
Payment Systems Act 2003

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Act 627

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Act 627

PAYMENT SYSTEMS ACT 2003

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LAWS OF MALAYSIA

Act 627

PAYMENT SYSTEMS ACT 2003

An Act to make provisions for the regulation and supervision of payment systems and payment instruments and for matters connected therewith.

[1 November 2003, P.U. (B) 308/2003]

WHEREAS under paragraph 4(c) of the Central Bank of Malaysia Act 1958 [Act 519] one of the principal objects of the Bank is to promote monetary stability and a sound financial structure: AND WHEREAS the Bank is the authority responsible for promoting the reliable, efficient and smooth operation of the national payment and settlement systems and for ensuring that the national payment and settlement systems policy is directed to the advantage of Malaysia: NOW THEREFORE IT IS ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Payment Systems Act 2003. (2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires-- "payment instruction" or "settlement instruction" includes an instruction to transfer, clear or settle transactions in funds or securities, as the case may be;

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"Bank" means the Central Bank of Malaysia established by the Central Bank of Malaysia Act 1958;

"fund" or "money" includes any unit of account or unit of value that facilitates the purchase of goods or services; "data" means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer;

"specify" means to specify in writing, and a power to specify includes the power to specify differently for different persons, payment systems or payment instruments, or for different classes, categories or descriptions of persons, payment systems or payment instruments;

"prescribe" means prescribed by order published in the Gazette, and a power to prescribe includes the power to make different provisions for different persons, payment systems or payment instruments, or for different classes, categories or descriptions of persons, payment systems or payment instruments;

"Governor" means the Governor of the Bank and includes a Deputy Governor of the Bank;

"payment instrument" means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment;

"designated payment instrument" means a payment instrument prescribed as a designated payment instrument under subsection 24(1);

"chief executive officer", in relation to an operator, means a person by whatever name called, who, either individually or jointly with one or more other persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of the operator;

"computer" means any device for recording, storing, processing, retrieving or producing any information or other matter, or for performing any one or more of those functions, by whatever name or description such device is called; and where two or more computers carry out any one or more of those functions in combination or in succession or otherwise conjointly, they shall be treated as a single computer;

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"Minister" means the Minister charged with the responsibility for finance;

"computer output" means a statement or a representation, whether in written, printed, pictorial, film, graphical, acoustic or other form--

(a) produced by a computer;

(b) displayed on the screen of a computer; or

(c) accurately translated from a statement or representation so produced;

"officer", in relation to any sole proprietorship, company, body, association or group of persons, whether corporate or unincorporate, includes any employee and a chief executive officer; "issuer" means any person, acting alone or under an arrangement with another person, who undertakes to be responsible for the payment obligation in respect of a payment instrument resulting from the user being issued with or using the payment instrument; "director" means any person who occupies the position of a director by whatever name called, and includes an alternate or substitute director, and without prejudice to the foregoing, in the case of--

(a) a co-operative society, means a member of the Board of Directors, or other governing body of the co-operative society;

(b) a statutory body, means a member of the board, committee, council or other governing body of the statutory body; (c) a partnership, means a partner;

(d) a sole proprietorship, means the sole proprietor; and (e) any company, body, association or group of persons, whether corporate or unincorporate, including those listed in (a) to (d) above, means a person in accordance with whose directions and instructions the directors or officers are accustomed to act or a person having the direction and control, whether directly or indirectly, of the management of its business or affairs;

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"operator" means any person, acting alone or under an arrangement with another person, responsible for the rules, procedures and operations of a payment system but excludes such persons as may be prescribed by the Bank;

"participant" means any person who is permitted by the rules governing the payment system to send payment or settlement instructions to a payment system and is bound by the rules governing that payment system;

"systemic risk" means--

(a) the risk that the failure of a participant or operator to meet his payment or settlement obligations will cause another participant to be unable to meet his payment or settlement obligations when due; or

(b) the risk that the failure of a participant or operator to meet his payment or settlement obligations may cause significant liquidity or credit problems that might threaten the stability of financial markets;

"relative" has the same meaning as in the Banking and Financial Institutions Act 1989 [Act 372];

"securities" has the same meaning as in the Securities Commission Act 1993 [Act 498];

"business associate" has the same meaning as in the Banking and Financial Institutions Act 1989;

"designated payment system" means a payment system prescribed as a designated payment system under subsection 6(1); "payment system" means any system or

arrangement for the transfer, clearing or settlement of funds or securities, but excludes-- (a) a payment system operated by the Bank under the Central Bank of Malaysia Act 1958;

(b) a clearing house recognized under the Securities Industry Act 1983 [Act 280];

(c) a clearing house licensed under the Futures Industry Act 1993 [Act 499];

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(d) an in-house payment system operated by a person solely for his own administrative purposes that does not transfer, clear or settle funds or securities for third parties; (e) a system that solely facilitates the initiation of payment instructions; and

(f) such other systems or arrangements as may be prescribed by the Bank.

Application

3. (1) Where an operator issues a designated payment instrument, such operator shall also comply with the requirements of Part III.

(2) Where an issuer operates a payment system, such issuer shall also comply with the requirements of Part II. (3) This Act shall apply to a person outside Malaysia who is an operator of a payment system if such payment system accepts payment or settlement instructions from participants in Malaysia unless otherwise prescribed by the Bank.

Functions of the Bank

4. (1) The Bank shall have all the functions and powers conferred on it by this Act and such functions and powers shall be in addition to those conferred under the Central Bank of Malaysia Act 1958 and the Governor shall perform the functions of the Bank on its behalf.

(2) The Bank may authorize any of its officers to perform any of its functions under this Act.

(3) The Bank may, either generally or in a particular case, appoint a person who is not an officer of the Bank to perform any or all of its functions or render such assistance in the performance of its functions under this Act as the Bank may specify. 14 Laws of Malaysia ACT 627

PART II

PAYMENT SYSTEMS

Chapter 1

Payment Systems and Designation of Payment Systems Operation of payment systems

5. (1) No person shall operate any payment system unless he has complied with the requirements of subsection (3) and has received a written notification from the Bank that he has so complied. (2) The written notification under subsection (1) is not an approval or endorsement of the payment system by the Bank. (3) A person referred to in subsection (1) shall submit to the Bank the documents and information as prescribed by the Bank, together with such fees as may be prescribed by the Bank. (4) Notwithstanding subsection (1), the Bank may, by written notice, prohibit a person from operating any payment system where— (a) the payment system is detrimental to the reliable, safe, efficient and smooth operation of the payment systems of Malaysia; or

(b) the prohibition is in the interest of the public. (5) The Bank shall give the person referred to in subsection (4) a reasonable opportunity to make representations before making a decision to impose the prohibition under that subsection. Designation of payment systems

6. (1) The Bank may, by order published in the Gazette, designate a payment system as a designated payment system if the Bank is of the opinion that—

(a) the payment system poses systemic risk; or

(b) the designation is necessary to protect the interest of the public.

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(2) The Bank may, in considering whether to designate a payment system as a designated payment system under subsection (1), inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions relating to the payment system, upon giving written notice to the operator. Compliance with Chapter 2

7. (1) Where a payment system is prescribed as a designated payment system under subsection 6(1), the operator of that designated payment system shall comply with the provisions of Chapter 2. (2) The Bank may, upon the request of an operator of a designated payment system, allow for an extension of time, with or without conditions, for the compliance with any of the requirements in

Chapter 2.

Power to revoke designation

8. (1) The Bank may, by order published in the Gazette, revoke the designation of a payment system if the Bank is of the opinion that--

- (a) the designated payment system no longer poses any systemic risk; or
- (b) it is no longer in the interest of the public that the system be designated.

(2) The Bank shall give the operator a reasonable opportunity to make representations before making a decision to revoke the designation.

