

NOTES BY THE HON. ZHIVARGO LAING MINSTER OF STATE, MINISTRY OF FINANCE ON THE PAYMENT SYSTEMS BILL 2011

Mr. Speaker,

MODERNIZING THE BAHAMAS

Our effort to modernize the Bahamian economy and society continues. When we speak of “modernizing” our economy and society, we are not simply looking for some theoretical buzz word to make sexy what it is we are doing in hopes that it will sell us in the political marketplace. We literally and practically mean that we are attempting to ensure that the tools, skill-sets, infrastructure, systems, laws, regulations, procedures and programmes of our country are so updated as to leverage themselves against the best available technology, techniques and practices in order to put us in the best position to seize the opportunities and meet the challenges of an evolved and evolving domestic and international

environment. We do this not as a luxury of our existence but as a necessity to it. As developed countries have come to advance the wellbeing of their people through this march of modernization, so we must do and give every Bahamian man, woman and child the absolutely best prospects for a brighter and more glorious future.

- We build modern schools so that motivated teachers with cutting edge educational practices can teach our children in them and give them the best opportunity to receive an education commensurate with their ambitions, giving them the best chance to receive employment commensurate with their education;
- We dig up roads to get to rusty leaking cast iron pipes so that they might be replaced with modern pvc and/or polyethylene water tight pipes so our people can enjoy clean, rust free, adequately pressured water for the basic living needs;
- We dig up roads to lay telecommunications, cable and other utilities to ensure the greater safety and durability in the face of nature's harshness, ensuring their enduring delivery of services to our people;
- We design and redesign dug up roads and pave them so that we create a modern road network that better meets that needs of a small island whose

people have long endured the discomforts and disadvantages of a network too out dated for its population size and commercial sophistication;

- We build modern courts so that judicial efficiencies might lead to a more effective execution of justice and benefit our citizenry through a greater sense of justice and reduced levels of crime;
- We build modern airports and seaports so that residents and visitors alike might have a travel experience that invites that continuous patronage for the long term economic health of our nation;
- We build modern hospital facilities so that our people in their hour of vulnerability might have the comfort of knowing that there is available to them the best tools and skills to heal their hurt and restore their health;
- We upgrade our information and communication technology so that the advances of 4G and E-Government might be available to give our people speedy access to information; unencumbered opportunities to communicate with their family, friends or business interest; and easier ways of doing their business with the state and each other;

- We build modern parks so that the minds of our people heavy with the fatigue of work or worry might find occasion to rest and recreate in an environment of peace and aesthetic pleasure; and
- We modernize our legislation because in so doing we ensure that the bounds in which we wish our society and commerce to operate are defined so as to take account of the prevailing dynamism of their environment as well as the increasing complexity of our world.

Yes, we modernize not for modernization sake but because the needs of our people can be met thereby. So our march of modernization continues.

FINANCIAL SERVICES AND SYSTEMS LEGISLATION TO DATE

Mr. Speaker, you will recall that in this place we have passed a number of new and updated laws addressing issues in the broader financial services area and in respect of our financial system. These include:

- New Business License Act
- New Securities Act
- New Domestic Insurance Act
- New International Insurance Act
- New Executive Foundations Act
- New Telecommunications Legislation to govern an open, competition driven telecommunications industry, including The Communications Act, 2009, the Utilities Regulation and Competition Authority (URCA) Act, 2009, the Utilities Appeal Tribunal (UAT) Act, 2009, the Utilities Regulation and Competition (Amendment) Act 2011, the Communications (Amendment) Act 2011;
- Critical amendments to the Trustees, Perpetuities and Company Liquidation legislation
- New Arbitration Act
- Upgraded Central Bank legislation and reforms to exchange control procedures ...in order to put The Bahamas in the best position to have a best in class central banking regime and regulated financial system;

THE COMPENDIUM OF PAYMENT SYSTEM LEGISLATION

Mr. Speaker, when we conduct domestic or international commercial or financial transactions, we typically use cash or cash alternatives. Over centuries, cash alternatives have become more prominent in this regard, especially where large, trade related activities are concerned. So that a business purchasing large volumes of supplies from abroad might use a bank draft or certified check or international money order. The use of such alternatives to cash as a way of transferring money is known as a “payment system”.

In our more modern world, where information and communications technology has rapidly evolved and continues to do so, making online commerce one of the fastest growing modes of business dealings, new alternatives to cash transactions have evolved, including credit cards, debit cards, internet banking, e-commerce payment systems, electronic funds transfer (ATMs), direct credits or debits, etc. There might also be very particular payment systems created to deal with specific kinds of business transactions such as might be used by securities traders, financial institutions settling claims between themselves and the like.

These various and ever evolving methods of transferring money of course have their own implications for a country's financial system and increasingly so where they become a larger share of the commerce taking place within it. They also represent fiduciary responsibilities among the participants that have to be honoured and the breach of which can have serious implications not only for the users but for the financial system itself. Increasingly, countries have begun, especially in the wake of the most recent global economic and financial crisis, to take steps to better protect and preserve their financial system by ensuring the wholesome regulations of their financial systems.

The Central Bank of The Bahamas being cognizant of these realities have put forward the propositions that have led to the legislative initiatives we now have before it. These are truly driven by the Bank and we believe sensibly so.

