant in the payment system not less than 20 working days before the change comes into effect.
- (3) However, despite subsection (2), the Central Bank may, in a particular case and if it considers that it is in the interest of monetary policy or financial stability or otherwise in the public interest:

- (a) waive the requirement of notice of a rule change or system change; or
- (b) authorise notice of less than 20 working days.

## **PART 6 SETTLEMENT**

### **34 Payment system must be operated in accordance with this Part**

- (1) A payment system that comprises or includes a settlement system (“***the settlement system***”) must be operated in accordance with this Part.
- (2) In the event of a conflict, this Part overrides the rules of a payment system.

### **35 Settlement**

The discharge of settlement obligations between participants in the settlement system must be effected by entries processed through the settlement system in accordance with the settlement rules.

### **36 Settlement accounts**

- (1) A participant in the settlement system must:
  - (a) operate a settlement account with the Central Bank or the operator of the payment system; or
  - (b) otherwise appoint, as agent to hold funds and settle its obligations, another participant in the payment system that operates a settlement account.
- (2) The operation of a settlement account is subject to:
  - (a) the settlement rules; and
  - (b) any further terms or conditions that the Central Bank may prescribe.

### **37 Settlement agent**

- (1) A participant who appoints a settlement agent under section

36(1)(b) must, before the agent settles any transaction on behalf of the participant:

- (a) notify the operator of the payment system in writing of the appointment; and
  - (b) provide the operator with written confirmation by the agent of acceptance of the appointment.
- (2) A participant who terminates the appointment of a settlement agent must give the operator written notice of not less than 5 working days before the appointment terminates.

### **38 Netting**

- (1) The obligations of settling participants in the settlement system must be settled on the basis of netting.
- (2) Netting in accordance with the rules of the settlement system is valid and enforceable despite any written law or common law rule to the contrary.

### **39 Finality of settlement**

- (1) A transfer instruction that is entered into, and effected in accordance with the rules of, the settlement system must not, whether in whole or in part, be revoked, reversed, repaid, recovered or set aside despite any enactment or rule of law to the contrary.
- (2) Subsection (1) extends to any application made to the Court by a foreign court, foreign representative, or foreign creditor to reverse, repay, recover or set aside a settlement, whether in whole or in part that relates to an insolvency that is within the jurisdiction of the relevant foreign court, foreign representative or foreign creditor.

### **40 Collateral for payment and settlement**

- (1) The rights and remedies of parties in a payment system in respect of collateral that secures the performance of an obligation incurred in the payment system:
  - (a) are not affected by an insolvency; and
  - (b) are not subject to any order staying or otherwise restricting the

exercise of those rights.

- (2) In subsection (1), “*party*” includes any of the operator, a participant, a clearing house, a central counterparty, the Central Bank or any third party.

## **PART 7                    MONITORING AND ENFORCEMENT**

### **41                    Licence holder must report to Central Bank**

- (1) A licence holder must file periodic reports with the Central Bank in accordance with regulations.
- (2) The Central Bank may make regulations prescribing:
- (a) the form and contents of the reports; and
  - (b) the frequency of the reports; and
  - (c) any other matter that the Central Bank considers necessary or expedient for inclusion in a report.

### **42                    Central Bank may require additional information from licence holder**

- (1) The Central Bank may, by notice in writing to a licence holder, require from it any information, data or forecasts about any matters relating to:
- (a) the structure, operations, or management of the payment system; or
  - (b) the provision of payment services.
- (2) The notice may require any or all of the information, data or forecasts to:
- (a) be in consolidated form; and
  - (b) be audited, or reviewed in a specified manner, by a person approved by the Central Bank; and
  - (c) relate to specified periods; and

- (d) be provided by a specified time, or within a specified period; and
  - (e) be provided in a specified form; and
  - (f) be provided to a specified place.
- (3) A licence holder that fails to comply with a notice given to it under subsection (1) commits an offence.

Maximum penalty: 50,000 penalty units or, where the violation is a continuing one, 10,000 penalty units for each day during which the violation continues

**43 Central Bank may require licence holder to provide audited financial statements**

- (1) The Central Bank may, by notice in writing to a licence holder, require it to provide its audited financial statements prepared in accordance with the International Financial Reporting Standards and International Accounting Standards.
- (2) The notice must specify the period for which the financial statements are required.
- (3) A licence holder that fails to comply with a notice given to it under subsection (1) commits an offence.

Maximum penalty: 50,000 penalty units or, where the violation is a continuing one, 10,000 penalty units for each day during which the violation continues

**44 Central Bank may appoint investigator**

- (1) The Central Bank may by notice in writing to a licence holder appoint a person to investigate:
  - (a) the affairs of the licence holder; and
  - (b) the operation and management of a payment system; and
  - (c) the provision of payment services by a licence holder.