Chapter 2

Requirements for Operation of Designated Payment Systems Disqualification of director

9. (1) A person is disqualified from being appointed as a director of an operator of a designated payment system if-- (a) that person has been adjudged a bankrupt, or has suspended payments, or has compounded with his creditors, whether in or outside Malaysia, within five years prior to the date of the appointment;

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(b) that person has been convicted of an offence under this Act or such an offence has been compounded against him;

(c) that person has been convicted of an offence under the Banking and Financial Institutions Act 1989, Insurance Act 1996 [Act 553], Islamic Banking Act 1983 [Act 276], Takaful Act 1984 [Act 312], Money-Changing Act 1998 [Act 577], Exchange Control Act 1953 [Act 17], Central Bank of Malaysia Act 1958, Development Financial

Institutions Act 2002 [Act 618], Anti Money Laundering Act 2001 [Act 613], Securities Industry Act 1983, Futures Industry Act 1993, Companies Act 1965 [Act 125] or under any written law involving fraud or dishonesty which is punishable with, as the case may be--

(i) imprisonment for one year or more, whether by itself, or in lieu of, or in addition to, a fine; or (ii) a fine of one million ringgit or more, or such

offence has been compounded against him;

(d) that person has been a director or chief executive officer of any company which has been convicted of an offence under any written law during his tenure of office unless he proves that such offence was committed without his knowledge or consent and he was not in a position to prevent the offence;

(e) there has been made against that person an order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision by bond or otherwise, under any law relating to the prevention of crime, or to preventive detention for the prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration; or

(f) that person has been a director or chief executive officer of a corporation incorporated in or outside Malaysia which is being or has been wound up.

(2) No person shall accept an appointment as a director of an operator of a designated payment system, and no such operator shall appoint a person as a director of such operator, if that person is disqualified under subsection (1).

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Appointment of chief executive officer

10. (1) A person is disqualified from being appointed or remaining as chief executive officer of an operator of a designated payment system if--

(a) that person would be disqualified from being appointed a director under subsection 9(1);

(b) that person is not available for full time employment; or (c) that person is carrying on any other business or vocation, except as a non-executive director or shareholder of another company.

(2) No person shall accept an appointment as chief executive officer of an operator of a designated payment system, and no such operator shall appoint a person as chief executive officer of such operator, if that person is disqualified under subsection (1). (3) An operator of a designated payment system shall appoint a chief executive officer who shall be--

(a) an individual; and

(b) resident in Malaysia during the period of his appointment. Exceptions

11. (1) A person who is disqualified as a director or chief executive officer of an operator of a designated payment system on the ground specified in paragraph 9(1)(f) may, with the written concurrence of the operator in which he is holding office or is to be appointed, apply to the Bank in writing to be exempted from that paragraph and the Bank may grant such exemption, subject to such conditions as it considers fit to impose. (2) During the pendency of any criminal proceedings in any court for an offence referred to in paragraph 9(1)(b) or (c) against a director or chief executive officer of an operator of a designated payment system, that director or chief executive officer shall not act in that capacity, or hold any other office, or act in any other capacity, in any payment system or in any manner, directly or indirectly, be concerned with any business or affairs of any payment system unless authorized in writing by the Bank to such extent and subject to such conditions as the Bank may impose. 18 Laws of Malaysia ACT 627

(3) For the purposes of subsection (2), criminal proceedings shall be deemed to be pending from the date that the accused person is first charged in court for the offence until the date of the final conclusion of the proceedings, whether in a court of original jurisdiction or, in the event of an appeal by any party, in a court of final appellate jurisdiction.

Effect of disqualification

12. Where a person becomes disqualified under subsection 9(1) or 10(1) after his appointment--

(a) he shall immediately cease to hold office; and (b) the operator of the designated payment system shall immediately terminate his appointment,

and that person, notwithstanding any contract of service, shall not be entitled to claim any compensation for his loss of office or termination of appointment.

Governance arrangements

13. The operator of a designated payment system shall establish adequate governance arrangements which are effective, accountable and transparent to ensure the continued integrity of such designated payment system.

Operational arrangements

14. An operator of a designated payment system shall establish the following

operational arrangements:

(a) rules and procedures setting out the rights and liabilities of the operator and the participant and the financial risks the participant may incur;

(b) procedures, controls and measures for the management of credit, liquidity and settlement risk, including rules determining the time when a payment instruction and a settlement is final;

(c) criteria for participation in the designated payment system; and

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(d) measures to ensure the safety, security and operational reliability of the designated payment system including contingency arrangements.

Changes to designated payment systems

15. (1) Where the Bank has prescribed documents and information under subsection (2), an operator of a designated payment system shall submit to the Bank particulars of any proposed change to the documents or information within thirty days prior to the making of such change.

(2) The Bank, in prescribing the documents and information to be submitted under subsection 5(3), may also prescribe the documents and information to which subsection (1) shall apply. (3) Where it appears to the Bank that such change is inappropriate, the Bank may, before the expiry of the thirty days referred to in subsection (1)--

(a) prohibit the operator from making such change; or (b) require the operator to make any other changes as the Bank may specify.

Chapter 3

Finality of Payment and Netting Arrangement

Interpretation

16. For the purposes of this Chapter-- "bilateral netting" means a netting arrangement between two parties;

"multilateral netting" means a netting arrangement that has more than two parties;

"payments netting" means a netting arrangement where on any day on which amounts are due between the parties in respect of one or more transactions, the party with the higher gross payment obligation is obligated to pay to the other party the net amount of the gross payment obligations of the parties;

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"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 where so terminated the termination value becomes due and payable;

"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;

"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 thereof; "insolvency administrator" includes a receiver, manager, receiver and manager, liquidator, provisional liquidator, judicial manager, curator, special administrator or any other person, by whatever name called, authorized under any law in or outside Malaysia to take control of a person's property for the benefit of that person's creditors in the event that the person is, or is likely to become, insolvent;

"designated payment system" includes a payment system operated by the Bank under the Central Bank of Malaysia Act 1958. Application

17. (1) The provisions of this Chapter shall apply to-- (a) any payment or settlement instruction sent through a designated payment system; and

(b) any netting arrangement, in respect of claims or obligations arising from a payment or settlement instruction that is final under subsection 19(1), entered into between an operator and a participant or between participants only in respect of a designated payment system.

(2) Any written law relating to bankruptcy and insolvency shall continue to apply, but where there is any conflict or inconsistency between the provisions of this Chapter and the written law relating to bankruptcy and insolvency, the

provisions of this Chapter shall prevail.

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Payment or settlement instruction made after appointment of insolvency administrator

18. This Chapter shall not apply in relation to any payment or settlement instruction which is sent through a designated payment system after the expiry of the day on which an insolvency administrator is appointed in respect of an operator or participant of a designated payment system.

Finality of payment and netting arrangement

19. (1) A payment instruction or settlement shall be valid and enforceable by and against an operator or participant of a designated payment system and shall be final and shall not be revoked, reversed or set aside by any person from the time the payment instruction or settlement is determined to be final under the rules of the designated payment system required to be established under paragraph 14(b) and no order shall be made by any court for the rectification or stay of such payment instruction or settlement. (2) A netting arrangement shall be valid and enforceable and an operator or participant of a designated payment system shall do whatever is permitted or required under the netting arrangement in order to give effect to the netting arrangement. (3) Any payment or settlement obligations owed to an operator or participant of a designated 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. (4) Without limiting the generality of subsection 17(2), any payment instruction or settlement that is final and irrevocable under subsection (1) and any netting arrangement that is valid and enforceable under subsections (2) and (3) shall be given effect notwithstanding anything to the contrary contained in— (a) sections 223 and 224 of the Companies Act 1965 in relation to avoidance of dispositions of property; (b) section 296 of the Companies Act 1965, section 59 of the Bankruptcy Act 1967 [Act 360] or subsection 40(1) of the Pengurusan Danaharta Nasional Berhad Act 1998 [Act 587] in relation to the disclaiming of onerous property; 22 Laws of Malaysia ACT 627

(c) section 219 of the Companies Act 1965 and section 47 of the Bankruptcy Act 1967 in relation to the time of commencement of insolvency;

(d) section 293 of the Companies Act 1965 and section 53 of the Bankruptcy Act

1967 in relation to undue preference; and

(e) section 222 of the Companies Act 1965 and section 10 of the Bankruptcy Act 1967 in relation to the power to stay or restrain proceedings.

