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EXPOSURE

## A BILL

## FOR

An Act to provide for the management, administration, operation, regulation, oversight and supervision of payments, clearing and settlement systems in Nigeria and for matters connected therewith.

Commencement ( )

BE IT ENACTED BY the National Assembly of the Federal Republic of Nigeria as follows:

### 1. Interpretation

In this Act, unless the context otherwise requires -

“**bank**” means a bank licensed under the Banks and other Financial Institutions Act or under the repealed Banking Act or any other prior legislation;

“**Bank**” means Central Bank of Nigeria;

“**Bankruptcy Act**” means the Bankruptcy Act No. 16, 1979;

“**Banks and other Financial Institutions Act**” means Banks and other Financial Institutions Act (Act No. 24 of 1991);

“**Board**” means the Board of the Bank referred to in section 6 of the Central Bank of Nigeria Act;

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

“**Central Bank of Nigeria Act**” means the Central Bank of Nigeria Act, 2007;

“**clear**” or “**clearing**” means the exchange of payment instructions between system participants with a view to reconciling and confirming payment instructions;

“**clearing system**” means a system whereby system participants can exchange data, documents and payment instruments and instructions relating to funds or securities transfers to other system participants;

“**Companies and Allied Matters Act**” means the Companies and Allied Matters Act, No. 20, 1990;

“**Director of Banking Operations**” means the Director of Banking Operations Department of Central Bank of Nigeria;

“**electronic funds transfer**” means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a bank to debit or credit an account maintained with that bank through electronic means and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfers initiated by telephone, internet and card payment;

“**Governor**” and “**the Deputy Governor**” means respectively the Governor and Deputy Governors of the Bank appointed under the Central Bank Act;

“**holding company**” means a holding company as provided in section 338(5) (a) of the Companies and Allied Matters Act;

“**money**” means notes and coins issued in accordance with section 20 of the Central Bank of Nigeria Act and any other currency being legal tender in Nigeria;

“**national payments system**” means the payment system as a whole, and includes any payments system, settlement system, clearing system and payments system arrangement used in the process of effecting payment between payers and beneficiaries;

“**netting**” means the determination by the system provider of the amount of money or securities, due or payable or deliverable, as a result of setting off or adjusting the payment obligations or delivery obligations among the system participants, including the claims and

obligations arising out of the termination by the system provider, on the insolvency or dissolution or winding up of any system participant or such other circumstances as the system provider may specify in its rules or regulations or bye-laws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

“**Officer(s)**” means officers and employees of the Central Bank of Nigeria;

“**payment**” means the partial or complete discharge of an obligation by its settlement in the form of transfer of funds, assets, or services equal to the monetary value of part or all of the debtor’s obligation;

“**payment clearing house**” means an arrangement between two or more system participants governing the clearing of payment instructions between those system participants;

“**payment instruction**” means any instruction, authorisation or order in any form, including electronic means, to effect a payment,

“**payment instrument**” means an instrument, authority or a process enabling a payer to issue a payment instruction;

“**payment obligation**” means an indebtedness that is owned by one system participant to another system participant as a result of clearing or settlement of one or more payment instructions relating to funds, securities or foreign exchange or derivatives or other transactions;

“**payments system arrangement**” means procedures and services for the processing of payment transactions;

“**payments system services**” means all services relating to payments systems, settlement system, clearing systems and payment system arrangements;

“**payments system**” means a system that enables payments to be effected between a payer and a beneficiary;

“**security**” means any asset as may be determined by the Bank, pledged by a system participant as collateral for meeting its settlement obligations;

“**service provider**” means a person registered as contemplated in section 3(2) of this Act as service provider;

“**settlement instruction**” means an instruction given to the settlement system by or on behalf of a system participant to effect settlement of a payment obligation or to discharge any other obligation of one system participant to another system participant;

“**settlement obligation**” means an indebtedness that is owed by a system participant to another system participant as a result of a settlement instruction;

“**settlement system**” means a system established and operated by the Bank to facilitate the transfer of funds for the discharge of payment and settlement obligations between system participants;

“**settlement**” means payment or discharge of outstanding obligation that a system participant owes to another system participant;

“**subsidiary**” means a subsidiary company as defined in section 338(1) (a) of the Companies and Allied Matters Act, and includes a subsidiary company of a subsidiary;

“**system participant**” means a bank or any other person participating in a payments system and includes the system provider;

“**system provider**” means a person who operates an authorised payments system.

