

A BILL

FOR

AN ACT TO PROVIDE FOR THE MANAGEMENT, ADMINISTRATION, OPERATION, REGULATION AND SUPERVISION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS IN THE FEDERAL REPUBLIC OF NIGERIA AND TO PROVIDE FOR CONNECTED MATTERS

Sponsored by Senator Hope Uzodinma

| | Commencement

ENACTED by the National Assembly of the Republic of Nigeria,
as follows:

- 1 1. In this Bill, unless the context otherwise requires- Interpretation
- 2 "bank" means a bank as defined in section 1 of the Banks and other Financial
- 3 Institution Act 2007;
- 4 "Banks and Other Financial Institution Act" means the Banks other
- 5 Financial Institution Act, 2007;
- 6 "clearing , or "clearing" means the exchange of payment instructions;
- 7 "money" means a banknote or coin issued by the Central Bank of Nigeria;
- 8 section 10(I)(a)(iii) read with section 14 of the Central Bank of Nigeria Act;
- 9 "netting" means the determination of the net payment obligations between
- 10 two or more system participants within a payment clearing house or the
- 11 determination of the net settlement obligations between two or more system
- 12 participants within the payment system;
- 13 "payment clearing house" means an arrangement between two or more
- 14 system participants governing the clearing of payment instructions between
- 15 those system participants: "payment instruction" means an instruction to a
- 16 system participant to transfer funds or make a payment;
- 17 "payment obligation" means an indebtedness that is owed by one system
- 18 participant to another as a result of the clearing of one or more payment
- 19 instructions;

- 1 "payment system" means a system that enables payments to be effected
2 between a payer and a beneficiary;
- 3 "payment system management body" means a body recognised by the Central
4 Bank in terms of section 3(1);
- 5 "person" includes any partnership;
- 6 "Central Bank" means the Central Bank of Nigeria referred to in section I of the
7 Central Bank of Nigeria Act; 2007;
- 8 "settlement instruction" means an instruction given to the settlement system by a
9 system participant or by a payment clearing house to effect settlement of one or
10 more payment obligations or to discharge any other obligation of one system
11 participant to another system participant; "settlement obligation" means an
12 indebtedness that is owed by one system participant to another as a result of one
13 or more settlement instructions;
- 14 "settlement system" means a system established and operated by the Central
15 Bank for the discharge of payment and settlement obligations between system
16 participants;
- 17 "Central Bank Act" means the Central Bank of Nigeria Act, 2007;
- 18 "system operator" means a person authorised by the payment system
19 management body to provide clearing processing services on behalf of two or
20 more system participants or a payment clearing house; (xiv)
- 21 "system participant" means a member of the payment system management
22 body.-
- 23 2. -(1) The Central Bank, as contemplated in the Central Bank Act
24 may exercise the powers and must perform the duties conferred and imposed
25 on it by this Act.
- 26 (-) The board of directors of the Central Bank may, in writing and on
27 such conditions as the board considers necessary-
- 28 (a) delegate to any officer of the Central Bank any power conferred on
29 the Central Bank by this Act; or
- 30 (b) authorise any such officer to perform any duty imposed on the

Powers and duties
of Central Bank
regarding payment
system

1 Central Bank by this Act.

2 (2) Any delegation of a power or authorisation to perform a duty
3 under subsection (2) -

4 (a) does not prevent the board of directors of the Central Bank from
5 exercising that power or performing that duty; and 45

6 (b) may at any time be withdrawn in writing by that board.

7 3. -(1) Subject to subsection (2), the Central Bank may recognise a
8 payment system management body established with the object of
9 organizing, managing and regulating the participation of its members in the
10 payment system.

Payment system
management body

11 (2) The Central Bank may recognise a payment system
12 management body as contemplated in subsection (1) if that Bank is satisfied
13 that-

14 (a) the payment system management body, as constituted, fairly
15 represents the interests of all banks, mutual banks and branches of foreign
16 institutions participating in the payment system;

17 (b) the deed of establishment or constitution, as the case may be,
18 and the rules of the payment system management body, including the rules
19 relating to admission as members of that body are fair, equitable and
20 transparent; and

21 (c) it will be enabled to adequately oversee the affairs of the
22 payment system management body and its members in the discharge of the
23 Central Bank's responsibilities, specified in the Central Bank of Nigeria Act
24 regarding the monitoring, regulation and supervision of payment, clearing
25 and settlement systems.

