

NATIONAL PAYMENT SYSTEM (AMENDMENT) BILL, 2023*(Bill No. 11 of 2023)***EXPLANATORY STATEMENT**

This Bill seeks to amend the National Payment System Act. In making these amendments, the Bill addresses certain deficiencies which impeded, to some extent, its effective regulatory and oversight functions. As such, this Bill provides amendments that address the deficiencies and align the legislation with international standards and best practices.

This Bill makes provision for the Central Bank of Seychelles to be able to determine the use or acceptance of any form of payment instruments including the imposition of a limit on the value of transaction to be used. This is aligned with the Central Bank of Seychelles' plan to modernise the country's national payment system (NPS). Consistent with guidance issued by standard setting bodies, the Bill also provides for the exemptions to Central Bank of Seychelles in relation to certain requirements as it discharges the functions of owning fully and operating payment, clearing and settlement systems. Likewise, in the absence of a national netting law, the Bill makes provision for legal recognition of netting arrangements within the payments transactional cycle.

The Bill further puts forth amendments serving to align certain provisions relating to confidentiality, inspections, record keeping and archiving etc. with that of the Financial Institutions Act, 2004 as amended (FIA). Additionally, proposal is being made for the Central Bank of Seychelles to be granted the power to designate those Financial Market Infrastructures or payment instruments which are deemed to be of systemic importance.

Ultimately, the proposed amendments aim to strengthen the Act so as to ensure the safety, soundness, effectiveness and efficiency of Seychelles' NPS.

Dated this 30th day of August, 2023.

**NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE**

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NATIONAL PAYMENT SYSTEM (AMENDMENT) BILL, 2023

(Bill No. 11 of 2023)



A BILL

FOR

AN ACT TO AMEND THE NATIONAL PAYMENT SYSTEM ACT, *CAP. 298.*

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the National Payment System (Amendment) Act, 2023.

Amendment of section 2

2. Section 2 of the National Payment System Act, (hereinafter referred to as the “principal Act”) is amended by —

- (a) inserting the following definition after the definition of “bank” —

“business day” means any day other than Saturday, Sunday or public holiday;

- (b) inserting the following definition after the definition of “credit union” —

“customer funds” means sums received from, or for the benefit of, a payment system user for the execution of a payment transaction”

Amendment of section 3

3. Section 3 of the principal Act is amended —

- (a) in subsection (1) by inserting after the words “effective operation” the words “so as to promote the stability of the country's financial system”;
- (b) in subsection (2)(a) by inserting the word “oversight” after the word “system”;
- (c) in subsection (2)(c) by inserting the words “licensed, authorised or designated entity or systems” after the words “regarding any authorised entity”
- (d) by inserting a new subsection (4) as follows —

“(4) The Central Bank may —

- (a) determine the use or acceptance of any form of payment instruments;

- (b) impose a limit on the value of transactions permitted for a payment instrument;
- (c) pronounce on the amount which it shall consider to be deemed as 'high value transactions' and also specify in which systems or payment stream such transactions shall be processed, cleared and settled.”

Amendment of section 4

4. The principal Act is amended in section 4(2) by inserting a new paragraph (g) as follows —

- “(g) act as a custodian or a settlement agent, or both, for a clearing house.”

Amendment of section 7

5. The principal Act is amended in section 7 —

- (a) in subsection (1) by inserting after the words “the Central Bank” the words “or is an agent of a licensed payment service provider”;
- (b) inserting a new subsection (7A) as follows —

“(7A) A payment service provider shall give written notice to the Central Bank at least thirty business days prior to its intention to extend its product or service offerings.

Amendment of section 8

6. The principal Act is amended in section 8(1) by inserting after the words “or other modification” the words “in such manner as may be prescribed”

Insertion of new Part IIIA

7. The principal Act is amended by the insertion of a new Part after Part III as follows —

“Part IIIA Designation

Designation of a Systemically Important Financial Market Infrastructure

8A.(1) The Central Bank may, by notice published in the *Gazette*, designate a financial market infrastructure as being Systemically Important if it determines that;

- (a) the financial market infrastructure poses systemic risk;
- (b) such designation is in the interest of maintaining the integrity of the national payment system and financial stability; and
- (c) such designation is necessary to protect the interest of the public.

