



REPUBLIC OF VANUATU

NATIONAL PAYMENT SYSTEM ACT NO. 8 OF 2021

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REPUBLIC OF VANUATU

Assent: 20/07/2021
Commencement: 22/07/2021

NATIONAL PAYMENT SYSTEM ACT NO. 8 OF 2021

An Act to provide for the establishment of the National Payment System and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY MATTERS

1 Interpretation

In this Act, unless a contrary intention appears:

applicant means a person applying for a licence under this Act;

bank has the same meaning as in the Financial Institutions Act [CAP 254];

central counter party means an entity that is the buyer to a 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;

close-out netting means a netting arrangement under which, following the occurrence of certain events specified by the parties to the arrangement, all or any of the transactions referred to in the netting arrangement may be terminated, and if so terminated the termination value becomes due and payable;

collateral means an asset or third-party commitment that is used by a collateral provider to secure an obligation vis-à-vis a collateral taker;

Committee means the National Payment System Committee established under section 8;

electronic funds transfer means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a bank or payment service provider 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, transfers initiated by telephone, internet, card or other devices;

electronic money means electronically, including magnetically or in any other tangible or intangible device (such as a SIM card or a software), stored monetary value as represented by a claim on the issuer, which is:

- (a) issued on receipt of funds for the purpose of making payment transactions; and
- (b) accepted as a means of payment by persons other than the issuer;

financial institution has the same meaning as in the Financial Institutions Act [CAP 254];

licence means a licence granted under section 12;

licensee means a person who has been granted licence under this Act to provide payment services or to operate a payment system in Vanuatu;

Minister means the Minister responsible for finance;

multilateral netting means an arrangement among 3 or more parties to net their obligations;

National Payment System means the National Payment System established under section 4;

net termination value means the net amount obtained after setting off or otherwise netting the obligations between the parties in accordance with:

- (a) settlement rules issued by the Reserve Bank; or
- (b) a netting arrangement entered into between the parties;

netting means the determination of the net payment obligations or the determination of the net termination value of settlement obligations between two or more system 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:

- (a) an account of amounts due is kept; and
- (b) the rights and obligations of the parties in respect of the account are continuously extinguished and replaced by a new single amount payable by one party to the other;

operator means the Reserve Bank or any other entity licensed by the Reserve Bank to operate a system;

participant means an entity which is recognized in the rules of a system as eligible to send and receive transfers, 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 which includes but are not limited to:

- (a) cheques;
- (b) funds transfers initiated by any paper or paperless device (such as automated teller machines, points of sale, internet, telephone, mobiles);
- (c) payment cards, including those involving storage of electronic money;

payment services means:

- (a) services enabling:
 - (i) cash deposits and withdrawals; and
 - (ii) execution of payment transactions; and
 - (iii) issuing or acquisition of payment instruments; and
 - (iv) the provision of remittance services; and
 - (v) any other services functional to the transfer of money; and

(b) the issuance of electronic money and electronic money instruments,

but does not include the provision of solely online or telecommunication services or network access;

payment services provider means any entity providing payment services;

payment system means a set of instruments, procedures and rules for the transfer of funds between or among participants;

regulations means the regulations made under this Act;

remittance services means a financial service that:

- (a) accepts cash or other payment instruments (including E-money instruments) in one location; and
- (b) pays a corresponding sum in cash or other form to a beneficiary in another location,

by means of a communication, a message, transfer or through a clearing network to which the money transfer service belongs;

Reserve Bank means the Reserve Bank of Vanuatu established under the Reserve Bank of Vanuatu Act [CAP 125];

securities means a financing or investment instrument issued by a company or government agency that:

- (a) denotes an ownership interest; and
- (b) provides evidence of a debt, a right to share in the earnings of the issuer or a right in the distribution of a property; and
- (c) may be traded in financial markets such as stock exchanges,

and includes bonds, debentures, notes, options, shares, and warrants but does not include insurance policies;

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

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

system means a system established and operated by an operator and includes a payment, clearing and settlement system.

2 Purpose of the Act

The purpose of this Act is to establish a legal framework for licensing, regulation and oversight of a payment system in Vanuatu.

3 Application of the Act

This Act applies to the following entities:

- (a) the regulator; and
- (b) participants such as financial institutions; and
- (c) money changers; and
- (d) remittance service providers; and
- (e) mobile network operators; and
- (f) the government; and
- (g) other payment participants.