Preservation of rights

20. For the avoidance of doubt, it is declared that the provisions of this Chapter shall not restrict or preclude any person from enforcing his rights under the law in so far as it does not affect the finality of payment instruction or settlement or the validity and enforceability of a netting arrangement under this Chapter. Non-recognition of insolvency order by foreign court

21. Notwithstanding any other written law or rule of law, a court shall not recognize or give effect to an order of a court exercising jurisdiction under the law of insolvency outside Malaysia in so far as the making of that order would be inconsistent with or contrary to the provisions of this Chapter.

Requirement to notify in the event of insolvency, etc.

22. (1) Where an operator of a designated payment 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 his obligations; or

(c) has suspended payments or compounded with his creditors, such operator shall immediately notify the participants of the designated payment system.

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(2) Where a participant of a designated payment 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 his obligations; or

(c) has suspended payments or compounded with his creditors, such participant shall immediately notify the operator who shall notify the other participants of the designated payment system. PART III

PAYMENT INSTRUMENTS

Chapter 1

Operation and Designation of Payment Instruments

Prohibition of issuance of payment instruments

23. (1) The Bank may, by order published in the Gazette, prohibit any person from issuing or using any payment instrument if-- (a) the issuing or use of the payment instrument is detrimental to the reliable, safe, efficient and smooth operation of the payment systems of Malaysia; or

(b) the prohibition is in the interest of the public. (2) The Bank may, in considering whether to prohibit any person from issuing or using any payment instrument under subsection (1), inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions of the issuer of the payment instrument, upon giving written notice to the issuer.

(3) The Bank shall give the person referred to in subsection (1) a reasonable opportunity to make representation before making a decision to impose the prohibition under that subsection. Designation of payment instruments

24. (1) Where the Bank is of the opinion that-- (a) a payment instrument may be of widespread use as a means of making payment and may affect the payment systems of Malaysia; and

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(b) it is necessary to protect the interest of the public or it is necessary to maintain the integrity, efficiency and reliability of a payment instrument, the Bank may prescribe such payment instrument as a designated payment instrument.

(2) Where a payment instrument is prescribed as a designated payment instrument, the issuer of that designated payment instrument shall comply with the requirements of subsection 25(1) within such period as the Bank may specify.

Issuing of designated payment instruments

25. (1) No person shall issue a designated payment instrument unless he has--

(a) submitted to the Bank the documents and information as may be prescribed by the Bank;

(b) paid the fee prescribed by the Bank; and

(c) obtained a written approval from the Bank to issue a designated payment instrument.

(2) The Bank may in giving its approval--

(a) require all or any of the documents submitted to be modified and altered as it may deem necessary; and

(b) impose such restriction, limitations or conditions as it may deem fit.

Revocation of approval

26. (1) The Bank may revoke an approval granted under paragraph 25(1) (c) if it appears to the Bank that--

(a) the issuer has contravened or is contravening any of the provisions of this Act;

(b) the issuer has contravened any restrictions, limitations or conditions of the approval;

(c) the issuer has failed to comply with any guidelines, circulars, standards or notices issued by the Bank under section 70; 25Payments Systems

(d) the issuer has made a false or an incorrect statement in the documents or information submitted under paragraph 25(1) (a) or particulars of any change to documents and information submitted under subsection 29(1);

(e) the issuer has ceased issuing the designated payment instruments for any continuous period of six months; or (f) the issuer goes into liquidation or is wound up or is otherwise dissolved.

(2) The Bank shall give the issuer a reasonable opportunity to make representations before making a decision to revoke the approval. Chapter 2

Requirements for Issuance of Designated Payment

Instruments

Governance arrangements

27. The issuer of a designated payment instrument shall establish adequate governance arrangements which are effective, accountable and transparent to ensure the continued integrity of such designated payment instrument.

Operational arrangements

28. An issuer of a designated payment instrument shall establish the following operational arrangements:

(a) rules and procedures setting out the rights and liabilities of the issuer and the user of the designated payment instrument and the risks the user may incur;

(b) measures to ensure prudent management of funds collected from a user of the designated payment instrument, including measures to ensure that such funds are available for repayment to a user; and

(c) measures to ensure safety, security and operational reliability of the designated payment instrument including contingency arrangements.

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Changes to designated payment instruments

29. (1) Where the Bank has prescribed documents and information under subsection (2), an issuer of a designated payment instrument shall submit to the Bank particulars of any proposed change to the documents or information within thirty days prior to the making of such change.

(2) The Bank, in prescribing the documents and information to be submitted under subsection 25(1), may also prescribe the documents and information to which subsection (1) shall apply. (3) Where it appears to the Bank that such change is inappropriate, the Bank may, before the expiry of the thirty days referred to in subsection (1)--

(a) prohibit the issuer from making such change; or (b) require the issuer to make any other changes as the Bank may specify.

PART IV

POWERS OF THE BANK

Chapter 1

General Powers of the Bank

Requirement to incorporate

30. (1) The Bank may at any time require an operator or issuer which is not a body corporate established by or under any written law to incorporate as a company under the Companies Act 1965 within such time as the Bank may specify

and the operator or issuer shall not continue to operate the payment system or issue the payment instrument after the specified time unless he has complied with the Bank's requirement.

(2) The Bank may, upon the request of an operator or issuer, allow for an extension of time, with or without conditions, for the compliance with the requirements of subsection (1).

Requirement to submit information

31. (1) An operator, participant or issuer shall, within such time as the Bank may specify, submit to the Bank all such documents and information regarding the payment system or payment instrument as the Bank may specify.

(2) The documents and information referred to in subsection (1) shall include documents and information relating to any participant of the payment system or user of the payment instrument, and the business, affairs, statistics and information on transactions relating to the payment system or payment instrument as the Bank may specify under subsection (1).

(3) The provisions of subsection (1) shall be without prejudice to, and shall not in any manner derogate from, any other power conferred on the Bank or an investigating officer under this Act. (4) The provisions of this section shall have effect notwithstanding the provisions of any written law as to secrecy or other restriction on the disclosure of information or of any oath, undertaking or requirement of secrecy, to the contrary, or of any obligation under any contract, agreement or arrangement, whether express or implied, to the contrary.

Chapter 2

Powers of the Bank over Designated Payment Systems and Designated Payment Instruments

Power to make modifications

32. (1) The Bank may, by written notice, require an operator of a designated payment system or issuer of a designated payment instrument to make modifications or alterations to-- (a) the designated payment system or designated payment instrument including governance arrangements referred to in section 13 or 27;

(b) operational arrangements referred to in section 14 or 28; (c) documents and information submitted under subsection 5(3) or 25(1); and

(d) any other documents relating to the designated payment system or designated payment instrument.

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(2) In exercising its powers under subsection (1), the Bank shall have regard to--

- (a) systemic risk;
- (b) the object of the Bank to promote monetary stability and a sound financial structure;
- (c) the interest of the public including market conditions and behaviour;
- (d) the safety, integrity, efficiency or reliability of the designated payment system or designated payment

instrument including security and operating standards and infrastructure arrangements;

(e) the interests of the current participants of the designated payment system or users of the designated payment instruments; or

(f) the interests of persons who, in the future, may want access to the designated payment system or may want to use the designated payment instrument.

(3) An operator of a designated payment system or an issuer of a designated payment instrument shall make such modifications or alterations as may be required under subsection (1) within such time as the Bank may specify.

(4) The Bank shall give the operator of a designated payment system or issuer of a designated payment instrument a reasonable opportunity to make representations before making a decision to impose the requirement under subsection (1).