- (2) The Central Bank may appoint a person under subsection (1) if the Central Bank believes on reasonable grounds that 1 or more of the following apply:
- (a) the operation or management of the payment system or the provision of payment services has not been, or is not being, conducted in a prudent manner;
  - (b) the payment system or the provision of payment services is operating fraudulently or recklessly;
  - (c) the licence holder has failed, is failing, or is likely to fail to comply with this Act, the regulations, the rules of the payment system, any direction or guideline given or issued by the Central Bank, or a licence condition or restriction.
- (3) A person commits an offence if the person hinders, obstructs or delays an investigator appointed under subsection (1) in the carrying out of an investigation under this section.

Maximum penalty: 1 million penalty units or imprisonment for 10 years, or both

#### **45 Investigator's power to obtain information or documents**

- (1) An investigator appointed under section 44 may, for the purposes of the investigation:
- (a) by notice in writing, require the licence holder, or any director, officer or employee of the licence holder, or any other person, to:
    - (i) supply any information or data relating to the affairs, structure, operations, and management of the licence holder; and
    - (ii) produce for inspection any document of the licence holder or relating to the affairs, structure, operations or management of the licence holder that is in the custody or control of the operator, director, officer, employee or other person, as the case may be; and
    - (iii) if necessary, reproduce in usable form any information recorded or stored in those documents; and



- (b) take copies of any document produced for inspection under paragraph (a).
- (2) The investigator, in exercising a power under subsection (1), must if requested produce a copy of the notice of his or her appointment.
- (3) A person commits an offence if the person fails to comply with a requirement of an investigator under this section.

Maximum penalty: 50,000 penalty units or, where the violation is a continuing one, 10,000 penalty units for each day during which the violation continues

#### **46 Investigator's power to enter and search place**

- (1) An investigator appointed under section 44 may, for the purposes of the investigation, enter and search any place:
  - (a) if the occupier of the place consents; or
  - (b) the investigator obtains a warrant on application to a Magistrate.
- (2) A Magistrate may issue a warrant to an investigator if the Magistrate is satisfied that there are reasonable grounds for believing:
  - (a) that it is reasonably necessary for the purpose of determining whether to exercise any of the powers conferred on the Central Bank under this Act or the regulations that an investigation of a payment system or a licence holder should be carried out; or
  - (b) a licence holder or other person has failed to comply with any requirement to supply information, data or forecasts under this Part, or any information, data or forecasts supplied by the operator of a payment system or other person under this Part are false or misleading in a material particular; or
  - (c) a licence holder has failed, or is failing, or is likely to fail to comply with this Act, the regulations, the rules of a payment system, any direction or guideline given or issued by the Central Bank, or a licence condition or restriction.

## **47 Central Bank may give directions**

- (1) The Central Bank may give a licence holder a direction, in writing, if the Central Bank believes on reasonable grounds that 1 or more of the following apply:
  - (a) the operation or management of a payment system or the provision of payment services has not been, or is not being, conducted in a prudent manner;
  - (b) a licence holder or a director or other officer of a licence holder has failed, is failing, or is likely to fail to comply with this Act, the regulations, the rules of a payment system, any other direction, notice, or guideline given or issued by the Central Bank, or a licence condition or restriction;
  - (c) a licence holder is insolvent, or likely to become insolvent.
- (2) The Central Bank may:
  - (a) amend or modify a direction; or
  - (b) replace a direction with another direction; or
  - (c) cancel a direction.
- (3) A direction under this section must state the grounds on which it is given.
- (4) A licence holder that fails to comply with a direction given to it under subsection (1) commits an offence.

Maximum penalty: 50,000 penalty units or, where the violation is a continuing one, 10,000 penalty units for each day during which the violation continues

## **48 Scope of directions**

A direction to a licence holder under section 47 may require the licence holder to do any of the following things:

- (a) consult with the Central Bank, at the times and in the manner specified by the Central Bank, about the operation and

management of the payment system;

- (b) cease to accept new participants;
- (c) take, or refrain from taking, any specified action in order to address an actual or likely default, failure to comply, or other breach listed in section 47(1);
- (d) ensure that a director or other officer or employee of the licence holder ceases to take part in the operation or management of a payment system or the provision of payment services, except with the permission of the Central Bank and so far as that permission extends;
- (e) remove a director or other officer or employee of the licence holder from office;
- (f) suspend or cease carrying on the operation of a payment system, or any part of its operation, or the provision of payment services;
- (g) carry on the operation of the payment system, or any part of its operation, or provide payment services in accordance with the direction;
- (h) prepare a remedial action plan;
- (i) prepare a disaster recovery plan;
- (j) amend the rules of a payment system as specified by the Central Bank.