PART 2 POWERS AND OPERATIONAL ROLES OF THE RESERVE BANK

4 Establishment of the National Payment System

The Reserve Bank is to establish the National Payment System.

5 Functions and powers of the Reserve Bank

- (1) The Reserve Bank is to regulate and oversee the National Payment System.
- (2) Without limiting subsection (1), the Reserve Bank may:
 - (a) formulate, monitor and review policies on the National Payment System; and
 - (b) licence payment service providers and operators of the payment system and any further implementing measures; and
 - (c) determine rules, directives, standards and procedures on how to operate the payment system; and
 - (d) act as a forum for the consideration of matters of policy and mutual interest concerning the National Payment System; and
 - (e) perform any such other functions relating to systems or the issuance of payment instruments permitting the accomplishment of its functions.
- (3) The Reserve Bank has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

6 Operational roles of the Reserve Bank

- (1) The Reserve Bank may provide facilities for a system to an operator or a participant.
- (2) In addition to subsection (1), the Reserve Bank has the following roles:
 - (a) to extend intra-day credit to participants with adequate collateral; and
 - (b) to act as the central securities depository; and
 - (c) to establish, own, operate or participate in the ownership or operation of a system; and

- (d) to act as a central counter party to participants; and
 - (e) to hold cash accounts for operators and participants, which may be used for the clearing and settlement of transfers into a system; and
 - (f) to hold securities on accounts for operators and participants, which may be used for the operations of a system.
- (3) For the purpose of paragraph (2)(b), **central securities depository** means an entity that enables:
- (a) securities to be immobilized or dematerialized; and
 - (b) securities transactions to be processed by book-entry; and
 - (c) custodial and asset services to be provided; and
 - (d) securities to be held either as an electronic record or in physical form.

7 Cooperation with other authorities

- (1) The Reserve Bank may cooperate with:
- (a) a public authority that regulates and supervises financial services for other entities that are directly or indirectly involved in payment services in Vanuatu; and
 - (b) an entity that directly or indirectly is involved in monitoring and supervision of capital markets in Vanuatu; and
 - (c) a monetary authority or international organization that deals with regulation and oversight of a system.
- (2) For the purpose of subsection (1), the Reserve Bank may enter into a memorandum of understanding with the authority or the entity.

8 Establishment of the National Payment System Committee

- (1) The Reserve Bank is to establish a National Payment System Committee.
- (2) The Reserve Bank may, by directives:
- (a) provide for the composition and number of members of the Committee; and

- (b) establish the charter of the Committee and its scope of activities;
and
- (c) set out any other matters relating to the Committee to give effect for the purposes of this Act.

9 Functions and powers of the Committee

The Committee has the following functions:

- (a) to advise the Reserve Bank on the following:
 - (i) the regulation and oversight of the National Payment System; and
 - (ii) the operational and technical standards of the National Payment System; and
 - (ii) other matters relating to or affecting payment services, clearing and settlement of payment securities; and
- (b) to set out the terms and conditions for any sub-committees or working group that deals with the various aspects of the National Payment System; and
- (c) to assist the Reserve Bank to adequately monitor the affairs of the operators, participants and payment service providers; and
- (d) to support the work of the Reserve Bank in promoting contractual or other general measures by the market where and when appropriate.

PART 3 LICENSING OF SERVICES AND SYSTEMS

10 Prohibition

- (1) A person must not provide a payment service or operate a system unless the person is granted a licence.
- (2) A bank providing payment services under the Financial Institutions Act [CAP 254] is not required to obtain a licence to provide payment services under this Act.
- (3) Despite subsection (2), a bank:
 - (a) must comply with operational, reporting and disclosure requirements as may be determined by the Reserve Bank; and
 - (b) is subject to oversight requirements by the Reserve Bank for licensees; and
 - (c) must obtain a licence under this Act to operate a system.

11 Application for a licence

An application for a licence must be:

- (a) made to the Reserve Bank in the prescribed form; and
- (b) accompanied by the prescribed application fee.

12 Granting of a licence

- (1) The Reserve Bank may grant a licence, with or without conditions, to the licensee to provide payment services or to operate a system under this Act.
- (2) The Reserve Bank must not grant a licence to an applicant unless it is satisfied that:
 - (a) the applicant will carry out proper assessments in accordance with this Act and the regulations; and
 - (b) the applicant has maintained adequate levels of capital based on the types of services, average value of payment, aggregate value and other factors that the Reserve Bank considers necessary.