Power to issue directives

33. (1) Where the Bank is of the opinion that an operator or a participant of a designated payment system or issuer of a designated payment instrument--

(a) is engaging or is about to engage, in any act, or course of conduct or has omitted any act or is about to omit any act that results or is likely to

result in systemic risk being inadequately controlled, or that is detrimental to the interests of its participants, users or creditors or the public generally; 29 Payments Systems

(b) has contravened any provision of this Act, whether or not there has been no criminal prosecution in respect thereof, or any guideline issued under section 70; or

(c) has become or is likely to become unable to meet all or any of his obligations,

the Bank may issue a directive in writing requiring the operator or participant of the designated payment system or issuer of the designated payment instrument to--

(aa) take any steps, take any action, do or not to do any act or thing, in relation to the designated payment system or the designated payment instrument which in the opinion of the Bank is necessary to remedy the situation; (bb) cease to operate the designated payment system; or (cc) cease to issue the designated payment instrument. (2) In giving any directive under subsection (1), the Bank may include requirements of a consequential, ancillary or incidental nature to be complied with by the operator or participant of a designated payment system or the issuer of a designated payment instrument and the Bank may impose such terms, conditions and requirements as it deems necessary or expedient.

(3) An operator or participant of a designated payment system or an issuer of a designated payment instrument shall comply with any directive issued under subsection (1) within such time as the Bank may specify.

(4) If the Bank exercises its power under paragraph (1) (bb), the operator is prohibited from operating the designated payment system and if the Bank exercises its power under paragraph (1) (cc) the approval to issue a designated payment instrument is deemed to have been revoked under section 26.

(5) The Bank shall give the operator, participant or issuer, as the case may be, referred to in subsection (1) an opportunity to make representations before making a decision to issue a directive under that subsection.

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Chapter 3

Powers of Examination

Examination by the Bank

34. The Bank 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 an operator or issuer and any of his offices in or outside Malaysia.

Production of person's books, etc.

35. (1) For the purposes of an examination under section 34, any person under examination and that person's directors and officers shall afford any officer of the Bank carrying out the examination access to all his premises, apparatus, equipment, machinery, books or other documents and accounts, including documents of title to his assets, all securities held by him in respect of his customers' transactions, all his cash, and to all such documents, information and facilities as may be required by that officer for the purpose of the examination, and shall produce to that officer all such apparatus, equipment, machinery, books or other documents, accounts, titles, securities or cash, and give all such information, orally or in writing, as he may require, however, so far as is consistent with the conduct of the examination, such apparatus, equipment, machinery, books or documents, accounts, titles, securities and cash shall not be required to be produced at such times or at such places as may interfere with the proper conduct of the normal daily business of that person.

(2) Notwithstanding the generality of subsection (1), any officer of the Bank authorized by the Bank in writing for this purpose may take possession of any apparatus, equipment, machinery, books or other documents, accounts, titles, securities or cash to which he has access under subsection (1) if in his opinion-- (a) the inspection of them, the copying of them or the making of extracts from them cannot reasonably be undertaken without taking possession of them;

(b) it may be interfered with or destroyed unless he takes possession of them; or

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(c) it may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under or in connection with this Act, the Central Bank of Malaysia Act 1958 or any other written law.

(3) A person who is or was at any time--

(a) a director or officer of an operator or issuer; (b) an agent of or who performs any of the functions of an operator or issuer;

(c) a participant of a payment system or user of a payment instrument; or

(d) an auditor of an operator or issuer,

shall give such information or document as the Bank may require within such time as the Bank may specify in carrying out an examination under section 34.

(4) An auditor referred to in paragraph (3) (d) shall not be liable for breach of contract relating to, or duty of, confidentiality for giving any information or document to the officer carrying out the examination.

Chapter 4

Control Over Designated Payment Systems

Operator of designated payment system insolvent

36. Any operator of a designated payment system who is insolvent or likely to become insolvent, or has become or likely to become unable to meet all or any of his obligations, or has suspended payments or compounded with his creditors shall immediately inform the Bank of that fact.

Directive in the event of insolvency

37. (1) Without prejudice to section 33, if the Bank is satisfied, upon being informed by an operator of a designated payment system under section 36 or after an examination under section 34 or otherwise, that an operator of a designated payment system-- (a) is insolvent or is likely to become insolvent;
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(b) has become or is likely to become unable to meet all or any of his obligations; or

(c) has suspended payments or compounded with his creditors, the Bank may issue a directive in writing, exercising any one or more of the following powers, as it deems necessary-- (aa) remove from office, with effect from such date as may be specified in the directive, any director or chief executive officer of the operator of the designated payment system; (bb) appoint any person as a director or chief executive officer of the operator of the designated payment system and provide in the directive for the person so appointed to be paid by the operator of the designated payment system such

remuneration as may be set out in the directive; or (cc) appoint a person to advise the operator of a designated payment system in relation to the proper conduct of its business, and provide in the directive for the person so appointed to be paid by the operator of the designated payment system such remuneration as may be set out in the directive.

(2) This section shall apply notwithstanding anything contained in any written law, or any limitations contained in the constituent documents of the operator of a designated payment system. Assumption of assets

38. (1) Where any of the circumstances set out in paragraphs 37(1) (a) to (c) exist in respect of an operator of a designated payment system, the Bank may, whether or not the Bank has exercised any of its powers under section 37, provide by order published in the Gazette--

(a) for the Bank to assume control of the whole of the property, business and affairs of the operator of a designated payment system, and carry on the whole of its business and affairs, or to assume control of such part of its property, business and affairs, and carry on such part of its business and affairs, as may be set out in the order, or for the Bank to appoint any person to do so on behalf of the Bank, and 33Payments Systems

for the costs and expenses of the Bank, or the remuneration of the person so appointed, as the case may be, to be payable out of the funds and properties of the operator of the designated payment system as a first charge thereon;

(b) whether or not an order has been made under paragraph (a), to authorize an application to be made by the Bank to the High Court to appoint a receiver or manager to manage the whole of the business, affairs and property of the operator of a designated payment system, or such part thereof as may be set out in the order, and for all such incidental, ancillary or consequential orders or directions of the High Court in relation to such appointment as may, in the opinion of the Bank, be necessary or expedient; or

(c) whether or not an order has been made under paragraph (a) or (b), to authorize the Bank to present a petition to the High Court for the winding up of the operator of a designated payment system.

(2) An order under subsection (1) or a directive of the Bank under section 37 may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by an order under subsection (1) or a further directive under section 37, as the case may be.

(3) No order under subsection (1) or (2) or directive under section 37 shall be made unless the operator of a designated payment system in respect of which

the order or directive is to be made, and in the case of a directive under paragraph 37(1) (aa), the director or chief executive officer of the operator of the designated payment system who is to be removed from office, has been given a reasonable opportunity of making representations against, or otherwise in respect of, the proposed order or directive. (4) Notwithstanding subsection (3), if in the opinion of the Bank any delay would be detrimental to the interests of the operator or participant of a designated payment system or creditors, or the public generally, an order under subsection (1) or (2) or directive under section 37 may be made first and the opportunity to make representations against or otherwise in respect of the order or directive shall, in such case, be given immediately after the order 34 Laws of Malaysia ACT 627

or directive has been made, and the order or directive may, in consequence of such representations, either be confirmed, or be modified, amended, altered, varied or replaced under subsection (2), or be revoked under subsection (5), subject to such conditions, if any, as the Bank thinks fit to impose.

(5) An order of the Bank under subsection (1) or (2) or a directive of the Bank made under section 37, may at any time be revoked by an order or a directive similarly made by the Bank, as the case may be, and any such order or directive may contain all such provisions of an incidental, ancillary, or consequential nature, as may be deemed necessary or expedient by the Bank, as the case may be.

(6) Where a receiver or manager has been appointed by the High Court under paragraph (1) (b), in respect of an operator of a designated payment system, all proper costs, charges and expenses, including the remuneration, of such receiver or manager shall be payable out of the assets of the operator of the designated payment system in priority to all other claims.

Effect of removal from office

39. The removal under paragraph 37(1) (aa) of any director or chief executive officer of an operator of a designated payment system shall be lawful and valid notwithstanding anything contained in any contract of service or other contract or agreement, whether express or implied, whether individual or collective, and whether or not made or provided for under any written law, and such person shall not be entitled to claim any compensation for the loss or termination of office.

Provisions relating to assumption of control under paragraph 38(1) (a)

40. (1) Where control of an operator of a designated payment system has been

assumed in pursuance of section 37 or an order under paragraph 38(1) (a), the operator of the designated payment system and its directors and officers shall provide the Bank or the person appointed by the Bank with such facilities, documents and information as may be required to carry on its business.