## **AUTHORISATION OF PAYMENTS SYSTEMS**

### **2. Payments system not to operate without authorisation**

(1) No person, other than the Bank, shall commence or operate a payments system except in accordance with an authorisation issued by the Bank under the provisions of this Act:

Provided that nothing contained in this section shall apply to—

(a) the continued operation of an existing payments system on commencement of this Act for a period not exceeding six months from such commencement, during which period such operator shall apply to the Bank for authorisation to continue the business of payments system;

(b) any person acting as the duly appointed agent of another person to whom the payment is due;

(c) a company accepting payments either from its holding company or any of its subsidiary companies or from any other company which is also a subsidiary of the same holding company;

(d) any other person whom the Bank may, after considering the interests of monetary policy or efficient operation of payments systems, the size of any payments system or for any other reason, by notification, exempt from the provisions of this section.

(2) For the purposes of establishment and operation of clearing houses for a sound and efficient operation of payments system, the provisions of section 47 of the Central Bank of Nigeria Act shall apply.

### **3. Application for authorisation**

(1) Any person desirous of commencing or carrying on a payments system shall apply to the Bank for an authorisation under this Act.

(2) Any person, who is not a system participant and is desirous of providing payments system services, shall apply to the Bank to be registered as a service provider if that person meets the requirements and conditions set out in the Bank's rules.

(3) An application under this section shall only be made by a company duly incorporated in Nigeria.

(4) An application under sub-sections (1) and (2) of this Act shall be made in such form and in such manner and shall be accompanied by such documents and fees as may be prescribed by the Bank.

#### **4. Inquiry by the Bank**

The Bank upon the receipt of an application under section 3 of this Act and before an authorisation is issued under this Act, may make such inquiries as it may consider necessary or authorise any person on its behalf to conduct such inquiries for the purpose of satisfying itself about the genuineness of the particulars furnished by the applicant, its capacity to operate the payments system and the credentials of the participants or for any other reason it may consider necessary.

#### **5. Issue or refusal of authorisation**

(1) The Bank may, if satisfied, after any inquiry under section 4 of this Act that the application conforms with the provisions of this Act and the regulations made hereunder, issue an authorisation for operating the payments system under this Act having regard to the following:

(i) the need for the proposed payments system or the services proposed to be undertaken by it;

(ii) the technical standards or the design of the proposed payments system;



- (iii) the terms and conditions of operation of the proposed payments system including any security procedure;
- (iv) the manner in which transfer of funds may be effected within the payments system;
- (v) the procedure for netting of payment instructions or of effecting the payment obligations under the payments system;
- (vi) the financial status, experience and integrity of the applicant;
- (vii) interests of consumers, including the terms and conditions governing their relationship with payments system providers;
- (viii) monetary and credit policies; and
- (ix) such other factors as may be considered relevant by the Bank.

(2) An authorisation issued under sub-section (1) shall be in such form as may be prescribed and shall —

- (a) state the date on which it takes effect;
- (b) state the conditions subject to which the authorisation shall be in force;
- (c) indicate the fees, if any, to be paid for the authorisation to be in force;
- (d) if it is considered necessary, require the applicant to furnish such security and risk management framework for the proper conduct of the payments system under the provisions of this Act;
- (e) continue to be in force till the authorisation is revoked.

(3) Where the Bank considers that the application for authorisation should be refused, it shall give the applicant a written notice to that effect stating the reasons for the refusal:

Provided that no such application shall be refused unless the applicant is given a reasonable opportunity of being heard.