#### **49 Central Bank may require audit of accounts etc**

- (1) The Central Bank may by written notice require any of the following entities to make available its financial statements, accounts, records and other documents for audit:
  - (a) the operator of a payment system;
  - (b) the provider of a payment service;
  - (c) a participant in a payment system.

- (2) The Central Bank may require an audit under subsection (1):
- (a) routinely, once in each financial year; and
  - (b) otherwise, if the Central Bank considers that there are regulatory concerns that justify an audit.
- (3) The Central Bank:
- (a) may conduct the audit itself or appoint an independent auditor to do so; and
  - (b) may require the operator, provider, or participant to meet the costs of the audit.
- (4) A person that fails to comply with a notice given to it under subsection (1) commits an offence.

Maximum penalty: 50,000 penalty units or, where the violation is a continuing one, 10,000 penalty units for each day during which the violation continues

## **50 Central Bank must not disclose information**

- (1) The Central Bank must not directly or indirectly disclose to any person any information or document obtained in the course of exercising its functions under this Act.
- (2) However, subsection (1) does not apply to disclosure by the Central Bank:
- (a) made for the purpose of exercising its functions under this Act; or
  - (b) made for the purpose of protecting the financial integrity, effectiveness, or security of the national payment system; or
  - (c) made to a person who is legally authorised or entitled to receive it; or
  - (d) ordered to be made by a court; or
  - (e) made for statistical purposes; or

- (f) made for the purpose of meeting obligations entered into by Solomon Islands under international agreements; or
- (g) made in the course of cooperation with another regulator under section 15.

## **51 Retention of records**

- (1) Each operator of a payment system, provider of payment services, or participant in a payment system must retain the records and documents obtained or created by it in the course of operating a payment system, providing payment services, or participating in a payment system, as the case may be.
- (2) The records and documents:
  - (a) must be retained for a period of 10 years from first being obtained or created; and
  - (b) may be retained in electronic form if readily retrievable in hard copy form.

## **52 Compliance by agent or third party with AML legislation**

Each operator of a payment system or provider of payment services must ensure that any agent or third party acting on its behalf complies with the requirements of anti-money laundering legislation in force in Solomon Islands and any directives or guidelines given or issued under that legislation.

## **53 Approval required for outsourcing arrangement**

- (1) A licence holder must not enter into an outsourcing arrangement unless:
  - (a) the licence holder has applied to the Central Bank in accordance with subsection (2); and
  - (b) the Central Bank has approved the outsourcing arrangement in writing.
- (2) An application for approval of an outsourcing arrangement must:
  - (a) be in the form prescribed or otherwise approved by the

Central Bank; and

- (b) contain or be accompanied by the information required by the form or otherwise prescribed; and
  - (c) be accompanied by the prescribed fee; and
  - (d) be filed with the Central Bank.
- (3) The Central Bank must not authorise an outsourcing arrangement unless it is satisfied that:
- (a) it has received all information material to the application; and
  - (b) the outsourcing will not materially impair:
    - (i) the licence holder's internal controls; or
    - (ii) the ability of the licence holder to comply with the terms, conditions and restrictions of its licence; or
    - (iii) the ability of the Central Bank to monitor and enforce compliance by the licence holder with the requirements of this Act; and
  - (c) the outsourcing will not result in delegation of any of the responsibilities of senior management of the licence holder; and
  - (d) the outsourcing will not alter the obligations of an issuer of a payment instrument to any user of the instrument.
- (4) In this section:

***“operational function”*** means a function of a licence holder that is listed in regulations as an operational function for the purposes of this section;

***“outsourcing arrangement”*** means an arrangement, whether contractual or otherwise, under which a licence holder engages another person to perform an operational function of the licence holder.

**Approval required for use of agents**

- (1) A provider of payment services must not provide payment services to a consumer through the use of an agent or agents unless:
  - (a) the provider has applied to the Central Bank in accordance with subsection (2); and
  - (b) the Central Bank has given the provider written approval for the use of agents by that provider.
- (2) An application for approval of the use of an agent or agents must:
  - (a) be in the form prescribed or otherwise approved by the Central Bank; and
  - (b) contain or be accompanied by the information required by the form or otherwise prescribed; and
  - (c) be accompanied by the prescribed fee; and
  - (d) be filed with the Central Bank.
- (3) The provider must file a notice with the Central Bank notifying the Central Bank of:
  - (a) the appointment of each agent; and
  - (b) any change in agent.
- (4) The Central Bank:
  - (a) must maintain a register of current agents that are notified to it under subsection (3); and
  - (b) must make the register available for inspection by the public; and
  - (c) if practicable, must publish the register on an Internet site maintained by the Central Bank.
- (5) The provider must take all reasonable steps to ensure that a consumer is made aware that a payment service is provided through the use of an agent.

