



ST. CHRISTOPHER AND NEVIS

CHAPTER 20.57

PAYMENT SYSTEM ACT and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2020

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PAYMENT SYSTEM ACT

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CHAPTER 20.57
PAYMENT SYSTEM ACT

AN ACT TO ADVANCE OPERATION AND REGULATION OF THE PAYMENT SYSTEM GENERALLY AND PARTICULARLY TO CODIFY PROCEDURES GOVERNING THE PAYMENT SYSTEM; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Payment System Act.

Interpretation.

2. In this Act—

“access”, in relation to a funds transfer system or settlement system, means the entitlement or eligibility of a person to become a participant in the system, as a user of the system, on a commercial basis on terms that are fair and reasonable;

“access regime”, in relation to a designated funds transfer system, means an access regime that has been established by the Central Bank under section 15;

“Authority” means the Financial Services Regulatory Commission;

“banking business” means the business of receiving funds through—

- (a) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
- (b) the sale or placement of bonds, certificates, notes or other securities and the use of such funds, either in whole or in part, for loans or investment, and includes,

any other activity recognised by the Central Bank as banking practice and which a financial institution may be authorised to do;

“Central Bank” means the Eastern Caribbean Central Bank established by the Eastern Caribbean Central Bank Act, Cap. 21.06;

“central counterparty” means an entity that is a buyer to every seller and the seller to every buyer in a net settlement system;

“clearing” means the process of transmitting, reconciling or confirming payment orders or security transfer instructions prior to settlement and includes the netting of instructions and the establishment of final position for settlement;

“clearing house” means—

- (a) an arrangement between two or more system participants governing the clearing or netting of payment instructions between those system participants; and

- (b) a central location or central processing mechanism through which financial institutions agree to exchange payment instructions or other financial obligations;

“collateral” means an asset or third-party commitment that is provided by the collateral provider to the collateral taker and is accepted by the collateral taker to secure an obligation of the collateral provider;

“Currency Union” refers collectively to the territories of Anguilla, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines which use the Eastern Caribbean Currency as their official currency;

“designated”, in relation to a funds transfer system, means a system which is classified as being systematically important and meeting prescribed standards established by the Central Bank in accordance with the provisions of this Act;

“electronic funds transfer” means funds transfer by electronic means, and includes the use of computer – telecommunications systems;

“financial institution” includes any person doing banking business, and all offices and branches of a financial institution in Saint Christopher and Nevis shall be deemed to be one financial institution;

“funds transfer system” means a formal arrangement, based on private contract or statute law among participants, with common rules and standardised arrangements for the transmission and settlement of money obligations arising among the participants;

“large value electronic funds transfer system” means the large value electronic funds transfer system established under section 4(4)(a) through which large value and high priority funds transfers are made between participants in the system for their own account or on behalf of their customers;

“Minister” means the Minister responsible for Finance;

“money services business operator” means a person holding a licence under any money services business legislation to conduct money services business;

“netting” means the determination of net payment obligations between two or more settling participants within a payment clearing house or the determination of the net settlement obligations between two or more settling participants within the payment system;

“operator” means a person authorised or appointed to operate a funds transfer system or settlement system;

“payment” means the payor’s transfer of a money claim to a party acceptable to the payee and includes clearing and settlement;

“payment obligation” means an indebtedness that is owed by one settling participant to another as a result of the clearing of one or more payment instruction(s);

“payment system” means—

- (a) a network of competing and complementary services that facilitates transactions involving the exchange of payment in return for goods, services, real and financial assets and includes the instruments, rules, institutions, technical processes and procedures that facilitate the circulation of money and the transfer of value to discharge payment obligations; or

- (b) several funds transfer systems and settlement systems that ensure the circulation of money;
- “retail funds transfer system” means the retail funds transfer system established under section 4(1)(b) which handles a large volume of payments of relatively low value in such forms as cheques, credit transfers, direct debits by various means including through Automated Teller Machines and Electronic Funds Transfer Systems;
- “settlement” means the act of discharging obligations in respect of funds or securities transfer by two or more parties;
- “settlement obligation” means an indebtedness by one settling participant to another as a result of one or more settlement instructions;
- “settlement rules” means the rules which determine how payment obligations are calculated, netted or settled and includes rules prescribing corrective, punitive or other action in the event that a settling participant is unable or is likely to become unable to meet its obligations to the clearing house, central counter – party or other settling participants;
- “settlement system” means a system used to facilitate the settlement of transfers of funds or financial instruments;
- “settling participant” means a participant who can settle transactions on his or her own and for other participants;
- “system participant” means a party who participates in a funds transfer system or settlement system which is operated, designated or regulated by the Central Bank;
- “systemically important” means a system of fundamental importance to the—
- (a) proper functioning of the Currency Union’s financial system; or
 - (b) maintenance of the Currency Union’s economic stability.

PART II

AUTHORITY OF THE CENTRAL BANK AND PAYMENT SYSTEM

Establishment of Payment System and Central Bank’s exclusive authority.

3. (1) A payment system shall be established in Saint Christopher and Nevis by the Central Bank.
- (2) The payment system established under subsection (1) shall be the sole payment system operating in Saint Christopher and Nevis.
- (3) The Central Bank shall, subject to any money services legislation that is passed Parliament, have exclusive authority for the operation, supervision and administration of the payment system established under subsection (1), and may issue guidelines and directives to govern its operation and regulation.

Characteristics of the Payment System.

4. (1) The payment system established under section 3 shall consist of—
- (a) a large value electronic funds transfer system; and

(b) a retail funds transfer system.

(2) The large value electronic funds transfer system shall consist of the following—

(a) an interbank funds transfer system operated and administered by the Central Bank; and

(b) a securities settlement system.

(3) The retail funds transfer system shall consist of—

(a) the cheque clearing system operated and administered by the Central Bank;

(b) the debit transfer system;

(c) the credit transfer system; and

(d) any other funds transfer system designated by the Central Bank.

(4) The retail funds transfer system shall handle the following types of transactions—

(a) business to business;

(b) business to person;

(c) person to person;

(d) person to business.

(2) Only the Central Bank and financial institutions which satisfy the eligibility criteria and comply with other requirements laid down in the rules of a funds transfer system may be members of that funds transfer system.

The large value electronic funds transfer system.

5. (1) The large value electronic funds transfer system shall be the sole system for large value payments and settlement.

(2) Subject to subsection (3), the operational design of the large value electronic funds transfer system shall facilitate the expeditious transmission of instructions to permit each payment to be made between parties to transactions—

(a) from and to accounts held at the Central Bank for that purpose; or

(b) from incoming transfers.

(3) The Central Bank may establish and administer a net settlement system in respect of a funds transfer system operated by it.

(4) The Central Bank shall be the central counter – party of a net settlement system established pursuant to the provisions of subsection (3).

Cheque clearing system.

6. The cheque clearing system referred to in section 4(3)(a) is the sole cheque clearing system in Saint Christopher and Nevis for the cheques drawn on licensed financial institutions carrying on business in the Currency Union.

Settlement of systems not operated by the Central Bank.

7. (1) The Central Bank may provide settlement facilities in respect of—
- (a) a funds transfer system designated under the Act;
 - (b) any part of a retail funds transfer system established or operated by another person.
- (2) In giving effect to subsection (1), the Central Bank shall consider whether the system—
- (a) is or is likely to be a systemically important system having regard to the function, volume or value of that system;
 - (b) involves or might involve material risks which the Central Bank can abate or help to manage.
- (3) The Central Bank may—
- (a) provide payments facilities to effect settlement of securities transactions including transactions of the securities system operated by the Eastern Caribbean Central Securities Depository Limited licensed under section 45 of the Securities Act, Cap. 21.16 by—
 - (i) be under the supervision of a probation officer for a period specified in the order, being not less than 12 months but not exceeding 3 years; and
 - (ii) perform unpaid work for a number of hours so specified, being in the aggregate not less than 80 hours and not exceeding the maximum hours specified in section 24; or
 - (b) make rules and enter into agreements respecting the systems and processes referred to in paragraph (a).

Participation in systems not operated by the Central Bank.

8. The Central Bank may participate in any—
- (a) net settlement system, securities settlement system or any part of a retail funds transfer system established and operated by another person;
 - (b) non-currency union payment system on terms and conditions it considers necessary or desirable to accomplish its purposes.

Technical assistance to operators of funds transfer systems.

9. The Central Bank may, on terms and conditions it considers appropriate, provide technical, financial or any other assistance to another person for the establishment or operation of a funds transfer system.

Netting arrangements.

10. (1) A discharge of settlement obligations between system participants is effected by means of entries processed through the settlement system in accordance with the procedure described in the First Schedule or any rules issued by the Central Bank.

(2) Notwithstanding the provisions of any other enactment, the procedures set out in the First Schedule shall be applicable.

(3) The obligation of a settling participant or central counter-party to make payment to and the corresponding right of a participant or central-counterparty to receive payment from another settling participant or central counter-party shall be netted and a net settlement or close out amount determined, entered and cleared in accordance with settlement rules prescribed in accordance with section 33.

(4) A settlement that is effected by means of an entry to the credit of an account maintained by the central counter-party is final and irrevocable and may not be reversed or set aside.

(5) An entry to or payment out of the account of a settling participant to settle a payment or settlement obligation in a settlement system is final and irrevocable and may not be reversed or set aside.

(6) The Minister may, at any time, amend the First Schedule by Order published in the *Gazette*.

PART III

DESIGNATION OF FUNDS TRANSFER SYSTEM AND SETTLEMENT SYSTEM

Designation of funds transfer system.

11. (1) The Central Bank may designate a funds transfer system or settlement system—

- (a) where the designation is in the public interest;
- (b) on receipt—
 - (i) from the Authority of a copy of the licence issued to a money services business operator accompanied by a recommendation for designation of that money services system pursuant to section 6(4) of the Money Services Business Act;
 - (ii) of information which establishes that a money services business operator who is licensed under the provisions of the money services business legislation is managing a systemically important funds transfer system or settlement system;
- (c) where—
 - (i) systemic disruption in the financial system could result if the operator or a participant in the system goes into insolvency or bankruptcy; and
 - (ii) any other matter specified in the regulations warrants designation of the funds transfer system,

may impose any restrictions or conditions on the operation of the system which it deems prudent.

(2) The Central Bank shall inform the operator of its decision to designate the funds transfer system or settlement system and shall publish notification of its decision in the *Gazette* and any other media of general circulation.

(3) The Central Bank may, in respect of any designation made under subsection (1)—

- (a) impose conditions to which the designation is subject;

- (b) amend or revoke any condition to which the designation is subject;
 - (c) make the designation subject to a new condition.
- (4) No variation of the conditions which a designation is subject to or revocation of designation shall have retrospective effect.
- (5) A variation or revocation shall not affect—
- (a) the validity or enforceability of the rules of the designation system;
 - (b) any payment to, or out of, the account of a system participant or netting; or
 - (c) any settlement that took place prior to the date that the variation or revocation comes into force.
- (6) The Central Bank—
- (a) may vary or revoke a designation made under subsection (1) by giving written notice to the designated operator;
 - (b) shall publish in the *Gazette* a notice of its decision to vary or revoke a designation made under subsection (1); and
 - (c) may publish notice of its decision in any other appropriate media of general circulation.

Central Bank to establish standards for designated systems.

- 12.** (1) The Central Bank may establish standards to be complied with by the operators or participants in a designated funds transfer system or designated settlement system where it is in the public interest.
- (2) Standards established under subsection—
- (a) shall be published in the *Gazette* and any other appropriate media of general circulation;
 - (b) shall come into force—
 - (i) subject to sub-paragraph (ii), on the day on which the standards are published in accordance with paragraph (a); or
 - (ii) on the date specified in the standards;
 - (c) may be varied or revoked as provided in section 13.

Variation or revocation of standards.

- 13.** (1) The Central Bank may vary or revoke any standards if the Central Bank considers it appropriate to do so, having regard to—
- (a) whether the variation or revocation would be in the public interest;
 - (b) the interests of the current participants in the system;
 - (c) the interests of people who, in the future, may desire access to the system; and
 - (d) any other matters the Central Bank considers relevant.
- (2) The Central Bank—
- (a) shall publish in the *Gazette* details of its decision to vary or revoke the standards and particulars of the variation or revocation; and

(b) may publish notice of its decision in any other appropriate media of general circulation.

(3) Failure by the Central Bank to comply with subsection (2) shall not invalidate the variation or revocation.

Cessation of standards.