(4) Every application for authorisation shall be processed by the Bank as soon as possible and an endeavour shall be made to dispose of such

application within six months from the date of filing of such application.

## **6. Revocation of authorisation**

(1) If a system provider:

- (i) contravenes any provisions of this Act;
  - (ii) does not comply with the regulations;
  - (iii) fails to comply with the orders or directions issued by the Bank;
- or
- (iv) operates the payments system contrary to the conditions subject to which the authorisation was issued, the Bank may, by order, revoke the authorisation given to such system provider under this Act:

Provided that no order of revocation under sub-section (1) of this section shall be made:

- (a) except after giving the system provider a reasonable opportunity of being heard; and
- (b) without prejudice to the direction of the Bank to the system provider that the operation of the payments system shall not be carried out, until the order of revocation is issued.

(2) Nothing contained in sub-section (1) of this section shall apply to a case where the Bank considers it necessary to revoke the authorisation given to a payments system in the interest of the monetary policy of the country or for any other reasons to be specified by it in the order.

(3) The order of revocation issued under sub-section (1) shall include necessary provisions to protect and safeguard the interests of persons affected by such order of revocation.

(4) Where a system provider becomes insolvent or dissolved or wound up, such system provider shall immediately notify the Bank and thereupon the Bank shall take such steps as it deems necessary to

revoke the authorisation issued to such system provider to operate the payments system.

## **7. Functions of the Bank and Payments System Management**

### **Committee**

(1) The Bank shall be the designated authority for the regulation and supervision of all payments systems under this Act.

(2) The Bank may, for the purposes of exercising the powers and performing the functions conferred on it by or under this Act, by regulation, constitute a committee of its Board to be known as the Payment System Management Committee (hereinafter referred to as the Committee) for the regulation and supervision of Payments and Settlement Systems.

(3) The Committee constituted under sub-section (2) of this section shall consist of the following members, namely:

- (a) the Governor of the Bank, who shall be the Chairman;
- (b) the Deputy Governor Operations of the Bank, who shall be the Vice-Chairman;
- (c) three other Deputy Governors of the Bank;
- (d) not more than three non-executive Directors of the Bank to be nominated by the Governor;
- (e) the Accountant General of the Federation
- (f) three representatives to be nominated by the Bankers' Committee;
- (g) three representatives of the service providers to be nominated by the Bank;
- (h) the Director of Banking Operations; and
- (i) the Registrar of the Chartered Institute of Bankers to serve as the secretary to the Committee.

(4) The powers and functions of the Committee constituted under sub-section (2) of this section, the time and venue of its meetings, the procedure to be followed at such meetings, (including the quorum at such meetings) and other matters incidental thereto, shall be as may be prescribed by regulations by the Bank.

## **POWERS OF THE BANK**

### **8. Power to determine standards**

(1) The Bank may, from time to time by guidelines, prescribe—

(a) the format, mode, manner, value and the shape of payment instructions;

(b) the timings to be maintained by payments systems;

(c) the manner of transfer of funds within the payments system, either through paper, electronic means or in any other manner, between banks or between banks and other system participants;

(d) such other standards to be complied with by the payments systems generally;

(e) the criteria for membership of payments systems including authorisation, continuation, termination and rejection of membership;

(f) the conditions subject to which the system participants shall participate in a payments system and the rights and obligations of the system participants in such system;

(g) the specifications, modes and procedures for deployment of payments system infrastructures.

(2) Without prejudice to the provisions of sub-section (1), the Bank may, from time to time, issue such guidelines, as it may consider necessary for the proper and efficient management of the payments

systems generally or with reference to any particular payments system.