**55                    Outsourcing and use of agents: liability of licence holder**

- (1) A licence holder must ensure that the performance of an operational function that has been outsourced or entrusted to an agent complies with this Act, the regulations, any directions or guidelines given or issued by the Central Bank, and any licence condition or restriction.
- (2) Despite subsection (1), a licence holder remains fully liable under this Act for the compliance of an operational function that has been outsourced or entrusted to an agent with this Act, the regulations, any directions or guidelines given or issued by the Central Bank, and any licence condition or restriction.

**PART 8                    INSOLVENCY OF LICENCE HOLDER OR PARTICIPANT**

**56                    Notice of insolvency proceeding**

- (1) A licence holder or a participant in a payment system must file a notice with the Central Bank notifying the Central Bank of any insolvency proceeding that has been commenced or continued against it.
- (2) The notice must:
  - (a) be filed without delay when the operator or participant first becomes aware of the insolvency proceeding; and
  - (b) must include a copy of any order that has been made in the proceeding.
- (3) The operator or participant must not operate or participate in the payment system while the proceeding is unresolved or not finally determined.

**57                    Insolvency administrator bound by netting arrangement or rules**

- (1) This section applies if:
  - (a) a participant in a payment system is bound by a written netting arrangement or written netting rules; and



- (b) an insolvency proceeding has commenced against the participant; and
  - (c) an insolvency administrator has been appointed in respect of the participant.
- (2) The insolvency administrator is bound by the provisions of the netting arrangement or the netting rules in respect of any payment or settlement obligation that:
  - (a) has been determined through netting before the commencement of the insolvency proceeding; and
  - (b) either:
    - (i) the obligation is due to be discharged on or after the commencement of the insolvency proceeding; or
    - (ii) discharge of the obligation is overdue on or after commencement of the insolvency proceeding.
- (3) This section applies despite anything to the contrary in any other written law.

## **58 Preservation of rights**

Nothing in this Part restricts or affects the enforcement of any right by a person except to the extent that enforcement of the right affects:

- (a) the finality of a payment or settlement in a payment system; or
- (b) the enforceability of a netting arrangement or of netting rules.

## **59 Conflict of laws**

- (1) In the event of the insolvency of a foreign participant in a payment system, the rights, obligations, and liabilities of the participant in relation to participation in the payment system must be determined by Solomon Islands law alone.
- (2) In subsection (1), ***“foreign participant”*** means:
  - (a) in the case of an entity that is a body corporate, an entity

incorporated under the laws of another jurisdiction; or

- (b) in the case of any other person or entity, a person or entity whose principal place of business is outside Solomon Islands.

## **PART 9                      ELECTRONIC BANKING AND FUNDS TRANSFER**

### **60                      How cheque may be presented**

- (1) A cheque may be presented for payment to the drawee bank by notifying that bank of the essential features of the cheque through presenting the cheque:
  - (a) in physical form; or
  - (b) in electronic form.
- (2) For the purposes of this section, the essential features of a cheque are:
  - (a) its serial number; and
  - (b) the code that identifies the drawee bank; and
  - (c) the drawer's account number; and
  - (d) the amount for which the cheque is drawn in numbers and in words; and
  - (e) its date; and
  - (f) any other prescribed feature.

### **61                      Electronic presentment of cheque**

- (1) The drawee and presenting banks of a cheque that is presented in electronic form are subject to the same duties and liabilities in relation to the collection and payment of the cheque as if the cheque had been presented in physical form.
- (2) The presentment of a cheque in electronic form is not made outside the ordinary course of business, in bad faith or negligently only because the cheque is presented in electronic rather than in

physical form.

**62 Drawee bank may require physical presentment**

- (1) The electronic presentment of a cheque must be disregarded if:
  - (a) the drawee bank requests the presenting bank to present the physical cheque; and
  - (b) the request is made before the close of business on the first working day immediately following the electronic presentment of the cheque.
- (2) A request under subsection (1) does not constitute dishonour of the cheque by non-payment.

**63 Enforceability of electronic funds transfer**

- (1) An electronic funds transfer must not be denied legal effect or enforceability solely because the funds transfer is in electronic form.
- (2) A record of a payment transaction must not be denied legal effect or enforceability solely because the record is in electronic form.

**64 Issue of electronic money**

- (1) Subject to subsection (2), no person may issue electronic money unless:
  - (a) that person is licensed as a payment service provider; and
  - (b) the licence is endorsed by the Central Bank for the issue of electronic money.
- (2) Subsection (1) does not apply to a financial institution.
- (3) The Central Bank must prescribe the criteria that a provider must satisfy for the endorsement of the provider's licence for the issue of electronic money.
- (4) Funds received by a provider in exchange for the issue of electronic money must not be treated as a deposit for the purposes of this Act.
- (5) A person who contravenes subsection (1) commits an offence.