14. The Standards shall cease to be in force on—

- (a) the prescribed expiry date;
- (b) the revocation of those standards by the Central Bank;
- (c) voluntary cessation of operation of the designated funds transfer system or designated settlement system to which the standards apply;
- (d) dissolution of the designated funds transfer system or designated settlement system to which the standards apply; or
- (e) suspension or revocation of designation of the funds transfer system or settlement system to which the standards apply.

Establishment of access regime.

15. (1) The Central Bank may establish an access regime for the participants in a designated funds transfer system or designated settlement system.

(2) The access regime must be one that the Central Bank considers appropriate, having regard to—

- (a) the public interest;
 - (b) the interests of the current participants in the system;
 - (c) the interests of people who, in the future, may desire access to the system; and
 - (d) any other matters the Central Bank considers relevant.
- (3) The Central Bank shall publish in the *Gazette*—
- (a) details of its decision to establish an access regime; and
 - (b) particulars of the access regime.

(4) Failure to comply with subsection (3) shall not invalidate the access regime.

Commencement and cessation of access regime.

16. (1) An access regime—

- (a) comes into force—
 - (i) subject to sub-paragraph (ii), on the day on which the particulars are published in accordance with section 15; or
 - (ii) on the date specified in the particulars establishing the access regime;
- (b) may be varied as provided in section 17.

(2) An access regime ceases to be in force on—

- (a) the prescribed expiry date;

- (b) the revocation of the access regime;
- (c) voluntary cessation of operation of funds transfer system to which the access regime applies;
- (d) dissolution of the funds transfer system to which the access regime applies; or
- (e) suspension or revocation of designation of the funds transfer system or settlement system to which the access regime applies.

Variation of Access Regime.

17. (1) The Central Bank may vary an access regime if the Central Bank considers it appropriate to do so, having regard to—

- (a) whether the variation would be in the public interest;
 - (b) the interests of the current participants in the system;
 - (c) the interests of people who, in the future, may desire access to the system; and
 - (d) any other matters the Central Bank considers relevant.
- (2) The Central Bank shall publish in the *Gazette*—
- (a) details of its decision to vary an access regime, and particulars of the variation; and
 - (b) may publish notice of its decision in any other media.

(3) Failure by the Central Bank to comply with subsection (2) does not invalidate the variation.

Commencement of variation.

18. (1) Variation of an access regime comes into force—

- (a) subject to sub-paragraph (b), on the day on which the decision to vary the access regime is published in accordance with the provisions of section 17; or
- (b) on the date specified in the decision to vary the access regime.

Revocation of access regime.

19. (1) A participant in a designated funds transfer system or designated settlement system may make an application to the Central Bank in the prescribed form for revocation of the access regime.

(2) The Central Bank may revoke an access regime in the public interest or for other compelling reasons.

Effective date of revocation.

20. Revocation of an access regime takes effect on the date specified in the decision to revoke the access regime.

PART IV

BANKRUPTCY OR INSOLVENCY OF SYSTEM PARTICIPANT OR AN OPERATOR

Bankruptcy or insolvency of an operator or system participant.

21. (1) A system participant or an operator must notify the Central Bank if it goes into bankruptcy or insolvency, and must give the notice as soon as practicable after such proceedings are instituted.

(2) A system participant or an operator does not contravene subsection (1) if it takes reasonable steps to comply with that subsection.

(3) Subject to subsection (2), a system participant or an operator who contravenes subsection (1) commits an offence.

Utilisation of deposits in event of bankruptcy or insolvency.

22. (1) Despite anything to the contrary in the Bankruptcy Act, Cap. 5.04, Companies Act, Cap. 21.03, Companies Ordinance, Cap. 7.06 (N) or the Banking Act, Cap. 21.01, any assets of a settling participant which is provided prior to the issue of any bankruptcy, winding – up or receivership order against that system participant to the Central Bank, an operator or central counter-party, as security in respect of its payment or settlement obligations, may be utilised by the Central Bank, the operator or the central counter-party to the extent required for the discharge of those settlement obligations of the system participant.

(2) Notwithstanding anything in the Bankruptcy Act, Cap. 5.04, Companies Act, Cap. 21.03, Companies Ordinance, Cap. 7.06 (N) or the Banking Act, Cap. 21.01, if a system participant goes into bankruptcy, receivership or is wound up—

- (a) any provision contained in a written netting agreement to which that system participant is a party;
- (b) any provision contained in the rules of the settlement system or in clearing, netting and settlement agreements to which that system participant is a party; or
- (c) any rules and practices applicable to the system participant,

is binding upon the liquidator, receiver or administrator in respect of any payment or settlement obligation which has been determined through netting prior to the issue of the bankruptcy, winding-up or receivership order, and which is to be discharged on or after the date of the bankruptcy, winding-up or receivership order.

(3) A settling participant against which a bankruptcy, winding-up or receivership application has been lodged is prohibited from clearing or participating in any settlement system other than for the purposes of discharging payment obligations.

(4) Notwithstanding section 10 of the Bankruptcy Act, the rights and remedies of a participant, clearing house or central counter-party or the Central Bank to realise any collateral granted to it as a security for a payment or the performance of an obligation incurred in a net settlement system may not be the subject of any stay provision or court order.

(5) A settling participant who participates in any settlement system in violation of the provisions of subsection (3) commits an offence, and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars.

PART V

EXAMINATION, AUDIT AND INFORMATION

Validity of electronic data.

23. (1) Information stored, disseminated or used by system participants and operators shall not be denied legal effect solely on the ground that—

- (a) it is information of an electronic record; or
- (b) it is contained in the electronic record purporting to give it legal force and validity, but is referred to in another electronic record.

(2) Information recorded in electronic format may be produced in evidence in accordance with the procedures established in the Evidence or other applicable law.

Retention of records.

24. (1) The Central Bank and system participants shall retain all records obtained by them during the course of operation and administration of a funds transfer system or settlement system for a period of at least five years from the date of creation of each particular record.

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

Central Bank examination of books of an operator.

25. (1) The Central Bank shall examine or cause an examination to be made of each designated transfer system and designated settlement system, from time to time, or whenever in its judgment such examination is necessary or expedient in order to determine that such funds transfer system or settlement system is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(2) The operator of a designated funds transfer system or designated settlement system shall produce for the inspection of any examiner appointed by the Central Bank at such time as the examiner specifies, all the books, minutes, accounts, cash, instruments, securities, documents and vouchers relating to its business as requested by the examiner for the purpose of this Act.

(3) If any books, minutes, accounts, cash, instruments, securities, documents and vouchers are not produced or information is not supplied in accordance with subsection (1), the defaulting operator commits an offence, and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars, and in case of a continuing offence, to a further penalty of one thousand dollars for each day on which the offence is continued after conviction thereof.

(4) Where an operator knowingly supplies information or produces any item pursuant to subsection (2) which is false in any material particular, the operator commits an offence, and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars.

(5) The Central Bank may assess a designated funds transfer system or designated settlement system for the reasonable expenses of conducting an examination under this section.

Disclosure and access to books and records.

26. (1) An operator of a designated funds transfer system or designated settlement system shall produce for the inspection of any examiner appointed by the Central Bank at such time as the examiner specifies, all the books, minutes, accounts, cash, instruments, securities, documents and vouchers relating to its business as requested by the examiner for the purpose of this Act.

(2) If any books, minutes, accounts, cash, instruments, securities, documents and vouchers are not produced or information is not supplied in accordance with subsection (1), the defaulting operator of a designated funds transfer system or designated settlement system commits an offence, and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars, and in case of a continuing offence, to a further penalty of one thousand dollars for each day on which the offence is continued after conviction thereof.

(3) Where an operator knowingly supplies information or produces any item pursuant to subsection (2) which is false in any material particular, the operator of a designated funds transfer system or designated settlement system commits an offence, and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars.

System participant and operator to provide information.

27. (1) A system participant and an operator shall provide any information requested by the Central Bank relating to the volumes or values of payment and settlement instructions or payment and settlement obligations.

(2) Any information obtained by the Central Bank in response to a request made under subsection (1) is confidential and shall not be disclosed to any third party by the Central Bank, its servants or agents except—

- (a) with the written consent of the system participant or operator;
- (b) in the course of the performance of his duties within the scope of his employment;
- (c) when lawfully required to make disclosure by any court of competent jurisdiction within Saint Christopher and Nevis; and
- (d) under the provisions of any law of Saint Christopher and Nevis;
- (e) as deemed necessary by the Central Bank to protect the integrity, effectiveness or security of the payment system.

(3) Any person who contravenes the provisions of subsections (1) and (2) commits an offence.

Annual audit, report and publication of financial statements.

28. (1) A designated funds transfer system or designated settlement system operator shall appoint annually an auditor satisfactory to the Central Bank whose duties shall be to—

- (a) examine the books and records and to make a report on the annual financial statements and financial position, and in every such report the auditor shall state whether, in the auditor's opinion, the balance sheet and profit and loss account give a true and fair view of the state of affairs of the funds transfer system or settlement system and of its results for the period then ended; and

- (b) include all or any of the following duties as may be imposed on the auditor by the operator of the designated funds transfer system or designated settlement system at the request of the Central Bank—
 - (i) to submit such additional information in relation to the audit of the funds transfer system or settlement system as the Central Bank considers necessary;
 - (ii) to carry out any other relevant examination or establish any procedure in any particular case;
 - (iii) to submit a report on any of the matters referred to in subparagraphs (i) and (ii);
 - (iv) to submit a report on the financial and accounting systems and risk management controls of the funds transfer system or settlement system;
 - (v) to certify whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the funds transfer system or settlement system.

(2) An operator shall remunerate the auditor in respect of the discharge by the auditor of all or any of the duties set out in subsection (1).

(3) Where, in the course of the performance of his or her duties, an auditor is satisfied that—

- (a) there has been a serious breach of or non-compliance with the provisions of this Act; or
- (b) there is evidence that a criminal offence involving fraud or dishonesty may have been committed,

the auditor shall immediately report the matter to the operator and the Central Bank.

(4) The Central Bank may request copies of reports submitted to the operator by both its internal and external auditors.

(5) An auditor shall simultaneously with his or her report to an investigative, regulatory or other institution on a funds transfer system or settlement system, report to the Central Bank any matter he or she is required to report to such institution.

(6) An operator who fails to secure compliance with a request under subsection (1)(b) commits an offence, and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars for each such failure.

(7) If an operator fails to appoint an auditor satisfactory to the Central bank, the Central Bank may appoint an auditor for such funds transfer system or settlement system, and the remuneration of the auditor so appointed shall be determined by the Central Bank and paid by the operator.

(8) The Central Bank may appoint an auditor to conduct an independent audit of a funds transfer system or settlement system in accordance with the instructions of the Central Bank, and to report the findings or result to the Central Bank.

(9) An auditor is not liable for breach of any duty solely by reason of compliance with the provisions of subsections (1), (3) or (5) of this section or any other request for information from the Central Bank.

(10) No person having an interest in any funds transfer system or settlement system, otherwise than as a depositor, and no director, manager, secretary, employee

or agent of a funds transfer system or settlement system is eligible for appointment as auditor for such funds transfer system or settlement system.

(11) A person appointed as auditor who shall, after an appointment, acquire any interest in a funds transfer system or settlement system, otherwise than as a depositor, or becomes a director, manager, secretary, employee or agent of such funds transfer system or settlement system shall immediately cease to be such auditor for that system.

PART VI

COMPLIANCE, ARBITRATION AND REGULATION

Management's duty to comply with the law.

29. (1) A director, manager, secretary or other officer concerned in the management of a system participant shall take all reasonable steps to secure compliance by the system participant with the requirements of this Act.

(2) A director, manager, secretary or other officer concerned in the management of a system participant who contravenes the provisions of subsection (1) commits an offence, and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Settlement of disputes by Arbitration.

30. (1) Any dispute between system participants concerning any matter arising under this Act shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to subsection (2) of this section.

(2) If the dispute is between—

- (a) only two parties, each party shall be entitled to appoint one arbitrator, and the two parties shall together appoint a third arbitrator who shall be the Chairperson of the tribunal; and
- (b) three or more parties, each party shall be entitled to appoint one arbitrator, and all the parties shall together appoint an additional arbitrator, who shall be the Chairperson of the tribunal.

(3) If, within thirty days of receipt of the request for arbitration, any party has not appointed an arbitrator or if, within thirty days of the appointment of the arbitrators, the parties have not appointed a third arbitrator or, as the case may be, an additional arbitrator, any party to the dispute may request such judicial authority as may be prescribed by the Minister, to make the required appointment.

(4) The procedure of the tribunal shall be fixed by the arbitrators, but the Chairperson of the Tribunal shall have full power to settle all questions of procedure in any case of disagreement.