### **9. Notice of change in the payments system**

(1) No system provider shall cause any change in the system which would affect the structure or the operation of the payments system without—

(a) the prior approval of the Bank; and

(b) giving notice of not less than thirty days to the system participants after the approval of the Bank:

Provided that in the interest of monetary policy of the country or in the public interest, the Bank may permit the system provider to make any changes in a payments system without giving notice to the system participants under paragraph (b) or requiring the system provider to give notice for a period longer than thirty days.

(2) Where the Bank has any objection to the proposed change for any reason, it shall communicate such objection to the system provider within two weeks of receipt of the intimation of the proposed changes from the system provider.

(3) The system provider shall, within a period of two weeks of the receipt of the objections from the Bank forward its comments to the Bank and where the Bank is satisfied with the comments of the system provider, the Bank may give its approval for the proposed changes.

(4) Where the Bank is not satisfied with the comments of the system provider pursuant to sub section (3) of this section, the Bank may decline to give its approval for the proposed changes.

## **10. Power to call for returns, documents or other information**

The Bank may request from any system provider such returns or documents as it may require or other information in regard to the operation of its payments system at such intervals, in such form and in such manner, as the Bank may, from time to time, require or as may be prescribed and such order shall be complied with.

## **11. Access to information**

The Bank shall have the right to access any information relating to the operation of any payments system and the system provider shall provide access to such information.

## **12. Power to enter and inspect**

Any officer of the Bank duly authorised in writing may, for the purpose of ensuring compliance with the provisions of this Act or any regulations, enter any premises where a payments system is being operated and may inspect any equipment, including any computer system or other documents in the premises and may call upon any employee of such system provider or participant or any other person working in such premises to furnish such information or documents as may be required by such officer.

## **13. Confidentiality**

(1) Subject to the provisions of sub-section (2) of this section, any document or information obtained by the Bank under sections 10 to 12 shall be kept confidential.

(2) Notwithstanding anything contained in sub-section (1) of this section, the Bank may disclose any information or tender any document obtained by it to any person to whom the disclosure of such

information or tendering of such document is considered necessary for protecting the integrity, effectiveness or security of the payments system, or in the interest of banking or monetary policy or the operation of the payments systems generally or in the public interest or in compliance with any legal requirement.

#### **14. Power to carry out audit and inspection**

The Bank may, for the purpose of carrying out its functions under this Act, conduct or cause to be conducted such audits and inspections of a payments system or participants thereof and it shall be the duty of the system provider and the system participants to assist the Bank to carry out such audit or inspection, as the case may be.

#### **15. Power to issue directions**

Where the Bank is of the opinion that,—

(a) a payments system or a system participant is engaging in, or is about to engage in, any act, omission or course of conduct that results, or is likely to result, in systemic risk being inadequately controlled or

(b) any action under paragraph (a) is likely to affect the payments system, the monetary policy or the credit policy of the country, the Bank may issue directions in writing to such payments system or system participant requiring it, within such time as the Bank may specify –

(i) to cease and desist from engaging in the act, omission or course of conduct or to ensure the system participants cease and desist from the act, omission or course of conduct; or

(ii) to perform such acts as may be necessary, in the opinion of the Bank, to remedy the situation.

## **16. Power of Bank to give directions generally**

Without prejudice to the provisions of the foregoing, the Bank may, if satisfied that for the purpose of enabling it to regulate the payments systems or in the interest of management or operation of any of the payments systems or in the public interest, it is necessary to do so, lay down policies relating to the regulation of payments systems including electronic, non-electronic, domestic and international payment systems affecting domestic transactions and give such directions in writing as it may consider necessary to system providers or the system participants or any other person either generally or to any such agency and in particular, pertaining to the conduct of business relating to payments systems.

## **17. Directions of Bank to be complied with**

Every person to whom a direction has been issued by the Bank under this Act shall comply with such direction without any delay and a report of compliance shall be furnished to the Bank within the time allowed by it.

## **18. Settlement provisions**

(1) A person shall not participate in the settlement system unless such person is the Bank or a system participant.