Maximum penalty: 2 million penalty units or imprisonment for 20 years, or both

**65 Conditions that apply to issuer of electronic money**

The following conditions apply to a provider whose licence is endorsed for the issue of electronic money:

- (a) the issue of electronic money must not include the provision of credit;
- (b) the provider must provide such statistics as the Central Bank by regulations may require on the total electronic money issued by the provider and redeemed values;
- (c) the provider must provide such ongoing information as the Central Bank by regulations may require for monitoring and controlling the quantity of, and turnover in, the supply of electronic money in the economy;
- (d) the provider must ensure that clearing and settlement mechanisms effect, within the time limits set by the Central Bank from time to time, final settlement after a payment instruction has been initiated in the banking system;
- (e) the provider must redeem electronic money value in Solomon Islands currency at par on the request of the holder of the electronic money;
- (f) the management of the underlying float and redemption of electronic money value by the provider to the holder must be clearly defined.

**PART 10 CONSUMER PROTECTION**

**66 Transparency of fees charged to consumers of payment services**

- (1) The provider of a payment service must not charge a fee or other charge to a consumer of the service unless the provider complies with subsection (2).
- (2) The provider must disclose the amount of the fee or charge by a notice displayed prominently and conspicuously:

- (a) at the location or facility at which the service is initiated or requested by the consumer; and
  - (b) in advertising promoting the service; and
  - (c) if the provider maintains an Internet site, on that site.
- (3) The notice must be in the form, and contain the information, as the Central Bank may prescribe.
  - (4) A provider of a payment service who contravenes subsection (1) commits an offence.

Maximum penalty: 50,000 penalty units or, where the violation is a continuing one, 10,000 penalty units for each day during which the violation continues

## **67 Transparency of terms and conditions of payment service**

- (1) A payment service provider must, before a consumer enters into a contract for provision of a payment service:
  - (a) disclose in writing the terms and conditions of the payment service; and
  - (b) take all reasonable steps to ensure that the consumer clearly understands those terms and conditions.
- (2) For the purposes of subsection (1)(b), reasonable steps include (but are not limited to) ensuring that the terms and conditions are expressed in clear and concise language.
- (3) If the terms and conditions include a provision for their unilateral variation by the provider, the provider must not vary a term or condition without giving the customer written notice of the variation of not less than 15 working days before the variation becomes effective.
- (4) Subsection (3) does not apply if the variation is immediately necessary to maintain or restore the security of the payment system or of the consumer's account with the provider.

## **PART 11 MISCELLANEOUS MATTERS**

### **Division 1 Delegation**

#### **68 Delegation by Central Bank**

- (1) The Central Bank may delegate any of its powers or functions under this Act.
- (2) However, the Central Bank must give the Minister prior written notice of any delegation and the Minister may revoke it at any time by written notice to the Central Bank.
- (3) The Minister must not give any direction to the Central Bank in relation to its functions under this Act, except to the extent that the *Central Bank of Solomon Islands Act 2012* permits the Minister to give the direction.

### **Division 2 Offences**

#### **69 Offence of false and misleading conduct**

An entity, director, officer or other person who makes any application or statement, or makes, or gives or supplies any application, document, or information to the Central Bank for the purposes of this Act knowing that it is false or misleading in a material respect commits an offence.

Maximum penalty: 2 million penalty units or imprisonment for 20 years, or both

#### **70 Criminal liability of directors and officers**

If a body corporate is convicted of an offence under this Act, every director and officer of the body corporate is also guilty of the offence if it is proved:

- (a) that the act that constituted the offence took place with his or her authority, permission or consent; or
- (b) that he or she:
  - (i) knew, or could reasonably be expected to have known,

- that the offence was to be or was being committed; and
- (ii) failed to take reasonable steps to prevent or stop it.

## **71 Administrative penalties**

This Act is a relevant law for the purposes of section 63 of the *Central Bank of Solomon Islands Act 2012*.