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(2) The Bank or the person appointed by the Bank shall control and carry on the property, business and affairs of the operator of the designated payment system as the case may be, in the name and on behalf of that operator of the designated payment system until the directive issued under section 37 or order made under paragraph 38(1) (a) is revoked.

(3) During the period for which a directive under section 37 or an order under paragraph 38(1) (a) is in force--

(a) no director or chief executive officer of the operator of the designated payment system shall engage in any activity in relation to the designated payment system, directly or indirectly, except as may be required or authorized by the Bank or the person appointed by the Bank;

(b) no remuneration shall accrue or be payable to a director or chief executive officer of the operator of the designated payment system unless approved in writing by the Bank or the person appointed by the Bank; and

(c) the Bank or the person appointed by the Bank shall be vested with all the powers of the operator of a designated payment system, and its board of directors, under its constituent documents, or exercisable by the operator of a designated payment system or its board of directors under any written law regardless whether such powers are exercisable by resolution.

(4) For the avoidance of doubt, it is hereby declared that a directive under section 37 or an order under paragraph 38(1) (a) shall not have the effect of conferring on, or vesting in, the Bank or the person appointed by the Bank any title to, or any beneficial interest in, any property of the operator of a designated payment system to which the directive or order relates.

Power to reduce share capital and to cancel shares

41. (1) Notwithstanding anything in any written law or the constituent documents of an operator of a designated payment system, the Bank or the person appointed by the Bank may apply to the High Court for an order to reduce the share capital of such operator by cancelling any portion of its paid-up capital which is lost or unrepresented by available assets.

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(2) Where the High Court makes an order under subsection (1) to reduce the share capital of an operator of a designated payment system, the Court may--

(a) on an application by the Bank, or the person appointed by the Bank; and

(b) if, on the expiry of thirty days from the date of any call made by the operator of a designated payment system on its members to pay on their respective shares, payment on any such shares has not been made,

also order that such shares for which payment has not been made be cancelled accordingly.

(3) Where the share capital of an operator of a designated payment system is reduced pursuant to subsection (1), or any of its shares is cancelled pursuant to subsection (2), the Bank or the person appointed by the Bank may cause the constituent documents of the operator of a designated payment system to be altered accordingly. (4) The powers conferred under subsections (1), (2) and (3) on the Bank and the person appointed by the Bank shall be in addition to any powers exercisable under subsection 64 (1) of the Companies Act 1965, and where an application is made to the High Court under subsection (1)--

(a) the High Court may exercise any of the powers conferred on it under section 64 of the Companies Act 1965 in relation to an application for confirmation referred to therein; and

(b) subsections 64(9) and (10) of the Companies Act 1965 shall apply in relation thereto.

PART V

INVESTIGATION, SEARCH AND SEIZURE

Interpretation

42. For the purposes of this Part, "financial institution" means a bank, a finance company, a banking and finance company, a merchant bank or a discount house licensed under the Banking and Financial Institutions Act 1989, or a prescribed institution as defined 37Payments Systems

under the Development Financial Institutions Act 2002 or any co-operative society registered or deemed to have been registered under the Co-operative Societies Act 1993 [Act 502] or a clearing house recognized under the Securities Industry Act 1983 or a clearing house licensed under the Futures

Industry Act 1993. Appointment of investigating officers, their powers, functions and duties

43. (1) For the purposes of this Part, the Bank may appoint any officer of the Bank or any person appointed under subsection 4(3) to be an investigating officer.

(2) Subject to subsection (3), an investigating officer appointed under subsection (1) shall have all the powers, functions, and duties conferred on an investigating officer under this Act, and where such investigating officer is not an officer of the Bank, he shall, in relation to such powers, functions and duties-- (a) be subject to; and

(b) enjoy such rights, privileges, protection, immunities and indemnities as may be specified in,

the provisions of this Act, the Central Bank of Malaysia Act 1958 or other written law applicable to an officer of the Bank as if he was an officer of the Bank.

(3) An investigating officer shall be subject to the direction and control of the Governor, or of such other officer of the Bank as may be authorized by the Governor to act on behalf of the Governor, and of any other investigating officer or officers superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties referred to in subsection (2) in compliance with such directions, instructions, conditions, restrictions or limitations as the Governor, or an officer of the Bank authorized to act on behalf of the Governor, or an investigating officer superior in rank, may specify orally or in writing, either generally, or in any particular case or circumstance.

(4) The Governor, or any officer of the Bank authorized by the Governor to act on behalf of Governor, shall have all the powers, functions and duties of an investigating officer. 38 Laws of Malaysia ACT 627

(5) An investigating officer conducting any examination of any person under this Part shall have the power to administer an oath or affirmation to the person who is being examined. Investigation powers in respect of clearing houses

44. Where the Bank has reason to believe that an offence has been committed under this Act, and it is necessary to exercise its powers under this Part in respect of a clearing house recognized under the Securities Industry Act 1983 or a clearing house licensed under the Futures Industry Act 1993, the Bank shall notify the Securities Commission established by the Securities

Powers of entry, search and seizure

45. (1) Where an investigating officer is satisfied, or has any reason to believe, that any person has committed an offence under this Act, he may, if in his opinion it is reasonably necessary to do so for the purpose of investigating into such offence-- (a) enter any premises and there search for, seize and detain any property, apparatus, equipment, machinery, computer, computer output, data, book or other document;

(b) have access to, inspect, make copies of, or take extracts from, any computer, computer output, book or other document so seized and detained, including access to any program or data held in any computer or have access to, inspect or check the operation of any computer and any associated apparatus or material;

(c) take possession of, and remove from the premises, any equipment, apparatus, machinery, property, computer, computer output, data, book or other document so seized and detained;

(d) search any person who is in, or on, such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any equipment, apparatus, machinery, property, computer, computer output, data, book or other document found on such person;

(e) break open, examine, and search, any article, container or receptacle, including accessing into a computer; or (f) stop, detain or search any conveyance.

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(2) In exercising his powers under subsection (1), an investigating officer may if it is necessary so to do--

(a) break open any outer or inner door of any premises and enter thereinto;

(b) forcibly enter such premises and every part thereof; (c) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or

(d) detain all or any person found on any premises, or in any conveyance, searched under subsection (1) until such premises or conveyance has been

searched.

(3) An investigating officer shall for the purposes of this section be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of any program or data held in any computer including in a form in which the information contained in a computer can be taken away and in which it is visible and legible. (4) A list of all things seized in the course of a search made under this section and of the premises in which they are respectively found shall be prepared by the investigating officer conducting the search and signed by him.

(5) The occupant of the premises entered under subsection (1), or any person on his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under this section shall be delivered to such occupant or person at his request.

(6) An investigating officer shall, unless otherwise ordered by any court--

(a) on the close of investigations or any proceedings arising therefrom; or

(b) with the prior written consent of any officer of the Bank authorized by the Governor to act on the Governor's behalf for this purpose, or of any investigating officer superior to him in rank, at any time before the close of investigations, release any property, apparatus, equipment, machinery, computer, computer output, data, book or other document seized, detained or removed by him or any other investigating officer, to such person as he 40
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determines to be lawfully entitled to the property, apparatus, equipment, machinery, computer, computer output, data, book or other document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law.

(7) A record in writing shall be made by the investigating officer effecting any release of any property, apparatus, equipment, machinery, computer, computer output, data, book or other document under subsection (6) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release. (8) Where the investigating officer is unable to determine the person who is lawfully entitled to the property, equipment, apparatus, machinery, computer, computer output, data, book or other document or where there is more than one claimant to such property, equipment, apparatus, machinery, computer, computer output, data, book or other document, the investigating officer shall report the matter to a Magistrate who shall

then deal with the property, apparatus, equipment, machinery, computer, computer output, data, book or other document as provided for in subsections 413(2), (3) and (4), and sections 414, 415 and 416 of the Criminal Procedure Code [Act 593].