(2) A system participant shall effect the discharge of any payment obligation or settlement obligation in money or by means of an entry passed through the settlement system to the credit of the settlement account of the beneficiary system participant which account is maintained at the Bank for settlement purposes.



(3) A discharge of payment obligation or settlement obligation that has been effected in terms of subsection (2) of this section is final and irrevocable.

(4) Notwithstanding the provisions of the Bankruptcy Act, a settlement instruction that has been finally and irrevocably effected in terms of subsection (2) of this section may not be revoked, reversed, netted, set-off or set aside except by an order of court where fraud or illegality is established:

Provided that in revoking or setting aside such settlement instruction, which has been concluded, the court may make an order revoking and ordering a refund or return of the fund involved by the appropriate party.

(5) The provisions of sub section (4) of this section shall not apply to systemically important settlement systems as may be determined from time to time by the Bank.

(6) When a system participant is wound up -

(a) the Registrar of the Federal High Court shall serve on the Bank, a copy of the application for winding-up, and the winding-up order within 14 days of its issuance; and

(b) notwithstanding the provisions of sections 417 and 418 of the Companies and Allied Matters Act, a winding-up order shall not affect any settlement that has become final and irrevocable prior to the service of the order on the Bank in terms of paragraph (a).

(7) The Bank, after consultation with the Committee, may determine such conditions, rules or procedures, as it considers necessary regarding the issuing of settlement instructions and discharging of settlement obligations including security to support settlement.

(8) The conditions, rules or procedures determined under sub-section (7) of this section shall be incorporated in settlement contracts to be entered into between the Bank and system participants.

### **19. Payment provisions**

(1) A person shall not issue a payment instrument unless such -

(a) instrument is registered with the Bank upon application made to it by such person in writing;

(b) a person is a system participant; or

(c) a person is exempted by the Bank under subsection (2) of this section, or is one of a category of persons so exempted.

(2) The Bank may by circular and subject to such conditions as it may determine, exempt any person or category of persons from the provisions of subsection (1) of this section, if the Bank is satisfied that such exemption is in the public interest and will not cause undue risk to the payments system.

(3) A person who contravenes subsection (1) of this section commits an offence.

### **20. Clearing provisions**

(1) A person shall not clear payment instructions unless such person is a system participant or its agent.

(2) A person who contravenes subsection (1) of this section commits an offence.

### **21. Third party payment**

(1) A person shall not accept money or payment instructions, as a regular feature of such person's business, from any other person for purposes of making payment on behalf of that other person to a third

party to whom that payment is due, unless the person so accepting money or payment instructions is -

(a) a system participant or its agent; or

(b) a person or one of a category of persons exempted by the Bank under subsection (3) of this section.

(2) Subsection (1) of this section may not be construed as prohibiting the acceptance of money or payment instructions -

(a) by a holding company from its subsidiary, or by a subsidiary from its holding company, or by a subsidiary from another subsidiary of the same holding company; or

(b) by an agent of the holding company or subsidiary referred to in paragraph (a) above.

(3) The Bank may, by notice and subject to such conditions as the Bank may determine, exempt any person or category of persons from subsection (1) of this section, if the Bank is satisfied that such exemption is in the public interest and will not cause undue risk to the national payments system.

(4) A person who contravenes subsection (1) of this section commits an offence.

## **22. Netting agreements and rules**

Notwithstanding anything to the contrary in the Bankruptcy Act or any other law, if a system participant is wound up by an order of a court of competent jurisdiction, or a receiver or liquidator is appointed for a system participant, any provision contained in a written netting agreement to which the system participant is a party, or any netting rule or practice applicable to the system participant, shall be binding upon the liquidator or receiver in respect of -

(a) any payment or settlement instruction which has been delivered to another system participant, a service provider or to the Bank prior to the winding up order, or appointment of the liquidator or receiver and which instruction -

(i) is subject to calculation and determination through clearing or netting; or

(ii) may result in a payment or settlement obligation, which obligation is to be discharged on or after the date of the winding-up order, or appointment of the receiver or liquidator, or the discharge of which was overdue on the date of the winding-up order, or appointment of the receiver or liquidator, as the case may be; or

(b) any payment or settlement obligation -

(i) which has been determined through netting prior to the issue of the winding-up order or appointment of the receiver or liquidator; or

(ii) which is to be discharged on or after the date of the winding-up order, appointment of the receiver or liquidator, or the discharge of which was overdue on the date of the winding-up order, appointment of the receiver or liquidator.