26 (3) Only-

27 (a) the Central Bank; and

28 (b) a bank or branch of a foreign institution that complies with the
29 entrance and other applicable requirements laid down in the rules of a
30 payment system management body may be members of the payment system

1 management body.

2 (4) No body, member of that body or any other person may participate
3 in the settlement system unless-

4 (a) in the case of that body, the body is recognised by the Central Bank
5 as a payment system management body in terms of subsection (1); or

6 (b) in the case of that other person, the person is a member of a
7 payment system management body recognised by the Central Bank as
8 contemplated in paragraph (a).

Object and
rules of payment
system
management
body

9 4.-(1) The objects of the payment system management body are to
10 manage and control all matters affecting payment obligations and tie clearing
11 or netting of payment obligations and, in connection with those objects-

12 (a) to provide a forum for the consideration of matters of policy and
13 mutual interest concerning its members;

14 (b) to act as a medium for communication by its members with the
15 Government, the Central Bank, Financial Institutions and other exchange,
16 other public bodies, authorities and officials, the news media, the general
17 public and other private associations and institutions and

18 (c) to deal with and promote any other matter of interest to its
19 members and to foster co-operation between them.

20 (2) addition to any other provisions thereof, the rules of the payment
21 system management body must empower that body-

22 (a) to admit members and to regulate, control and terminate
23 membership;

24 (b) to constitute, establish or dissolve anybody, committee or forum
25 consisting of its members and which has an impact on, interfaces with, has
26 access to or makes use of payment, clearing or settlement systems or
27 operations-

28 (i) determine the criteria subject to which any person is to be
29 authorised to act as a system operator within the payment system in order to
30 provide specific services to one or more members of the payment system

1 management body or to act on behalf of those members; and

2 (ii) authorise that person as such a system operator in accordance
3 with those criteria; and

4 (c) to determine criteria subject to and in accordance with which a
5 member may be authorised to introduce any person to provide payment
6 services.

7 5. -(1) In this section 'money" means a banknote or coin issued by
8 the Central Bank in terms of section 10(1) (a)(iii) read with section 14 of the
9 Central Bank Act.

Settlement
provisions

10 (2) The discharge of settlement obligations between system
11 participants is effected in money or by means of entries passed through the
12 settlement system.

13 (3) A settlement that has been effected in money or by means of an
14 entry to the credit of the account maintained by the beneficiary system
15 participant with the Central Bank for settlement purposes, is a final and
16 irrevocable settlement.

17 (4) No settlement in terms of a settlement instruction which has
18 been finally and irrevocably effected in terms of subsection (3) may be
19 reversed or set aside.

20 (5) When a system participant is wound up, a copy of-

21 (a) the application for winding-up, when it is made; and

22 (b) the subsequent winding-up order, must be lodged with the
23 Central Bank.

24 (6) When a system participant is wound up, the relevant winding-
25 up order does, despite sections 341 (2) and 348 of the Companies and Allied
26 Act" not affect any settlement that has become final and irrevocable in terms
27 of subsection (3) prior to the lodgement of the copy of that order with the
28 Central Bank in terms of subsection (5).

29 (7) The Central Bank may, in consultation with the payment
30 system management body, prescribe by notice in the Gazette such

1 conditions, rules or procedures as it considers necessary regarding the issue of
2 settlement instructions and discharge of settlement obligations.

Clearing
provisions

3 6. -(1) No person may clear payment instructions unless that person is
4 a system participant.

5 (2) Any person that contravenes the provisions of subsection (1) is
6 guilty of an offence.

Control of
payment
intermediation

7 7. -(1) In this section-

8 (a) "holding company" means a holding company contemplated in
9 section 1(4) of the Companies and Allied Act, and

10 (b) "subsidiary" means a subsidiary contemplated in the Companies
11 and Allied Act.