(2) The notice of designation published under subsection (1) shall specify, at a minimum —

- (a) the financial market infrastructure that is subject of the designation;
- (b) the operator of the financial market infrastructure that is subject of the designation; and
- (c) any terms and conditions to which the designation may be subject.

(3) The Central Bank shall give a written notice of designation to the operator of the financial market infrastructure that is the subject of designation.

Variation or Revocation of Designation

8B.(1) The Central Bank may vary or revoke a designation made by —

- (a) varying or revoking any condition to which the designation may be subject; or
- (b) making the designation subject to new conditions.

(2) In determining whether to vary or revoke a designation, the Central Bank shall have regard to any or all of the following —

- (a) failure by the designated financial market infrastructure to comply with any condition to which the designation may be subject;
- (b) whether or not the designated financial market infrastructure has ceased to operate;
- (c) whether or not the designated financial market infrastructure operator has knowingly furnished information or documents which are false or misleading in any material respect to the Central Bank in connection with the designation;
- (d) whether or not it is in the public interest to revoke the designation; and
- (e) any other matter that the Central Bank may deem appropriate.

(3) The variation of the conditions to which a designation is subject or the revocation of a designation shall not —

- (a) have retroactive effect; and
- (b) affect the validity or enforceability of the rules of the designated financial market infrastructure, nor shall it affect any payment to or out of the account of a system participant or netting or settlement that took place, prior to the coming into effect of such variation or revocation.

(4) Variation of conditions or revocation of designation of a designated financial market infrastructure, shall be by notice in the *Gazette*, and immediate notification thereof shall be given in writing to the designated financial market infrastructure operator.

Obligations of Designated System Operator and Participants

8C.(1) An operator or participant of a designated financial market infrastructure shall notify the Central Bank as soon as is practicable after the occurrence of any of the following events —

- (a) an intention to make a material change to the operational rules, clearing or settlement procedures or activities of the designated financial market infrastructure;
- (b) an event or irregularity that impedes or prevents access to, or impairs the usual operations of the designated financial market infrastructure; and

(2) The operator or participant shall provide the Bank with any information it may require.

(3) Any person who refuses or fails to provide the information contemplated in subsections (1) and (2) shall be

guilty of an offence and liable to imprisonment for a period not exceeding six months or a fine not exceeding level 3 or both such fine and such imprisonment.”

Amendment of section 9

8. The principal Act is amended in section 9 —

(a) in subsection (1) by inserting, after the words “settlement is final,” the words “participant default,”;

(b) by inserting a new subsection (2A) as follows —

“(2A) The rules established under subsection (1) may where relevant and subject to Central Bank approval be disclosed to the public in such manner as may be determined by the Central Bank.”

(c) by repealing subsection (4) and substituting it as follows —

(4) An operator of a payment, clearing or settlement system shall not cause any change in the payment, clearing or settlement system which would affect the structure, operation or administration thereof without consulting with and giving notice of not less than thirty business days to the Central Bank and participants of the payment, clearing and settlement system.

(d) by inserting new subsections (4A) and (4B) as follows —

“(4A) For the purposes of subsection 4, the Central Bank may determine that such notification shall be accompanied with necessary documentation including —

(i) information related to changes in the design of the system;

(ii) information on changes to the risk

management framework applicable to the system;

- (iii) information on changes to contingency arrangements;
- (iv) information on changes to disclosure procedures for risk control measures; and
- (v) information on all changes to the legal, organisational, and technical arrangements with service providers.

(4B) The Central Bank may request for any supporting documentation or information in respect of the new changes to systems.”

- (e) by repealing subsection (5) and substituting it as follows —

“(5) Notwithstanding subsection (4), the Central Bank may —

- (a) as operator of a payment, clearing or settlement system, make a change to the rules of its system; and
- (b) in the interest of monetary policy, financial stability, or the public interest, permit an operator to make any changes to a payment, clearing or settlement system without giving notice to the participants thereof under paragraph (b) of subsection (4) or for requiring the operator to give notice for a period longer than thirty business days.”

