

Policy Proposals for
the Legal
Framework for the
Regulation of Retail
Payment Service
Providers –
A Consultation Paper



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Preamble

This consultation paper provides Bank of Jamaica's policy proposals for the legal and regulatory framework for the supervision of Payment Service Providers (PSPs) that are not deposit-taking institutions. The proposed legal framework as discussed in this paper will close the existing gaps in the current laws. The paper is being circulated to stakeholders to facilitate industry consultation, discussion and feedback on the proposed legal and regulatory framework.

1. Responding to this Consultation

Bank of Jamaica (the Bank) invites comments on the proposal for a legal and regulatory framework for PSPs. If relevant, please identify the organization you represent when providing your comments.

Questions for industry comments:

- What is your general view on these proposals? In answering please consider the objectives, policy, etc.
- What could be the best approaches to considering how to address the inclusion of PSPs in the Payment Clearing and Settlement Act (PCSA)?
- Are there any broader questions that may be addressed?

You are invited to draw upon your experiences as appropriate.

Comments are most helpful if they:

- indicate the clause and specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/rationale proposed; and
- describe any choices Bank of Jamaica (the Bank) should consider.

2. Submission of Responses

Comments on the proposals will commence Monday, 14 December 2020 and the window for receiving responses will be open up to close of business on Friday, 15 January 2021. Submission of responses are to be sent by email to PSPconsultation@boj.org.jm

The Bank reserves the right to publish any comments you provide, unless you expressly request otherwise at the time of making any comments.

This consultation paper is available on the Bank of Jamaica's website at www.boj.org.jm.

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Bank of Jamaica
Nethersole Place,
Kingston, Jamaica
(email PSPconsultation@boj.org.jm)

1. The Purpose of this Consultation Paper

1.1 The purpose of this paper is to outline the proposed amendments to the Payment Clearing and Settlements Act (PCSA), thereby enhancing the Bank's supervisory powers over entities which provide electronic retail payment services, which are subsequently referred to as Payment Service Providers (PSPs).

2. General Background

2.1 The Bank, as the payment system overseer, is committed to the development of an enabling legislative framework that will, create an enabling environment to drive innovation in payment services while reducing risk and protecting consumers as well as promote financial inclusion. Given the impact of pandemics such as COVID-19, the Bank seeks to accelerate the pace of adoption of digital payment services.

2.2 The PCSA will be amended to give the Bank effective oversight powers, which will be supported by supervisory guidance, where appropriate. The amendments are also intended to bring Jamaica's laws on payment services regulation in line with international requirements for payment oversight and AML/CFT supervision.

3. Proposed amendments to the Payment Clearing and Settlement Act (PCSA)

3.1 Definitions

Section 2 of the PCSA, the interpretation section, will be amended by inserting the following definitions:

- a) **“Agent”** means an individual or a legal person that acts on behalf of a licensed PSP that has been contracted through an agency agreement to provide payment services.¹ - NEW
- b) Section 2 (a) (i) definition of **“Clearing settlement system or system”** should be deleted and replaced with, “a company, corporation, association, partnership, agency, organization or other entity or person that provides clearing or settlement services for a payment system”.

¹ This agency agreement has to be approved by the Bank.

- c) **“Custodian account”** means a special purpose account or pooled account to hold customer funds in trust by the PSP with a deposit taking institution (DTI) licensed under the Banking Services Act. - NEW
- d) **“National Payments System”** means the system referred to in Bank of Jamaica Act comprising rules and procedures governing the establishment and operation of payment systems within Jamaica and their oversight by the Bank. - NEW
- e) **“Participant”** means any person who is recognised in the rules of a payment system as being eligible to settle payments through the system with the other participants but does not include a user or customer of a participant who instructs or receives payment over the system. – REPLACING EXISTING DEFINITION
- f) **“Payment Instrument”** means:
 - i. any instrument, whether tangible or intangible, which enables a person to obtain money, goods or services or to otherwise make payment or transfer money; and
 - ii. includes cheques, funds transfers initiated by any paper or paperless device such as automated teller machines, points of sale, internet and mobile phone and payment cards, including cards involving storage of electronic money”. – NEW
- g) **“Payment Service Provider”** means an entity providing payment services. The term does not include entities that are licensed as DTIs under the BSA.- NEW
- h) **“Payment Services”** - means all services related to:
 - i. the execution of payment instructions;
 - ii. the issuing or acquisition of payment instruments (including cash and non-cash); and
 - iii. any other services related to the transfer of money or value, including issuance of electronic money.

