

FIJI INTERCHANGE NETWORK (PAYMENTS) BILL 2016  
(BILL NO. 15 OF 2016)

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# BILL NO. 15 OF 2016

## A BILL

FOR AN ACT TO PROVIDE FOR THE REGULATION OF PAYMENT SYSTEMS  
AND SERVICES THROUGH THE FIJI INTERCHANGE NETWORK AND FOR  
RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

### PART 1—PRELIMINARY

#### *Short title and commencement*

- 1.—(1) This Act may be cited as the Fiji Interchange Network (Payments) Act 2016.
- (2) This Act comes into force on the date or dates appointed by the Minister by notice in the Gazette.

#### *Interpretation*

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

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

“Authority” means the Fiji Interchange Network Authority established under section 5;

- “bank” has the meaning in the Banking Act 1995;
- “Board” means the Board established under section 8;
- “central counter-party” means an entity that is the buyer to every seller and the seller to every buyer in a settlement system;
- “clearing” means the process of transmitting, reconciling or confirming funds or securities transfer instructions prior to settlement, and includes the netting of instructions and the establishment of final positions for settlement;
- “clearing house” means any entity that provides clearing or settlement services for a system, including the Authority;
- “electronic fund transfer” means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a bank to debit or credit an account maintained with that bank through electronic means, and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds and transfers initiated by telephone, mobile network operators, internet, card or other devices;
- “electronic money” means electronically, including magnetically, stored monetary value as represented by a claim on the issuer, which is issued for the purpose of making payment transactions and which is accepted as a means of payment by persons other than the issuer;
- “financial institution” has the meaning in the Banking Act 1995;
- “licensed payment system” means a payment system operated by a payment system operator;
- “licensee” means a person licensed to provide a payment service or operate a payment system in accordance with section 21;
- “Minister” means the minister responsible for the administration of this Act;
- “multilateral netting” means an arrangement amongst parties to net their obligations;
- “net termination value” means the net amount obtained after setting-off or otherwise netting the obligations amongst the parties in accordance with settlement rules issued by the Authority or a netting arrangement entered into between the parties;
- “netting” means the determination of the net payment obligations or the net termination value amongst participants within a system;
- “netting arrangement” means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation and includes bilateral netting, multilateral netting, netting by novation, close-out netting, payments netting or a combination of any of these;

“netting by novation” means a netting arrangement between the parties to a series of transactions where an account of amounts due is kept and the rights and obligations of the parties in respect of the account are continuously extinguished and replaced by a new single amount payable by one party to the other;

“Network” means the Fiji Interchange Network implemented under section 18;

“participant” or “party” means a person who is recognised in the rules of a system as eligible to exchange, clear and settle through the system with other participants either directly or indirectly;

“payment card” means any card, coupon book or other device, including a code or any other means of access to an account, that may be used from time to time to obtain money or to make payment, and includes a debit, credit and stored-value card;

“payment instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment or transfer money, and this includes, but is not limited to cheques, fund transfers initiated by any paper or paperless device such as automated teller machines, electronic fund transfers at points of sale, internet, telephone, mobile and payment cards, including those involving the storage of electronic money;

“payment service” means a service enabling cash deposits or withdrawals, execution of payment transactions, issuing or acquisition of payment instruments and any other services functional to the transfer of money; and this also includes the issuance of electronic money and electronic payment instruments and electronic money services provided by mobile network and other operators; but does not include the provision of solely on-line or telecommunication services or network access;

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

“payment system” means any system or arrangement for the processing, clearing and settlement of funds, but excludes—

- (a) a clearing house recognised under any other written law;
- (b) an in-house system operated by a person solely for the person’s own administrative purposes, that does not transfer, clear or settle funds for third parties; and
- (c) such other systems or arrangements as may be prescribed by regulations;

“payment system operator” means a person licensed by the Authority to operate a system;

“register” means the register of licensees established under section 25;