13 Conditions of a licence

- (1) Subject to subsection (2), the Reserve Bank may, on its own initiative, vary, suspend or cancel a condition of a licence.

- (2) Before varying, suspending or cancelling a condition of a licence, the Reserve Bank must:
 - (a) give the licensee written notice setting out the reasons for the proposed variation, suspension or cancellation; and
 - (b) give the licensee at least 15 days from the date of the notice is received to provide its responses on the proposed variation, suspension or cancellation.
- (3) In deciding whether to vary, suspend or cancel a condition of a licence, the Reserve Bank must take into account any responses provided under paragraph (2)(b).
- (4) The Reserve Bank must give a licensee written notice of its decision.
- (5) A licensee may apply in writing to the Reserve Bank to vary the conditions of its licence.

14 Suspension and revocation of a licence

- (1) The Reserve Bank may suspend or revoke a licence if:
 - (a) the licensee fails to comply with any of the conditions of its licence; or
 - (b) contravenes a provision of this Act or the regulations; or
 - (c) fails to comply with any directives.
- (2) Before suspending or revoking a licence, the Reserve Bank must:
 - (a) give the licensee written notice setting out the reasons for the suspension or revocation; and
 - (b) give the licensee at least 15 days from the date of the notice is received, to provide its responses on the suspension or revocation.
- (3) In deciding whether to suspend or revoke a licence, the Reserve Bank must take into account any responses provided under paragraph (2)(b).
- (4) The Reserve Bank must give a licensee written notice of its decision.

15 Licences non-transferable

A licence must not be transferred without the prior written approval of the Reserve Bank.

16 Renewal of a licence

A licence may be renewed subject to:

- (a) the Reserve Bank being satisfied that the licensee is a fit and proper person to continue to hold a licence; and
- (b) the payment of:
 - (i) the prescribed renewal fee; and
 - (ii) any other fees specified by the Reserve Bank in a directive.

17 Registration instead of licence

- (1) The Reserve Bank may register an applicant for a licence for the offering of payment instruments instead of granting a licence, if the management of a specific category of payment instruments does not involve specific risks for the market or may strongly compromise competitiveness.
- (2) The registration must not discriminate among payment services providers offering the same payment instrument.
- (3) The registration of an applicant must comply with the requirements prescribed by the regulations.

PART 4 RULES TO REGULATE SYSTEM

18 Establishment of rules of a system

- (1) An operator of a system is to issue written rules for the governance, management and operations of the system, including rules for:
 - (a) the management of liquidity, credit and settlement risk; and
 - (b) determining the time when a payment instruction and a settlement is final; and
 - (c) corporate governance, access, contingency arrangements and operational risk, rights and liabilities of participants and the operator.
- (2) Rules made under subsection (1), must be consistent with this Act and any regulations, rules and directives.
- (3) The Reserve Bank may issue directives on any of the matters specified under this Part and the directives of the Reserve Bank prevail if there is a conflict between any directives and rules issued by an operator under subsection (1).

19 Variation or revocation of rules

- (1) The Reserve Bank may vary or revoke any rules issued under section 18 if the variation or revocation is
 - (a) in the public interest; or
 - (b) in the interest of any or all of the current participants; or
 - (c) in the interests of persons who, in the future, may desire access to the system; or
 - (d) in the Reserve Bank's opinion, necessary for the continued operation of the system.
- (2) An operator of a payment system must not amend a rule issued under section 18 or make a change in the system which may affect the structure, operation or administration of the system without:
 - (a) the approval of the Reserve Bank; and
 - (b) giving at least 30 days notice of the amendment to the participants after the approval of the Reserve Bank has been given.

- (3) A notice is not required to be given under paragraph (2)(b), if the Reserve Bank is of the view that the change to a system is necessary in the interest of monetary policy, financial stability or the public interest.

20 Access to the system

An operator must:

- (a) make rules on access to a system that are non-discriminatory, objective and proportionate; and
- (b) not prevent access more than is necessary to safeguard against settlement risk, operational risk and business risk to protect the financial and operational stability of a system.

PART 5 ONGOING OVERSIGHT

21 General and individual measures

The Reserve Bank may issue directives:

- (a) to adopt general standards and criteria for the conduct of payment services activities or the operation of systems, either generally addressing the totality of entities or a specific category; or
- (b) to licensees on the governance, management, operations, relations with customers, and relations with systems; or
- (c) on any other matter for the efficient administration of this Part.