### **23. Utilisation of assets provided as security**

Notwithstanding anything to the contrary in the Bankruptcy Act, any asset of a system participant which the system participant, prior to the issue of its winding-up order, has provided -

(a) to the Bank as security for a loan in respect of its settlement obligation, may be utilised by the Bank to the extent required for the discharge of that settlement obligation; or

(b) in terms of a written agreement with a service provider, to the service provider as security in respect of its payment obligation, may

be utilised by the service provider to the extent required for the discharge of that payment obligation.

#### **24. Indemnity**

No officer of the Bank or a member of the Committee shall be personally liable for any loss or damage arising out of any act done or omitted to be done in good faith under this Act, unless such damage or loss is due to the member's or officer's negligence or failure to comply with this Act.

#### **25. Power to make regulations**

(1) The Bank, may by notice, published in the Gazette, make regulations not inconsistent with this Act relating to -

(a) any matter which is required or permitted by this Act to be determined by the Bank; and

(b) all other matters which the Bank considers necessary or expedient to be determined for the efficient functioning of the national payments system.

(2) A person who contravenes the regulations made under subsection (1) of this section commits an offence.

#### **26. Settlement of disputes**

(1) Where a dispute arises between the Bank and a participant, or a service provider or between the participants and service providers or where the dispute is between the participants or service providers, it shall be settled as provided in this section.

(2) Any of the parties to a dispute may furnish the Bank with full particulars of its grievance in writing, and thereafter the parties shall

attempt to settle the dispute by agreement within seven business days of receipt of particulars by the Bank.

(3) If the parties do not succeed in settling the dispute as provided in subsection (2) of this section, they may agree to attempt to settle the dispute through Alternative Dispute Resolution within a further period of 10 business days.

(4) If the parties are unable to settle the dispute in accordance with subsection (3) of this section, the parties shall refer the matter to -

(a) a single arbitrator appointed by both parties; or

(b) arbitrators appointed in accordance with the Arbitration and Conciliation Act no. 11 of 1988 at the request of both parties.

(5) The arbitrator referred to in subsection (4) of this section shall as far as possible be a person knowledgeable in law and in matters pertaining to payments systems.

## **27. Retention of records**

Notwithstanding anything to the contrary in any law relating to the retention of records, the Bank, system participants and service providers must retain all records obtained by them during the course of the operation and administration of the payments, clearing and settlement systems for a minimum period of five years from the date of the conclusion of the transaction.

## **28. Dishonour of electronic funds transfer for insufficiency, etc., of funds in the account**

(1) Where an electronic funds transfer initiated by a person from an account maintained by the person cannot be executed on the ground that the amount of money standing to the credit of that account is insufficient to carry out the transfer instruction, such person shall be

deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, or with a fine which may extend to twice the amount of the electronic funds transfer, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the electronic funds transfer was initiated for payment of any amount of money to another person for the discharge, in whole or in part, of any debt or other liability;

(b) the electronic funds transfer was initiated in accordance with the relevant procedural guidelines issued by the system provider; and

(c) the beneficiary makes a demand for the payment of the said amount of money by giving a notice in writing to the person initiating the electronic funds transfer and the person fails to make the payment of the said money to the beneficiary.

(2) It shall be presumed, unless the contrary is proved, that the electronic funds transfer was initiated for the discharge, in whole or in part, of any debt or other liability.