(5) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding on the parties.

(6) The Chairperson of the tribunal shall be entitled to vote, and in the event of a tie, shall have a casting vote.

Directives by Central bank.

31. (1) The Central Bank may issue directives to any person regarding a designated funds transfer system or designated settlement system regarding the application of the provisions of this Act, and may in such directive require any person to—

- (a) cease or refrain from engaging in any conduct or performing such other acts as are necessary to remedy the situation;
- (b) perform such acts as are necessary to comply with the directive or to effect the changes; or
- (c) provide the Central bank with such information and documents relating to the matter as specified in the directive.

(2) In considering whether to issue a directive, the Central Bank may have regard to any or all of the following matters—

- (a) that reasonable grounds exist to believe that a person is engaging or is about to engage in conduct with respect to the payment system that results or is likely to result in systemic risk;
- (b) that reasonable grounds exist to believe that a person is engaging or is about to engage in conduct with respect to the payment system that is or will be contrary to the public interest relative to the integrity, effectiveness, efficiency or security of the payment system;
- (c) the public interest;
- (d) the integrity, effectiveness, efficiency or security of the payment system;
- (e) national or Currency Union stability;
- (f) any other matter that the Central Bank considers appropriate.

(3) Any person who neglects, refuses or fails to comply with a directive issued under subsection (1)(a) commits an offence, and shall be liable, on conviction, to a fine not exceeding fifty thousand dollars to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(4) The Central Bank may apply to the High Court for an order directing a system participant to comply with a directive issued under subsection (1)(A).

(5) The Central Bank may impose restrictions against an operator or system participant who acts in contravention of this Act or regulations, rules or directives issued under this Act.

(6) In this section, “systemic risk” refers to a scenario in which the failure of one or more settling participants to meet their payment obligations or their settlement obligations is likely to cause any or all of the other system participants to be unable to meet their payment or settlement obligations.

Regulations.

32. The Minister may, on the recommendation of the Central Bank, make regulations for giving effect to the provisions of this Act, and without limiting the generality of the foregoing, may make regulations respecting—

- (a) reports or other information to be supplied by designated funds transfer system or designated settlement systems and any other matter associated with their use;

- (b) records to be kept, returns and reports to be made to the Central Bank or the Minister by persons who are appointed auditors under the Act;
- (c) form of reports and returns to be made by designated funds transfer systems or designated settlement systems and fixing the times when such reports and returns shall be made;
- (d) forms necessary for the administration of this Act;
- (e) penalties that may be imposed for violation of Orders or Regulations made under this Act, but no such penalty shall exceed a fine of fifty thousand dollars or imprisonment for a term exceeding twelve months;
- (f) any other matter required for efficient administration of this Act.

Authority to make rules.

33. (1) The Central Bank may make rules to give effect to the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Central Bank may make rules respecting—

- (a) accounts at the Central Bank, including—
 - (i) access, by virtual private network and other means;
 - (ii) balances;
- (b) conditions for the interconnection to and participation in the Payment System, large value electronic funds transfer system or other funds transfer systems or settlement systems operated or designated by the Central Bank;
- (c) features of the cheque clearing system, settlement systems and funds transfer systems;
- (d) finality of payment and settlement, netting, loss allocation, apportionment;
- (e) bank records and processes, and documents, including electronic documents and signatures;
- (f) collateral in all its forms, nature, effectiveness and means of realisation;
- (g) payment instruments such as cheques and electronic transfers, including arrangements respecting authenticity and integrity;
- (h) security, reliability, identification, authentication and contingency arrangements;
- (i) administration;
- (j) expenses and fees;
- (k) Payment System planning;
- (l) directives in respect of designated funds transfer systems or designated settlement systems;
- (m) establishment of a framework for administration of truncated cheques or cheques held either at the institution of deposit or afterwards;
- (n) alternative dispute resolution machinery;

(o) appointment of auditors; and

(p) ancillary matters,

and the rules shall be published in the *Gazette*.

(3) The Central Bank may, at any time, amend or replace the rules referred to in subsection (2), and such amendment or replacement shall be published in the *Gazette* or in any other media.

Prudential Guidelines.

34. The Central Bank may, in administering the provisions of this Act, issue prudential guidelines to operators and system participants, and without limiting the generality of the foregoing, may issue guidelines respecting—

- (a) policies, practices and procedures for evaluating financial soundness of operators and participants;
- (b) policies, procedures and systems of identifying, monitoring and controlling country risk, institutional risk, market risk, liquidity risk, operational risk and such other risks as the Central Bank shall specify;
- (c) liquidity requirements;
- (d) corporate governance;
- (e) auditors;
- (f) disclosure; and
- (g) anti-money laundering and combating the financing of terrorism matters.

PART VII

MISCELLANEOUS

Offences and penalty.

35. A person who contravenes or fails to comply with any provision of this Act, where the provision does not expressly create an offence or provide for a penalty, commits an offence, and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

Act to bind the Crown.

36. This Act binds the Crown.

FIRST SCHEDULE*(Section 10)***NETTING ARRANGEMENT ESTABLISHED BY THE CENTRAL BANK**

1. In a netting arrangement, obligations may be terminated, termination values may be calculated and a net amount become payable and be paid in accordance with the netting arrangement.
2. Paragraph 1 shall be applicable notwithstanding the following occurrences—
 - (a) any disposal of rights that may be netted under the netting arrangement;
 - (b) the creation of any encumbrance or other interest in relation to those rights; or
 - (c) the operation of any encumbrance or any other interest in relation to those rights, in contravention of the netting arrangement; and
 - (d) for the purposes of any law the assets and liabilities of a party to the netting arrangement shall include any net obligation owed to a party under a netting arrangement and does not include obligations terminated under the netting arrangement.
3. If a system participant goes into insolvency or bankruptcy—
 - (a) the party may do anything permitted or required by the netting arrangement in order to net obligations incurred before or on the day on which the insolvency or bankruptcy order is made;
 - (b) Subject to paragraph 4, the obligations that are incurred or have been netted under the netting arrangement are to be disregarded in the insolvency or bankruptcy;
 - (c) any net obligation owed to the party under the netting arrangement that has not been discharged is provable in the insolvency or bankruptcy;
 - (d) any net obligation owed to the party under the netting arrangement that has not been discharged may be recovered by the receiver or administrator for the benefit of creditors; and
 - (e) the netting and payment made by the party under the netting arrangement to discharge a net obligation is not to be voidable in the insolvency or bankruptcy.
4. The receiver or administrator may recover from the insolvent or bankrupt party for the benefit of creditors an amount equal to the amount of the obligation if—
 - (a) a party to a netting arrangement becomes insolvent or bankrupt;
 - (b) an obligation owed by the insolvent or bankrupt party to another party to the netting arrangement has been netted under the netting arrangement; and
 - (c) a direct payment by the insolvent or bankrupt party owing the obligation to the other party would have been voidable in accordance with insolvency or bankruptcy proceedings if it had been made to settle the obligation on the day the netting occurred.

SECOND SCHEDULE

(Section 33)

PAYMENT SYSTEM (EASTERN CARIBBEAN AUTOMATED CLEARING HOUSE SYSTEM) RULES

PART I

PRELIMINARY

Citation.

1. These rules may be cited as the Payment System (Eastern Caribbean Automated Clearing House System) Rules.

Definitions.

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

“acceptance” means the moment at which a transaction—

- (a) is validated as compliant;
- (b) passes the tests to determine whether there is sufficient collateral for the transaction to proceed; and
- (c) is no longer revocable by the originating participant;

“Act” means the Payment System Act, Cap. 20: 57;

“authenticated fax” means a fax bearing a code or a signature that can be used as confirmation that the source of the fax is authentic and that the recipient can therefore act on its instructions with confidence that the instructions are genuine;

“block” means an action taken by the ECACH, which prevents a specific system participant from sending and receiving transaction to and from the ECACH system;

“business day” means a day on which a system participant is operating to process payments;

“Central Bank” means the Eastern Caribbean Central Bank as established by the Eastern Caribbean Central Bank Agreement 1983;

“clearing cut-off time” means the latest time, stipulated in the Operating Procedures Manual, by which the ECACH will accept a file for settlement;

(Inserted by S.R.O. 18/2019)

“collateral” means an asset or third-party commitment that is provided by the collateral provider to the collateral taker and accepted by the collateral taker to secure an obligation of the collateral provider;

“direct credit” means a payment instruction initiated by an originator for onward credit to a receiver for a payroll credit, dividend payment, wire transfer or any other such instrument that allows a person to arrange a credit transaction in favour of another;

- “direct debit” means a payment instruction for an amount agreed under a direct debit mandate, collected from a receiver’s account on advance notice by an originating participant on request, under a standard contract;
- “disable” means an action taken by the ECACH, which prevents a specific system participant from being able to access the ECACH system;
- “ECACH” means the Eastern Caribbean Automated Clearing House as established by the Central Bank pursuant to Article 36 of the Eastern Caribbean Central Bank Agreement, 1983 for clearing cheques and retail electronic transactions within the Eastern Caribbean Currency Union;
- “ECACH system” means the components of the automated clearing house application, which is operated at the ECACH operator site that manage the daily clearing sessions and carries out file processing, net position calculation and submission of the net settlement instruction to the Central Bank;
- “effective date” means the date when actual value shall be passed to the receiver of an item;
- “electronic funds transfer” means funds transfer by electronic means, and includes the use of computer-telecommunications system;
- “end of day” means the time indicated on the ECACH processing schedule at which the processes, which take place to conclude the business day, are carried out for the system;
- “end of day processing” means the time of day when the system generates all end of day reports and closes the processing queues for that processing day;
- “funds transfer system” means a formal arrangement, based on private contract or statute law among participants, with common rules and standardised arrangement for the transmission and settlement of money obligations arising among the participants;
- ‘item’ means a transaction presented by a system participant for exchange and settlement using the ECACH;
- “magnetic ink character recognition” means special machine-readable characters;
- “NACHA” means the National Automated Clearing House Association of the United States of America;
- “NACHA Standards” mean the standards and requirements, as published by the NACHA, from time to time, for the organisation and exchange of financial data between an originating participant and a receiving participant;
- “net settlement instruction” means an instruction which contains the net credit and net debit posting, summed to zero, which the Central Bank shall process for the ECACH system participants in order to settle their indebtedness to each other with respect to that clearing;
- “Operating Procedures Manual” means the document which sets out the process and procedures for the operation of the ECACH;
(Inserted by S.R.O. 18/2019)
- “originating participant” means a system participant which originates a transaction to be sent to a receiving participant;
- “originator” means a person who authorises an originating participant to send an item for the account of that person;
- “payment instruction” means any instrument enabling the customer to transfer funds;

- “receiver” means a person that has authorised an originator to initiate an item to the receiver’s account;
- “receiving participant” means a system participant that receives a transaction from an originating participant;
- “routing number” means a numeric identifier that consist of a system participant’s unique identification number and branch number;
- “settlement” means the mechanism by which obligations in respect of funds transfer or in respect of payment in securities transaction between two or more parties are finally discharged;
- “settlement account” means a system participant’s designated account at the Central Bank, which is maintained for settlement;
- “settlement date” means the date on which an originator intends to pass value to the receiver of an item;
- “settlement participant” means a system participant which can settle transactions on his own account and for other system participants;
- “settlement system” means a system used to facilitate the settlement of transfer of funds or financial instruments;
- “system participant” means a party who participates in a funds transfer system or settlement system which is operated, designated or regulated by the Central Bank;
- “third party agent” means a system participant or a company that provides payment services to another system participant;
- “value date” means the date requested by the originator or originating participant for a receiving participant to take action on an item;
- “VIP item” means a cheque of the high value as stipulated in the Operating Procedures Manual.

(Inserted by S.R.O. 18/2019)

Purpose of rules.

3. The purpose of these rules is to articulate the standards and principles governing the operation of the ECACH.

International standards.

4. (1) All system participants shall comply with the Canadian Payments Association Code 006 Standards for magnetic ink character recognition encoded payment items for all paper based payment items cleared through the ECACH.
- (2) All system participants shall comply with the ANSI X9. 100-187 Standards, as published by the American National Standards Institute from time to time, for image exchange except as modified in Schedule 1.
- (3) All system participants shall comply with the NACHA Standards for electronic funds transfer except as modified in Schedule 1.

Compliance with Anti-Money Laundering and Combating the Financing of Terrorism Legislation.

5. All system participants shall meet the requirements and comply with all Anti-Money laundering and combating the Financing of Terrorism legislation, as well as regulations and guidelines issued by the Central Bank to this end.