“Reserve Bank” means the Reserve Bank of Fiji established under section 3 of the Reserve Bank of Fiji Act (Cap. 210);

“reviewable decision” under this Act includes the—

- (a) refusal to issue a licence;
- (b) refusal to renew a licence;
- (c) revocation of a licence; or
- (d) variation of the conditions of a licence;

“securities” means—

- (a) Government issued shares, debentures, bonds or such Government guaranteed issues;
- (b) Reserve Bank issued debentures or bonds; and
- (c) any other interests as may be prescribed by regulations;

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

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

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

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

“Steering Committee” means the Information Technology and Computing Services Steering Committee established under section 4 of the Reform of Information Technology and Computing Services Decree 2013; and

“system” includes a payment system and settlement system.

*Application*

**3.—**(1) This Act applies to a—

- (a) bank; and

- (b) payment service provider or class of payment service providers which operates wholly or partially in Fiji and is—
  - (i) designated by the Minister, from time to time following the approval of Cabinet, by notice in the Gazette; or
  - (ii) approved by the Minister upon written request by the person to the Minister.

(2) Notwithstanding subsection (1)(b), this Act does not apply to a payment service provider if the payment service provider's payment system is not required to connect with another payment system in order to facilitate its payment services.

*Objectives*

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

- (a) provide for the implementation of the Network to increase the provision of quality payment services to customers;
- (b) provide for the management, administration, operation, supervision and regulation of systems;
- (c) establish the Authority to regulate the shared payment infrastructure and the interconnection of payment systems through the Network; and
- (d) empower the Authority to develop policies and guidelines to promote the efficiency, stability and safety of the Network.

**PART 2—FIJI INTERCHANGE NETWORK AUTHORITY**

*Establishment of the Fiji Interchange Network Authority*

**5.—(1)** This section establishes the Fiji Interchange Network Authority as a body corporate with perpetual succession and a common seal.

(2) The Authority may enter into contracts and sue and be sued in its corporate name and has the power to acquire, hold and dispose of property, both real and personal, and generally do all such acts and things that are necessary for or incidental to the performance of its functions under this Act or any other written law.

(3) The affixing of the seal of the Authority must be authenticated in the manner specified under section 48 of the Interpretation Act (Cap. 7) and when so authenticated must be judicially noticed.

(4) If a document appears to bear the common seal of the Authority, it must be presumed, in the absence of proof to the contrary, that the common seal of the Authority was duly affixed to such document.

*Powers of the Authority*

**6.** The Authority has all the powers necessary to enable it to perform its functions, including the following—

- (a) modify operating guidelines from time to time;

- (b) appoint investigators to investigate any complaint made against a licensee;
- (c) exercise disciplinary powers in accordance with this Act;
- (d) issue, renew, suspend or revoke a licence issued under this Act;
- (e) determine the fees to be paid by licensees under this Act;
- (f) initiate legal proceedings against any person under this Act;
- (g) do all things that a body corporate may do, in accordance with its functions under section 7.

*Functions of the Authority*

**7.** The functions of the Authority are to—

- (a) regulate, maintain and ensure the stability and efficiency of the Network;
- (b) consider applications for a licence under this Act;
- (c) prepare operating guidelines for operating procedures to be adhered to by licensees;
- (d) collate information on the utilisation of the Network;
- (e) devise and implement programmes, services and measures to improve the Network;
- (f) advise and make recommendations to the Minister in respect of any matter relating to the Authority, licensees and technological advancement;
- (g) determine on the settlement bank for domestic transactions;
- (h) provide settlement services for licensees; and
- (i) carry out such other functions conferred upon it by this Act or as may be prescribed by regulations.

**PART 3—THE BOARD**

*The Board*

**8.—**(1) The Board is the governing body of the Authority and, in the name of the Authority, is to perform the functions of the Authority under this Act.

(2) The Board is to be constituted by a chairperson and four other members appointed by the Minister.