22 Power to examine

The Reserve Bank may carry out onsite examination of a participant, operator or payment service provider without notice if the Reserve Bank is of the opinion that it is necessary to examine the premises, equipment, books, records, documents, accounts or transactions of the participant, operator or payment service provider and any of their offices in or outside of Vanuatu.

23 Outsourcing of activities

- (1) An operator or payment service provider who intends to outsource its operational functions must obtain a written approval from the Reserve Bank before doing so.
- (2) Outsourcing of operational functions must not be undertaken in such a way that may impair materially the quality of the operator or payment service provider's internal control and the ability of the Reserve Bank to monitor its compliance with all obligations under this Act or any other Act.
- (3) For the purpose of subsection (2), an operational function is regarded as important if a defect or failure in its performance would materially impair:
 - (a) the continuing compliance of an operator with the requirements of this Act, the regulations or any directives; or
 - (b) the compliance by a payment service provider with the requirements of its licence; or
 - (c) the operator's or payment service provider's financial performance or soundness or the continuity of its services.

- (4) The Reserve Bank must ensure that when an operator or payment service provider outsources important operational functions, the operator or payment service provider must comply with the following conditions:
- (a) the outsourcing must not result in the delegation by senior management of its responsibilities; and
 - (b) the relationship and obligations of the issuer towards the users of any relevant payment instrument must not be altered; and
 - (c) the conditions which the operator or the payment service provider is to comply with in order to be licensed under this Act, must not be undermined; and
 - (d) that none of the other conditions on which the licence was granted is removed or modified.

24 Use of agents

- (1) If a payment service provider intends to provide payment services to a customer through an agent, the payment service provider must apply in writing to the Reserve Bank for approval.
- (2) An application must contain such information as is prescribed in writing by the Reserve Bank.
- (3) The Reserve Bank must keep and maintain a register of agents available to the public for inspection.
- (4) A payment service provider must not provide any payment service through its agents if the approval is not granted by the Reserve Bank.
- (5) A payment service provider must ensure that its agents inform customers that it is acting as an agent of that payment service provider.

25 Liability

- (1) If an operator or payment service provider relies on third parties for the performance of operational functions, the operator or payment service provider must take reasonable steps to ensure that the third party complies with this Act.
- (2) The operator or the payment service provider is liable for any acts of its employees, agents, branches or entities to which activities are outsourced.

26 Compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014

- (1) An operator and payment service provider must comply with the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and its Regulations.
- (2) An operator and the payment service provider must ensure that an agent or a third party acting on behalf of an agent complies with the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and its Regulations.

27 Retention of Records

- (1) The Reserve Bank, participants, operators and payment service providers must retain all records obtained during the course of its operations and administration for a period of 7 years from the date the record is obtained or produced.
- (2) For the purposes of subsection (1), records may be retained electronically pursuant to section 13 of the Electronic Transactions Act [CAP 263].

28 Access to information

An operator, participant or a payment service provider must:

- (a) provide any information requested by the Reserve Bank; and
- (b) produce all records, minutes, accounts, cash instruments, securities, vouchers or any document relating to its business or the business it affiliates for the inspection of any examiner appointed by the Reserve Bank on such date and at such time and in the manner that the Reserve Bank or the examiner specifies.

29 Disclosure of information

The Reserve Bank or an examiner must not directly or indirectly disclose to any person any information obtained under section 28, unless the disclosure:

- (a) is for the purpose of discharging a duty, performing a function or exercising a power under this Act; or
- (b) is necessary to protect the financial integrity, effectiveness or security of the system; or
- (c) is made to a recipient who is legally authorized to receive such information; or
- (d) is ordered by a court; or

- (e) is required for the purpose of meeting obligations which Vanuatu entered into under international agreements.

PART 6 SETTLEMENT, NETTING AND FINALITY OF PAYMENT

30 Settlement of accounts

- (1) For the purpose of this section, **settlement agent** means a company providing accounts for the participants of a system in order to settle transactions between them.
- (2) The Reserve Bank may request a participant to:
 - (a) open and maintain settlement accounts on the records of the Reserve Bank or a settlement system operator, including the maintenance of minimum balances, on such terms and conditions as the Reserve Bank or settlement system operator may specify; or
 - (b) appoint another participant who 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.
- (3) If a participant appoints a settlement agent, the participant must, before any obligation is settled by the settlement agent on their behalf, give the settlement system operator notice in writing of the appointment, accompanied by a written confirmation from the settlement agent of the appointment.
- (4) A participant who intends to terminate the appointment of its settlement agent, must notify the settlement system operator in writing, not less than 7 days before the date of termination of the appointment.