The purpose of the Payment Systems Bill is to introduce a new legislative and regulatory framework for the oversight by the Central Bank of payment systems and the regulation of multi-purpose stored value facilities such as prepaid cards and other payment instruments.

A new legal and regulatory framework is considered necessary for a number of reasons. First, the existing framework is provided for in several pieces of legislation which have been introduced over the years on a piecemeal basis, and also through informal agreements and cooperative arrangements with the Clearing Banks, the key payments stakeholders. A new legislative framework will provide the Central Bank with a comprehensive and consistent basis to oversee payment systems and payment instruments in The Bahamas and provide the Bank with the powers and tools to effectively regulate such systems and instruments. Furthermore, the Bill will strengthen the legal underpinnings of payment systems operating in The Bahamas by ensuring that all payments cleared through a designated payment system, are deemed to be final and irrevocable in the event of the insolvency of a system participant.

Developing a robust and modern financial infrastructure is especially important to a premier offshore financial centre such as The Bahamas whose economy is primarily sustained by tourism and international financial services. A failure in the country's financial infrastructure can lead to delays in interbank payments and banking operations and have serious negative consequences for the economy. One way to avoid this, is to ensure that domestic payment systems operate in a safe and efficient manner, while meeting the demands of increased financial activity and technological innovations. The proposed legislative changes will

enable the Bank to establish standards that promote the safety and efficiency of these systems, while promoting competition in the market for payment services.

The Payment Systems Bill once enacted, will also bring The Bahamas in line with international standards and best practice. Jurisdictions such as Australia and Canada and premier offshore centres such as Hong Kong and Singapore, have in recent years sought to formalise and strengthen their own payment systems framework and oversight of these systems by introducing comprehensive payments legislation.

The Central Bank-led initiative to modernize the payment system includes the implementation of a comprehensive legal and regulatory framework which is considered necessary for a number of reasons. Payment systems lie at the heart of the financial services sector; they provide a highway over which individuals and companies receive and make payments for goods and services. A payment system is essentially a set of instruments, procedures and rules for the transfer of funds among system participants. Disruptions in a system or the total failure of a system, pose a threat to the stability of the financial system. A safe and efficient payment system is, therefore, critical to the effective and smooth functioning of the financial system and helps maintain and promote financial stability.

Amendments to the Central Bank of The Bahamas Act, 2000 (CBBA) in 2010 enhanced the Central Bank's powers to, inter alia, regulate payments and securities systems and to regulate payment instruments. The CBBA was amended to provide that it is a duty of the Bank to ensure the stability of the financial system and to promote and ensure the establishment and oversight of a sound and efficient national payment system. The 2010 amendment to the CBBA was the precursor to the Payment Systems Bill which sets out in detail

the Bank's powers in respect of the oversight of payment systems and payment instruments.

The purpose of the Payment Systems Bill and the compendium of related legislation [which include the Companies (Amendment) Bill, the Bills of Exchange (Amendment) Bill and the Bankruptcy (Amendment) Bill and supporting regulations and Byelaws], is to introduce a comprehensive legislative and regulatory framework for the oversight by the Central Bank of payment systems and the regulation of multi-purpose stored value facilities, such as prepaid cards and other payment instruments. When enacted the legislation will codify key provisions necessary to undergird existing payment systems, and to provide a robust regulatory environment for the safe and efficient operation of these systems and, indeed, any system which may be established in the future. The Bill will also offer important protections for payments flowing through these systems, in the event of the failure of a participating institution.

Examples of payment systems operating in The Bahamas include the Bahamas Inter-Bank Settlement System (BISS), and the Automated Clearing

House (ACH). BISS, which commenced operations in 2004, is owned and operated by the Central Bank of The Bahamas, and is an example of a payment system that facilitates the electronic transfer and settlement of large value payments, (totaling over \$150,000), among the Clearing Banks, on a real time basis. The ACH is a clearing and settlement system for small value payments (under \$150,000) between the Clearing Banks. The ACH, which was implemented in 2010, is operated by the Bahamas Automated Clearing House Limited (BACH) and is jointly owned by the Clearing Banks. These payment systems currently operate on a contractual basis among participants.

6. Members of the public have already benefitted from the payment systems modernization initiative. In particular it is to be noted that the implementation of the ACH has led to increased efficiency in processing payments –

- The time involved in the overall cheque clearing process, has been reduced from five to two business days following the deposit of a cheque. In January 2010, the manual system of cheque processing was replaced by an electronic cheque clearing process. Under the new system, payment details of cheques are captured electronically and submitted to the ACH for processing in a safe and secure environment. Further, a payor's account is debited on the same day

on which his or her cheque is presented by the payee and the payee's account is credited within two business days.

Since September, 2010, direct credits have been facilitated through the ACH. Direct credits provide an electronic alternative to cheque payments, allowing customers of participating Clearing Banks to transfer funds directly to the accounts of other customers at any other participating bank. Employers may now deposit salary payments with direct immediate credit to employees' accounts at any Clearing Bank instead of issuing physical cheques. Employees are now able to access their salaries immediately through the convenience of an ABM/ATM system at any bank of their choice, rather than standing in long lines in a bank to cash their paycheques. This should result in a cost savings to the banks and to the businesses that make bulk payments, as time, resources and costs associated with the manual processing of cheques and cash payments, are redeployed.