(3) The composition of the Board may be prescribed by regulations.

(4) The members of the Board may hold office for a term up to 3 years, and are eligible for re-appointment.

(5) The members of the Board must be remunerated in a manner and at rates subject to terms and conditions determined by the Minister.



(6) The members of the Board may be removed by the Minister for inability to perform the functions of the Board, whether arising from infirmity of body or mind, absence, misbehaviour or any other cause, or may be otherwise removed by giving 30 days' written notice or 30 days' remuneration *in lieu* of such notice.

(7) The office of a member of the Board becomes vacant if the member—

- (a) dies;
- (b) resigns by giving 30 days' written notice to the Minister;
- (c) completes a term of office and is not reappointed; or
- (d) is removed from office under subsection (6).

(8) The powers and functions of the Board as prescribed in this Act must be exercised and performed by the Board, or such other person as directed by the Board.

*Vacancies*

**9.** Any vacant office under section 8(7) must be occupied in the same manner in which the appointment to the office was made, and every person appointed under this section must hold office for the remainder of the term for which the person's predecessor was appointed.

*Meetings and proceedings of the Board*

**10.—**(1) At all meetings of the Board, 3 members form a quorum.

(2) The chairperson must preside at all meetings of the Board and in the absence of the chairperson, the members present must elect one of the members to preside.

(3) All meetings of the Board must be held at such times and places as the chairperson may determine.

(4) All questions arising at any meeting of the Board must be decided by a majority of votes of the members of the Board present at the meeting.

(5) At a meeting of the Board, the chairperson and all members of the Board present have the right to vote, and in the case of equality of votes, the chairperson, or in the absence of the chairperson the member presiding, has a casting vote.

(6) The validity of any proceedings of the Board must not be affected by any vacancy amongst its members or by any defect in the appointment of any member.

(7) Subject to the provisions of this Act, the Board may regulate its own proceedings.

*Disclosure of interests*

**11.—**(1) If—

- (a) a member of the Board has a personal interest or any direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and

- (b) the member's interest could conflict with the performance of the member's duties in relation to the matter,

the member must immediately disclose the interest to the Board.

(2) The disclosure must be recorded in the minutes of the meeting and unless the Board so determines, the member must not—

- (a) be present during any deliberation of the Board in relation to the matter; and
- (b) vote on any matter before the Board in relation to the matter.

*Board may establish committees*

**12.—**(1) The Board may, from time to time, establish such committees as it considers necessary or expedient to assist the Board in the performance of its functions under this Act.

(2) The Board may appoint any person to be a member of any committee established under subsection (1), and must appoint a chairperson of each committee.

(3) A committee established under this section may regulate its own procedures and, in the performance of its functions, such committee must be subject to and act in accordance with any direction given to the committee by the Board.

(4) Meetings of a committee established under this section must be held at such times and places as the chairperson of the committee may, subject to subsection (3), determine.

(5) A committee may invite any person, for the purpose of advising it on any matter under discussion to attend any meeting of the committee, but the person so invited must not be entitled to vote at any such meeting.

(6) The members of a committee or any person invited may be paid such allowances and other expenses as the Board may determine, subject to the approval of the Minister.

(7) The members of a committee may be removed by the Board for inability to perform the functions of the committee, whether arising from infirmity of body or mind, absence, misbehaviour or any other cause, or may be otherwise removed by giving 30 days' written notice or 30 days' remuneration *in lieu* of notice.

(8) The office of a member of a committee becomes vacant if the member—

- (a) dies;
- (b) resigns by giving 30 days' written notice to the Board;
- (c) completes a term of office and is not reappointed; or
- (d) is removed from office under subsection (7).

*Appointment of Chief Executive Officer*

**13.—**(1) The Board may appoint a suitably qualified person as the Chief Executive Officer of the Authority, in accordance with terms and conditions determined by the Board.

(2) The Chief Executive Officer may be appointed for a term not exceeding 3 years and is eligible for re-appointment.