## **Division 3 Regulations**

### **72 Regulations**

- (1) The Central Bank may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), the Central Bank may make the following regulations:
  - (a) establishing an advisory council for the purpose of advising the Central Bank as to the regulation of payment systems in Solomon Islands (see section 16);
  - (b) prescribing the form of an application for a licence, the information to be contained in or accompany the form, and the fee that must accompany the application (see section 18);
  - (c) prescribing capital adequacy requirements for the issue of a licence (see section 19);
  - (d) prescribing other criteria for the issue of a licence (see section 19);
  - (e) prescribing a fee for the renewal of a licence (see section 24);
  - (f) prescribing the extent and circumstances of the transferability of a licence (see section 26(1));
  - (g) prescribing the form and content of the rules of a payment system (see section 31(1)(b));
  - (h) prescribing terms and conditions for the operation of a settlement account (see section 36(2)(b));

- (i) prescribing the requirements for reports by a licence holder to the Central Bank (see section 41(2));
- (j) prescribing the form of an application for approval of an outsourcing arrangement, the information to be contained in or accompany the form and the fee that must accompany the application (see section 53(2));
- (k) listing the functions of a licence holder that is an operational function for the purpose of section 53 (see section 53(4));
- (l) prescribing the form of an application for approval of the use of an agent, the information to be contained in or accompany the form and the fee that must accompany the application (see section 54(2));
- (m) prescribing an essential feature of a cheque (see section 60(f));
- (n) prescribing the criteria that a provider must satisfy for the endorsement of the provider's licence for the issue of electronic money (see section 64(3));
- (o) prescribing the scope and detail of statistics relating to the issue of electronic money that must be reported in a licence holder's annual financial statements (see section 65(b));
- (p) prescribing the scope and detail of ongoing information relating to the supply of electronic money that must be provided to the Central Bank (see section 65(c));
- (q) prescribing the form and content of a notice of fees and charges that must be displayed by a provider of payment services (see section 66(3)).

### **73 Recovery by Central Bank of costs of discharging functions under this Act**

- (1) The Central Bank may by regulation:
  - (a) require the payment of fees and charges in order to recover the cost of discharging its functions under this Act; and
  - (b) in addition to fees expressed to be payable in this Act,



prescribe further circumstances in which fees and charges are payable; and

- (c) prescribe the amounts of fees and charges.
- (2) Regulations made under subsection (1) may prescribe different fees and charges for different classes of entity.

## **PART 12                    CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISIONS**

### **74                    Central Bank of Solomon Islands Act 2012 amended.**

The *Central Bank of Solomon Islands Act 2012* is amended by repealing Part 6.

### **75                    Transitional provisions**

- (1) The requirement to hold a licence under section 17 does not apply to a person operating a payment system or providing a payment service immediately before the commencement date, for a period of 6 months after the commencement date.
- (2) A person providing a payment service through the use of an agent immediately before the commencement date is not required to obtain approval for the use of an agent under section 54 for a period of 6 months after the commencement date.
- (3) Nothing in subsection (2) affects the liability of person providing a payment service immediately before the commencement date to obtain approval for the use of an agent under section 54 if the use of an agent commences after the commencement date.
- (4) In this section, “**commencement date**” means:
  - (a) for the purposes of subsection (1), the date on which section 17 commences; or
  - (b) for the purposes of subsections (2) and (3), the date on which section 54 commences.

## **PAYMENT SYSTEMS BILL 2020**

### **OBJECTS AND REASONS**

A payment system is a system used for transferring, clearing, or settlement of funds or securities. An electronic payment system effectively allows intermediaries to communicate with each other, electronically transferring amounts when people pay for goods and services. In Solomon Islands, there is no payments system in place to facilitate electronic funds transfers between banks or between customers of different banks. Instead, all these payments are made with cheques. The cheque clearing is totally manual.

The *Payment Systems Bill 2020* provides the legal framework to introduce an electronic payment system in Solomon Islands. Implementation and use of an electronic payment systems and securities settlement systems would allow a safer and, at the same time, more efficient settlement process reducing systemic risks, avoiding human errors and delays the typical of manual processing, and speeding up the availability of funds for beneficiaries of payments.

Although it is expected that there will continue to be a need for manual clearing given the high use of cheques used in the financial system, the Bill provides the ability to transition towards an electronic payment system which will positively affect the efficiency of trade and activity in the economy.

The Bill provides for, among other things:

- the powers and duties of the Central Bank to regulate, licence and oversee the national payment system
- the powers and duties of the Central Bank to operate payment, clearing and settlement systems, and provide underlying or associated services
- rules on the issuance of electronic money.

**HON. HARRY KUMA**  
**MINISTER FOR FINANCE AND TREASURY**

## **PAYMENT SYSTEMS BILL 2020**

### **EXPLANATORY MEMORANDUM**

Clause 1 states the short title of the Bill.

Clause 2 is the commencement clause and provides that the Act commences on the day appointed by the Minister by notice in the Gazette. However, clause 2 also allows for a staggered commencement for different provisions.

Clause 3 sets out the definitions of terms used in the Bill. The meaning of some of the terms that are central to the Bill are set out separately in clauses 5 to 9.

Clause 4 provides that the Act binds the Crown.