Soon, direct debits will be facilitated through the ACH, and will further revolutionise the way the public conducts their banking and business

affairs. While some aspects of direct debit transactions already exist as a part of the services offered by the Clearing Banks, (for example, payment of insurance premiums by way of standing orders and direct debits), these services only permit the transfer of values among customers of the same bank. Direct debits through the ACH will eventually facilitate direct payments between all the Clearing Banks allowing a customer of one bank to deposit funds into another customer's account at any Clearing Bank. This will allow consumers to make bill payments easily and more quickly.

The Payment Systems Bill and related Bills will address a number of important issues including the following:

- While we note that there have been significant gains with the implementation of both the BISS and the ACH, pursuant to their respective contractual arrangements, there still exist legal impediments to even greater efficiency. For example, the Bills of Exchange Act currently provides that cheques must be physically presented for payment at the proper place. Therefore the Clearing

Banks continue to meet weekly at the Central Bank for physical exchange of cheques. With the enactment of the Payment Systems Bill and the amendment of the Bills of Exchange Act, the Clearing Banks will no longer be required to exchange physical cheques with each other.

The legislation will strengthen the legal underpinnings of payment systems operating in The Bahamas by ensuring that all payments cleared through a designated payment system, are deemed to be final and irrevocable in the event of the insolvency of a system participant.

The legislation will assist the jurisdiction in complying with the Basel Committee's Core Principles for Systemically Important Payment Systems (CPSIPS) which are the international standards for systemically important payment systems. According to the CPSIPS Report, a payment system is regarded as being systemically important where, if the system were insufficiently protected against risk, disruption within it could trigger or transmit further disruptions amongst participants or systemic disruptions in the financial area more widely.

A number of other jurisdictions regionally (such as Trinidad) and internationally (Canada, Singapore and Hong Kong) have adopted payment systems legislation consistent with CPSIPS.

The CPSIPS Report considers systemic importance to be determined largely by the size or nature of the individual payments or their aggregate value. Although systems handling specifically large-value payments would normally be considered systemically important, a systemically important system does not necessarily handle only high-value payments, but can relate to payments of various values which can also trigger or transmit systemic disruption by virtue of certain segments of its traffic.

Based on CPSIPS standards, the Bank has identified the Bahamas Interbank Settlement System (BISS) and the Automated Clearing House (ACH) as the only systemically important payment systems currently operating in The Bahamas.

Any person that operates or participates in a domestic payment, clearing or settlement system or who seeks to establish, operate or participate in such a

system and issuers of electronic money (other than banks or trust companies), will all be subject to the Central Bank's supervision. However, where the Central Bank designates a payment system as a "systemically important payment system" or a "SIP", the Payment Systems Bill will require the participants, operators, clearing houses and settlement institutions of the designated system to adhere to enhanced regulatory requirements.

The Payment Systems Bill together with the Payment Systems (Oversight) Regulations and the Payment Systems (National Payments Committee) Byelaws, also addresses the role of the Central Bank in relation to payment systems and payment instruments. The Bill will:

- Provide that the Central Bank is responsible for formulating, adopting and monitoring the implementation of a national payment system policy for The Bahamas and for overseeing payment systems and payment instruments; determining general or individual standards and guidelines for all domestic payment systems and payment instruments approved by the Bank; establishing and performing control and audit procedures; imposing administrative sanctions; and

suspending the operation of any system or terminating the participation of any member in an approved system on the grounds provided in the Bill.

- Formally establish the National Payments Committee (NPC), as an advisory body, chaired by the Bank, to provide a forum for discussion of payment-related issues. Membership of the NPC shall comprise certain governmental bodies which regulate or are in any other way involved in payments activities and the financial markets, major financial institutions or their national associations which are participants in payment systems; and other persons approved by the NPC that are involved in the clearing and settlement of payments or securities or in the financial markets. The objective is to provide a meaningful, formal vehicle through which payments matters of national importance may be considered, and recommendations made on the way forward.
- Identify the Central Bank as the regulator for issuers of electronic money products that may be accessed by the general public and which provide a multipurpose means of payment, that is, which can

be used to purchase goods and services from third party merchants other than the issuer. For electronic money issuers (other than banks and trust companies licensed by the Central Bank), there is a separate regulatory regime under the Bill. “Electronic Money” is defined in the Bill as essentially a stored value facility (SVF) in which a record of the funds or value available to the consumer for multipurpose use is stored on an electronic device in the consumer’s possession. The operative word here is “multipurpose”—those stored value cards that may be used that may be presented at various establishments and effectively used as “money”. Under the provisions of the Bill, non-bank issuers of multi-purpose SVFs must be licensed by the Central Bank and are subject to the information-gathering powers of the Bank. Existing issuers of these products will be given a grace period (four months) within which they must be licensed by the Central Bank.

The Payment Systems (National Payments Committee) Byelaws, 2012 and the Payment Systems (Oversight) Regulations, 2012 form part of the legislative package for the supervision and regulation of payments systems and payment instruments in the jurisdiction.

Payment Systems (National Payments Committee) Byelaws, 2012

The Byelaws set out the objectives of the NPC, which include advising the Bank on the implementation of the National Payment System Policy; and supporting the implementation of the Policy through collaboration with stakeholders and facilitating co-operation between market participants. The Byelaws also set out the qualifying criteria for membership in the NPC.