12 (2) Subject to subsection (3), no person may as a regular feature of
13 that person's business accept money or payment instructions from any other
14 person for purposes of making payment on behalf of that other person to a third
15 person to whom that payment is due, unless the person so accepting money or
16 payment instructions-

17 (a) is a system participant;

18 (b) is a person introduced by a system participant in accordance with
19 criteria determined in terms of section 4(2)(d);

20 (c) is a person or one of a category of persons exempted by the
21 Minister of Finance in terms of subsection (4).

22 (3) Subsection (2) may not be construed as prohibiting the acceptance
23 of money or payment instructions-

24 (a) by any person acting as the duly appointed agent of the person to
25 whom the payment is due;

26 (b) by a holding company from its subsidiary, or by a subsidiary from
27 its holding company, or by one subsidiary from another subsidiary of the same
28 holding company; or

29 (c) for purposes of the effecting of a money lending transaction by an
30 agent or a mandatory as contemplated in paragraph (&) or (gg), respectively, of

1 the definition of the business of a bank" in section I of the Banks and other
2 Financial Institutions Act.

3 (4) The Minister of Finance may, after consultation with the
4 Central Bank and the payment system management body, by notice in the
5 Gazette and subject to such conditions as the Minister may determine,
6 exempt any person or category of persons from the provisions of subsection
7 (2) if the Minister is satisfied that such exemption will be in the public
8 interest and will not cause undue risk to the payment system.

9 (5) Any person that contravenes the provisions of subsection (2) is
10 guilty of an offence.

11 8. -(1) The provisions of this section apply despite anything to the
12 contrary in the law relating to insolvency or in the Banks and other Financial
13 Institutions Act.

Netting
agreements and
netting rules

14 (2) If a system participant is wound up or placed under judicial
15 management or a curator is appointed to a system participant, any provision
16 contained in a written netting agreement to which that system participant is a
17 party, or any netting rules and practices applicable to the system participant,
18 is binding upon the liquidator, judicial manager or curator, as the case may
19 be, in respect of any payment or settlement obligation-

20 (a) which has been detained through netting prior to the issue of the
21 winding-up order or judicial management order or the appointment of the
22 curator, as the case may be; and

23 (b) which is to be discharged on or after the date of the winding-up
24 order, judicial management order or the appointment of the curator, as the
25 case may be, or the discharge of which was overdue on the date of the
26 winding-up order, judicial management order or appointment of the curator,
27 as the case may be.

28 9. Despite anything to the contrary in the law relating to
29 insolvency, any asset of a system participant which was provided prior to the
30 issue of any order for that system participant's winding-up, by that

Utilisation of
assets provided
as security to
Central Bank or
payment clearing
house

1 participant-

2 (a) to the Central Bank as security for a loan in respect of its settlement
3 obligations may be utilised by the Central Bank to the extent required for the
4 discharge of those settlement obligations of the system participants; or

5 (b) in terms of a written agreement with any payment clearing house,
6 as security in respect of its payment obligations, may be utilised by the
7 payment clearing house to the extent required for the discharge of those
8 payment obligations.

Information

9 **10. -(1)** The Central Bank has access to any information relating to the
10 volumes or values of payment and settlement instructions or payment and
11 settlement obligations, and system participants must on request provide such
12 information to the Central Bank.

13 (2) Subject to subsection (3), any information-

14 (a) obtained by the Central Bank in terms of subsection (1); and

15 (b) identifying a specific system participant, is confidential and may
16 not be disclosed by any director or officer of the Central Bank to any person,
17 except to an officer of the Central Bank who requires that information for
18 purposes of the execution of his or her duties in terms of this Act. Central Bank
19 Act, the Banks and other Financial Institutions Act.

20 (3) Despite subsection (2) of this section and the Central Bank Act, the
21 Central Bank may disclose any information of which the disclosure is
22 necessary to protect the integrity, effectiveness or security of the payment
23 system.

24 (4) A person that contravenes the provisions of subsection (2) is guilty
25 of an offence.

Settlement of
disputes

26 **11. -(1)** In this section "business day" means any day other than a
27 Saturday, Sunday or public holiday.

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beheld
to
Bank of
clearing
house

28 (2) If any system participant considers itself wronged by a decision
29 taken by the Central Bank under a provision of this Act, the matter is deemed to
30 constitute a dispute between that system participant and the Reserve Bank, which

1 dispute must be settled as provided in this section.