31 Finality of payment

- (1) A system must specify rules under section 18:
 - (a) to achieve finality in the operations of the system, pursuant to this Act and as prescribed by any rules, regulations or directives issued by the Reserve Bank; and
 - (b) to establish irrevocability of orders once entered into the system, unless special conditions apply.
- (2) An entry or payment that has been effected under subsection (1):
 - (a) must not be revoked, reversed or set aside, including without limitation, by insolvency or bankruptcy proceedings or any other Act similar in purpose and effect; and

- (b) is not subject to any other Act or order of an administrative or judicial authority that operates as a stay of that payment.

32 Collateral for payment and settlement obligation

- (1) For the purpose of this section, **clearing house** means any entity that provides clearing or settlement services for a system, including the Reserve Bank.
- (2) The rights and remedies of an operator, a participant, a clearing house, a central counter party and any other third party into a system or the Reserve Bank to collateral granted to it as security for a payment or the performance of an obligation incurred in the system must:
 - (a) not be affected by insolvency or bankruptcy proceedings or any other Act similar in purpose and effect; and
 - (b) not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

PART 7 ELECTRONIC FUNDS TRANSFER AND ELECTRONIC MONEY

Division 1 Electronic Funds Transfer

33 Enforceability and evidence of electronic funds transfer

An electronic funds transfer and a record of an electronic funds transfer is evidence of the value that has been transferred and is enforceable in accordance with the Electronic Transactions Act [CAP 263].

34 Fees to be notified to the customers

- (1) A payment service provider who imposes fees on a customer for an electronic transfer must provide written notice of the fees to the customer.
- (2) The notice of fees must:
 - (a) be displayed at a place where it is visible to customers who use the service; and
 - (b) state that the fees are determined by the Reserve Bank.
- (3) A customer must not be charged with a fee if he or she is not provided with a written notice under subsection (1).
- (4) Despite subsection (3), a customer may be charged with a fee if the customer is aware of the notice posted under subsection (2) and decides whether or not to continue with the transaction.

35 Terms and conditions of electronic funds transfers

- (1) The terms and conditions of electronic funds transfers involving a customer's account must be disclosed by the bank concerned or other payment service provider in a manner clearly understood by the customer, at the time the customer contracts for an electronic funds transfer service.
- (2) The terms and conditions of the electronic funds transfer under subsection (1), must be made in accordance with the directives of the Reserve Bank.
- (3) The terms and conditions to be disclosed under subsection (1) must include the following:
 - (a) the customer's liability for unauthorized electronic funds transfer and notice, advise or prompt reporting of any loss, theft, or

- unauthorized use of a card, access code or other means of access;
and
 - (b) the telephone number of the person to be notified in the event the customer believes that an unauthorized electronic fund transfer has been or may be effected; and
 - (c) the kind and nature of electronic funds transfer which the customer may initiate, including any limitations on the frequency or amount of such transfers; and
 - (d) any charges for electronic funds transfer or for the right to make such transfers; and
 - (e) the customer's right to stop payment of a preauthorized electronic funds transfer and the procedure to initiate a stop payment order; and
 - (f) the customer's right to receive information of electronic funds transfer; and
 - (g) the bank or other payment service provider's liability to the customer; and
 - (h) the circumstances under which the bank or other payment service provider will in the ordinary course of business disclose information concerning the customer's account to third parties; and
 - (i) a notice to the customer that a fee may be imposed if the customer initiates a transfer from an Automatic Teller Machine (ATM) or other electronic terminal that is not operated by the issuer of the card or other means of access.
- (4) A bank or payment service provider must notify a customer at least 21 days prior to the effective date of any material change in any term or condition of the customer's account required to be disclosed, unless such change is immediately necessary to maintain or restore the security of an electronic funds transfer system or a customer's account.
- (5) A notice under subsection (4) must be given in writing or by any other means as may be determined by the Reserve Bank.