- (f) by the insertion of a new subsection (6) as follows —

“(6) Any changes made to the rules by the Central Bank in terms of subsection (5) shall be binding and valid to the operators and participants of a payment, clearing or settlement system and any person not in compliance with such rules shall be liable to an administrative penalty which may be enforced by the operator or the Central Bank as the case may be.”

Amendment of section 11

9. The principal Act is amended in section 11 by inserting a new subsection (5) as follows —

“(5) A payment service provider or an operator shall advise the Central Bank without undue delay of any change regarding the use of entities to which activities are being outsourced in terms of subsection (1).”

Amendment of section 12

10. The principal Act is amended by repealing section 12 and substituting it as follows —

12.(1) A person who has access to the books, accounts, records, financial statements or other documents, whether electronically or otherwise in his or her capacity as —

- (a) director, officer, employee, agent or service provider of an operator, participant or payment service provider; or
- (b) member of the audit committee or liquidator of an operator or payment service provider;

shall not during or after his or her relationship with the operator, participant or payment service provider disclose to any person or governmental authority any information relating to the affairs of any customer of a participant or payment service provider, except —

- (i) with the written authorisation of the customer or his or her personal representative;
- (ii) for the purpose of the performance of his or her duties within the scope of employment or appointment in compliance with this Act;
- (iii) as directed in writing by the Central Bank; or
- (iv) when required to do so by law or any court of competent jurisdiction in Seychelles.

(2) Subject to any express requirement of this Act, every director, officer, employee, agent or service provider of an operator, participant or payment service provider shall preserve and aid in preserving confidentiality with regard to all matters relating to the affairs of the operator, participant or payment service provider and their customer that may come to his or her knowledge in the performance of his or her duties.”

Amendment of section 13

11. The principal Act is amended by repealing section 13.

Amendment of section 15

12. The principal Act is amended in section 15(1) by repealing the words “Anti-Money Laundering Act 2006” and substituting it with the words “Anti-Money Laundering and Countering the Financing of Terrorism Act 2020”.

Amendment of section 16

13. The principal Act is amended in section 16 —

- (a) in subsection (2) by inserting after the words “may specify.” The words “Records may be kept in electronic

form to the extent that adequate data recovery systems and procedures are in place.”;

(b) by inserting new subsection (3) as follows —

(3) Every payment service provider, operator or participant and any other third-party service providers shall include binding contractual arrangements for record keeping and archiving of records within their service level agreements or any other operational manuals or rule books.

Amendment of section 17

14. The principal Act is amended by repealing section 17 and substituting it as follows —

17.(1) Every payment service provider, operator and participant shall furnish such report, return, books, accounts or other information relating to the provision of payment services or the operation of a payment, clearing or settlement system, as the case may be, at such time and in such manner and form, as may be determined by the Central Bank.

(2) Every payment service provider, operator and participant shall participate or become a member of any system or closed user group specified by the Central Bank for automatic collection of payment and/or securities processing or clearing or settlement related data or statistics.

(3) The Central Bank may publish, in whole or in part, and at such times as it may decide, the information or data furnished under this section.

(4) Where any payment service provider, operator or participant —

(a) fails to comply with a requirement under this section;

(b) for the purposes of this section —

- (i) knowingly furnishes information which is false or misleading in any material particular; or
- (ii) wilfully or recklessly withholds any material information,

shall be guilty of an offence and liable to imprisonment not exceeding a period of six months or a fine not exceeding level 3 or both such fine and such imprisonment.”

Amendment of section 18

15. The principal Act is amended by repealing section 18 and substituting it as follows —

“**18.**(1) The Central Bank may, for the purposes of carrying out its functions under this Act, conduct periodic inspections and audits of a payment service provider, an operator,

a participant of a system or a designated financial market infrastructure —

- (a) as determined by its relevant framework; or
- (b) when issues arise that are of regulatory concern.

(2) The Central Bank may conduct audits or commission independent auditors or any other persons to conduct an audit of the accounts, books, documents and other records of a payment service provider, a system operator, a designated financial market infrastructure and its participants.