Without prejudice to the generality of the foregoing, the term payment services shall include:

- i. services related to placement of cash or cash withdrawals on a payment account, as well as the related operations of servicing of a payment account;
- ii. execution of payment transactions, including transfers of funds on a payment account with the user’s payment service providers or with another payment service provider for:
 - a. execution of direct debits, including one-off direct debits; and

- b. execution of payment transactions through a payment card or other similar instruments;
 - iii. Issuing and/or acquiring of payment instruments;
 - iv. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods or services. - NEW
- i) **“Payment Systems”** means any formal arrangements with common rules and standardized arrangements for the execution of transfer orders between participants, including a clearing house, the settlement of payments relating to securities or for the processing, clearing or settling of payment transactions or payment messages between –
 - i. Three or more participants; or
 - ii. two or more participants provided the formal arrangement between these participants is designated by the Bank as a payment system. - NEW
- j) **“Payment Transactions”** means any act initiated by the payer or the payee of placing, transferring or withdrawing funds irrespective of any underlying obligations between the payer and the payee and includes payment messages. - NEW
- k) **“Settlement”** means an act that discharges obligations in respect of funds or securities transfers between two or more parties. - NEW
- l) **“Supervisor”** means the Governor of the Bank of Jamaica acting in the capacity as the Supervisor of payment systems and PSPs. - NEW

4. Amendments to existing Provisions in the PCSA

4.1 Section 3 (2) Bank to exercise oversight functions over clearing and settlement systems

Add the following: “to facilitate –

- 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.”

4.2 Section 24 (Duty of Confidentiality on the part of the Bank and its staff)

This section shall be amended to introduce a new subsection 4 which states that, “the Bank shall be permitted to share information with the members of the statutory committees established under the Bank of Jamaica Act, and any other regulatory body with which the Bank has entered into an information-sharing arrangement.”

5. Insertion of a new Part in the Act to provide Enabling Provisions for Supervisory Oversight of Payment Service Providers and agents – Part IV (NEW)

The PCSA shall be amended by including a new Part IV, which shall treat with the Bank’s mandate as regulator of PSPs and their agents.

5.1 Section in Part IV (mandate and scope of supervisory powers) - NEW

A new section shall be inserted which states the Bank shall be responsible for the supervision and oversight of payment services, payment service providers and their agents.

5.1.1 Licensing of Payment Service Providers – NEW

The PCSA shall be amended to include a new section which treats with the licensing of payment service providers.

The PCSA shall specify that no entity shall provide payment services or carry on the operations of a payment service provider, unless that entity has been licensed by the Bank.

The deposit-taking institutions are not required to be licensed under the PCSA as PSPs.

5.1.2 Oversight Powers of the Bank for PSPs

The Bank shall have the power to-

- a) Supervise the operations of licensed payment service providers
- b) Issue licences to payment service providers;
- c) Register agents of payment service providers;
- d) Conduct onsite and offsite examinations and inspections of the premises of payment service providers and their agents;
- e) Carry out investigations in relation to the activities of licensed and unlicensed payment service providers;
- f) Obtain warrants in support of such investigations;
- g) Request information and/or data from licensed payment service providers and their agents;
- h) Obtain injunctions in support of the discharge of the Bank's supervisory functions under this Act and any Regulations;
- i) Enforce the provisions of this Act and the Regulations, using such powers as are prescribed, including but not limited to issuing warning letters, notices, directions, cease and desist orders, and suspension or revocation of licences;
- j) Impose fixed penalties for specified offences under this Act and any attendant Regulations;
- k) Issue supervisory guidance in support of its functions under this Act and the regulations, including but not limited to rules, codes, non-objection letters, guidelines, guidance notes, bulletins, notices and supervisory rules;
- l) Enter into such arrangements for information sharing, including any memorandum of understanding with other regulatory agencies within or outside Jamaica in relation to the sharing of information regarding the payment services industry and payment systems;
- m) Develop Codes of Conduct for the market behaviour of payment service providers and their agents;
- n) Issue regulations for matters under this Act which can impose administrative penalties, subject to the approval of the Minister and the affirmative resolution of Parliament;
- o) Obtain from the Supreme Court, orders of restitution on behalf of customers of licensed PSP; and
- p) Disclose information and data in relation to any PSPs and its agents to the Minister, members of the Financial System Stability Committee and such other entities as prescribed in this Act and attendant Regulations;

- q) Publish registers and public notices about PSPs, their agents and any enforcement action taken against such PSPs and their agents;
- r) Consider and determine the establishment of locations of payment service providers;
- s) Exercise such other powers as are necessary for the Bank's effective discharge of its mandate under this Act and Regulations; and
- t) Make regulations concerning the foregoing².

5.2 Eligibility Requirements for an applicant to be granted a licence

- a) In making a determination to grant a licence, the Bank shall have regard to the licensing requirements and other matters set out in the PCSA, the attendant regulations and any supervisory guidance.
- b) The Bank will not grant a licence unless it is satisfied that each person who is a substantial shareholder, director, officer or key employee is a fit and proper person.
- c) Where a licence has not been granted, the applicant shall have the right to appeal the decision to the Supervisor.

5.3 Duration of the licence

The licence shall be an annual licence, which shall be granted on payment of the licensing fee as prescribed by the Bank.