Clause 5 gives the meaning of “payment system”. At the heart of the Bill is the requirement that payment systems in Solomon Islands be regulated. For the purposes of the Bill, the payment systems in Solomon Islands are collectively called the “national payment framework”.

Clauses 6 and 7 set out the meaning of “clearing system” and “settlement system” respectively. These are, or may be, components of a payment system.

Clause 8 describes what is meant by the “national payment framework”. Broadly this term covers the whole of the payments systems in Solomon Islands and is central to the Bill as later clauses charge the Central Bank of Solomon Islands (abbreviated in this Explanatory Memorandum to “CBSI”) with the responsibility of overseeing the national payment framework.

Clause 9 gives the meaning of “payment service”. A payment service is, or may be, a component of a payment system.

Clause 10 gives an overview of how a payment system is regulated. There are 3 aspects to regulation: licensing, compliance with the regulatory regime, and supervision by the CBSI. These are covered in detail in later clauses of the Bill.

Clause 11 describes the role of the CBSI under the Bill: it has a dual regulatory and operational role.

Clause 12 sets out the nature of the CBSI’s regulatory role, that is, the role of regulating and overseeing the national payment framework.

Clause 13 lists the functions of the CBSI in its regulatory role.

Clause 14 describes the CBSI's operational role, that is, the steps that the CBSI may take to enable the functioning of payment systems.

Clause 15 gives the CBSI a power to cooperate with other relevant regulators.

Clause 16 relates to the establishment of an advisory council to advise the CBSI as to the regulation and oversight of the national payment framework. Establishing the advisory council is optional: the CBSI may do so, but is not required to do so.

Clause 17 restricts the operation of a payment system or the provision of a payment service to persons who are licensed to do so. A person who contravenes this restriction, that is, by acting without a licence, commits an offence.

Clause 18 sets out the procedure for applying for a licence under the Act. The application is made to the CBSI.

Clause 19 states the criteria that the CBSI must apply in accepting an application and issuing a licence.

Clause 20 is a procedural provision setting out the process that the CBSI must follow in determining whether a licence application should be accepted.

Clause 21 provides that the CBSI may impose conditions or restrictions as terms of a licence. Breach of a licence condition or restriction is an offence.

Clause 22 provides for the amendment by the CBSI of a licence condition, restriction, or endorsement.

Clause 23 provides that a licence may be issued for a specified or an unspecified term. Duration of a licence may also be affected by the powers that the CBSI has to renew, suspend or cancel a licence.

Clause 24 provides for the renewal of a licence by the CBSI.

Clause 25 requires the CBSI to give notice of the issue or renewal of a licence. Notice must be given in the *Gazette* and published on the CBSI's Internet website.

Clause 26 states that a licence is not transferable, unless the CBSI prescribes regulations setting out the circumstances in which, and the extent to which, a

licence may be transferred.

Clause 27 gives the CBSI the power to suspend a licence. The grounds for suspension are set out in clause 27(2). The maximum period of suspension is 30 working days.

Clause 28 provides for the cancellation of a licence. Cancellation is serious step and clause 29 sets out the procedure for effecting cancellation. Cancellation is initiated by notice to the licence holder by the CBSI of the CBSI's intention to cancel.

Clause 30 requires rules for each payment system, that is, rules providing for its governance, management, and operation. The rules must be approved by the CBSI and operating a payment system without approved rules is an offence.

Clause 31 sets out the contents requirement for payment system rules.

Clause 32 gives the CBSI the power to vary or revoke a payment system rule. The CBSI may intervene if it thinks it necessary for the proper and efficient operation of the payment system.

Clause 33 restricts the ability of a payment system operator to make certain changes without first obtaining CBSI approval and, if the change is approved, giving notice of the upcoming change to participants in the payment system.

Clause 34 requires that a payment system that has a settlement system component must be operated in accordance with Part 6 of the Bill.

Clause 35 provides for the discharge of settlement obligations between participants in a settlement system.

Clause 36 sets out the requirements for the operation of a settlement account.

Clause 37 sets out the requirements for notification and confirmation of the appointment of a settlement agent.

Clause 38 provides that settlement of selling participants in a settlement system must be settled on the basis of netting. "Netting" has a technical meaning which is set out in the interpretation provision, clause 3.

Clause 39 provides for the finality of settlement. A transfer instruction under a settlement system cannot be undone.

Clause 40 preserves the availability of collateral that secures an obligation incurred in a payment system from the effect of insolvency or any order restricting the exercise of rights to the collateral.

Clause 41 and following clauses set out the powers of the CBSI to monitor and enforce compliance with the regulatory regime governing payment systems in Solomon Islands. Under clause 41, a licence holder must make periodic reports to the CBSI. It is left to the CBSI to prescribe what the reports must contain and how often they must be provided.