Division 2 Electronic Money

36 Issuance of electronic money

- (1) In addition to the requirements for a licence under this Act, an applicant for a licence as a payment service provider who intends to issue electronic money must satisfy the Reserve Bank that the following conditions are met:
- (a) the provision of electronic money must not include the provision of credit; and
 - (b) electronic money products denominated in Vatu are to be treated as sight deposits, and the electronic money must be issued in exchange for the equivalent of Vatu or highly liquid assets acceptable by the Reserve Bank; and
 - (c) electronic money providers must provide statistics on electronic money loaded and redeemed values in their periodic financial statements and the system is able to provide sufficient and reliable information to the Reserve Bank to monitor and control the quantity and velocity of electronic money supply in the economy; and
 - (d) clearing and settlement mechanisms must facilitate rapid provision of final settlement after a payment instruction has been initiated in the banking system, according to time limits that the Reserve Bank may establish from time to time; and
 - (e) payment service providers must be obliged to redeem electronic money value in Reserve Bank money, at par, upon request and the management of the underlying float and redemption of electronic money value by the payment service provider to the holder must be clearly defined; and
 - (f) the funds received in exchange for electronic money is not treated as a deposit.
- (2) The Reserve Bank is to prescribe the category of persons who may issue electronic money and the requirements and criteria applicable to those persons.

PART 8 WINDING UP AND ADMINISTRATION OF AN OPERATOR OR PARTICIPANT

37 Reserve Bank to be notified of winding up

If an operator or a participant is wound up or placed in receivership, the operator or participant at whose instance the winding up or the administration order or the decision, as the case may be, was issued, must lodge a copy of the order or decision with the Reserve Bank immediately.

38 Prohibition

An operator or a participant against which a winding-up application or receivership has been lodged or decision for voluntary dissolution is made, is prohibited from operating or participating in any system until such application or system is disposed of or finally determined.

39 Winding up or administration of participant not to affect finality

A payment or any entry is final and irrevocable once settled in accordance with section 31 regardless of any insolvency or bankruptcy proceedings, winding up or opening of receivership of a participant.

40 Rules of the Reserve Bank and systems to bind liquidators

- (1) If an institution participating in a system is wound up or placed in receivership or declared insolvent by a Court, any provision contained in a written netting arrangement to which the participant is a party or any netting rules and practices applicable to the system, are binding upon the liquidator or administrator of the participant in respect of any payment or settlement obligation:
 - (a) which has been determined through netting prior to the issue of the winding-up or administration order, as the case may be; and
 - (b) which is to be discharged on or after the date of the winding-up or arrangement order or discharge of which was overdue on the date of the winding-up or system of administration order, as the case may be.
- (2) Despite any other Act, this section applies for the time being in force in Vanuatu to protect finality of payments.

41 Preservation of rights

A person has the right to enforce any rights if it does not affect the finality of payment instruction or settlement or the validity and enforceability of a netting arrangement under this Part.

42 Conflict of laws

- (1) If there is an insolvency of a foreign participant, the rights and obligations of the foreign participant to settlement are governed by the laws of Vanuatu.

- (2) The rights and obligations of a domestic participant in a foreign system are governed by the law of the country of the foreign system.

PART 9 INFRINGEMENTS, REMEDIAL MEASURES AND OFFENCES

43 Infringements and remedial measures

- (1) For the purpose of this section, **systemic risk** means:
 - (a) the risk that relates to the inability of a participant to meet its obligations in a system as they become due; or
 - (b) a disruption to the system that may, for whatever reason, cause other participants in the system to be unable to meet their obligations as they become due.
- (2) The Reserve Bank may impose one or more of the administrative actions under subsection (4), with respect to an operator, a participant, its agent, managers or employees, if the Reserve Bank determines that one or more of these entities has committed an infringement under this Act.
- (3) The action taken under subsection (2), must be based on the following:
 - (a) the seriousness of the infringement; and
 - (b) the infringement effect on systemic risk; and
 - (c) the stage at which the infringement was detected; and
 - (d) whether the infringement was voluntarily reported by the perpetrator; and
 - (e) the appropriate measure to remedy or terminate the infringement.
- (4) The Reserve Bank may take any of the following administrative actions:
 - (a) issue a written warning; or
 - (b) issue an order to cease and discontinue from such infringements and to undertake remedial measure; or
 - (c) issue an order to perform such acts as are necessary to comply with a directive of the Reserve Bank; or
 - (d) recommend suspension or dismissal of officers, managers or employees of perpetrators from their positions; or

- (e) suspend or revoke in accordance with the provisions of this Act the licence of an operator, payment service provider, or the authorisation to a participant.