Search of person

46. (1) An investigating officer may search any person whom he has reason to believe has on his person any property, apparatus, equipment, machinery, computer, computer output, data, book or other document or other article necessary, in his opinion, for the purpose of investigation into any offence under this Act, and for the purpose of such search may detain such person as may be necessary to have the search carried out and may remove him in custody to such place as may be necessary to facilitate such search. (2) An investigating officer making a search of a person under subsection (1) may seize, detain, or take possession of any property, apparatus, equipment, machinery, computer, computer output, data, book or other document, or article, found upon such person for the purpose of the investigation being carried out by him. (3) No female person shall be searched under this section or under section 50 except by another female.

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Obstruction to exercise of powers by an investigating officer

47. No person shall— (a) refuse any investigating officer exercising his powers under section 45 or 46 access to any premises or any part thereof, or fail to submit to the search of his person; (b) assault, obstruct, hinder or delay such investigating officer in effecting any entrance which he is entitled to effect; (c) fail to comply with any lawful demands of any investigating officer in the execution of his duties under section 45 or 46;

(d) refuse to give to an investigating officer any information which may reasonably be required of him and which he has it in his power to give;

(e) fail to produce to, or conceal or attempt to conceal from, an investigating officer any property, book, other document or article in relation to which the investigating officer has reasonable grounds for suspecting that an offence has been or is being committed under this Act;

(f) rescue or endeavour to rescue any thing which has been duly seized;

(g) furnish to an investigating officer as true, information which he knows or has reason to believe to be false; or (h) before or after any seizure, break

or otherwise destroy any thing to prevent the seizure thereof, or the securing of such thing.

Requirement to provide translation

48. (1) Where an investigating officer finds, seizes, detains or takes possession of any computer, computer output, data, book or other document, in the exercise of any power under this Part, and such book or other document or any part thereof is in a language other than the national language or the English language, or in any sign or code, the investigating officer may, orally or in writing, require the person who had the possession, custody or control of such computer, computer output, data, book or other document, to furnish to the investigating officer a translation in the national 42 Laws of Malaysia ACT 627

language or the English language of such computer output, data, book or other document within such reasonable period as the investigating officer may specify, having regard to the length of the computer output, data, book or other document, or other circumstances relating to it.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation, or knowingly make a translation under that subsection which is not accurate, faithful and true.

(3) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence under investigation, the Bank shall pay him reasonable fees for the translation.

Power to examine persons

49. (1) Where an investigating officer suspects any person to have committed an offence under this Act, he may, if in his opinion it is reasonably necessary to do so for the purposes of an investigation into such offence--

(a) order any person orally or in writing to attend before him for the purpose of being examined orally by the investigating officer in relation to any matter which may, in the opinion of the investigating officer, assist in the investigation into the offence;

(b) order any person orally or in writing to produce before the investigating officer property, apparatus, equipment, machinery, computer, computer output, data, book or other document, or article, or thing which may, in the opinion of the investigating officer, assist in the investigation into the offence; or

(c) by written notice require any person to furnish a statement in writing

made on oath or affirmation setting out therein all such information which may be required under the written notice, being information which, in the opinion of the investigating officer, would be of assistance in the investigation into the offence.

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(2) A person to whom an order under paragraph (1) (a) or (b), or a written notice under paragraph (1) (c), has been given shall comply with the terms of such order or written notice, as the case may be, and, in particular--

(a) a person to whom an order under paragraph (1) (a) has been given shall attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the investigating officer until the examination is completed, and shall during such examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the question truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse;

(b) a person to whom an order has been given under paragraph (1) (b) shall not conceal, hide, destroy, alter, remove from or send out of Malaysia, or deal with, expend, or dispose of, any property, apparatus, equipment, machinery, computer, computer output, data, book or other document, article or thing specified in the order, or alter or deface any entry in any such computer output, data, book or other document, or cause such acts to be done, or assist or conspire to do such acts; and

(c) a person to whom a notice has been given under paragraph (1) (c) shall, in his statement made on oath or affirmation, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained by him, and shall not fail to furnish or disclose the same on the ground that it tends to incriminate him or his spouse.

(3) A person to whom an order or a notice is given under subsection (1) shall comply with such notice or order and with the provisions of subsection (2) in relation thereto, notwithstanding the provisions of any written law, whether enacted before or after the commencement of this Act, or of any oath, undertaking or requirement of secrecy, to the contrary, or of any obligation under any contract, agreement or arrangement, whether express or implied, to

the contrary.

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(4) Where any person discloses any information or produces any property, equipment, apparatus, machinery, computer data, book or other document, article or thing, pursuant to subsections (1) and (2), neither the first-mentioned person, nor any other person on whose behalf or direction or as whose agent or officer the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any agreement or arrangement, or otherwise. (5) An investigating officer may seize, take possession of and retain for such duration as he deems necessary, any property, apparatus, equipment, machinery, computer, computer output, data, book or other document, or article or thing produced before him in the course of an investigation under subsection (1), or search the person who is being examined by him under paragraph (1) (a), or who is producing anything to him under paragraph (1) (b), for ascertaining whether anything relevant to the investigation is concealed, or is otherwise upon such person.

(6) An examination under paragraph (1) (a) shall be reduced into writing by the investigating officer and shall be read to and signed by the person being examined, and where such person refuses to sign the record, the investigating officer shall endorse thereon under his hand the fact of such refusal and the reasons thereof, if any, stated by the person examined.

(7) The record of an examination under paragraph (1) (a), or a written statement on oath or affirmation made pursuant to paragraph (1) (c), or any property, apparatus, equipment, machinery, computer, computer output, data, book or other document, or article or thing produced under paragraph (1) (b) or otherwise in the course of an examination under paragraph (1) (a) or under a written statement on oath or affirmation made pursuant to paragraph (1) (c) shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court-- (a) for or in relation to an offence under this Act; (b) for or in relation to any other matter under this Act; or (c) for or in relation to any offence under any other written law,

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regardless whether such proceedings are against the person who was examined, or who produced the property, apparatus, equipment, machinery, computer, computer output, data, book, other document, article or thing, or who made the written statement on oath or affirmation, or against any other person.

Specific persons in respect of whom powers of investigation may be exercised

50. Without prejudice to the generality of other powers of investigation conferred on an investigating officer under this Part, such powers may be exercised by the investigating officer-- (a) against--

- (i) any past or present business associate;
 - (ii) any person who is or was a relative;
 - (iii) any person who is or was a creditor;
 - (iv) any person who is or was concerned with the control or management, in whole or in part, of the affairs; or
 - (v) any person who has or had an interest in the shares, or otherwise has or had an interest in the property, of the person suspected to have committed an offence under this Act;
- (b) against any business associate or relative of a person referred to in paragraph (a); or
- (c) against any body, corporate or unincorporate, in which any person referred to in paragraph (a) is a director or officer or, where such body is a corporation, has an interest in the shares of the corporation.

Seizure of movable property in financial institution

51. (1) Where the Bank is satisfied on information given by an investigating officer that any movable property, including any monetary instrument or any accretion to it, which is the subject matter of an offence under this Act or evidence in relation to the commission of such offence, is in the possession, custody or control

of a financial institution, the Bank may, notwithstanding any other law or rule of law, by order direct the financial institution not to part with, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied.

(2) A financial institution or any agent or officer of a financial institution shall not, on account of complying with an order under subsection (1), be liable to any prosecution under any law or to any proceedings or claim by any

person under any law or under any contract, agreement, or arrangement, or otherwise. (3) Any person who fails to comply with an order under subsection (1) commits an offence.

(4) In this section, "monetary instrument" includes the domestic currency or any foreign currency, travellers' cheque, personal cheque, bank cheque, money order, investment security or negotiable instrument in bearer form or otherwise in such form that title to it passes upon delivery or upon delivery and endorsement. Dealing with property after seizure to be void

52. (1) Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under this Act or by virtue of this Act by or on behalf of the Government of Malaysia, or the Government of a State, or a local authority or other statutory authority, shall be null and void, and shall not be registered or otherwise given effect to by any person or authority.

(2) For so long as a seizure of any property under this Act remains in force, no action, suit or other proceeding of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgement or decree, regardless whether such claim was made, or such judgement or decree was

given, before or after such seizure was effected, except at the instance of the Government of Malaysia or the Government of a State, or at the instance of a local authority or other statutory authority, or except with the prior consent in writing of the Public Prosecutor.