Application of rules.

6. These rules govern—

- (a) paper-based payment items that are eligible for cheque truncation and electronic cheque presentment using the ECACH;
- (b) the use of imaging and the transmission of electronic information between system participants, to create new options for storage and retrieval of images and associated information; and
- (c) electronic transaction transmitted through the ECACH.

Rules to bind system participants and third party agents.

7. These rules are binding on all system participants and third party agents who—

- (a) send items to the ECACH;
- (b) receive items from the ECACH;
- (c) are obligated to settle for items exchanged in the ECACH.

PART 2**PARTICIPATION, ACCESS AND RESPONSIBILITIES****General.**

8. (1) This Part describes and governs the clearing and settlement of credit and debit items for system participants of the ECACH.

(2) Any cheque image or electronic funds transfer item sent to the ECACH for processing and settlement is subject to the provisions of this Part.

(3) All time indications in these rules relate to the time at the place where the head office of the ECACH is located.

Direct and Indirect Settlement.

9. The Central Bank, in consultation with the ECACH, may allow a system participant to settle—

- (a) directly in the ECACH using the system participant's settlement account held at the Central Bank; or
- (b) indirectly in the ECACH using the designated settlement account of a system participant who is allowed to settle directly under the rule 9(a) above.

Admission of system participants.

10. (1) The Central Bank, in consultation with the ECACH, may authorise the admission of a new system participant into the ECACH.

(2) Admission to the ECACH shall be subject to the applicant meeting the eligibility criteria and completing the required application form set out in Schedule 3 to these rules, and executing a Participant Collateral and Settlement Agreement.

(3) At the commencement of the ECACH, the Central Bank and all financial institutions licensed to do banking business pursuant to the provisions of section 5 of the Banking Act, Cap. 21:01 and who meet the requirements for admission to the ECACH shall be deemed to be system participants.

Suspension of a system participant.

11. The Central Bank, in consultation with the ECACH, may suspend the access of a system participant, by locking or disabling the system participant for a specific period in the following circumstances—

- (a) by agreement with the system participant concerned;
- (b) when a system participant fails to comply with a requirement for participation set out in these rules;
- (c) where an interceding event materially affects the system participant's established pattern of sending and receiving payments for a period of time, but only during the continuance of that event;
- (d) where a system participant materially breaches its obligations under these rules or the applicable procedures and fails to rectify the breach.

Grace period under suspension.

12. The Central Bank, in consultation with the ECACH, prior to the suspension of a system participant, may determine—

- (a) whether a grace period should be granted; and
- (b) the duration of the grace period to be granted under rule 12(a), on a case by case basis.

Access to data under a suspension.

13. A system participant whose access to the ECACH is suspended under Rule 11 is not entitled to participate in the ECACH, but may retain the right to access its data outside the system upon request to the ECACH.

Notification of suspension.

14. The ECACH shall immediately notify all system participants of a suspension made under Rule 11 through the use of email, telephone contact or any other means available and shall confirm the suspension of a system participant by notice in writing within twenty four hours.

Reinstatement of a suspended system participant.

15. (1) The Central Bank, in consultation with the ECACH, may reinstate a suspended system participant.

(2) The ECACH shall, within forty-eight hours of the decision to reinstate a suspended system participant under rule 15(1) notify system participants of that decision and the reactivation date of that system participant.

Cessation of a system participant.

16. A system participant ceases to be a system participant on—
- (a) resignation;
 - (b) becoming insolvent or making an arrangement or composition with creditors generally;
 - (c) being wound up, dissolved or otherwise ceasing to exist except in the case of a winding up for the purpose of reconstruction or amalgamation the terms of which have been approved by the ECACH; or
 - (d) being terminated by the Central Bank in accordance with these Rules.

Resignation to be in writing.

17. A system participant who resigns from the ECACH shall give at least sixty days' notice in writing to the ECACH.

Termination.

18. The Central Bank may terminate access to the ECACH by giving at least thirty days written notice of termination to a system participant on the following conditions—

- (a) the system participant has been suspended under Rule 11;
- (b) the Central Bank has consulted with the ECACH regarding such termination; and
- (c) the system participant has been allowed a period of at least fourteen days following receipt of the written notice, within which to make written submissions to the Central Bank regarding its termination.

Grace period under termination.

19. The Central Bank, in consultation with the ECACH, prior to termination of a system participant, may determine—

- (a) whether a grace period should be granted; and
- (b) the duration of the grace period to be granted under rule 19(a), on a cases by case basis.

Effective date of termination.

20. The termination served pursuant to rule 18 shall take effect on a date the Central Bank shall determine.

Revocation of termination.

21. The Central Bank may revoke a notice issued pursuant to the provisions of rule 18 at any time before it becomes effective.

Discharge of obligations on suspension and cessation.

22. A person who is suspended or ceases to be a system participant shall continue to be bound by these rules in respect of—

- (a) any act, matter or event occurring prior to the time such cessation takes effect, or as a result of such suspension or cessation; and
- (b) any fees, costs, charges and expenses which may have been levied on the system participant prior to suspension or cessation.

Discharge of monies owed on cessation.

23. Subject to any rights of set-off, counterclaim or combination thereof, upon any cessation of a system participant—

- (a) the person who ceases to be a system participant shall immediately pay all sums of money owed by it to any other system participant in respect of obligations arising from the exchange of payments; and
- (b) all sums of money owed to the system participant who ceases to be a system participant by any other system participant in respect of all payments exchanged shall be paid by that other system participant to the system participant who ceases to be a system participant.

Cessation of access.

24. A person who ceases to be a system participant pursuant to rule 16 shall immediately cease to effect exchanges in the ECACH.

Notice to system participants of cessation.

25. The Central Bank shall immediately notify all system participants by the most expeditious means available of any cessation under rule 16.

Entrance and exit fees.

26. A person who ceases to be a system participant pursuant to rule 16—

- (a) is not entitled to be reimbursed any part of any entrance, operating or other fee paid; and
- (b) shall pay the exit fee set out in the Operating Procedures Manual.
(Substituted by S.R.O 18/2019)

Collateralisation.

27. A system participant shall maintain sufficient aggregate collateral, as set out in the Participant Collateral and Settlement Agreement, to cover a minimum period as the Central Bank may determine, from time to time, to ensure prompt settlement of ECACH transactions.

Calculating the minimum collateral amount and the credit limit.

28. (1) The collateral amounts required by a system participant shall be based on a multiple of the average daily gross obligation over a period determined by the Central Bank, in consultation with the ECACH and the system participants of the ECACH, from time to time.

(2) The collateral amounts shall be recalculated at least annually by the Central Bank.

(3) The credit limit shall be a percentage of the collateral amount as shall be determined by the Central Bank, from time to time.

Settlement failure.

29. (1) The ECACH shall only accept payment instructions that are fully collateralised, from system participants to prevent settlement failure.

(2) A collateral held in relation to instructions accepted by the ECACH shall not extend to items settled bilaterally under rules 85(4), 90, 92, and 93.

Sending credit and debit items.

30. (1) An originating participant may send an item to the ECACH once the item is drawn on a receiving participant.

(2) An originating participant shall send an item under rule 30(1) in accordance with the standards prescribed in rule 4.

Security procedures.

31. (1) All files originated by a system participant for processing shall be digitally signed and encrypted by the system participant before transmission to the ECACH.

(2) All outgoing ECACH files from the ECACH shall be digitally signed and encrypted by the ECACH before being transmitted to the system participant.

(3) A system participant shall not disclose any aspects of the security procedures offered by the ECACH except to a third party agent designated under Rule 47(1).

(4) The originating participant or the receiving participant shall notify the ECACH immediately where the confidentiality of the security procedures is compromised, and shall act to prevent the security procedures from being further compromised.

Processing of items.

32. (1) The ECACH shall process all items in accordance with these rules.

(2) The ECACH may reject, or may impose conditions for the processing of, any item for reasons specified in these rules.

(3) The ECACH shall only act on instructions in an item that provides information in accordance with the standards described in rules 4(1), 4(2) or 4(3) as modified by Schedule 1.

Duplicate items.

33. Where the ECACH notifies an originating participant of the receipt of a suspected duplicate file or any other problem, the ECACH shall not process the file without approval of the originating participant or its third party agent.

ECACH not responsible for system participants' failure.

34. The ECACH shall not be responsible for a system participant's failure to comply with these rules.

Recording of communication.

35. The ECACH may record any communication relating to an item by using any recording device.

Acknowledgement for electronic transmissions.

36. (1) The ECACH shall provide an acknowledgement of receipt to an originating participant for files sent by the originating participant by electronic transmission, within thirty minutes of receiving the files.

(2) An acknowledgement of receipt by the ECACH is not a confirmation of acceptance or an indication of rejection of the items contained in the files by the ECACH.

Verification of acknowledgement.

37. A system participant shall be responsible for verifying the information in the acknowledgement and notifying the ECACH immediately of any discrepancy.

Notification for non-receipt of acknowledgement.

38. A system participant shall notify the ECACH promptly of the non-receipt of an acknowledgement.

Designation by routing number.

39. An originating participant shall designate the receiving participant by a routing number.

Processing by routing number.

40. The ECACH may process an item on the basis of the routing number of a receiving participant appearing in any form on the item when received.

No obligation for use of routing number.

41. The ECACH shall not be responsible for any loss or delay resulting from acting on the routing number, whether or not the routing number is consistent with any other designation of the receiving participant as identified on the item.

Delivery of items to receiving participants.

42. (1) The ECACH shall deliver items by electronic means to a receiving participant or to the third party agent designated under rule 46(1).

(2) The delivery of items by electronic means may include making them available on the ECACH system for the system participant or its third party agent to retrieve.

(3) In an emergency situation—

(a) a system participant shall immediately advise the ECACH of its alternate third party agent in writing;

(Amended by S.R.O. 18/2019)

(b) the ECACH may send items to and receive items from the alternate third party agent which the system participant assigned under rule 42(3)(a).

Items deemed delivered.

43. Where an item is placed on the ECACH storage device and made available to the system participant or its agent to retrieve, or is sent using an agreed arrangement with the system participant, the item shall be considered delivered.

Advice of non-receipt of items.

44. A system participant shall promptly advise the ECACH when it does not receive items by the expected date and time.

Receipt of items in a timely manner.

45. (1) A system participant shall manage its electronic connection to allow it to receive items in a timely manner throughout the business day.

(2) Where a system participant does not receive items in a timely manner because of its own action or omission regarding the management of its electronic connection, or because of any emergency circumstances not attributable to a fault of the ECACH, it shall settle for the items with the ECACH on the settlement date.

Designation of a third party agent.

46. (1) A system participant may, with the prior approval of the ECACH, designate a third party agent to send and receive items on the system participant's behalf.

(2) Where a system participant chooses to designate a third party agent under rule 46(1), the system participant shall ensure that its third party agent complies with the system participant's obligation under these rules.

(3) Where a system participant designates a third party agent, the designating system participant shall ensure that the third party agent meets the following criteria—

- (a) is registered under a Companies Act in the Currency Union;
- (b) the owners and operators of the company are fit and proper persons as outlined under section 26 of the Banking Act;
- (c) the company has sufficient capital and or risk insurance, commensurate with the levels of transaction to be processed, to provide warranties for any liability that may arise from processing transaction under these rules;
- (d) the company has the adequate tools and capacity to ensure compliance with these Rules.

(4) The ECACH shall act upon items, information, and instructions sent to the ECACH by the third party agent designated by the system participant under rule 46(1).

Use of credentials by third party agent.

47. The ECACH, on the written instruction of a system participant, shall grant the system participant's third party agent credentials authorising its access to the ECACH's system to act—

- (a) on behalf of the system participant; and

- (b) on behalf of other system participants who use the same third party agent, if the system participant agrees that the third party agent may act.

Establishment of controls for third party agents.

48. It is the responsibility of a system participant and its third party agent to establish controls sufficient to ensure that the third party agent properly segregates the items, information, and instructions of a system participant from any items, information, or instructions of other system participants.

ECACH not responsible for proper identification by third party agent.

49. The ECACH shall not take any measures to ensure that a system participant's work is properly identified or segregated by a third party agent.

System participant bound by acts or omission of third party agent.

50. A system participant is bound by the acts or omission of its third party agent with respect to items that are handled by the ECACH pursuant to these Rules.

System participant to authorise settlement to ECACH.

51. A system participant authorises the ECACH to—
- (a) settle for items sent to or received from the ECACH by the system participant's third party agent;
 - (b) obtain from the system participant payment as provided in these Rules for any fees owed to the ECACH in connection with items sent to the ECACH or received from the ECACH by the system participant's third party agent.