*Functions of the Chief Executive Officer*

**14.**—(1) The Chief Executive Officer is responsible to the Board for the management of the Authority.

(2) The Chief Executive Officer must attend every meeting of the Board, and if the Chief Executive Officer, for any reason, is unable to attend a meeting, the Chief Executive Officer may, in consultation with the chairperson, nominate an officer to attend the meeting on his or her behalf.

(3) The Chief Executive Officer must not engage in any other business without the prior approval of the Board.

*Appointment of staff*

**15.**—(1) The Board or the Chief Executive Officer may appoint such officers or agents as the Board or the Chief Executive Officer considers necessary for the efficient exercise, performance and discharge of the functions of the Board or the Chief Executive Officer.

(2) The officers and agents appointed under subsection (1) must be remunerated in a manner and at rates subject to terms and conditions determined by the Board.

**PART 4—REPORTING**

*Financial reporting and audit of accounts*

**16.**—(1) The financial year of the Authority must commence on the first day of January and end on the thirty-first day of December of each year.

(2) The funds of the Authority must consist of any money appropriated for the purposes of the Authority, and all other money lawfully received by the Authority.

(3) The Authority must cause proper accounts to be kept and must, as soon as practicable after the end of each financial year but not more than 3 months from the end of the financial year, cause to be prepared for that financial year a statement of accounts of the Authority which must include a balance sheet and an account of income and expenditure.

(4) The Authority must cause the statement of accounts to be audited by the Office of the Auditor-General.

(5) The Authority must, as soon as practicable, send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who must cause the statement and the report to be laid before Cabinet.

*Annual report*

**17.** The Authority must, as soon as practicable after the end of each financial year but not more than 5 months from the end of the financial year, prepare a report on its activities during that financial year and send a copy of the report to the Minister who must cause a copy to be laid before Cabinet.

## PART 5—FIJI INTERCHANGE NETWORK

*Implementation of the Fiji Interchange Network*

**18.—**(1) The Authority must implement an information technology infrastructure for the interconnection of payment systems to be known as the Fiji Interchange Network.

(2) The Network interconnects the payment systems of licensees under this Act.

*Interface message specifications and guidelines*

**19.** Every transaction routing through the Network must be routed in accordance with the interface message specifications and guidelines determined by the Authority.

*Ownership of the Network*

**20.—**(1) The Network is owned by the State.

(2) The State may transfer ownership of part or the whole of the Network provided that the transfer does not affect the operation of the Network.

## PART 6—LICENSING

*Principle of licensing*

**21.—**(1) Any person to whom this Act applies who provides a payment service or operates a payment system must—

- (a) be licensed under this part to provide the payment service or operate the payment system; and
- (b) provide the payment service or operate the payment system through the Network.

(2) Any person who contravenes this section commits an offence and is liable upon conviction—

- (a) in the case of a natural person, to a fine not exceeding \$30,000 and an additional fine of \$1,000 for each day the offence continues; and
- (b) in the case of a body corporate or unincorporate, to a fine not exceeding \$150,000 and an additional fine of \$5,000 for each day the offence continues.

*Application for a licence to provide a payment service or operate a payment system*

**22.** An application for a licence must be made to the Authority in the prescribed form and must be accompanied by—

- (a) the prescribed fee;
- (b) a list of all the types of payment instruments used by the applicant;
- (c) written confirmation from the Reserve Bank that the applicant's payment service, payment system, rules and internal policies meet the standard required by the Reserve Bank; and
- (d) any other information that the Authority may require.

*Grant, renewal, suspension and revocation of a licence*

**23.**—(1) Subject to subsection (2), the Authority may, upon being satisfied that the criteria in section 22 are complied with, grant a licence to an applicant to—

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

on such terms and conditions as the Authority deems appropriate.

(2) In order to obtain a licence from the Authority, an applicant may be required to maintain capital levels specified by the Authority.