(3) It shall not be a defence in a prosecution for an offence under subsection (1) that the person, who initiated the electronic funds transfer through an instruction, authorisation, order or agreement, did not have reason to believe at the time of such instruction, authorisation, order or agreement that the credit of his account is insufficient to effect the electronic funds transfer.

(4) The Court shall, in respect of every proceeding under this section, on production of a communication from the bank denoting the dishonour of electronic funds transfer, presume the fact of dishonour of such electronic funds transfer, unless and until such fact is disproved.

(5) For the purpose of proceedings under this section and for any other proceedings where an electronic payment is in issue, the provision of section 47 (4) of the Central Bank of Nigeria Act shall apply.

(6) The provisions of the Dishonoured Cheques (Offences Act) No. 44, 1977 shall apply to the dishonour of electronic funds transfer to the extent the circumstances admit.

### **29. Requirement for digital signature**

(1) All electronic transactions under the payments system shall be digitally signed in a manner that may be determined by the Bank.

(2) For the purpose of subsection (1) of this section, all system participants shall register with a public key infrastructure recognised by the Bank.

## **OFFENCES AND PENALTIES**

### **30. Penalties**

(1) A person who contravenes the provisions of section 2 or fails to comply with the terms and conditions subject to which the authorisation has been issued under section 5, shall be punished with imprisonment for a term which shall not be less than one year but not exceeding ten years or with fine of not less than ten million Naira or both and for a further fine of one hundred thousand Naira for each day the contravention or failure continues.

(2) Any person who in any application for authorisation or in any return or other document or in respect of any information required to be furnished under any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false or wilfully omits to make a material statement, shall be liable to



imprisonment for a term not less than one year but not exceeding three years and shall also be liable to fine which shall not be less than one million Naira.

(3) If any person fails to produce any statement, information, returns or other documents, or to furnish any statement, information, returns or other documents, which under section 10 or under section 11, it is his duty to furnish or to answer any question relating to the operation of a payments system which is required by an officer making inspection under section 12, such person shall be liable to a fine of not less than one million Naira or imprisonment for a term of not less than one year or both fine and imprisonment.

(4) If any person discloses any information, the disclosure of which is prohibited under section 13, such person shall be liable to imprisonment for a term of not less than two years, or with a fine of not less than five hundred thousand Naira or an amount equal to twice the amount of the damages incurred by the act of such disclosure, whichever is higher or with both such fine and imprisonment.

(5) Where a direction issued under this Act is not complied with within the period stipulated by the Bank or where no such period is stipulated, within a reasonable time or where a penalty imposed by the Bank under this Act or regulation is not paid within a period of thirty days from the date of the order, this shall constitute a ground for the withdrawal of any authorisation granted under this Act.

(6) If any provision of this Act is contravened, or if any default is made in complying with any other requirement of this Act, or of any regulation, order or direction made or given or condition imposed hereunder and in respect of which no penalty has been specified, then, every such contravention or default, as the case may be, shall attract a fine of not less than three million Naira and in the case of a continuing

contravention or default, a further fine of ten thousand Naira for every day, during which the contravention or default continues.

### **31. Offences by companies**

(1) Where a person who has committed a contravention of any of the provisions of this Act or any regulation, direction or order made there under is a company, every person who at the time of the contravention, was in-charge of and was responsible for the conduct of the business of the company as well as the company itself, shall be guilty of the contravention and shall be liable to be proceeded against and punished in accordance with the provisions of section 29 of this Act:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any regulation, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished in accordance with the provisions of section 29 of this Act.

### **32. Application of fine**

A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings.

### **33. Power of Bank to impose fines**

(1) Notwithstanding anything contained in section 29 of this Act, if a contravention or default is of the nature referred to in sub-section (2) or sub-section (6) of section 29, as the case may be, the Bank may impose on the person contravening or committing the default a penalty of three million Naira or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention or default is a continuing one, a further penalty of five hundred thousand Naira for every day after the first during which the contravention or default continues.

**34.** This Act may be cited as the Payments System Management Act, 2010.