2 (3) The system participant concerned must in writing furnish the
3 Central Bank with full particulars of its grievance, and thereafter the system
4 participant and the Central Bank must attempt to settle the dispute by
5 consensus within seven business days of the receipt by the Central Bank of
6 those particulars.

7 (4) If the system participant and the Central Bank do not succeed in
8 settling the dispute as contemplated in subsection (3), they may agree to
9 attempt to settle the dispute by mediation within a further period of business
10 days.

11 (5) Mediation as contemplated in subsection (4) means a process
12 whereby-

13 (a) the system participant concerned and the Central Bank agree on
14 a mediator;

15 (b) the mediator familiarises himself or herself with the position
16 held by the system participant concerned and the Central Bank,
17 respectively;

18 (c) the mediator, the system participant concerned and the Central
19 Bank discuss the dispute at a meeting attended by them;

20 (d) the system participant concerned and the Central Bank at or
21 following such meeting attempt to settle the dispute by consensus; and

22 (e) the system participant concerned and the Central Bank share the
23 mediator's costs equally.

24 (6) If the system participant concerned and the Central Bank are
25 unable to settle the dispute by consensus as contemplated in either
26 subsection (3) or (5), the dispute must be referred -

27 (a) to a single arbitrator to be agreed on between the system
28 participant and the Central Bank; or

29 (b) failing such agreement, to an arbitrator appointed at the request
30 of the system participant and the Central Bank by a recognised body

1 concerned with the facilitation and promotion of the resolution of disputes by
2 means of mediation or arbitration.

3 (7) An arbitrator referred to in subsection (6) must, as far as possible,
4 be a person appointed on account of his or her knowledge of the law and the
5 payment system.

6 (8) The provisions of the Arbitration Act, apply, with the changes
7 required by the context, to an Arbitration contemplated in subsection (6).

8 (9) The decision of the arbitrator is final and binding on the system
9 participant concerned and the Central Bank.

Directives by
Central Bank

10 12. -(1) In this section "systemic risk" means the risk that the failure of
11 one or more system participants, for whatever reason, to meet their payment
12 obligations within the payment system or their settlement obligations within
13 the settlement system, may result in any or all of the other system participants
14 being unable to meet their respective payment or settlement obligations. .

15 (2) If reasonable grounds exist to believe that any person is engaging
16 in or is about to engage in any act, omission or course of conduct, with respect
17 to the payment system, that results or is likely to result in systemic risk, or is or
18 will be contrary to the public interest in the integrity, effectiveness or security
19 of the payment system, the Central Bank may issue a directive in writing
20 requiring that person-

21 (a) to cease or refrain from engaging in the act, omission or course of
22 conduct or to perform such other acts as are necessary to remedy the situation
23 and are specified in the directive; or

24 (b) to provide the Central Bank with such information and
25 documents, relating to the manner, as are specified in the directive, within the
26 period specified in the directive.

27 (3) Any person who neglects, refuses or fails to comply with a
28 directive issued under subsection (2)(a) is guilty of an offence.

29 (4) irrespective of whether criminal proceedings have been or may be
30 instituted against a person in respect of an offence referred to in subsection (3),

1 the Central Bank may apply to a High Court having jurisdiction for an order
2 directing that person to comply with a directive issued under subsection (2).

3 13. Despite anything to the contrary in any legislation relating to
4 the retention of records, the Central Bank and system participants must
5 retain all records obtained by them during the course of the operation and
6 administration of the settlement system for a period of five years as from the
7 date of each particular record.

Retention of
records

8 14. Any person convicted of an offence referred to in -

Penalties

9 (a) section 6(?), 7(5) or 12(3), is liable to a fine not exceeding NI
10 million or to imprisonment for a period not exceeding five years, or to both
11 such fine and such imprisonment; or

12 (b) section 10(4). is liable to a fine not exceeding R 1000 or to
13 imprisonment for a period not exceeding six months, or to both such fine and
14 such imprisonment.

15 15. This Bill may be cited as the National Payment System Bill,
16 2015

Citation