Payment Systems (Oversight) Regulations, 2012

The operator of a designated payment system will be required under the Regulations, to obtain the Central Bank's approval for the appointment of its chief executive officer or directors in The Bahamas, who are entrusted with the management of the operator. As persons with a substantial shareholding in an operator can influence the management of the operator, a person who seeks

to become a substantial shareholder of an operator of a designated payment system must obtain the approval of the Central Bank.

Where the Central Bank believes that a designated system is being operated inefficiently or in a manner considered to be unsafe, the proposed Regulations give the Bank the power to take certain actions in relation to a designated payment. These include the power to appoint a person to advise the clearing house of the designated payment system on the proper conduct of its operations, for the Bank to assume control of and carry on the operations of the clearing house, to require the clearing house to cease operation of the designated system, to petition for the winding up of the clearing house, and to require the clearing house to take any action as the Bank may consider necessary.

Consequential amendments to the Companies, Bills of Exchange and Bankruptcy Acts will have to be made in light of the provisions of the Payment Systems Bill.

Companies (Amendment) Bill, 2012

When enacted, the Companies (Amendment) Bill, will insert new sections 262A and 262B into the Companies Act. Together, these two provisions seek to (i) ensure the validity and finality of transactions of a company that is being wound up; and (ii) exclude such transactions from the provisions of the Companies Act relating to insolvency proceedings and from the effects of foreign court orders which are inconsistent with the provisions of the Payment Systems Bill. Such transactions will be protected where, inter alia, they are treated by relevant payment system rules as final and irrevocable and where these transactions are made prior to the issuance of a winding up order.

The Bills of Exchange (Amendment) Bill, 2012

When enacted, the Bills of Exchange (Amendment) Bill, will amend section 52 of the Bills of Exchange Act and also insert a new section 75A into that Act.

The effect of these amendments will be to recognize and validate the electronic presentment of cheques when presentment is effected in accordance with the provisions of the Payment Systems Bill.

The Bankruptcy (Amendment) Bill, 2012

When enacted the Bankruptcy (Amendment) Bill, will insert a new section 75A and section 75B into the Act. These sections seek to exclude the finality of transactions in relation to the property of a bankrupt made through a designated system, from the requirements of the Bankruptcy Act, which relate to insolvency proceedings, and from the effects of foreign court orders which are inconsistent with the provisions of the Payment Systems Bill.

DETAILS OF KEY PROVISIONS

Key Provisions in the Bill	Rationale for the Provision
<p>Function and powers of the Central Bank (Part I, Clause 4)</p> <p>“4. Oversight powers of the Central Bank.</p> <p>(1) The Central Bank, may in the exercise of its functions pursuant to paragraphs (b) and (c) of subsection (1) of section 5 and section 25 respectively of the Central Bank Act, in relation to the establishment and oversight of a national payment system –</p> <p style="padding-left: 40px;">(a) determine general or individual standards and guidelines for approved systems, designated systems and payment instruments;</p> <p style="padding-left: 40px;">(b) establish and perform control and audit procedures; and</p> <p style="padding-left: 40px;">(c) impose administrative sanctions.</p> <p>(2) The Bank shall, in the exercise of the powers granted by or referred to in subsections (1), be guided by best international standards.”</p>	<p>Clause 4 of the Bill, gives the Central Bank supervisory oversight of payment systems and payment instruments. In relation to its oversight function, Clause 4 empowers the Bank to determine the standards and guidelines for the operation of any payment system operating in The Bahamas or any payment instruments; establish and perform audit procedures; and impose administrative sanctions.</p>
<p>National Payment System Policy (Part I, Clause 6)</p> <p>“6. Bank to oversee national payment system policy.</p> <p>(1) The Central Bank shall formulate, adopt and monitor the implementation of a national payment system policy for The Bahamas.</p>	<p>Clause 6 of the Bill empowers the Bank to establish and monitor a national payment system policy which must be made public by the Bank. The Policy must be designed to inter alia, promote the safety and efficiency of payment systems and to control risks associated with payment systems, facilitate cooperation among participants and promote competition in the payment services market.</p>

Key Provisions in the Bill	Rationale for the Provision
<p>(2) The Bank shall make public the Policy adopted.</p> <p>(3) The Bank shall design the Policy primarily to-</p> <ul style="list-style-type: none"> (a) facilitate the overall stability of the financial system of The Bahamas; (b) promote the safety and efficiency of payment systems; (c) control risk; (d) contribute to the promotion of competition in the market for payment services; (e) contribute to the protection of payment system users; and (f) enhance other aspects of the public interest. <p>(4) The Bank shall, in pursuance of the Policy objectives stated in subsection (3), facilitate-</p> <ul style="list-style-type: none"> (a) the interaction of its clearing and settlement systems and related arrangements with other systems or arrangements connected with the exchange, clearing or settlement of payments or securities; (b) the development of new methods and technologies for payments and the transfer of securities; and (c) the cooperation among all participants in the evolution of payment systems and the provision of money transmission services. 	