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

(4) A licence granted by the Authority in accordance with subsection (1) may be—

- (a) renewed by the Authority on such terms and conditions as the Authority considers necessary; or
- (b) suspended or revoked by the Authority in the following circumstances—
  - (i) failure by the licensee concerned to comply with any condition, directive, order or guidelines issued by the Authority;
  - (ii) if in the opinion of the Authority, the licensee concerned has ceased to provide a payment service or operate a payment system;
  - (iii) if the licensee does not fully disclose or fails to satisfactorily disclose information required by the Authority;
  - (iv) if the licensee introduces or uses faulty payment instruments in the market;
  - (v) if the licensee is declared bankrupt or insolvent;
  - (vi) if the licensee fails to commence business within the time specified by the Authority.

(5) The Authority may, for the purposes of this Act, amend any condition of any licence issued under this Act by way of alteration, substitution, addition, omission or other modification if it considers the amendment reasonable.

(6) If after considering an application for a licence, the Authority decides that the applicant must not be issued with a licence, the Authority must notify the applicant of its decision in writing, and such notification must state the reason or reasons for its decision.

(7) A licence or any right acquired in accordance with this Act is not transferable except as may be prescribed by the Authority, and any transfer in contravention thereof is void.

*Exemption*

**24.** If, a financial institution is licensed under the Banking Act 1995, the Authority may, with the approval of the Minister, in writing, exempt the financial institution from complying with a requirement under this Act.

*Register of licensees*

**25.—(1)** This section establishes the register of licensees which is to be kept and maintained by the Authority.

- (2) The register must contain a record of—
- (a) each licensee under this Act; and
  - (b) all types of payment instruments provided by licensees.
- (3) The register must include in relation to each licensee—
- (a) the licensee’s full registered name and registered contact address;
  - (b) the type of payment service provided by the licensee;
  - (c) the type of payment system operated by the licensee;
  - (d) the types of payment instruments used in the payment system operated under paragraph (c); and
  - (e) any other information that the Authority considers appropriate.
- (4) The Authority may issue directives to ensure that—
- (a) the information provided by a licensee and maintained in the register is up-to-date, relevant and satisfactory; and
  - (b) payment instruments provided by the licensee are not faulty, harmful or unsafe for customers.
- (5) Where a directive issued in accordance with subsection (4) is not complied with, the Authority may revoke or suspend the relevant licence in accordance with section 23(4)(b)(i).

*Rules of systems*

**26.—(1)** Each operator of a system must formulate rules for the governance, management and operations of the system that the operator runs, including rules—

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

(2) A copy of the rules formulated in accordance with subsection (1) must be made available to the Authority at the time an application for a licence is lodged and at such other time as requested by the Authority.

(3) The rules formulated in accordance with subsection (1) must comply with the requirements of this Act, any other written law and any directive issued by the Reserve Bank.

(4) The Reserve Bank may vary or revoke any rules of the operator formulated in accordance with subsection (1), where it considers 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 persons who, in the future, may desire access to the system; and
- (d) any other matter the Reserve Bank considers relevant.

(5) No operator of a system must cause any change in the system which would affect the structure, operation or administration of the system without—

- (a) the approval of the Reserve Bank; and
- (b) giving notice of not less than 30 days to the participants of the system following the approval of the Reserve Bank.

(6) The Reserve Bank may, in the interest of monetary policy, financial stability or the public interest, permit the payment system operator to make any changes to a licensed payment system without giving notice to the participants or requiring the operator to give notice for a period of not less than 30 days.

(7) The Reserve Bank may issue directives in respect of any or all of the matters specified in this section and where there is an inconsistency or conflict between any rule, instruction, direction or agreement and any directive made under this Act, such directive prevails.

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

- (a) in the case of a natural person, to a fine not exceeding \$30,000, and an additional fine of \$1,000 for each day the offence continues; and
- (b) in the case of a body corporate or unincorporate, to a fine not exceeding \$150,000, and an additional fine of \$5,000 for each day the offence continues.