(3) If independent auditors or any other person are commissioned, the cost shall be borne by the payment service

provider, system operator, a designated market infrastructure or its participants subject to the audit.

(4) An inspection may include officers or employees of another local authority that is charged with the regulation or supervision of activities of payment service providers, operators and participants and designated financial market infrastructure.

(5) The Central Bank and any person authorised under this section to inspect or audit a payment service provider, system operator, a designated market infrastructure or its participants shall be subject to section 11 of the Central Bank of Seychelles Act in respect of information acquired in the course of performing functions under this section and may —

- (a) require any administrator, officer, employee or agent of a payment service provider, system operator or participant to furnish such information as may be necessary for the purpose of the inspection; or
- (b) require any such administrator, officer, employee or agent to produce for inspection any books, records or other documents in his or her possession containing or likely to contain any such information.

Amendment of section 19

16. The principal Act is amended in section 19 —

- (a) in subsection (2) by inserting a new subsection 2(d) after subsection 2(c) as follows —
 - “(d) submitted to it under section 17 in statistical or aggregated form if it does not disclose confidential information of a payment service provider, operator or participant.”

- (b) by inserting a new subsection (2A) after subsection (2) as follows —

“(2A) Notwithstanding subsection (2)(b), the Central Bank may decide not to disclose information if —

- (a) the purpose for which the data or information will be used is insufficiently specified;
- (b) the confidential nature of the data or information is not adequately guaranteed; or
- (c) it is not sufficiently guaranteed that the data or information will not be used for a purpose other than for which it is supplied.”

Amendment of section 24

17. The principal Act is amended in section 24 by inserting a new subsection (4) as follows —

“(4) A settlement account of any participant shall not be liable to attachments, garnishee proceedings or seizures.”

Amendment of section 25

18. The principal Act is amended in section 25 by inserting a new subsection (4) as follows —

“(4) An operator shall issue rules that include failure-to-settle arrangements that provide —

- (a) for adequate assets as collateral; and
- (b) how the effect of settlement failure is to be mitigated in the event of failure to settle payment obligations by one or more of the participants in the system.”

Amendment of section 26

19. The principal Act is amended in section 26 by inserting a new subsection (2) (the existing provision becoming subsection (1)) to read as follows —

“(2) The collateral pledged by participants to operators of payment, clearing or settlement systems referred to in subsection (1) shall be for the sole purpose of providing security for the performance of obligations in a payment, clearing or settlement system.”

Insertion of new section 26A

20. The principal Act is amended by the insertion of the following new section 26A after section 26 —

“Netting

26A.(1) A netting arrangement shall be valid and enforceable and an operator or participant of a payment, clearing or settlement system shall do whatever is permitted or required under the netting arrangement in order to give effect to the netting arrangement.

(2) Any payment or settlement obligations owed to an operator or participant of a payment system under the netting arrangement that has not been discharged —

- (a) is provable in insolvency proceedings; and
- (b) may be recovered for the benefit of the creditors.

(3) Any payment instruction or settlement that is final and irrevocable and any netting arrangement that is valid and

enforceable shall be given effect notwithstanding anything to the contrary contained in any other law.

(4) Notwithstanding any other law, a court shall not recognise or give effect to an order of a court exercising jurisdiction under the law of insolvency outside Seychelles in so far as the making of that order would be inconsistent with or contrary to the provisions of this section.”

Amendment of section 27

21. The principal Act is amended by repealing section 27 and substituting it as follows —

“27.(1) Where an operator —

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to become unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors,

such operator shall immediately notify the Central Bank and the participants of the payment, clearing or settlement system.

(2) Where a participant of a payment, clearing or settlement system —

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to become unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors,

such participant shall immediately notify the operator who shall notify the Central Bank and other participants of the payment, clearing or settlement system.

- (3) Where a payment service provider —
- (a) is insolvent or is likely to become insolvent;
or
 - (b) has become or is likely to become unable to meet any or all of its obligations,

such payment service provider shall immediately cease to operate and notify the Central Bank and its customers that it has ceased operations.