Key Provisions in the Bill	Rationale for the Provision
<p>(5) The Bank shall, in promoting the safety and efficiency of the national payment system, cooperate with central banks of other countries and other relevant domestic authorities.</p> <p>(6) The Bank may, in pursuance of its obligations under subsection (5), undertake commitments under memoranda of understanding and or other instruments and, unless prohibited by law, adopt joint measures.”</p>	
<p>Establishment of National Payments Committee (Part II, Clause 7)</p> <p>“7. Establishment of National Payments Committee.</p> <p>(1) There is established for the purposes of this Act a committee to be known as the National Payments Committee.</p> <p>(2) The Committee shall act as an advisory body to the Bank in the exercise of its oversight function in respect of the national payment system.</p> <p>(3) The Committee shall support the achievement of sound and efficient payment systems in The Bahamas and serve as a forum for cooperation to maintain orderly conditions in regional and international systems.</p> <p>(4) The Committee shall comprise –</p> <p>(a) the Bank, whose representative shall also act as chairman of the Committee;</p> <p>(b) such other governmental bodies regulating or in any other way involved in payments activities and the financial markets as the Bank may determine;</p>	<p>A National Payments Council or NPC, was established in May 2003 with the objective of facilitating the modernization of the national payments system and has been meeting on an informal basis, from time to time, to address issues relating to the Bahamas Inter-bank Settlement System (the BISS) and the Automated Clearing House (the ACH).</p> <p>Clause 7 of the Bill provides for the formal establishment of the NPC (which will be known as the National Payments Committee), to act as an advisory body to the Central Bank in the Bank’s role as the regulator of payment systems. Membership in the NPC currently comprises senior representatives from the Central Bank and the Clearing Banks Association. Clause 7 also provides that the Bank, through its representative, shall act as Chairman of the NPC and that the Bank shall serve as the secretariat for the NPC. It is anticipated that as the scope of payments activities broadens, membership in the NPC will expand to include other key stakeholders such as governmental bodies that regulate or which are in any other way involved in payments activities and the financial markets; major financial institutions, or their national associations, that are participants in payment systems; and other persons approved by the Committee that are involved in the clearing and settlement of payments or securities or in the financial markets.</p>

Key Provisions in the Bill	Rationale for the Provision
<p>(c) major financial institutions, or their national associations, that are participants in payment systems;</p> <p>(d) other persons approved by the Committee that are involved in the clearing and settlement of payments or securities or in the financial markets.</p> <p>(5) The Bank may issue byelaws in respect of the –</p> <p>(a) composition of the Committee;</p> <p>(b) the competences, working procedures and timing of meetings of the Committee;</p> <p>(c) eligibility requirements for individuals and financial institutions; and</p> <p>(d) all other matters relevant to the operations and functions of the Committee.</p> <p>(6) The Bank shall serve as the secretariat of the Committee.”</p>	
<p>Approval of domestic payment systems (Part II, Clauses 8 & 10)</p> <p>“8. Approval required for domestic payment systems.</p> <p>(1) No person shall, after this Act comes into force, organise, establish, operate or participate in a proposed domestic payment system unless –</p> <p>(a) application is made to the Bank for approval; and</p> <p>(b) the Bank grants approval in writing of such proposed payment system.</p> <p>(2) Every clearing house of an existing payment system shall,</p>	<p>The proposed provisions give the Central Bank authority to approve any proposed or existing domestic payment system and to withdraw such approval by order, where it is of the view that a system is being operated in a manner that is detrimental to the interests of the participants or customers of that system or to the financial system of The Bahamas.</p>

Key Provisions in the Bill	Rationale for the Provision
<p>within three months after this Act comes into force –</p> <p>(a) make application to the Bank to continue its operations; or</p> <p>(b) cease to operate.</p> <p>(3)</p> <p>(4)</p> <p>(5)"</p> <p>“10. Withdrawal of approval.</p> <p>(1) The Bank may where it is of the view that a system is being operated in a manner that is detrimental to the interests of the participants or customers of that system or to the financial system of The Bahamas, by order withdraw any approval granted under section 9.</p> <p>(2)</p> <p>(3)"</p>	
<p>Finality of Payments and Protection of Designated Systems (Part III, Clauses 11 and 12)</p> <p>“11. System rules and finality of payments.</p> <p>(1) Notwithstanding any provision of any statute or other law of The Bahamas-</p> <p>(a)</p> <p>(b)</p> <p>(c) where the system rules of a designated system provide that the settlement of a payment obligation through an entry to or a payment out of a settlement account of a participant, a clearing house or a central counter-party at the Bank is final and irrevocable, the entry or payment, as the case may be, shall not be reversed, repaid or set aside.</p>	<p>The Bill provides for the finality of payments cleared through a designated payment system and protects payments entered into the system from being unwound in the event of the insolvency of a system participant.</p>

Key Provisions in the Bill	Rationale for the Provision
<p>(2) An entry to or a payment out of the settlement account of a participant, a clearing house or a central counter-party at the Bank made to settle a payment obligation in accordance with the rules of a designated system shall not be the subject of any provision or order that operates as a stay of that activity.</p> <p>(3) The rights and remedies of a participant, a clearing house, a central counter-party or the Bank in respect of collateral granted to it as security for a payment or the performance of an obligation incurred in a designated system shall not be the subject of any stay, provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.</p> <p>(4)</p> <p>(5)</p> <p>(6)"</p> <p>“12. Protection from insolvency proceedings.</p> <p>(1) Insolvency proceedings commenced against a participant shall not have retroactive effect on the rights and obligations of a participant which arose from, or in connection with, its participation in a designated system before the commencement of such insolvency proceedings.</p> <p>(2)</p> <p>(3) Transactions valid, enforceable, binding against liquidators and or third parties, and which shall not be challenged on any ground whatsoever, include -</p>	