*Access to systems*

**27.** The rules on access to systems as provided for in section 26(1)(b) must be objective, non-discriminatory and proportionate and those rules must not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

## PART 7— APPEAL

*Right of appeal*

**28.** Any person may appeal, subject to the provisions of this Act, to the Minister against a reviewable decision of the Authority.

*Lodgement of appeal*

**29.—(1)** Any appeal made under this Act must be made within 20 working days of notification of the decision to the appellant except where the Minister may, for good cause, extend the period of 20 working days.

(2) An appeal by an applicant under this Act must—

- (a) be in writing;
- (b) clearly and concisely set out the grounds for the appeal;
- (c) be accompanied by the prescribed fee; and
- (d) be sent to the Minister.

*Minister to inquire*

**30.** The Minister must, upon receiving an appeal under section 29, refer a copy of the appeal to the Authority within 5 working days and request a written statement from the Authority for the decision appealed against.

*Authority to respond*

**31.** The Authority must, within 10 working days of receiving a copy of an appeal under section 30, provide to the Minister a written statement setting out the reasons for the decision appealed against.

*Decision of the Minister*

**32.—(1)** The Minister must, within 10 working days of receipt of the Authority's written statement under section 31, either—

- (a) affirm the Authority's decision;
- (b) vary the Authority's decision; or
- (c) set aside the Authority's decision and make a new decision in its place.

(2) The Minister must, as soon as possible after an appeal has been determined, forward the decision in writing to the appellant.

(3) The decision of the Minister on an appeal made under this Act is final and conclusive, and not subject to any appeal.



PART 8—ONGOING OVERSIGHT

*General standards and measures*

**33.—**(1) The Reserve Bank—

- (a) regulates payment systems in Fiji;
- (b) may, at any time, adopt general standards and criteria for the conduct of the activities of payment services or the operation of systems, either generally addressing the totality of entities or a specific category; and
- (c) may, at any time, issue directives to a licensee with respect to the licensee's governance, management, operations and relations with participants.

(2) The Authority—

- (a) regulates the operation of the Network;
- (b) may, at any time, adopt general standards and criteria for the operation of the Network; and
- (c) may, at any time, issue directives to a licensee for the operation of the Network and for the proper and efficient administration of this Act.

(3) At least 15 days' notice must be given by the Reserve Bank or the Authority, as the case may be, before a standard or a directive issued under this section takes effect.

(4) A licensee must comply with and give effect to a standard or a directive issued under this section.

(5) Any person who contravenes a standard or a directive issued under this section commits an offence and is liable upon conviction—

- (a) in the case of a natural person, to a fine not exceeding \$30,000, and an additional fine of \$1,000 for each day the offence continues; and
- (b) in the case of a body corporate or unincorporate, to a fine not exceeding \$150,000, and an additional fine of \$5,000 for each day the offence continues.

*Reporting and disclosure requirements*

**34.—**(1) A licensee is subject to reporting and disclosure requirements as may be determined by the Authority.

(2) Any information obtained by the Authority under subsection (1) must not be disclosed, directly or indirectly, to another person except—

- (a) for the purposes of performing its functions under this Act;
- (b) where it is necessary to protect the financial integrity, effectiveness or security of the Network;
- (c) when ordered to do so by a court of law; or

- (d) where it is required for the purpose of meeting obligations under any written law or any international agreement entered into by the State.

*Power to examine records*

**35.** The Authority may, where it is of the opinion that it is necessary for the purposes of carrying out its functions under this Act, examine with or without any prior written notice, the premises, apparatus, equipment, machinery, books or other documents, accounts or transactions of a participant, an authorised operator or issuer of payment instruments and any of their offices in or outside of the country.

*Retention of records*

**36.—(1)** A licensee must retain all records obtained by the licensee during the course of the licensee's operation and administration for a period of 7 years in accordance with section 8(3) of the Financial Transactions Reporting Act 2004.