Validity of seizure

53. Where the seizure of any property has been effected under this Act, the validity of such seizure, or other form of disposal of such property, or of any destruction of the property in accordance with the provisions of this Act, in consequence of such seizure, shall not be affected by any objection to it relating to the manner in which the seizure was effected, or the place at which it was effected, or the person from whom it was effected, or the person to whom any notice of the seizure was given, or omitted to be given, or any failure to conform to any procedural provision of this Act or of any other written law in effecting the seizure. Assistance to police or other public officer

54. The Bank may at its own initiative, or on the request of a public officer—

(a) supply to a police officer or any other public officer a copy of any book, computer output, data, or other document seized, detained or taken possession of under section 45 or 46, or of any record of examination under paragraph 49(1) (a), or of any written statement on oath or affirmation made under paragraph 49(1) (c) or of any book or other document produced under paragraph 49(1) (b), or otherwise in the course of any examination under paragraph 49(1) (a), or under any written statement on oath or affirmation made pursuant to paragraph 49(1) (c), and such police officer or other public officer may make such use of such copy of such record, statement, book or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or (b) allow a police officer or any other public officer to have access to and inspect any property, apparatus, equipment, machinery, computer, computer output, data, book, other 48 Laws of Malaysia ACT 627

document, article or thing which had been produced before, or seized, detained or taken possession of, by an investigating officer under this Part, and such police or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

Investigating officer deemed to be public servant and public officer

55. An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code [Act 574], and to be a public officer for the purposes of the Criminal Procedure Code or any other written law which the Bank may prescribe.

PART VI

OFFENCES

Offences and penalties

56. (1) Any person who fails to comply with or contravenes any requirement or prohibition imposed upon him by any of the provisions of this Act, any specification or requirement made, or any order, directive or notice given, or any limit, term, condition or restriction imposed, in the exercise of any power conferred under, pursuant to, or by virtue of any of the provisions of

this Act set out in the second column of the Schedule commits an offence under such provision and shall on conviction be liable to a fine not exceeding the amount set out in the third column of the Schedule or to imprisonment not exceeding the term set out in the fourth column of the Schedule, or to both, and in the case of a continuing offence, shall in addition, be liable to a daily fine not exceeding the amount set out in the fifth column of the Schedule for every day during which the offence continues.

(2) Notwithstanding subsection (1), if the person convicted of an offence under this Act is a body corporate, the punishment of imprisonment set out in the fourth column of the Schedule shall not apply to it.

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General penalty

57. Any person who fails to comply with or contravenes any requirement or prohibition imposed upon him by any of the provisions of this Act or any specification or requirement made, or any order, directive or notice given, or any limit, term, condition or restriction imposed in the exercise of any power conferred under, pursuant to, or by virtue of any of the provisions of this Act not specified in the Schedule, commits an offence under such provision, and if no penalty is expressly provided for the offence in this Act, shall on conviction be liable to a fine not exceeding five hundred thousand ringgit, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding one thousand ringgit for every day during which the offence continues.

Offences by body corporate and by servants and agents

58. (1) Where any offence against any provision of this Act has been committed by any body corporate or association of persons, any person who at the time of the commission of the offence was a director or officer of the body corporate or association of persons or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such body corporate or association of persons, or was assisting in such management, shall be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person, in this subsection referred to as the "principal", would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for

every such act, omission, neglect or default of any clerk, servant or agent of his, or of the clerk or servant of such agent if such act, omission, neglect or default was committed by the principal's clerk or servant in the course of his employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

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Joinder of offences

59. Notwithstanding anything contained in any other written law, where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of such offences committed within any length of time. Power to compound offences

60. (1) The Governor may with the consent in writing of the Public Prosecutor, offer to compound any offence under any provision of this Act or under regulations made under this Act by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per centum of the amount of the maximum fine, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence, within such time as may be specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Governor may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Upon receipt of the amount under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

Power to impose administrative penalty

61. (1) The Bank may, by regulations issued under section 69, impose administrative penalties on any person for any delay in complying with any directive, guideline, standard, circulars, specification, order or notice issued by the Bank in respect of any provision of this Act.

(2) The Bank shall, before making a decision to impose any administrative penalty on a person, serve on him a written notice calling on him to show

cause why the administrative penalty should not be imposed on him.

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(3) If a satisfactory explanation is not received within fourteen days from the date of the written notice, the Bank may impose an administrative penalty in an amount not exceeding five hundred ringgit for each day of non-compliance and such amount shall not in total exceed the sum of five thousand ringgit.

Offences to be seizable offences

62. Every offence under the Act shall be a seizable offence, and a police officer not below the rank of Inspector, or an investigating officer appointed under section 43, may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

Duty of investigating officer to make over arrested person to police

63. An investigating officer appointed under section 43 making an arrest under section 62 shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person arrested shall be dealt with as provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Attempts, preparations, abetments and conspiracies punishable as offences

64. (1) Any person who-- (a) attempts to commit any offence under this Act; (b) does any act preparatory to or in furtherance of the commission of any offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit, as those terms are defined in the Penal Code, any offence under this Act, whether or not the offence is committed in consequence thereof,

shall be guilty of such offence and shall be liable to the penalty provided for such offence.

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(2) Any provision of this Act which contains a reference to any offence under any specific provision of this Act shall be read as including a reference to an offence under subsection (1) in relation to the offence under that specific provision.

PART VII

MISCELLANEOUS

Duty to submit accurate information

65. Where under any provision of this Act power is given to the Bank to require any person, or where any person is required under any provision of this Act, to submit to the Bank any information, statistics, return or document--

(a) the Bank may specify that such information, statistics, return or document shall be submitted within such period, at such intervals, in such manner, in such form, and in writing or by means of any visual recording, whether of still or moving images, or any sound recording, or any electronic, magnetic, mechanical, or other recording, on any substance, material, thing or article, as the Bank may set out in the specification; and

(b) such person shall not submit, produce or provide any information, statement, statistics, return or document which he knows, or has reason to believe, to be false or misleading. Appeal against a decision of the Bank

66. (1) If any person disagrees with any decision by the Bank in relation to subsection 5(4), 8(1), 23(1), 26(1), 32(1), 33(1) or 61(1), such person may within twenty-one days, or within such extended period of time as the Bank may allow, appeal in writing against the decision of the Bank to the Minister whose decision shall be final.

(2) Every appeal under subsection (1) shall be submitted to the Bank and the Bank shall forward the written appeal to the Minister together with the Bank's recommendation.

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(3) If within the period specified in subsection (1) the person appeals to the Minister, the decision of the Bank shall not take effect unless the Minister confirms the decision or, for any reason, dismisses the appeal, or the appeal is withdrawn. Exemptions

67. The Bank may, if it is consistent with the purposes of this Act, by order published in the Gazette, exempt any particular person or any class, category or description of persons, from all or any of the provisions of this Act, for such duration, and subject to such condition, as the Bank may specify in the order. Moneys received by the Bank

68. All moneys received by the Bank pursuant to this Act including fees

collected under subsection 5(3) and paragraph 25(1)(b), moneys collected for the compounding of an offence under section 60 and administrative penalties under section 61 shall form part of the funds of the Bank.

Regulations

69. (1) The Bank may, with the approval of the Minister, make such regulations as may be--

(a) required or permitted by this Act to be prescribed by regulations;

(b) necessary or expedient for--

(i) giving full effect to the provisions of this Act; (ii) carrying out or achieving the objects and purposes of this Act; or

(iii) the further, better or more convenient

implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made--

(a) to provide that any act or omission in contravention of any provision of such regulations shall be an offence; 54 Laws of Malaysia ACT 627

(b) to provide for the imposition of penalties for such offences which shall not exceed a fine of one million ringgit or imprisonment for a term not exceeding one year or both; (c) to provide for the imposition of an additional penalty for a continuing offence which shall not exceed one thousand ringgit for each day that the offence continues after conviction.