Delivery to third party agent.

52. The ECACH may send items to the system participant by delivering or transmitting such items to the system participant's third party agent.

Reliance on third party agent designation.

53. The ECACH may rely on the third party agent designation until it is revoked in writing and the ECACH has had thirty days to respond to the revocation.

System participants responsibility for items on termination of third party agent.

54. A system participant shall be responsible for the settlement of items that exist at the time of any termination of the third party agent designation and these obligations shall survive the termination of the third party agent designation.

Indemnity for acts of third party agent.

55. A system participant indemnifies for ECACH against any claim, loss, cost, or expense resulting from—
- (a) the acts or omissions of the system participant's third party agent;
 - (b) the ECACH's acts or omissions in carrying out the instructions of a third party agent within the scope of the agency appointment; or

- (c) the third agent's arrangements for accessing the ECACH, including but not limited to attorney's fees and expenses of litigation, except for any claim, loss, cost, or expense arising solely out of the ECACH's failure to exercise ordinary care or to act in good faith.

Pending and rejected items.

56. (1) All items not settled in one session may be held over and processed in the next consecutive session but not later than the last session prior to cut off for end of day processing.

(2) All items not settled by end of day processing shall be rejected and such items shall be submitted in a new session when the ECACH resumes.

Time schedules, settlement dates and extension of time limits.

57. (1) The ECACH processing schedule as published from time to time shall contain the business days and the deadlines for the ECACH to receive credit and debit items of various classes for immediate or next day settlement.

(2) The time schedule shall also show the effective date for classes of items and provisions for settlement for various effective dates.

(3) The ECACH shall process items in accordance with its published processing schedules and shall send them to the receiving participant on or before the settlement date.

(4) Where a delay beyond the applicable time limit in acting on an item occurs due to "Acts of God", major system failures, delayed settlement or any other circumstances beyond the control of the ECACH, the time for acting on the items shall be extended by the time necessary to complete the action, provided the ECACH exercises such diligence as the circumstances require.

Designation of settlement account.

58. (1) Prior to sending an item to or receiving an item from the ECACH, a system participant shall designate a settlement account, and identify the transactions to be settled through the account.

(2) Where a system participant designates the account of another system participant, the designated system participant shall agree to that designation.

(3) Only a system participant authorised by the Central Bank under Rule 9(a) may be designated to settle for another system participant.

Actions to be taken by the ECACH on a designated settlement account.

59. By designating a settlement account, a system participant and its settling participant, authorise the ECACH—

- (a) to debit the designated account on the settlement date with the amount of credit items sent by the system participant to the ECACH;
- (b) to debit the designated account on the settlement date with the amount of debit items received by the system participant from the ECACH;
- (c) to credit the designated account on the settlement date with the amount of debit items sent by the system participant to the ECACH;

- (d) to credit the designated account on the settlement date with the amount of credit items received by the system participant from the ECACH; and
- (e) to debit and credit to the designated settlement account the amount of other transactions including fees with respect to ECACH items.

General Charges.

60. A system participant and its settling participant, agree to maintain in the designated settlement account, a balance of funds sufficient to cover charges under these Rules and all other charges to the system participant's and its settling participant's account.

ECACH not responsible for rights between system participant and settling participant.

61. The ECACH is not responsible for any obligations or rights of a system participant with respect to a settling participant.

Prior designations of no effect.

62. A settlement designation by a system participant supersedes all prior designations with respect to an item.

Obligations for settlement of transaction.

63. (1) A system participant remains responsible under these rules for all transactions, notwithstanding that it has designated a settlement account, including a settlement account maintained by another system participant.

(2) The ECACH may, at its sole discretion, recover the unpaid balance of a system participant's obligation with respect to an item from its originating or receiving participant, without prior notice and demand.

Termination of settlement designation by written notice.

64. A system participant may terminate a settlement designation by giving thirty days' notice in writing to the Central Bank.

Settlement.

65. (1) A system participant's settlement obligation is owed to the ECACH which acts as a central counter party.

(2) On the settlement date, the Central Bank shall debit or credit the settlement account for the net settlement amount.

(3) The ECACH may take any action authorised by law to recover amounts owed to it by the system participant, including, but not limited to, the exercise of set-off without demand or notice, whether or not the obligations are contingent or un-matured, the realisation on any available collateral, and the exercise of any rights it may have as a creditor under applicable law.

(4) Where the ECACH determines that there may not be sufficient funds in the account at the settlement time on the settlement date to cover a debit for a credit item or for a received debit item, the ECACH may cease processing the item and may refuse to settle for the item.

(5) The ECACH may also cease processing and refuse to settle for an item if it receives notice of the suspension or the winding up of a system participant prior to the acceptance of such item.

(6) Where the ECACH ceases to process or refuses to settle for an item, the ECACH shall notify the originating participant and the receiving participant within thirty minutes of such refusal to process or refusal to settle.

Availability of credit.

66. (1) Credit given for a debit item by the ECACH is available for use and may qualify as a reserve on the settlement date.

(2) The ECACH may refuse to permit the use of credit given for a debit item if it determines that there may not be sufficient funds in the originating participant's settlement account to cover charge back or return of the item.

(3) Credit given by the ECACH for a credit item is final and available for use and may qualify as a reserve.

Revocation of items.

67. (1) An originating participant may not amend or revoke an item after it has been sent to the ECACH, except as provided for in rules 134 to 141.

(2) The ECACH may cancel items by initiating a reversing batch of items if it discovers that it sent a duplicate or erroneous batch of items.

(3) The ECACH shall notify the originating participant within twenty-four hours of the discovery of a duplicate or erroneous batch of items.

(4) Nothing in these rules constitutes a waiver by any ECACH system participant of a right of recovery.

Return of items.

68. (1) A system participant may return a debit or credit item, except a VIP item, to the ECACH by the clearing cut-off time for the last session on the business day following settlement.

(2) A system participant is accountable for the amount of a debit or credit item received if the item is not returned to the originating participant by the clearing cut off time.

(Substituted by S.R.O. 18/2019)

Processing of a returned item.

69. The ECACH shall process a returned item it receives from a receiving participant and send it or make it available to the originating participant in accordance with Rule 68.

Settlement of a returned item.

70. On the settlement date, the ECACH shall debit or credit the settlement account of an originating participant in the amount of a returned debit or credit item, and shall credit or debit the settlement account of a receiving participant in the amount of the returned debit or credit item.

Recourse and alternative resolution.

71. (1) The return procedures, timeframes and responsibilities set out in these Rules shall apply to all participants and shall limit the degree to which they can seek recourse from other system participants under these rules.

(2) Subject to rule 71(3), nothing in these rules shall preclude a system participant from exercising its rights and seeking recourse outside of these rules.

(3) A system participant may only pursue alternative resolution outside of these rules after exhausting all options available under these rules.

Disputed returns.

72. (1) Where an originating participant in the first instance, disputes the propriety of a returned item the ECACH shall provisionally settle for the disputed returned item, subject to receipt of funds from the receiving participant.

(2) Where the receiving participant disputes the originating participant's claim under rule 72(1), the ECACH will reverse the provisional settlement for the disputed returned item, subject to receipt of funds from the originating participant.

Finality.

73. (1) Where the ECACH submits to the Central Bank net settlement instructions and the Central Bank accepts the net settlement instructions, the net settlement instructions shall be deemed final.

(2) A valid payment instruction accepted by the ECACH and transmitted to the receiving participant is deemed final when the clearing cut-off time for the last session on the business day following the settlement of the instruction has passed. *(Substituted by S.R.O. 18/2019)*

Obligations of originating participant in finality.

74. An originating participant shall promptly make the funds available for withdrawal to a customer where a payment instruction is deemed final.

No return of funds.

75. Once the ECACH payment is settled with finality, any request from the system participant for return of funds on behalf of their customers shall not be handled by the ECACH.

Advice of credit, debit and reporting of errors.

76. (1) The ECACH shall provide an advice of credit and debit to a settling participant for items for which the system participant has agreed to settle.

(2) An advice of credit indicates that credit has been given, subject to the provisions of these rules.

(3) The ECACH shall also, on request of the system participant, provide an advice to a settling participant's third party agent.

(4) A system participant shall immediately report an accounting error to the ECACH.

Records.

77. (1) A system participant in the ECACH shall keep its electronic records of items for at least seven years.

(2) The ECACH may request a system participant to resend items kept pursuant to rule 77(1).

(3) The ECACH shall also keep its electronic records of items processed for at least seven years after the settlement date.

Fees and penalties.

78. (1) The ECACH—

(a) may set fees including entrance, exit, annual membership and other fees for transactions and services rendered to system participants by the ECACH;

(b) may periodically review the fees; and

(c) shall publish the fees in the Operating Procedures Manual.

(2) The ECACH shall notify a system participant in writing of any fee revisions no less than one month before the effective date.

(3) A system participant shall pay any applicable fees for transactions and services rendered to the system participant by the ECACH.

(4) For fees payable pursuant to sub-rule (3), the ECACH shall—

(a) send a notice stipulating the amount owed by each system participant on the first business day of the month following the month in which the fees were incurred; and

(b) withdraw the amount stipulated in the notice from the settlement account of the system participant within fifteen business days after the notice is issued.

(Substituted by S.R.O. 18/2019)

Non-value messages.

79. The ECACH shall handle messages that do not result in an accounting entry, such as a notification of change, in the same manner as an items of value.

Limitations on liability and warranty.

80. (1) The ECACH's liability to a system participant is limited to instances of its own failure to exercise ordinary care, or for its own or its employees' wilful misconduct.

(2) The ECACH shall not act as an agent of a system participant or its assign and shall not be liable for the insolvency, neglect, misconduct, mistake or default of any system participant or assign.

(3) The ECACH does not make any warranty with respect to an item it processes or settles for under these Rules.

Restriction of claims for processing or settling a claim.

81. A system participant is barred from making a claim against the ECACH for loss resulting from the ECACH's processing of or settling for an item after one year from the settlement date of the item.

Failure to send a written objection to an advice debit.

82. Where a system participant or settling participant fails to send a written objection to an advice of debit to the ECACH within thirty calendar days after receipt of the advice, it is deemed to have approved the debit on its own behalf and on behalf of the system participant for which it settles.

Damages.

83. (1) The measure of damages for the ECACH's failure to exercise ordinary care, or for its own or its employees' wilful misconduct is as follows—

- (a) in processing a non-value message, its liability may not exceed the amount of its fee paid to the ECACH for the message;
- (b) for a credit item including a returned credit item, its liability is limited to damages that are attributable directly and immediately to the failure to exercise ordinary care or to the wilful misconduct, and does not include damages that are attributable to indirect consequences of such conduct, even if such consequences were foreseeable at the time of such conduct;
- (c) for a debit item including a returned debit item, its liability for its failure to exercise ordinary care is limited to the amount of the item reduced by an amount that could not have been realised by the use of ordinary care;
- (d) where there is wilful misconduct with respect to a debit item, the measure of damages includes other damages that are attributable directly and immediately to the wilful misconduct, but does not include damages that are attributable to indirect consequences of such misconduct.

(2) The ECACH, in its sole discretion, may satisfy its obligation to pay damages in the form of interest by—

- (a) providing an "as of" adjustment to a system participant in an amount equal to the amount on which interest is to be calculated, multiplied by the number of days for which interest is to be calculated ; or
- (b) paying damages in the form of interest to a system participant or another party on the item that is entitled to such payment.

PART 3**OPERATING RULES FOR CHEQUE IMAGE EXCHANGE****Scope.**

84. (1) In this Part, "eligible item" means an approved paper based payment item.

(2) This Part governs the clearing and settlement of eligible items to be processed through the ECACH.

(3) These rules are binding on an originating participant who sends eligible items to the ECACH, a receiving participant who receives eligible items from the ECACH, and on a settling participant who has agreed to settle for eligible items under these rules.

(4) Any eligible item that is sent to the ECACH for clearing and settlement is subject to the provisions of these rules.

(5) The ECACH shall process such eligible items in its capacity as operator.

General requirements.

85. (1) Each eligible item shall be exchanged, cleared and settled in accordance with these rules.

(2) All eligible items shall contain a magnetic ink character encoded routing number, account number and serial number in compliance with the Canadian Payment Association Code 006 Standards specified in rule 4(1).

(3) The front and back images of each eligible item shall be captured prior to truncation.

(4) To facilitate the transition from the manual system to the automated system, the ECACH shall allow the bilateral exchange under these rules of paper based items that are not in compliance with the Canadian Payment Association Code 006 standard for a period of nine months from the start of operations in Saint Christopher and Nevis.