(2) The retention of records under subsection (1) may be retained by electronic means in accordance with any other written law.

*Use of customers' information*

**37.** No person who has acquired knowledge in the person's capacity as director, manager, officer, employee or agent of any payment service provider is to disclose to any other person any information in respect of a customer except—

- (a) with the written authorisation of the customer or of the customer's legal representative;
- (b) for the purpose of the performance of the person's duties under this Act and following any Authority limitations to this extent;
- (c) in the course of any winding up of the payment service provider;
- (d) when ordered to do so by a court of law; or
- (e) where it is required for the purpose of meeting obligations under any written law or any international agreement entered into by the State.

*Fees and charges*

**38.** The Authority may impose fees and charges as prescribed by regulations for—

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

PART 9—SETTLEMENT, NETTING AND FINALITY OF PAYMENTS

*Settlement accounts*

**39.—**(1) Every participant to a system must—

- (a) open and maintain settlement accounts on the books of the Authority or a licensed settlement system operator, including the maintenance of minimum balances, on such terms and conditions as the Authority or licensed settlement system operator may specify; or
- (b) appoint another participant which has opened a settlement account as a settlement agent to settle all obligations due from the first-mentioned participant to any other participant arising out of each day's clearing.

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

(3) Any participant who intends to terminate the appointment of the participant's settlement agent must notify the operator in writing not less than 7 days before the date of termination of such appointment.

*Finality of payments*

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

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

*Securities and derivatives clearing houses*

**41.** Nothing in any law relating to bankruptcy or insolvency or in any order of a court made in respect of the administration of a reorganisation, arrangement or receivership involving insolvency, including in any foreign law or order of a foreign court, has the effect of—

- (a) preventing a securities and derivatives clearing house from—
  - (i) if it is a party to a netting settlement amount in accordance with the provisions of the termination value or net settlement in accordance with the provisions of the agreement, with the party entitled to the value or amount becoming a creditor of the party owing the value or amount for that value or amount; or

- (ii) acting in accordance with any of its rules that provide the basis on which payment and delivery obligations are calculated, netted and settled; or
- (b) interfering with the rights or remedies of a securities and derivatives clearing house in respect of any collateral that has been granted to it as security for the performance of an obligation incurred in respect of the clearing and settlement services provided by the securities and derivatives clearing house.

#### PART 10—MISCELLANEOUS

##### *Settlement of disputes by arbitration*

**42.** Any dispute between a payment service provider or payment system operator and a participant concerning any matter arising under this Act must be submitted to arbitration under the Arbitration Act (Cap 38).

##### *Customer complaints*

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

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

- (a) may request any information related to the customer's financial transaction from the Authority or another participant; and
- (b) must address the customer's grievance in accordance with the relevant code of conduct.

##### *Steering Committee to perform functions of the Board*

**44.** Notwithstanding sections 6 and 7, until such time the members of the Board are appointed by the Minister under section 8, the functions of the Board must be performed, and the powers of the Board must be exercised, by the Steering Committee.

##### *Regulations*

**45.** The Minister may, following consultation with the Authority, make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

##### *Power to issue implementing measures*

**46.** The Authority may issue directives, orders, guidelines or policies as the Authority considers necessary to give effect to the provisions of this Act.

##### *Consequential*

**47.—(1)** This Act has effect notwithstanding any provision of any written law governing payments, and accordingly to the extent that there is any inconsistency between this Act and any other written law, this Act prevails.

(2) Any agreement entered into between or amongst payment service providers for the interconnection of payment systems prior to the commencement of this Act or designation of such payment service provider under section 3(1)(b)(i) and which remains valid and in force immediately prior to the commencement of this Act or the date of designation, ceases to have legal effect and is deemed to be void upon commencement or the designation.

*Transitory provisions*

**48.**—(1) Any bank and other system operator or participant or their administrators conducting business on the effective date of this Act must conform their services and systems to the requirements of this Act within 6 months from the effective date of this Act.