Clause 42 empowers the CBSI to require additional information from a licence holder by giving notice to the licence holder. Failure to comply with the notice is an offence.

Clause 43 empowers the CBSI by notice to a licence holder to require it to provide its audited financial statements. Failure to comply with the notice is an offence.

Clause 44 empowers the CBSI to appoint an investigator, for example, to investigate the affairs of a licence holder. Broadly the grounds for appointment of an investigator are imprudence, fraud or recklessness in relation to a payment system or payment services, or non-compliance with the regulatory regime.

Clause 45 gives an investigator the power to obtain information or documents for the purposes of the investigation.

Clause 46 empowers an investigator to enter and search a place for the purposes of an investigation. Except if the occupier consents to entry and search, an investigator requires a warrant do so.

Clause 47 provides for the CBSI to give directions to a licence holder. Failure to comply with a direction is an offence. A direction is an intervention by the CBSI broadly if it suspects that imprudence, non-compliance, or insolvency has occurred or is likely to occur. Failure to comply with a direction is an offence.

Clause 48 sets out the scope of directions that may be made under clause 47.

Clause 49 empowers the CBSI to require documents from the operator of a payment system and others for the purpose of an audit.

Clause 50 prohibits disclosure by the CBSI of information or documents obtained by it in the course of exercising its functions under the Act. Clause

50(2) sets out exceptions to the general prohibition.

Clause 51 requires the retention of records and documents by the operator of a payment system and others.

Clause 52 imposes the obligation on the operator of a payment system or the provider of a payment service to ensure that its agents and other persons acting for it comply with Solomon Islands anti-money laundering legislation.

Clause 53 restricts a licence holder from entering into an outsourcing arrangement without CBSI approval.

Clause 54 requires the approval of the CBSI for the use of an agent to provide payment services to consumers.

Clause 55 requires a licence holder to ensure that the performance of an outsourced or agency function complies with the regulatory regime.

Clause 56 requires a licence holder and others to give the CBSI notice of insolvency proceedings.

Clause 57 provides that an insolvency administrator appointed in respect of a participant in a payment system is bound by the netting arrangement or netting rules to which the participant is subject.

Clause 58 effectively provides that the precedence that Part 8 of the Bill gives to the finality of payment or settlement and to a netting arrangement or netting rules is the only restriction effected by Part 8 on the enforcement of a right.

Clause 59 is a conflict of laws provision asserting that the position of a foreign insolvent participant in a payment system must be determined by Solomon Islands law.

Clause 60 makes provision for presentment of a cheque in electronic form.

Clause 61 provides that the liabilities of the drawee and presenting banks are the same whether a cheque is presented in physical or electronic form.

Clause 62 preserves the right of a drawee bank to require the physical, as opposed to the electronic, presentment of a cheque.

Clause 63 provides that the enforceability of a funds transfer is not affected by the fact that the transfer is in electronic form.

Clause 64 requires that, for the issue of electronic money, a person be licensed as a payment service provider with the appropriate endorsement by the CBSI.

Clause 65 sets out the conditions that apply to a payment service provider whose licence is endorsed by the CBSI for the issue of electronic money.

Clause 66 requires the disclosure of fees by a payment service provider to the consumer of the service.

Clause 67 requires pre-contract disclosure of terms and conditions to a consumer who enters into a contract for the provision of a payment service.

Clause 68 provides for the delegation by the CBSI of any of its powers or functions under the Act.

Clause 69 creates an offence relating to making a false or misleading application to the CBSI, or giving the CBSI a document, application, or information that is false or misleading.

Clause 70 relates to the secondary criminal liability of directors and officers of a body corporate that commits an offence under this Act

Clause 71 provides that the Act is a relevant law for the purposes of section 63 of the Central Bank of Islands Act 2012. That provision allows the CBSI to impose administrative penalties upon any person who contravenes a provision of the Central Bank of Solomon Islands Act "or any other relevant law".

Clause 72 sets out the regulations that may be made under the Act.

Clause 73 provides for cost-recovery by the CBSI through charging fees and charges.

Clause 74 amends the Central Bank of Islands Act 2012 by repealing Part 6. That Part comprises the current provisions (sections 26 and 27) dealing with regulation of payment systems by the CBSI and are therefore a duplication of the bill.

Clause 75 makes provision for existing payment system operators and payment service providers during a transitional period of 6 months after the date of commencement of the Act. First, the requirement of a licence imposed by clause 17 is suspended for the transitional period. Second, the requirement under section 54 of approval for use of an agent is suspended for the transitional period in the case of an existing payment service provider who is



using an agent immediately before the commencement date.