(5) All bilateral exchanges shall be conducted in accordance with rules 91, 92, 93 and 94 as applicable.

(6) A system participant shall maintain an archive of data and images for each eligible item sent to or received from the ECACH.

(7) An originating participant shall retain cheque images for a period of at least seven years commencing as of the date of capture.

(8) An originating participant may destroy the physical paper based documents of eligible items one year after settlement of the item to which the documents pertain.

Items and instruments eligible for ECACH.

86. The following instruments encoded with magnetic ink characters as prescribed in the Canadian Payment Association Code 006 Standard are eligible for exchange in accordance with these rules—

- (a) Eastern Caribbean currency denominated cheques drawn by a person on an account maintained by that person at a branch of a receiving participant, where the decision to honour or dishonour rests with the receiving participant, and where proof of the signing authority resides with the receiving participant;
- (b) United States currency denominated cheques drawn by a person on an account maintained by that person at a branch of a receiving participant, where the decision to honour or dishonour rests with the receiving participant, and where proof of the signing authority resides with the receiving participant.

VIP session.

87. (1) In this rule, “VIP session” means a special clearing session for VIP items specified in the Operating Procedures Manual.

(Amended by S.R.O. 18/2019)

(2) A system participant shall submit an eligible item to a VIP session in which the eligible items shall be individually cleared and settled through the Central Bank's interbank settlement system.

(3) The ECACH, after consultation with the Central Bank, shall, from time to time, determine the rate of high values for a VIP session specified in the Operating Procedures Manual.

((Amended by S.R.O. 18/2019))

Standards for image capture.

88. An originating participant shall capture images in accordance with the ECACH image usability standards in rule 95 and the image quality specifications as outlined in Schedule 2.

Image Capture.

89. The originating participant shall capture two image segments for all eligible items as follows—

- (a) black and white image of the front; and
- (b) black and white image from the back.

Unusable images.

90. Where an originating participant is unable to capture a usable image of an eligible item in accordance with the image quality specifications under Schedule 2, the originating participant shall exchange and settle the eligible bilaterally with the receiving participant.

Communication of bilateral exchanges.

91. (1) Where an item under these rules is to be settled bilaterally between system participants, the originating participant shall notify the receiving participant of any eligible item of the reason for bilateral exchange, within the same clearing session in which the item would have been presented.

(2) On a daily basis, all system participants are to provide to the Central Bank and the ECACH the following details of all cheques exchanged bilaterally—

- (a) the number of cheques delivered to and received from each system participant;
- (b) the value of cheques delivered to and received from each system participant; and
- (c) the number and value of returns received from and delivered to each system participant.

Delivery of physical cheques in bilateral exchanges.

- 92.**
- (a) Where both the originating participant and the receiving participant are within the same territory, the physical cheque shall be delivered over the counter by the clearing session following notification under rule 91(1).
 - (b) Where both the originating participant and the receiving participant are not within the same territory, the originating participant shall send or

dispatch the physical cheque to the receiving participant by the end of the following business day.

Transmission of cheque images in bilateral exchanges by fax, email.

93. (1) Where the originating participant is located within a different territory, by mutually agreed image standards, an image clearly outlining all the essential features of the front and back of the cheque shall be presented to the receiving participant using a mutually agreed method of transmission which may include authenticated fax, email, or any secured means of transmission.

(2) The transmission of the image details shall occur no later than the clearing session following the session when the cheque would have normally been presented.

Image usability standards.

94. An image is considered usable if it satisfies the following—

- (a) the image of each field is legible, that is, it can be read or deciphered by human eyes;
- (b) the image of each field is viewable, that is, there is perceived content in the field and the content can be viewed without obstruction;
- (c) the image is a clearly represented digital picture of an item on which all of the following are legible on the image of the item—
 - (i) the magnetic ink character recognition line as described in the Canadian Payment Association Code 006 referenced in rule 4(1);
 - (ii) the date field;
 - (iii) the payer information;
 - (iv) the convenience amount (amount in figures);
 - (v) the legal amount (amount in letters);
 - (vi) the payer's signature;
 - (vii) the payee's name;
 - (viii) the payee's endorsement(s), if present on the item.

Reason for return and return process.

95. (1) Where an image of an eligible item is not usable according to rule 94, the eligible item may be returned within the time frame outlined in rule 108.

(2) The originating participant may re-scan the source document and transmit the image as a new eligible item to the receiving participant.

Poor source documents.

96. Where an image of an eligible item is not usable due to the quality of the physical paper based document, the originating participant may—

- (a) return the physical paper based item to its customer;
- (b) forward the physical paper based document to the receiving participant for payment outside of these rules.

Piggy-back items.

97. (1) A piggy-back situation occurs when an eligible item is image-captured with another eligible item or instrument with the appearance of forming one eligible item.

(2) Where a piggy-back situation occurs, the originating participant shall correct the situation by separating and recapturing the two eligible items or the item and the instrument, as the case may be.

(3) Where an originating participant finds a piggy-back image after a submission to the ECACH, the originating participant shall notify the receiving participant about the error via fax, email or registered mail and request that the receiving participant, or its third party agent, initiate a return using the appropriate return code.

Liability of originating participant for usability.

98. An originating participant shall be liable to a receiving participant for the usability of each image that it captures up to the deadline for the return of eligible items under rule 108 after which the receiving participant assumes liability for the usability of the image.

Liability of originating participant under a piggy-back situation.

99. Where an originating participant receives a returned eligible item as a result of a piggy-back situation and is unable to locate the original items for re-capture, the originating participant shall be liable for any loss.

Endorsement.

100. (1) The originator or the originating participant shall endorse each eligible item before submitting to the ECACH for onward delivery to the receiving participant.

(2) The originator or originating participant shall place any endorsement on the rear side of the eligible item.

(3) An endorsement stamp or trace line of the originating participant shall be understood to guarantee the genuineness of the originator's endorsement or absence thereof.

Image cash letter creation.

101. A system participant shall create an image cash letter in accordance with the ANSI X9. 100-187 Standards as modified by Schedule 1.

Image cash letter transmission.

102. A system participant shall transmit and receive an image cash letter in accordance with the processing schedule stipulated in the Operating Procedures Manual for cheques.

(Substituted by S.R.O. 18/2019)

Eligible item in identification.

103. (1) A system participant who creates or transmits an image cash letter shall identify each eligible item by populating the appropriate identification fields in the cash letter as set out in the ANSI X9. 100-187 Standards as modified by Schedule 1.

(2) For any transit eligible item, an originating participant shall not repair information contained in any field of the magnetic ink character recognition line other than the receiving participant's routing number field and shall enter the amount field.

(3) Where any other field of the magnetic ink character recognition line is not valid, the originating participant shall classify the eligible item as unqualified during the cash letter creation process by indicating the appropriate code in the cheque detail record correction indicator field.

Responsibilities of originating participant.

104. An originating participant shall create and exchange cash letters via the ECACH.

Responsibilities of receiving participant.

105. (1) A receiving participant shall verify the cheque image received in an image cash letter and where necessary return the eligible item no later than the clearing cut-off time for the last session on the business day following settlement.

(2) Sub-rule (1) shall not apply to a VIP item.
(Substituted by S.R.O. 18/2019)

Presentment.

106. An eligible item is presented to the receiving participant when an image cash letter containing the eligible item is made available to the receiving participant by the ECACH.

Return by receiving participant.

107. When payment of an eligible item is refused, the receiving participant may initiate a return using the applicable return code in accordance with ANSI X9. 100-187 Standards as modified by Schedule 1 before the last clearing session on the next business day of the receiving participant following refusal.

Time limitation.

108. (1) The receiving participant shall return to the originating participant the returned eligible item as soon as possible but no later than the last clearing session on the next business day following the settlement date.

(2) Where the originating participant uses a third party agent the third party agent shall ensure that an image of each eligible item and information are accessible by the originating participant within reasonable time.

Fraudulent items.

109. Where an eligible item is counterfeited or contains—

- (a) a forged or unauthorised signature;
- (b) a forged endorsement; or
- (c) where the intended payee(s) was not paid,

the eligible item shall be sent to the originating participant within twenty-four hours of the discovery.

Genuineness of eligible item.

110. (1) The originating participant shall, with reasonable diligence and ordinary care, verify the *prima facie* genuineness of the eligible item to be truncated for signs of—

- (a) fraud;
- (b) forgery; or
- (c) tampering,

on the face of the instrument.

(2) The originating participant shall be responsible for detecting material alterations to the following—

- (a) payee name;
- (b) amount; or
- (c) date.

(3) In cases where the genuineness of an eligible item cannot be verified or a material alteration is detected, the originating participant shall not submit such eligible item(s) to the ECACH.

Returned eligible item not to be re-presented.

111. A returned eligible item which was returned for any reason except for image quality assurance failure by the receiving participant shall not be presented by the originating participant a second time.

Method and routing of returned eligible item.

112. Where an eligible item is presented in a session, the corresponding returned eligible item shall be returned using the same process and shall be returned using the applicable return code in accordance with ANSI X9. 100-187 Standards as modified by Schedule 1.

Images in an ECACH return image cash letter.

113. Where a returned eligible item is returned within the time limitation set out in rule 108, the front and back images of the eligible item being returned shall be included in the image cash letter.

Eligible items with incomplete or missing endorsement.

114. Where the endorsement on an eligible item is missing or incomplete the eligible item may be returned for the reason “incomplete or missing endorsement” using the appropriate return reason code.

Return codes for forged endorsements or material alterations.

115. Where a returned eligible item is being returned for the reason “forged endorsement” or “material alternation”, the receiving participant shall return the item using the return codes for forged and material alternations.

Misdirected eligible items to be returned.

116. (1) An eligible item is misdirected when the eligible item image routing information does not match the electronic routing information.

(2) A receiving participant shall forward a misdirected eligible item to an originating participant using the appropriate return code.

(3) A misdirected eligible item shall be returned within the clearing session immediately following the clearing session in which the eligible item was originally settled.

Incorrect amount in image cash letter.

117. (1) Where an eligible item with an incorrect amount is detected in an image cash letter by the originating participant after acceptance by the ECACH, the originating participant shall notify the receiving participant about the error via fax, email or registered mail and request that the receiving participant or its third party agent initiate a return using the appropriate return code specified within the ANSI X9. 100-187 Standards as modified by Schedule 1.

(2) An eligible item is deemed to have an incorrect amount when the amount in the image cash letter differs from the amount written in words on the face of the eligible item.

(3) The originating participant or its third party agent who creates the image cash letter with the incorrect amount shall be responsible for the difference in amount, provided that the error is detected within ninety days of the eligible item being presented to the receiving participant.

Words and figures differ.

118. Where the amount expressed in words on the face of an eligible item differs from the amount written in figures, the eligible item shall be returned and shall be noted as “cannot determine amount” no later than the last clearing session on the next business day following the settlement date in accordance with the Operating Procedures Manual.

(Amended by S.R.O. 18/2019)

Stale dated items.

119. An eligible item dated more than six months prior to presentment for payment may be returned unpaid for the reason “Stale Dated”.

Re-presentment.

120. (1) An originating participant may re-present a returned eligible item, if the originating participant believes the exception which caused the return has been rectified.

(2) If re-presenting a returned eligible item, the originating participant shall create an image cash letter in accordance with the ANSI X9. 100-187 Standards as modified by Schedule 1.

(3) A returned eligible item that is eligible for re-presentment may only be re-presented once.

PART 4

OPERATING RULES FOR ELECTRONIC FUNDS TRANSFERS

Scope.

121. This Part applies to all non-paper based payments that are transmitted through the ECACH.

Pre-requisites for initiating a credit or debit funds transfer.

122. Before initiating a credit or debit funds transfer to a receiver's account held at a receiving participant, an originating participant shall ensure the following—

- (a) the originator has authorised the originating participant to transmit, and to credit or debit the amount of, one or more entries to the receiver's account;
- (b) for all entries, the originator and the originating participant act in accordance with these rules;
- (c) the receiver has authorised the originator to initiate the entry to the receiver's account;
- (d) the receiver has an agreement with the originator where the receiver intends to make debit entries to a commercial account;
- (e) where the debit entries are to a non-corporate customer's account, the authorisation shall be in writing and shall be signed or similarly authenticated by the non-corporate customer;
- (f) the authorisation process shall confirm both the customer's identity and his or her consent to the authorisation.

Written electronic authorisation.