Key Provisions in the Bill	Rationale for the Provision
<p>(a) transfer orders, and the payments and settlements resulting from such transfer orders, which have been entered into a designated system in accordance with its rules prior to the moment of the commencement of insolvency proceedings even if the payment or settlement took place after the moment of commencement of insolvency proceedings; and</p> <p>(b) the netting of transfer orders and of the debts and obligations resulting from such transfer orders when the former have been entered into a designated system in accordance with its rules prior to the moment of the commencement of insolvency proceedings even if the netting took place after the moment of commencement of insolvency proceedings.</p> <p>(4)</p> <p>(5)</p> <p>(6)"</p>	
<p>Electronic Presentment of Cheques (Part IV, Clause 14)</p> <p>“14. Truncation of cheques.</p> <p>(1) A cheque may, in order to facilitate electronic processing of payment instruments, in particular by way of multilateral clearing procedures, be presented for payment to the banker on whom it is drawn by notification of the cheque’s essential features by-</p> <p style="padding-left: 40px;">(a) physical presentation of the cheque; or</p> <p style="padding-left: 40px;">(b) electronic or other means, including electronic transmission of the image of the cheque.</p> <p>(2)</p> <p>(3)"</p>	<p>Part IV of the Bill provides for cheque truncation and the use or presentment of an electronic image of a cheque called an Image Replacement Document (“IRD”) for payment instead of a physical cheque, to facilitate settlement of funds through the ACH. This process is known as cheque truncation.</p> <p>As the Bills of Exchange Act currently provides that cheques must be physically presented for payment at the proper place, the Clearing Banks continue to meet weekly at the Central Bank for the physical exchange of cheques. Clause 14 of the Bill seeks to limit the application of the Bills of Exchange Act in this regard and facilitates the presentation of cheques by electronic means. With the enactment of the Bill and the proposed amendment to the Bills of Exchange Act, the Clearing Banks will be able to utilize the cheque truncation system and will no longer be required to exchange physical cheques with each other. Bank customers will</p>

Key Provisions in the Bill	Rationale for the Provision
<p>(4) There shall be no requirement for presentment at the proper place or at a reasonable hour where a cheque is presented for payment under this section.</p> <p>(5)</p> <p>(6)</p> <p>(7) For the avoidance of doubt, any payment made upon presentment in accordance with this Part shall not be taken to have been made outside of the ordinary course of business, in bad faith, or negligently, by reason only that it is made by electronic or other means rather than by physical presentation of the cheque itself.”</p>	<p>benefit from a more efficient cheque clearing system which will enable them to access their funds more quickly.</p>
<p>Designation of Systems (Part V, Clauses 16 and 17)</p> <p>“16. Power of Bank to designate systems.</p> <p>(1) The Central Bank may, by order published in the Gazette, designate a system for the purposes of this Act as a designated system.</p> <p>(2) The Central Bank shall, when considering whether to designate a system, take the following factors into account -</p> <p>(a) whether a disruption in the operations of the system could -</p> <p>(i) trigger, cause or transmit further disruption to participants or systemic disruption to the financial system of The Bahamas;</p> <p>(ii) affect public confidence in payment systems or the financial system of The Bahamas;</p> <p>(b) the best interests of –</p> <p>(i) system participants and their customers; or</p> <p>(ii) the financial system of The Bahamas.”</p>	<p>While the Bill provides that the Central Bank’s approval is required to organise, establish, operate or participate in any proposed or existing domestic payment system, Clauses 16 and 17 of the Bill empower the Central Bank to designate payment systems that are considered systemically important for financial stability and public confidence and to withdraw such designation at any time.</p> <p>In determining whether or not to designate a system, Clause 16 provides that the Bank shall take the following factors into account:</p> <ul style="list-style-type: none"> • whether a disruption in the operations of the system could trigger, cause or transmit further disruption to participants or systemic disruption to the financial system of The Bahamas; • whether a disruption in the operations of the system could affect public confidence in payment systems or the financial system of The Bahamas; • the best interests of system participants and their customers; and • the best interests of the financial system of The