(2) Any bank and other system operator or participant or their administrators who contravenes subsection (1) commits an offence and is liable upon conviction—

- (a) in the case of a natural person, to a fine not exceeding \$30,000, and an additional fine of \$1,000 for each day the offence continues; and
- (b) in the case of a body corporate or unincorporate, to a fine not exceeding \$150,000, and an additional fine of \$5,000 for each day the offence continues.

*Limitation of liability*

**49.** No Board member nor person employed or engaged by the Authority is liable to any action, suit or proceeding for or in respect of any act or matter *bona fide* or done or omitted to be done in the exercise or supposed exercise of the powers conferred on the Board or any person employed or engaged by the Authority by or under the provisions of this Act or any other law.

*Enforcement*

**50.** The Authority and the Reserve Bank have the power, as the case may be, to enforce the provisions of this Act.

## **FIJI INTERCHANGE NETWORK (PAYMENTS) BILL 2016**

### **EXPLANATORY NOTE**

*(This note is not part of the Bill and is only intended to indicate its general effect)*

#### **1.0 BACKGROUND**

- 1.1 One of the initiatives of the Fijian Government is the implementation of the ‘National Switch’.
- 1.2 The National Switch is an information technology infrastructure which will interconnect the payment systems of payment service providers. The objectives of the National Switch are to—
- (i) prevent anti-competitive measures amongst payment service providers;
  - (ii) reduce the costs associated with electronic transactions;
  - (iii) reduce dependency on cash;
  - (iv) increase access by customers to financial systems and institutions;
  - (v) increase financial inclusion;
  - (vi) reduce the cost-base for setting up and providing financial services; and
  - (vii) share infrastructure.
- 1.3 From the commencement of the new law, all banks in Fiji will be required to provide their payment services through the National Switch. All banks will need to be licensed by the new Fiji Interchange Network Authority (‘**Authority**’) in order to provide their payment services. It would an offence under the new law to not connect to the National Switch.
- 1.4 The new law may later apply to other financial institutions, mobile phone companies, statutory bodies and other payment service providers.

## **2.0 FEATURES OF THE BILL**

- 2.1 Part 1 of the Bill provides the preliminary provisions. These provisions outline the short title and commencement of the new Act, the interpretation of terms used throughout the Bill and the application and objectives of the Bill.
- 2.2 Part 2 of the Bill establishes the Authority. It also outlines the powers and functions of the Authority.
- 2.3 Part 3 of the Bill establishes the Board as the governing body of the Authority. The Board will consist of 5 members, including the chairperson, and the Board will be responsible for performing the functions of the Authority.
- 2.4 Part 4 of the Bill deals with financial reporting and audit of accounts.
- 2.5 Part 5 of the Bill provides for the implementation of the Fiji Interchange Network (**‘Network’**). The Authority must implement the Network and every transaction routing through the Network must be routed in accordance with the interface message specifications and guidelines determined by the Authority.
- 2.6 Part 6 of the Bill provides the licensing provisions for persons who provide payment services or operate payment systems. Only those persons who are licensed will be allowed to provide payment services or operate payment systems, and these must be carried out through the Network.
- 2.7 Part 7 of the Bill provides the process for an appeal against the decision of the Authority to the Minister.
- 2.8 Part 8 of the Bill ensures that the Authority and the Reserve Bank of Fiji (**‘RBF’**) have ongoing oversight of the licensees. The Authority will regulate the operations of the Network while RBF will regulate the operations of payment systems and services.
- 2.9 Part 9 of the Bill provides for the settlement of accounts, netting and finality of payments.
- 2.10 Part 10 of the Bill provides the miscellaneous provisions.

## **3.0 MINISTERIAL RESPONSIBILITY**

- 3.1 The Act comes under the responsibility of the minister responsible for the administration of the Act.

A. SAYED-KHAIYUM  
Attorney-General