123. (1) An electronic authorisation is deemed to be in writing under these rules where it—

- (a) is displayed on a computer screen or other visual display and is in a readable form;
- (b) clearly states that it is an authorisation;
- (c) clearly and conspicuously states its terms; and
- (d) clearly outlines the manner and form for the receiver to revoke the authorisation by notifying the originator.

(2) The authorisation for credit entries may be written or oral.

Exception to authorisation requirement.

124. (1) Where both the originator and receiver are non-corporate customers, no authorisation by the receiver is required for credit entries, and no warranty with respect to that authorisation is made by the originating participant.

(2) The provisions of rules 150, 151, and 152 shall not apply to the entries described in rule 124(1).

Notice to be given to originator before a credit entry is made.

125. (1) Before a credit entry is made, the originating participant shall inform the originator, by notice in writing, that the—

- (a) entry may be transmitted through the ECACH;
- (b) rights and obligations of the originator concerning the entry is governed by and construed in accordance with any applicable legislation in respect of banking, anti-money laundering or consumer protection.

(2) The notice may be included as part of an agreement entered into by the originator binding the originator to these rules, or it may be provided to the originator in a separate agreement.

Notice to be given to receiver where credit entry is made.

126. (1) Where a credit entry is made, the receiving participant shall inform the receiver, by notice in writing, that the—

- (a) entry may be transmitted through the ECACH;
- (b) rights and obligations of the receiver concerning the entry is governed by and construed in accordance with any applicable legislation in respect of banking, anti-money laundering or consumer protection.

(2) This notice may be included as part of an agreement entered into by the receiver binding the receiver to these rules, or it may be provided to the receiver separately.

(3) Unless the receiving participant agrees to provide the receiver with notice that it has received an entry it shall be under no obligation to provide such notice.

Originating participant exposure limits.

127. Where an entry is initiated by an originator who is a body corporate, the originating participant shall—

- (a) establish an exposure limit for that originator;
- (b) implement procedures to review that exposure limit at least annually;
- (c) implement procedures to monitor entries initiated by the originator to ensure that the entries are in keeping with its exposure limit across multiple settlement dates; and
- (d) implement procedures to monitor the payments system risk associated with legitimate transaction entries initiated by the originator.

Authorisation of originator and receiver.

128. An originating participant shall ensure that each entry transmitted to the ECACH is in accordance with the required authorisation provided by the originator and the receiver.

Timeliness of credit entries and amount for debit entries.

129. An originating participant shall ensure that each—

- (a) credit entry is made within a reasonable period of time to allow the receiving participant to provide credit to the receiver at the start of

business in the designated settlement date, or where transmitted on the same day of settlement to provide credit to the receiver within the business day of settlement;

- (b) debit entry is for an amount which on the settlement date shall be due and owing to the originator from the receiver, either for a sum specified by the receiver to be paid to the originator, or to correct a previously transmitted erroneous credit entry.

Originating participant to ensure entry complies with other requirements.

130. An originating participant shall ensure the following—

- (a) the requirements of rule 122 concerning the authorisation of an entry have been satisfied;
- (b) the entry has not been reinitiated in violation of rule 143; and
- (c) the entry otherwise complies with these rules.

Transmittal of required information.

131. (1) Where an originating participant transmits an entry to the ECACH it shall contain the correct receiver account number and all other information necessary to enable the receiving participant to comply with the requirements of rule 162 except for information within the purview of the receiving participant's relationship with the receiver.

(2) An originating participant shall ensure that the information transmitted with an entry rule 131(1) above is payment related and conforms to the requirements of the NACHA Standards as modified by Schedule 1.

Limitation of warranties.

132. Notwithstanding anything in these rules to the contrary, the warranties contained within these rules do not apply to the goods or services to which an entry relates.

Indemnity for breach of warranty.

133. (1) An originating participant in breach of any of the preceding warranties shall indemnify a receiving participant and the ECACH from and against any and all claim, demand, loss, liability, or expense, including legal fees and costs, that result directly or indirectly from the breach of warranty or the debiting or crediting of the entry to the receiver's account.

(2) The indemnity under rule 133(1) includes, without limitation—

- (a) any claim, demand, loss, liability, or expense based on the fact that the debiting of an entry to an account resulted, either directly or indirectly, in the return of one or more items or entries of the receiver due to insufficient funds;
- (b) any claim, demand, loss, liability, or expense based on the fact that the failure of the originating participant to comply with any provision of these Rules resulted, either directly or indirectly, in the violation by a receiving participant of any applicable legislation in respect of anti-money laundering or consumer protection.

General rule for reversing files.

134. If an originator, originating participant, or the ECACH, has mistakenly initiated a duplicate file or a file in which each entry in one or more batches contains erroneous data, and no right to recall those entries otherwise exists under these Rules, the originator, originating participant, or ECACH, may initiate a file of entries referred to as a “reversing file” in accordance with NACHA Standards as modified by Schedule 1 and rules 135 to 137 to reverse each entry of the duplicate or erroneous file or batches

Time limits for initiating a reverse file.

135. (1) The ECACH shall initiate a reversing file in such time as to be transmitted or made available to the receiving participant within twenty-four hours of discovery of the duplication or error but not later than two business days after the settlement date of the duplicate or erroneous file or batch(es)

(2) Where a reversing file is initiated by an originator or originating participant, the file shall be transmitted to the ECACH within twenty four hours of the discovery of the duplication or error but no later than two business days after the settlement date.

Notification of reversing a file by ECACH.

136. Where the ECACH initiates a reversing file it shall notify each receiving participant and each originating participant directly concerned with the duplication or error, at or prior to the time of initiation.

Correcting files.

137. An originating participant shall send a reversing file in compliance with the requirements of the NACHA Standards as modified by Schedule 1, to correct an erroneous file or batch, accompanied by a file referred to as a “correcting file” with the correct information.

Indemnification on reversing files.

138. An originating participant or the ECACH who initiates a reversing or correcting file shall indemnify a system participant from and against any and all claim, demand, loss, liability, or expense, including legal fees and costs, that result directly and indirectly from the debiting or crediting of any entry in the file to the receiver’s account.

Rules inapplicable to reversing files.

139. The provision of rules 122, 128 and 147 shall not apply to a reversing file under this Part.

General rule for reversing entries.

140. (1) An originator may initiate an entry referred to as a “reversing entry” to correct an erroneous credit or debit entry previously initiated to a receiver’s account.

(2) An originating participant shall transmit a reversing entry to the ECACH in such time as to be transmitted by the receiving participant or made available to the receiving participant within two business days of the settlement date of the erroneous entry.

(3) The originator shall notify the receiver of the reversing entry and the reason for the reversing entry not later than the settlement date of the reversing entry.

(4) In this rule, an “erroneous entry” means an entry that—

- (a) is a duplicate of an entry previously initiated by the originator or originating participant;
- (b) orders the payment to or from a receiver not intended to be credited or debited by the originator; or
- (c) orders the payment in a dollar amount different from that which was intended by the originator.

Indemnification on reversing entries.

141. An originating participant that initiates a reversing entry shall indemnify a system participant and the ECACH from and against any and all claim, demand, loss, liability, or expense, including legal fees and costs, that result directly and indirectly from the debiting or crediting of the reversing entry to the receiver’s account.

Rules inapplicable to reversing entries.

142. The provisions of rules 122, 128 and 147 shall not apply to reversing an entry under rule 140.

Re-initiation of returned entries by originators.

143. (1) An originating participant or an originator may reinitiate a returned entry for the following reasons—

- (a) the entry was returned for insufficient or uncollected funds;
- (b) the entry was returned for a stopped payment and the receiver authorised re-initiation; or
- (c) where corrective action was taken.

(2) An originator may reinitiate an entry that has been returned for insufficient or uncollected funds not more than once following the return of the original entry after the settlement date of the original entry.

Media and format specification requirements.

144. The originating participant shall comply with the requirements of the appropriate NACHA Standard entry class code specified in Schedule 1 for each entry transmitted to the ECACH.

Release of information.

145. An originating participant agrees that the ECACH may release information to the Central Bank in accordance with the disclosure provision of the Act.

Pre-Notification.

146. (1) An originator or an originating participant may, at its option, deliver or send a pre-notification to a receiving participant, prior to the initiation of the first entry to a receiver or a receiver’s account with the receiving participant in accordance with the NACHA Standards as modified by Schedule 1.

(2) The pre-notification shall provide notice to the receiving participant that the originator intends to initiate one or more entries to a receiver's account in accordance with the receiver's authorisation.

(3) If the originator intends to initiate an entry on behalf of another person, any pre-notification transmitted shall be with respect to such person.

(4) In any case in which a pre-notification has been initiated by an originator, it shall do so not later than six business days before the initiation of the first entry to a receiver.

(5) An originator who has initiated a pre-notification may not initiate entries to a receiver's account sooner than six business days following the settlement date of the pre-notification entry.

(6) Where, within the six business days, the receiving participant has transmitted to the ECACH and the originating participant has received a return entry complying with the requirements of this rule indicating that the receiving participant will not accept entries, such entries shall not be initiated.

(7) Where, within the six business days, the receiving participant has transmitted to the ECACH and the originating participant has received a notification of change in accordance with this rule indicating that the receiving participant requires the requested changes to be made prior to the initiation of such entries, such entries shall not be initiated unless the requested changes have been made.

(8) A receiving participant shall verify the validity of an account number contained within a pre-notification.

(9) Where the account number contained within a pre-notification is invalid, a receiving participant shall—

- (a) return the pre-notification with the relevant return code; or
- (b) send a notification of change.

Notice by originator of change in amount.

147. Where the amount of a debit entry to be debited to a receiver's account differs from—

- (a) the amount of the immediately preceding debit entry relating to the same authorisation; or
- (b) a preauthorised amount,

the originator shall send the receiver a written or electronic notification of the amount of the entry and the date on or after which the entry will be debited, at least ten business days prior to the date on which the entry is scheduled to be initiated.

Receiver may elect to receive notice.

148. Where an originator informs the receiver of his or her right to receive notification concerning a change in the amount of a debit entry, a receiver may choose to receive notice only where—

- (a) the amount of the entry falls outside a specific range; or
- (b) the entry differs from the most recent entry by more than an agreed upon amount.

Notice by originator of change in scheduled debiting date.

149. (1) Where an originator changes the date on or after which entries to be initiated by the originator are scheduled to be debited to a receiver's account, the originator shall send to the receiver electronic or written notification of the new date on or after which entries initiated by the originator are scheduled to be debited to the receiver's account.

(2) The notification in rule 149(1) shall be sent not less than ten business days before the first entry to be affected by the change is scheduled to be debited to the receiver's account.

(Amended by S.R.O. 18/2019)

(3) For the purposes of rule 149(1), variation in debiting dates due to Saturdays, Sundays, or public holidays are not considered to be changes in the scheduled dates.

Originator to provide copy of debit authorisation.

150. An originator shall provide, at the request of each receiver, an electronic or hard copy of the receiver's authorisation for all debit entries to be initiated to an account.

Retention of the record of authorisation.

151. (1) An originator shall retain the original or a copy of each authorisation of a receiver for two years from the termination or revocation of the authorisation.

(2) At the request of the originating participant, the originator shall provide the original or a copy of the authorisation to the originating participant for its use or for the use of the receiving participant requesting the information pursuant to rule 152.

Receiving participant's right to information regarding entries.

152. (1) Prior to acting as a receiving participant for a receiver, the receiving participant may request, in writing, that an originating participant provide a copy of the receiver's authorisation for any entries, other than credit entries.

(2) Upon receipt of the receiving participant's written request, the originating participant shall obtain the original or a copy of the receiver's authorisation from the originator in accordance with rule 151 and provide it to the receiving participant within ten business days.

(3) An originating participant shall provide such authorisation without charge.

(4) The originator is under no obligation to the receiving participant to provide any other information concerning the receiver or any entry to be initiated by the originator to the receiver's account.

Receiving participant under obligation to accept entries.

153. Subject to its right to return or reject entries under these Rules, a receiving participant shall accept credit and debit entries that comply with these Rules which were received with respect to any account maintained with that receiving participant.

Receiving participant may rely on account numbers for posting of entries.

154. Where the account number and the name of the receiver contained in an entry do not relate to the same account, the receiving participant may rely solely on the

account number contained in the entry for purpose of posting the entry to the receiver's account.

Warranty and indemnity of receiving participant.

155. (1) A receiving participant warrants to an originating participant and the ECACH that it has the capacity to receive entries as provided in these rules and to comply with the requirements of these Rules concerning receiving participants.

(2) Any receiving participant who breaches a warranty under this rule shall indemnify an originating participant and the ECACH from and against any and all claim, demand, loss, liability, or expense, including legal fees and costs, resulting directly or indirectly from the breach of warranty.