Key Provisions in the Bill	Rationale for the Provision
<p>(3)</p> <p>(4) The Central Bank shall, prior to the designation of a system, consult the clearing house, participants of the system, and the settlement institution of the system and may consult interested parties, with respect to the effects of such designation.</p> <p>(5)</p> <p>(6)"</p>	<p>Bahamas.</p> <p>Prior to designation, the Bank will enter consultations with the clearing house, participants, settlement institution and all interested parties with respect to the designation.</p> <p>As the extent of the Bank's oversight will be proportionate to its assessment of the systemic risks posed by a system, systems which are designated by the Bank as being systemically important payment systems or SIPS, and their clearing houses, will be subject to enhanced supervision by the Central Bank.</p>
<p>"17. Withdrawal of designation of system.</p> <p>(1) Subject to subsection (2), the Central Bank may by order published in the Gazette withdraw the designation of any designated system at any time if, in the opinion of the Bank, the factors specified in subsection (2) of section 16 no longer apply.</p> <p>(1) The Central Bank shall, prior to the withdraw of the designation of a system, give the clearing house and the settlement institution of the system an opportunity to be heard."</p>	<p>According to the Basel Committee's Report on Payment and Settlement Systems' entitled, <i>Core Principles for Systemically Important Payment Systems</i> (the CPSIPS Report), a payment system is regarded as being systemically important where, if the system were insufficiently protected against risk, disruption within it could trigger or transmit further disruptions amongst participants or systemic disruptions in the financial area more widely. The CPSIPS Report considers systemic importance to be determined largely by the size or nature of the individual payments or their aggregate value. Systems handling specifically large-value payments like the BISS, would normally be considered systemically important as well as those systems, which process payments of various values, which can also trigger or transmit systemic disruption by virtue of certain segments of its traffic, such as the ACH.</p> <p>Having adopted the Core Principles as the basic standards governing its oversight of SIPS, the Bank shall, in the exercise of its oversight function, identify those systems operating within the Bahamas' financial system which as a result of their potential to trigger or transmit systemic disruption or create systemic risk, are considered systemically important. The Central Bank considers that there is systemic risk where the inability of a participant to meet its obligations in a payment system could cause:</p>

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	<ul style="list-style-type: none"> • other participants in the payment system to be unable to meet their obligations as they become due; • financial institutions in other parts of the financial system to be unable to meet their obligations as they become due; or • the system’s clearing house to become unable to meet its obligations as they become due. <p>Given their importance to the financial system as a whole, the Central Bank intends to designate both the ACH and the BISS as systemically important payment systems once the Bill is enacted.</p>
<p>Imposition of access regime, conditions and restrictions (Part VI, Clause 21)</p> <p>“21. Power of Bank to impose, vary, or revoke conditions and restrictions.</p> <p>(1) The Central Bank may by written notice impose on the participant or clearing house of a designated system, such conditions or restrictions as the Bank thinks fit.</p> <p>(2) The Central Bank may by written notice vary or revoke at any time any condition or restriction imposed pursuant to subsection (1), as the Bank thinks fit.</p> <p>(3) The Central Bank may, without affecting the generality of subsection (1) or (2), impose conditions or restrictions relating to—</p> <p>(a) the conditions to be met by any person in order to have access to, or to become a participant of, the designated system;</p> <p>(b).....</p>	<p>Clause 21 of the Bill empowers the Central Bank to impose an access regime so as to determine the rules for participation in a designated payment system. The Bank will also be empowered to impose conditions or restrictions on the participants or clearing houses of designated payment systems. The Central Bank will consider the interests of the public, the clearing house and current participants of the designated payment system, and such persons as may require access to the designated payment system in the future before imposing an access regime.</p>

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<p>(c)</p> <p>(d)</p> <p>(6) The Central Bank shall, in considering whether to impose, vary or revoke a condition or restriction under subsection (1) or (2), have regard to the following:</p> <p>(a) whether the imposition, variation or revocation of the condition or restriction in respect of the designated system would be in the interests of the public;</p> <p>(b) the interests of the current participants and clearing house of the designated system;</p> <p>(c) the interests of persons who, in the future, may require or desire access to the designated system; and</p> <p>(d) such other matters as the Bank may consider to be relevant.”</p> <p>(7)</p>	
<p>Central Bank Oversight of Designated Systems (Part VI)</p> <p>“19. Power of Bank to issue Directions.</p> <p>(1) The Central Bank may issue written directions of a general or specific nature to any participant or class of participants or clearing house of a designated system in any case where the Bank is of the opinion that —</p> <p>(a) it is necessary or expedient for ensuring the integrity or proper management of a designated system;</p> <p>(b) it is necessary or expedient for the effective administration of the Act;</p>	<p>The Central Bank will have supervisory powers over the participants and clearing houses of designated payment systems, including the power to inspect the books, conduct on-site examinations and off-site supervision, and to require the submission of periodic reports. The Bank will also be empowered to issue directions to the participants or clearing houses of designated payment systems.</p>

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<p>(c) it is otherwise in the interests of the public or a section of the public;</p> <p>(d) a person is engaged in, or is about to engage in any unsafe, unsound or unfair practice in the operation of a system; or</p> <p>(e) a person has contravened or failed to comply with, or is likely to contravene or fail to comply with the provisions of this Act, or any rule, regulation, instruction, direction or order given under it or any other written law which in the opinion of the Bank, relates to systems or any category of system.</p> <p>22. Power of Bank to inspect.</p> <p>(1) The Central Bank may, for the purpose of satisfying itself that this Act or any other relevant law is being complied with, conduct on-site examinations and off-site supervision of the business of a participant or clearing house of a designated system.</p> <p>(2) The Bank shall, in the performance of its duties under this Act, be entitled at all reasonable times to -</p> <p>(a) have access to such accounts, records, books and documents of any participant or clearing house;</p> <p>(b) request from a participant or clearing house or any of their managers or agents such information or explanation as the Bank considers appropriate;</p> <p>(c) call upon the participant or clearing house for such auditor's reports, working papers, information or explanation as the Bank considers appropriate;</p>	