44 Offences and penalties

- (1) If a person contravenes any provision of this Act, the person commits an offence punishable on conviction:
 - (a) in the case of an individual - by a fine not exceeding VT5,000,000 or by imprisonment to a term not exceeding 5 years, or both;
 - (b) in the case of a body corporate - to fine not exceeding VT10,000,000.
- (2) A director, manager or an employee of a system operator or participant who:
 - (a) obstructs a auditor from proper performance of his or her duty or inspection by the Reserve Bank or by an authorised inspector; or
 - (b) damages, destroys, alters or falsifies accounts, books or records of a licensed system operator or participant; or
 - (c) with intent to deceive, make false entries or fail to enter material items in the accounts of a licensed system,commits an offence punishable on conviction by a fine not exceeding VT5,000,000, or by imprisonment to a term not exceeding 5 years, or both.
- (3) If a person issues electronic money without a licence or breaches any other requirement under Part 3, the person commits an offence punishable on conviction:
 - (a) in the case of an individual - by a fine not exceeding VT5,000,000, or by imprisonment to a term not exceeding 5 years, or both;
 - (b) in the case of a body corporate - by a fine not exceeding VT10,000,000.

PART 10 MISCELLANEOUS PROVISIONS

45 Settlement of disputes by arbitration

- (1) Any dispute between an operator and a participant into a system concerning any matter under this Act must be submitted in writing to a designated arbitrator as agreed by each party.
- (2) If the dispute is:
 - (a) between 2 parties, each party is to appoint one arbitrator and must together appoint a third arbitrator, who is to be the Chairperson; or
 - (b) between 3 or more parties, each party is to appoint one arbitrator and all the parties must together appoint an additional arbitrator, who is to be the Chairperson.
- (3) The notice period for arbitration is 30 days.
- (4) If within 30 days of receipt of the request for arbitration, any of the party has not appointed an arbitrator or if within 30 days of the appointment of the arbitrators the parties have not appointed a third arbitrator or, as the case may be, the additional arbitrator, any party to the dispute may request the Court to make the appointment.
- (5) The procedures of the arbitration are to be determined by the arbitrators.
- (6) The Chairperson is to settle all questions of the procedure of the arbitration in any case of disagreement.
- (7) A decision of the arbitration made by a majority vote of the arbitrators is final and binding on all parties.
- (8) The Chairperson of the arbitration is entitled to vote, and in the event of a tie, he or she must have a casting vote.

46 Audits

- (1) The Reserve Bank may conduct audits or require an independent auditor to conduct an audit of the accounts, books, documents and other records of an operator, a payment service provider or a participant.
- (2) An operator, a payment service provider or a participant must assist the Reserve Bank to such extent necessary to enable the Reserve Bank or its auditors to carry out the audit under subsection (1).

47 Fees and charges

- (1) The Reserve Bank may impose fees or charges to defray its direct and indirect costs incurred in providing its oversight and regulatory services, to operators, payment service providers and participants.
- (2) The Reserve Bank may impose a fee or charge for the performance of its operational role and facilities under section 6.

48 Protection for acts done in good faith

The Reserve Bank or its officers, employees or agents or any other person engaged under this Act by the Reserve Bank is not liable for anything done in good faith when carrying out the Reserve Bank's functions, duties and powers under this Act.

49 Bank Holidays

Section 62 of the Financial Institutions Act [CAP 254] is extended to non-bank payment service providers as regulated under this Act.

50 Transitional provisions

- (1) A bank, an operator, a participant or an administrator who is conducting business relating to a payment service or the operation of a system on the commencement of this Act must take any measures necessary to have its organisation, administration and operations comply with the requirements of this Act within 6 months after the commencement of this Act.
- (2) Despite subsection (1), the Reserve Bank may by directive extend the period if, after the 6 months from the commencement of this Act, a bank, an operator, a participant or an administrator has not complied with the requirements of this Act.

51 Regulations and directives

- (1) The Minister may, on the advice of the Reserve Bank, make regulations not inconsistent with this Act for the better carrying out or to give effect to the provisions of this Act.
- (2) The Reserve Bank may issue directives, rules, standards and procedures to give effect to the functions and powers of the Reserve Bank under this Act.

52 Commencement

This Act commences on the day on which it is published in the Gazette.