Receipt and availability of entries.

156. (1) An entry or entry data is made available to a receiving participant or its third party agent when the entry or entry data is processed by the ECACH and made available to the receiving participant or its agent as provided for in these Rules.

(2) An entry or entry data is deemed to be received by a receiving participant on the business day on which the entry or entry data is made available to the receiving participant or to its third party agent.

Receiving participant to make available credit entries to receivers.

157. Subject to its right to return or reject entries in accordance with these Rules, each receiving participant shall make the amount of each credit entry received from the ECACH available to the receiver for withdrawal not later than the settlement date of the entry.

Time to debit entries to a receiver's account.

158. A receiving participant shall not debit the amount of any entry to a receiver's account prior to the designated settlement date of the entry.

Rights of receiver upon unauthorised debit to its account.

159. A receiver or other person whose account is debited by an entry which is, in whole or in part, not authorised by such person shall have rights, including the right to have the account re-credited.

Reliance on standard entry class codes.

160. A receiving participant may consider an entry containing a NACHA Standard entry class code specified in Schedule 1 as complying with the requirements to these Rules for that type of entry.

Reimbursement of receiving participant.

161. (1) A credit entry given to the receiving participant as provided in rule 157 is provisional until the receiving participant has received final settlement through the Central Bank.

(2) Where such settlement or payment is not received, the receiving participant is entitled to a refund from the receiver of the amount credited, and the originator is considered not to have paid the receiver the amount of the entry.

Periodic statements.

162. A receiving participant shall send or make available to its receiver, information concerning each credit and debit entry to the account of the receiver in accordance with the respective participant's agreement with the receiver.

Notice to receiver.

163. A receiving participating is not required to notify a receiver of receipt of an entry to its account unless otherwise provided for in an agreement between the receiving participant and receiver or required by law.

Release of information.

164. Each receiving participant agrees that the ECACH may release to the Central Bank information regarding the receiving participant entries transmitted to or by the receiving participant in accordance with the disclosure provisions of the Act.

Processing obligation of the ECACH.

165. In accordance with the NACHA Standards as modified by Schedule 1, the ECACH shall—

- (a) promptly process the entries, enter the data, insert the appropriate settlement date, or reject batches and files in accordance with rule 168;
- (b) transmit or make available entries and entry data to system participants in accordance with the processing schedule stipulated in the Operating Procedures Manual;
(Substituted by S.R.O. 18/2019)
- (c) total the debit and credit activity received from and sent to the system participant during each business day; and
- (d) calculate and report the settlement amounts for each day for all entries processed under these Rules.

Accounting advice.

166. The ECACH shall provide the Central Bank with accounting information to facilitate the processing of accounting entries for system participants.

Rejection by ECACH.

167. If an entry data received for processing does not meet the acceptance criteria defined by the NACHA Standards as modified by Schedule 1, the ECACH shall reject the file containing the entry and notify the appropriate originating participant.

ECACH to review originator status code.

168. The ECACH shall review each batch of entries it receives to ensure that the originator status code is included in accordance with the NACHA Standards as modified by Schedule 1.

ECACH to record entries.

169. (1) The ECACH shall retain a record of all entries, return entries, and adjustment entries referred to in this rule as "entries" received or transmitted by it for seven years from the date of receipt or transmittal of the entry.

(2) The ECACH shall provide information relating to a particular entry if requested to do so by the system participant that originated, transmitted, or received the entry.

Transaction and payments types.

170. (1) The ECACH shall process two main types of electronic fund transfer payments as follows—

- (a) credit instruments called direct credits; and
- (b) debit instruments called direct debits.

(2) The ECACH may process combined transaction types, direct debits and direct credits within the same batch.

(3) The batches within any one file may have different value dates.

Direct credit payments.

171. (1) Direct credit payments shall be submitted for clearing by the system participant required to settle for the payment.

(2) The receiving participant receives the files with payment batches after being processed.

(3) The direct credit payments shall be supported by multiple payment types based on the codes available in the file format used in the NACHA Standards as modified by Schedule 1.

(4) The acceptance of direct credits into the ECACH shall conform to the NACHA Standards as modified by Schedule 1 and the instrument types shall be submitted through a system participant of the ECACH.

(5) All direct credit instruments shall be submitted electronically.

Direct debit payments.

172. (1) The originating participant shall submit direct debits for clearing.

(2) Direct debit items may be sent either on their value dates or in accordance with the time specified for the early submission of files as set out in the Operating Procedures Manual.

(Amended by S.R.O. 18/2019)

(3) A receiving participant may refuse a direct debit item in accordance with these Rules by initiating a direct debit return.

(4) Direct debit batches shall be cleared and settled on their value date.

(5) The direct debit transactions are based on a direct debit mandate between the originator and the receiver.

(6) Direct debits shall be accepted where the originating participant of the item confirms that the necessary authorisations are in place from its originator allowing the processing of debits to the receiver's account.

(7) The agreement(s) shall cover provisions for the returning of debits once the receiver advises the receiving participant that the debit is authorised.

(8) The acceptance of direct debits into the ECACH shall conform to the NACHA Standards as modified by Schedule 1.

(9) In this rule, “direct debit mandate” means a continuing but revocable authority and request, given in writing and signed or similarly authenticated with a secure electronic signature, by a receiver, to an originator that authorises the originator to issue a direct debit instruction against the receiver’s account and that authorises the receiving participant to debit the account of the receiver with the amount of the direct debit instructions where a direct debit instruction is issued by the originator against the receiver’s account at the receiving participant.

SCHEDULE 1 TO THE RULES

(Rules 4(1), (2), (3), 130, 32, 85, 86, 101, 103, 107, 112, 117, 120, 131, 134, 137, 144, 146, 160, 165, 167, 168, 171 and 172)

FILE SPECIFICATIONS

File Specification.

(1) The ECACH System shall comply with the full ANSI X9. 100-187 Standards for cheque image exchange and the NACHA Standards for electronic payment files. However, modifications have been made to accommodate the needs of the Currency Union.

NACHA Standards.

(2) The Full NACHA Standards for the electronic payment files shall be accepted and processed by the ECACH system with the following modifications—

- (a) In order to allow for domestic multicurrency clearing and settlement, the Reference Field in the File Header Record will be a mandatory field used to indicate currency code. The “three character” ISO Currency Code for EC dollar and US dollar will be used.
- (b) The Central Bank is not using a check digit with the bank routing number scheme. A trailing zero will be used in any 9 digit Routing Number field, a zero will be used in any Banking Routing Number Check Digit field and there will be no validation on the check digit;
- (c) An additional operator code is being added “R62-originating participant exceeds collateral” to identify an operator return at the end of day if the originating participant does not have enough collateral to send the payments.

NACHA Standards entry class codes.

(3) The following NACHA Standards entry class codes shall be used for processing—

- (a) CIE-Customer Initiated Entry: Customer initiated entries are limited to credit applications where the customer initiates the transfer of funds to a person for payment of funds owed to that company or person. Typical examples of these entries are utility bills and other internet banking product payments.
- (b) PPD-Prearranged Payment or Deposit Entry—
 - (i) Direct Deposit: Direct deposit is a credit application that transfers funds into a customer’s account at the receiving participant. The

funds being deposited can represent a variety of products such as payroll, remittance, interest, pension and dividends refunds.

- (ii) **Preauthorised Payment:** A preauthorised payment is a debit application. Companies with existing relationships with the customers may participate in the electronic funds transfers through the electronic transfer (direct Debit) of payment entries. Through standing authorisations, the customer grants the company authority to initiate periodic charges to his or her account as bills become due. This concept is especially applicable in situations where the recurring bills are regular and do not vary in amount such as insurance premiums and loan instalments. Preauthorised payments may also be used for bills where the amount does vary, such as utility payments.
- (c) **CCD/CCD+ - Corporate Credit or Debit:** This application can be either a credit or a debit application where funds are either distributed or consolidated between corporate entities or government entities. This application can serve as a stand-alone funds transfer between corporate or government entities, or it can support a limited disclosure of information when the funds are being transferred between organisations (that is, sister companies) under the same group.
- (d) **CTX - Corporate Trade Exchange:** This application supports the transfer of funds (debit or credit) with a trading partner relationship in which business payment remittance information is sent with the funds transfer. The payment - related information is placed in multiple addenda records in a format agreed to by the parties and the ECACH.
- (e) **IAT - International ACH:** This application supports the cross-border transfer of funds (debit or credit) by a customer or business to pay another customer or business in another territorial jurisdiction.
- (f) **ADV - Automated Accounting Advice.**
- (g) **COR - Automated Notifications of Change or Refused Automated Notification of Change.**
- (h) **Returns - Returns, Dishonoured Returns, Contested Dishonoured Returns.**
- (i) **Pre-notifications - 0.01 dollar test file for credit or debit transactions.**
- (j) **File Acknowledgement - ECACH acknowledgement of file status.**

ANSI X9. 100-187 Standards.

(4) The full ANSI X9. 100 - 187 Standards for cheque images will provide a structure to facilitate electronic exchange of cheque related data and images for the purpose of forward cheque presentment, return item notification, and return processing with the following modifications—

- (a) In order to allow for domestic multicurrency clearing and settlement, Field 13 in the File Header Record will be a mandatory field used to indicate currency code.
- (b) The three character ISO Currency Code for EC dollars and US dollars will be used.
- (c) The Central Bank is not using a check digit with the bank routing number scheme. A trailing zero will be used in any 9 Digit Routing

Length	Minimum = 6.25 Inches Maximum = 8.50 Inches
Height	Minimum = 2.75 Inches Maximum = 3.75 Inches
Corners	Front Lower Right and Back Lower Left Corners > 0.8 Inches Front Upper (both) and Front Lower Left Corners > 1.0 Inches Rear Upper (both) and Rear Lower Right Corners > 3.0 Inches
Document Skew	Front Skew > 287.2 Degrees
Darkness	Front Minimum Darkness < 0.009 (Ratio of black pixels to total pixels) Front Maximum Darkness > 0.9 (Ratio of black pixels to total pixels) Back Minimum Darkness < 0.0038 (Ratio of black pixels to total pixels) Back Maximum Darkness > 0.98 (Ratio of black pixels to total pixels)
Noise	Front Noise Relative Density (Black and White) > 5,852 Spots considered as noise per square inch, on average Back Noise Relative Density (Black and White) > 5,852 Spots considered as noise per square inch, on average
IQA Record Size	Front = Minimum 250 Bytes, Maximum 200,000 Bytes Back = Minimum 250 Bytes, maximum 200,000 Bytes

†SCHEDULE 3 TO THE RULES

(Rule 10)

CRITERIA FOR PARTICIPATION

PART A

The conditions contained herein shall be met by system participants, and applicants to the ECACH to the satisfaction of the Central Bank, which is responsible under section 3 of the Act for the general supervision and management of the ECACH.

- (1) A person who is applying to participate in the ECACH shall be regulated and supervised under the Act or one or more of the following—
 - (a) Banking Act, Cap. 21.01;
 - (b) Money Services Business Act, Cap. 21.21; and
 - (c) Securities Act, Cap. 21.16.
- (2) The regulator or supervisor of the applicant shall warrant that the applicant meets the following—

† Schedule 3 to the rules and schedule 4 to the rules repealed by S.R.O. 18/2019 and as a consequence schedule 5 to the rules renumbered as schedule 3 to the rules

- (a) is materially in compliance with the relevant Act under which it is supervised, in that all statutory and prudential requirements must be satisfied, or an applicant must demonstrate that these will be satisfied;
 - (b) does not pose any credit risk to the clearing house;
 - (c) has adequate collateral to cover its clearing obligations; and
 - (d) satisfies the relevant fit and proper tests under the respective Acts.
- (3) The Central Bank is satisfied that the applicant is systemically important in relation to the following—
- (a) the capacity of the applicant’s transaction to transmit systemic disruption;
 - (b) the size and nature of individual payment obligations processed and settled by the institution on any given day;
 - (c) the aggregate value of payment obligations processed and settled by the institution on any given day;
 - (d) the size of payment obligations owed to and by other system participants in the general payment system, and
 - (e) whether it is in the public interest (in terms of added value and competition).
- (4) The applicant shall demonstrate the capacity to comply with the rules.

PART B

FORM

**APPLICATION FOR MEMBERSHIP IN THE
EASTERN CARIBBEAN CENTRAL BANK CLEARING HOUSE**

The
a licensed..... operating in
hereby applies for membership in the Eastern Caribbean Automated Clearing House.

Signed:

Name in Full: Date:

(Schedule inserted by S.R.O. 3/2014)