Key Provisions in the Bill	Rationale for the Provision
<p>(d) require that the auditor of a participant or clearing house, as the case may be, report to the Bank on the extent of the procedures of the auditor in respect of any examination undertaken by them;</p> <p>(e)</p> <p>(f)"</p>	
<p>Requirements for Clearing Houses (Part VII, Clause 23)</p> <p>“23. Duty of clearing house to notify Bank of certain events.</p> <p>(1) Every clearing house shall, with respect to its designated system, provide the Central Bank with thirty days notice in advance of any significant change intended to be made in relation to the designated system.</p> <p>(2) For the purposes of subsection (1), a significant change shall include but not be limited to a change affecting –</p> <p>(a) any document including its Memorandum of Association, and the relevant resolutions, agreements, rules and procedures relating to the formation, establishment, constitution, governance, administration and operation of the designated system; or</p> <p>(b) the operation of the designated system.”</p> <p>(3)"</p>	<p>Clause 23 of the Bill requires the clearing house of a designated payment system, to provide the Central Bank with prior notification of any significant changes to the operations, administration, rules and procedures of a designated payment system or other documentation in relation to any changes to the system.</p>
<p>Information gathering powers of the Bank (Part IX)</p> <p>“31. Power to obtain information.</p>	<p>The Central Bank will have the power to gather information from all relevant parties in connection with any payment system (whether designated or not) in The Bahamas, including the clearing houses and participants of a payment system. The Bank</p>

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<p>(1) The Central Bank may, by notice in writing, require any participant or clearing house to supply to the Bank, in such form and within such time period as the Bank may determine, such information as the Bank considers necessary to enable it to carry out its functions under this Act.</p> <p>(2) The Bank may, as it may reasonably require in connection with the exercise of its functions under this Act and the regulatory laws, at all reasonable times by notice in writing require the production within a stated time of specified information or information of a specified description, or of specified documents or documents of a specified description, from -</p> <p>(a) a person regulated under the regulatory laws; (b) a clearing house; (c) a participant or indirect participant in a system; (d) a connected person; or (e) a person reasonably believed to have information relevant to an enquiry by the Bank.</p> <p>(3)</p> <p>(4)</p> <p>(8).....”</p>	<p>may call for information whenever it considers it necessary to enable it to carry out its functions and duties under the draft Act or the Banks and Trust Companies Regulation Act, 2000.</p>
<p>Licensing Regime for Issue of Electronic Money (Part VIII, Clauses 26 and 29)</p> <p>“26. Licence required to issue electronic money</p> <p>(1) No person other than a bank, bank and trust company or trust company licensed under the regulatory laws shall, after this Act comes into force, commence the issue of electronic money without having applied for and obtained the grant of a license from the Central Bank.</p>	<p>Pursuant to Clause 26 of the Bill, all persons other than licensed banks, bank and trust and trust companies will be required to obtain a licence from the Central Bank to issue electronic money.</p> <p>Electronic money is defined in Clause 29 of the Bill as a stored value facility (SVF) in which a record of the funds or value available to the consumer for multipurpose use is stored on an electronic device (for example, a chip card or a hard drive in a personal computer), and which is in the consumer’s possession. Under the provisions of the Bill, non-bank issuers of multi-purpose</p>

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<p>(2) Every person issuing electronic money at the time this Act comes into force shall, within four months of the coming into force of this Act, -</p> <ul style="list-style-type: none"> (a) make an application to the Bank for the grant of a licence to issue electronic money; or (b) cease to issue electronic money. <p>(3)</p> <p>29. Definition of “electronic money”.</p> <p>For the purposes of this Part, “electronic money” means monetary value represented by a claim on the issuer, which is—</p> <ul style="list-style-type: none"> (a) stored electronically (b) issued on receipt of funds for the purpose of making payment transactions but does not amount to a deposit under the regulatory laws; and (c) accepted as a means of payment by persons other than the issuer.” 	<p>SVFs must be licensed by the Central Bank and are subject to the information-gathering powers of the Bank. Existing issuers of these products will be given a grace period of four months from the date on which the Payment Systems Act comes into force to apply to the Central Bank for a licence to issue e-money.</p> <p>The Central Bank does not intend to subject issuers of single purpose prepaid card products such as gift cards that may be purchased from a single issuer and are redeemable only by that issuer; or prepaid cards that are used only, for example, to pay for bus fare, to the licensing requirements under the Bill. The Bank’s approval will not be required to issue these single purpose SVFs.</p>

CONCLUSION

Mr. Speaker, the economy of The Bahamas is not what it was fifty years ago. It remains relatively small when compared for instance to its neighbor in the north but it is much larger than it used to be. In fact, in 1973, our Gross Domestic Product was less than \$1 billion; today it is of the order of \$7.8 billion. It is transacted commerce in ways today in ways that we might not have fathomed at Independence. Things have changed since then, and continue to do so. We must keep pace and we are making every effort to do just that. I remain fully confident that the steps that we are taking today, the things that we are doing today will yield benefits to our people long into the future. Even if the muddy waters of our present circumstances or the noisome pestilence of our prevailing political marketplace tries to suggests otherwise, the fact remains that the efforts we are making today will triumph to the benefit of Bahamians born and unborn. INDEED, IT MAY BE THE CASE THAT, AS THE BOOK OF WISDOM SAYS, “WISDOM WILL BE JUSTIFIED OF HER CHILDREN”.