5.4 Suspension or Revocation of Licence of a Payment Service Provider -NEW

5.4.1 As part of enhancing the Bank's enforcement powers under the PCSA, a new section will outline the circumstances in which the Bank may suspend or revoke the licence of a payment service provider. These circumstances shall include:

- a) failure to commence operations within 6 months after the licence is granted, unless approved by the Bank;
- b) cessation of business operations in Jamaica, or the commencement of receivership, voluntary winding up or insolvency proceedings in relation to the business of a licensed payment service provider;
- c) failure to comply with the provisions of this Act or any condition attached to the licence;

² Details of the matters to be addressed in regulations are in the Appendix.

- d) failure to comply with any direction or enforcement action taken by the Bank;
- e) conducting business in a manner detrimental to the best interests of the public; or
- f) any change in the significant shareholding³ of the licensed payment service provider, whether due to merger/amalgamation or acquisition of a controlling interest in shares.

5.4.2 Where the Bank exercises its discretion to suspend the licence of a payment service provider:

- a) The Bank shall state the duration of the suspension, and may impose conditions for the reinstatement of the licence.
- b) The Bank will give written notice of its decision to suspend or revoke the licence in such format and circumstances as may be prescribed.
- c) In the exercise of its powers to suspend or revoke a licence, the Bank may obtain an injunction to immediately freeze the accounts of the PSP and take possession of all the records of the PSP, to prevent dissipation of assets and destruction of records in order to protect the consumers.
- d) The PSP shall have the opportunity to be heard in relation to the decision to suspend or revoke the licence.

6. Imposition of Administrative Fines (Fixed Penalties/Civil Penalties) – NEW

The Bank will have the power to impose administrative fines (fixed penalties/civil penalties) on licensed PSPs for breaches of specified provisions in the Act or Regulations.

7. Duty to display licence – NEW

The PCSA shall be amended to require every licensed payment service provider to prominently display its licence at each licensed location. On the surrender or revocation of its licence, the PSP shall return the licence to the Bank.

³ Significant shareholding means 10% or more
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11 December 2020

8. Agents – NEW

The PCSA shall stipulate that a licensed payment service provider shall not provide payment services through any agent, unless that agent is authorised and registered by the Bank to carry on payment services at the relevant location.

9. Compliance with existing Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) Legislation – NEW

All licensed PSPs shall comply with the requirements of applicable AML/CFT legislation as are imposed on those financial institutions that are designated as regulated businesses under the Proceeds of Crime Act. The failure to comply with the requirements of any applicable AML/CFT legislation shall be an offence and shall attract an administrative fine.

10. Exemption requirements - NEW

A new section shall be inserted which states that PSPs shall be exempt from section 22A of the Bank of Jamaica Act.

11. Transitional provision – NEW

On the effective date of the amendments to the PCSA, a person who was previously authorized by the Bank to provide payment services shall immediately apply to the Bank to be licensed as a PSP.

Should a person continue to provide payment services after the transitional period without a licence, the person commits an offence and is liable on conviction in the Parish Court to a fine of three million dollars.

12. Section 27 (Offences and Penalties) – ADDITION OF NEW SUBSECTIONS

- a) This section shall be amended to include a new subsection 3, which specifies “that where a person provides payment services or operates a payment service business without being a licensed payment service provider, that person commits an offence, which shall attract a criminal penalty of three million dollars.”

- b) A new subsection 4 should state that “the Bank shall have the power to impose administrative fines (i.e. fixed penalties/civil penalties) for the contravention of specified sections in a new Part IV⁴.”
- c) General Penalty Provision: Further, a new subsection 5 should be inserted in, which states that “every person who contravenes sections under Part IV or any regulations made under this Act in respect of which no special penalty is provided, shall be liable to an administrative fine not exceeding three million dollars.”

13. Section 29 (Regulation Making Power)

- a) This section shall be amended by deleting the existing provision and inserting a new subsection 1 which allows the Supervisor to make regulations in consultation with the Minister, subject to affirmative resolution, for giving effect to the provisions of this Act.
- b) A new subsection 2 which shall be inserted, that without prejudice to the foregoing, permits the Bank to make regulations to give effect to the mandate of the Bank and its supervisory powers in respect of payment service providers⁵.
- c) A new subsection 3 shall be inserted which states, “The Bank is to be given the power to prescribe penalties for the commission of such offences (including administrative fines) which exceed \$1 million in its regulations.”
- d) A new subsection 4 shall be inserted which states “The Bank may also issue supervisory guidance, bulletins, notices, guidelines and rules as it deems fit to give effect to the provisions of the Act and any attendant Regulations.”

⁴ The Bank will share with the stakeholders, its list of administrative penalties.

⁵ Matters to be addressed in regulations are specified in the Appendix

APPENDIX

1. The Bank may make regulations in the following areas;
 - a. Licensing requirements;
 - b. Electronic money;
 - c. Agents of licensed payment service providers;
 - d. Capital requirements;
 - e. Liquidity requirements;
 - f. Investigative powers;
 - g. Enforcement powers;
 - h. Consumer protection requirements;
 - i. Code of conducts for licensed payment service providers and their agents; and
 - j. Offences and penalties (including administrative fines/fixed penalties).