(4) An operator or participant in a payment, clearing or settlement system or payment service provider shall not be wound up or placed into receivership except with prior notification to the Central Bank.

(5) Where an operator, participant of a payment, clearing or settlement system or payment service provider is wound up, a copy of —

- (a) the application for winding up when it is made; and
- (b) the subsequent winding up order which shall record the minute, hour and day that such order is made,

shall be lodged by the applicant, with the Central Bank on the same business day, and in any case, no later than the start of the next business day, and served on any other settlement agent that requires notification and the Central Bank shall immediately notify all relevant domestic and foreign system operators of the winding up proceedings, as applicable.

(6) The relevant operator shall enforce the winding up order immediately upon being notified by the Central Bank of the order lodged with it under subsection (5).

(7) Where an operator or participant of a payment, clearing or settlement system is voluntarily wound up, with the approval of the Central Bank, that operator or participant, as the case may be, shall inform all other participants of the winding up order within twenty-four hours of the winding up order taking effect.

(8) The Central Bank shall notify relevant domestic and foreign system operators and participants about the voluntary winding up of a participant or operator on the same business day and in any case, no later than the start of the next business day of the winding up resolution taking effect.”

Amendment of section 28

22.(1) The principal Act is amended in subsection 28, by inserting new subsections (the existing provision becoming subsection (1)) as follows —

(2) An operator or a participant against whom a winding up application or scheme of administration has been lodged or decision for voluntary dissolution is made, is prohibited from operating or participating in any payment, clearing or settlement system other than for purposes of discharging payment or settlement obligations in accordance with the rules of the payment, clearing or settlement system or clearing, netting and settlement agreements to which that participant is a party, or any rules and practices applicable to the participant in relation to such agreements.”

(3) Payment service providers are prohibited from providing their services to members of the public once an order for compulsory or voluntary winding up has been lodged with the Central Bank.

(4) Notwithstanding any other law, in the event of the insolvency of a payment service provider, customer funds shall be used solely for the payment of claims of payment service users.

Amendment of section 29

23. The principal Act is amended in section 29 by inserting —

- (a) after the words “of administration of” the words “an operator”;
- (b) after the words “the Central Bank” the words “in accordance with section 27”.

Amendment of section 30

24. The principal Act is amended in section 30 by the insertion of a new subsection (3) as follows —

“(3) The liquidator or administrator shall have authority to credit and debit the settlement accounts of a participant or

operator subsequent to a winding up or scheme of administration order for the purposes of —

- (a) discharging outstanding payments or settlement obligations; or
- (b) realising collateral provided, in order to enable settlement in accordance with the rules of the clearing, netting and settlement agreements to which that participant or operator was a party.”

Amendment of section 33

25. The principal Act is amended in section 33 —

- (a) by repealing subsection (1) and substituting it as follows —

“(1) Notwithstanding the Bills of Exchange Act (Cap [15] a bank or a credit union may present a cheque for payment to the bank or credit union on whom it is drawn by notifying the latter of its essential features by electronic

means or otherwise, instead of by presenting the cheque itself.”

(b) by repealing subsection (2) and substituting it as follows —

“(2) Notwithstanding the Bills of Exchange Act (Cap [15]), where a cheque is presented for payment under this section, presentment need not be made at the proper place or at a reasonable hour on a business day.”

Amendment of section 35

26. The principal Act is amended in section 35 by repealing and substituting paragraph (e) as follows —

“(e) clearing and settlement mechanisms shall facilitate provision of final settlement not more than one business day after a payment instruction has been initiated in the banking system.”

Amendment of section 35

27. The principal Act is amended in section 37 by repealing subsection (1) and the remaining subsections are renumbered accordingly.

Amendment of section 39

28. The principal Act is amended in section 39 —

(a) by inserting, after the words “or employee” of the words “or person appointed by”;

(b) by the deletion of the word “of” before “the Central Bank”.

Transitional provisions

29. Upon commencement of this Amendment, any person who is a payment service provider or operating a payment, clearing or settlement system as the case maybe and shall be permitted six months from the date of publication of this law to comply with the provisions of this law.