(3) Notwithstanding anything contained in any--

(a) approval, directive, acknowledgement, notice, standard or guideline issued under this Act; or

(b) rules and procedures governing a payment system or payment instrument,

every operator or issuer shall comply with any regulations made under subsection (1) and where there is any conflict or inconsistency between anything contained in paragraph (a) or (b) and the regulations, the provisions of the regulations shall prevail and have full force and effect.

Power to issue guidelines, etc.

70. The Bank may, generally in respect of this Act, or in respect of any particular provision of this Act, or generally in respect of the conduct of all or any of the operators of payment systems or issuers of payment instruments, issue such guidelines, circulars, standards or notices as the Bank may consider desirable. Contravention not to affect contract, agreement or arrangement

71. (1) Except as otherwise provided in this Act, or in pursuance of any provision of this Act, no contract, agreement or arrangement entered into in contravention of any provision of this Act shall be void solely by reason of such contravention.

(2) Subsection (1) shall not affect any criminal liability of any person for an offence under this Act in respect of such contravention. 55Payments Systems

Indemnity

72. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court or before any authority against the Minister or the Bank or any of its directors and officers, or any person acting on its behalf, either personally or in his official capacity, for, on account of, or in respect of an act done or statement made, or omitted to be done or made, or purporting to be done or made, or omitted to be done or made, in pursuance of or in execution of, or intended pursuance or execution of, this Act or any order, directive, instruction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith. Secrecy

73. (1) No director or officer of any operator or issuer, whether during his tenure of office, or during his employment, or thereafter, shall give, produce, divulge, reveal, publish or otherwise disclose to any person, or make a record for any person of, any information or document relating to the affairs or account of any participant of a payment system or user of a payment instrument. (2) No person who for any reason, has by any means access to any record, book, register, correspondence, or other document, or material, relating to the affairs or, in particular, the account, of any particular operator of a designated payment system, participant of a payment system or user of a payment instrument, shall give, produce, divulge, reveal, publish or otherwise disclose to any person, or make a record for any person of, any information or document relating to the affairs or account of such operator of a designated payment system, participant of a payment system or user of the payment instrument.

(3) No person who has any information or document which to his knowledge has been disclosed in contravention of subsections (2) or (3) shall in any manner disclose the information or document to any other person.

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Disclosures to the Bank and persons appointed by the Bank

74. (1) The provisions of section 73 shall not apply to the disclosure of any information or document--

(a) to the Bank, as is required for the purposes of the credit bureau established under paragraph 30(1) (mmm) of the Central Bank of Malaysia Act 1958;

(b) to the Bank, or to any director or officer of the Bank, or to any person appointed by the Bank under subsection 4(3) where the disclosure is for the purpose of the exercise of powers, the performance of functions or the discharge of duties of the Bank, or of the director or officer of the Bank, or of the person appointed under subsection 4(3); (c) to any person rendering professional services to the Bank in relation to any matter of law, accountancy, valuation, or any other matter requiring professional knowledge, where he is authorized in writing by the Bank to obtain the information from the operator or issuer for the purpose of his services to the Bank.

(2) Where the Bank, in the course of the exercise of any of its powers, or the performance of any of its functions, or the discharge of any of its duties under this Act or under any other written law, suspects any person to have committed any offence under this Act or any other written law, it shall be lawful for the Bank to give information of such commission to any police officer or to convey any or all information in relation to such offence to any authority or person having power to investigate under, or enforce, the provision of the law under which the offence is suspected by the Bank to have been committed.

(3) Subsection (2) shall have full force and effect, notwithstanding anything inconsistent therewith, or contrary thereto, in this Act or in any other written law.

Other permitted disclosure

75. The provisions of section 73 shall not apply to the disclosure of any information or document--

(a) which at the time of the disclosure is, or has already been made, lawfully

available to the public from any source other than the operator or issuer;

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(b) which is in the form of a summary, consolidation, aggregate or collection of information set out in such manner as does not enable information relating to any particular participant or any particular user of a payment instrument to be ascertained from it;

(c) which the customer, or his personal representative, has given permission in writing to disclose;

(d) where such disclosure is required or authorized under any other provision of this Act;

(e) where such disclosure is authorized in writing by the Bank; or

(f) where such disclosure is required or authorized by any court or under any written law.

Application of the Exchange Control Act 1953

76. Nothing contained in this Act shall in any manner affect, or derogate from, the provisions of the Exchange Control Act 1953, and in the application of any provision of this Act to any person, such provision shall apply subject to the provisions of that Act and, accordingly, in the event of any conflict or inconsistency between any provision of this Act and that Act, the provisions of that Act shall prevail.

Savings

77. (1) An issuer of a designated payment instrument who has obtained approval under paragraph 19(1)(b) of the Banking and Financial Institutions Act 1989 shall be deemed to have obtained approval under subsection 24(1) in respect of the issuance of that designated payment instrument.

(2) Any designated payment instrument issued pursuant to an approval under subsection 119(1) of the Banking and Financial Institutions Act 1989 shall be deemed to have been approved under subsection 24(1).

(3) An operator of a payment system who has obtained approval under subsection 119(1) of the Banking and Financial Institutions Act 1989 shall be deemed to have complied with the requirements and received the notification under subsection 4(1). 58 Laws of Malaysia ACT 627

(4) Every guideline and circular issued by the Bank under section 126 of the Banking and Financial Institutions Act 1989 in relation to paragraph 19(1) (b) and subsection 119(1) of the Banking and Financial Institutions Act 1989 shall be deemed to have been lawfully issued under section 70 of this Act in relation to the particular provisions of this Act corresponding to the matter dealt with in the guideline or circular and shall remain in full force and effect until it is amended, rescinded or replaced under this Act. 59Payments Systems

SCHEDULE

[Section 56 – Offences and Penalties]

First Column	Second Column	Third Column	Fourth Column	Fifth Column	Column
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Provision of this Act	Fine RM	Imprisonment RM	Daily Fine	Serial contravened or not
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No complied with

1. Subsection 5(1) 5 million 5 years 5 thousand
2. Subsection 5(4) 5 million 5 years 5 thousand
3. Subsection 9(2) 3 million 3 years --
4. Subsection 10(2) 3 million 3 years --
5. Subsection 10(3) 3 million 3 years --
6. Section 12 3 million 3 years 3 thousand
7. Section 13 3 million 3 years 3 thousand
8. Section 14 3 million 3 years 3 thousand
9. Subsection 15(1) 1 million 1 year 1 thousand
10. Paragraph 15(3) (a) 3 million 3 years 3 thousand
11. Paragraph 15(3) (b) 3 million 3 years 3 thousand
12. Section 22 1 million 1 year 1 thousand

13. Subsection 23(1) 5 million 5 years 5 thousand
14. Subsection 24(2) 5 million 5 years 5 thousand
15. Subsection 25(1) 5 million 5 years 5 thousand
16. Section 27 3 million 3 years 3 thousand
17. Section 28 3 million 3 years 3 thousand
18. Subsection 29(1) 1 million 1 year 1 thousand
19. Paragraph 29(3) (a) 3 million 3 years 3 thousand
20. Paragraph 29(3) (b) 3 million 3 years 3 thousand
21. Subsection 30(1) 1 million 1 year 1 thousand
22. Subsection 31(1) 1 million 1 year 1 thousand
23. Subsection 32(3) 3 million 3 years 3 thousand
24. Subsection 33(3) 5 million 5 years 5 thousand
25. Section 36 1 million 1 year 1 thousand
26. Subsection 37(1) 1 million -- 1 thousand
27. Section 47 3 million 3 years 3 thousand
28. Subsection 49(2) 3 million 3 years 3 thousand
29. Paragraph 65(a) 1 million 1 year 1 thousand
30. Paragraph 65(b) 3 million 3 years 3 thousand 60 Laws of Malaysia ACT 627

LAWS OF MALAYSIA

Act 627

PAYMENT SYSTEMS ACT 2003

LIST OF AMENDMENTS

Amending law Short title In force from

-- NIL --

61 Payments Systems

LAWS OF MALAYSIA

Act 627

PAYMENT SYSTEMS ACT 2003

LIST OF SECTIONS AMENDED

Section Amending authority In force from

-- NIL --

DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA