

Payment Systems Act 2003

Introduction

The Payment Systems Act 2003 (the Act) was gazetted on 7 August 2003 and came into effect on 1 November 2003. The introduction of the Act is in line with the recommendation in the Financial Sector Masterplan for the adoption of a flexible, proactive and effective regulatory framework for the oversight of payments system and to increase efficiency in the payment system. The introduction of the Act reflects the significance of payments system to the country's economic activities and recognizes Bank Negara Malaysia as the sole authority responsible for its oversight. An efficient and well functioning payments system would support the creation of social and economic efficiency and is crucial for the smooth functioning of the financial markets and in maintaining financial stability. In addition, the smooth operation of the payments system is also essential for Bank Negara Malaysia to effectively conduct monetary policy.

The objective of the Act is to ensure the safety and efficiency of the payment related infrastructure, and to safeguard public interest. The Act provides the legal framework to ensure that the financial system, and the public's confidence in the payment systems is well protected. The Act provides the specific legislative authority for a more comprehensive and effective oversight of the payment system. Banking institutions as well as non-bank players offering payment systems and instruments would be governed by the Act.

New oversight framework on payment system

The Act was drafted to provide a balanced regulatory framework for the oversight of the payment system in line with Bank Negara Malaysia's objective and to promote market innovation. The Act outlines two different oversight regimes for two types of players namely, the operator of payment systems and the issuer of designated payment instruments.

Oversight on the operator of payment systems

The Act defines a payment system as "any system or arrangement for the transfer, clearing or settlement of funds or securities". Several arrangements including the clearing house recognised under the Securities Industry Act 1983 or clearing house licensed under the Futures Industry Act 1993 are excluded from the definition of payment system. An operator of the payments system is required to submit documents and obtain notification from Bank Negara Malaysia. These documents and information are important for the establishment of a surveillance mechanism that is capable of monitoring developments in the payment system for the formulation of appropriate policies as and when required. Bank Negara Malaysia is also empowered to prohibit the operation of any payment system in the event that it is necessary in the interest of the public, or the operation of such system is detrimental to the reliable, safe, efficient and smooth operation of the country's payment systems.

The Act empowers Bank Negara Malaysia to designate a payment system as a designated payment system (DPS) if such a system poses systemic risks, or if the designation is necessary to protect the interest of the public. Only fit and proper persons can accept appointment as a director or chief executive officer of an operator of a DPS. The operation of a DPS would be subjected to closer oversight by Bank Negara Malaysia, including the requirement to establish good corporate governance. In addition, an operator of a DPS is required to ensure that adequate operational arrangements are in place to ensure the smooth functioning of these payment systems. This includes the establishment of rules and procedures setting out the rights and liabilities of the relevant parties including the financial risks that the parties might incur, as well as procedures for the management of credit risk and liquidity risk and measures to ensure the safety, security and operational reliability of the DPS.

To ensure that a DPS can work effectively, it is necessary for all payment and settlement instructions that are sent through the DPS be considered as final and irrevocable. The Act, therefore, provides that a payment or settlement instruction sent through a DPS shall be final and shall not be revoked or reversed



from the time such an instruction is entered into the DPS. The operator of a DPS is required to establish rules that determine the point of time that a payment or settlement instructions is deemed as final.

In acknowledging that a DPS may also adopt netting arrangements in order to reduce settlement risks, the Act gives legislative recognition to any netting arrangements that are entered into, in relation to the DPS, to avoid any uncertainty with regards to such netting arrangements. The Act provides that netting arrangements adopted by participants of a DPS as well as finality of payment and settlement instructions in a DPS prevail over insolvency laws.

Oversight on the issuance of designated payment instruments

The Act empowers Bank Negara Malaysia to designate a payment instrument as a designated payment instrument (DPI). These are instruments that are widely used or that should be regulated by Bank Negara Malaysia in the interest of the public. Issuance of a DPI requires the prior approval of Bank Negara Malaysia. Three payment instruments have been designated as a designated payment instrument, namely, electronic money, credit and charge instruments.

Similar to DPS, issuers of DPIs are required to implement adequate corporate governance and operational arrangements to ensure the safety and reliability of these payment instruments. This includes the requirement to establish measures to ensure prudent management of funds collected from the users of the designated payment instruments and to ensure that such funds are available for repayment to the users.

Powers of Bank Negara Malaysia under the Act

Bank Negara Malaysia is empowered under the Act to require an operator of a payment system or issuer of a payment instrument to be an incorporated company. This requirement may be imposed where the corporate structure is necessary to provide more permanence, credibility and stature to the entity that will be required to comply with the Companies Act 1965 as well. To ensure effective supervision and monitoring of the payment systems in the country, Bank Negara Malaysia may require the operator of a payment system or the issuer of a payment instrument to submit information on the payment system operated or the payment instrument issued by them. Other powers conferred by the Act to Bank Negara Malaysia include: -

i. Powers of examination

The Act empowers an examiner authorised by Bank Negara Malaysia to examine the premises and offices, apparatus or documents, of an operator of a payment system or an issuer of a payment instrument or any other person falling within the purview of the Act.

ii. Control over DPS

The Act imposes a duty on an operator of a DPS who is insolvent to immediately inform Bank Negara Malaysia. Bank Negara Malaysia, by order published in the Gazette, may assume control of, or to carry on, the whole or part of a DPS's property, business and affairs, as the case may be. Bank Negara Malaysia may appoint a person to carry out such powers on its behalf by making an application to the High Court to appoint a receiver or a manager to manage the company.

iii. Investigation, search and seizure

The Act empowers Bank Negara Malaysia to appoint its employee or any person as its investigating officer for offences under the Act. The investigation officer has the powers of entry into any premise, search and seize property, apparatus, or documents and search of persons. The Act also empowers Bank Negara Malaysia to investigate, with the concurrence of the Securities Commission, clearing houses recognised under the Securities Industry Act 1983 or those licensed under the Futures Industry Act 1993.

iv. *Offences and enforcement*

In order to ensure an effective regulatory regime, the Act includes a schedule of offences that provides for penalties in the event that identified provisions of the Act are contravened. Offences under the Act are assigned penalties in accordance with the severity of their potential effects, including systemic and other risks.

Conclusion

The enactment of the Act serves to strengthen Bank Negara Malaysia’s oversight over payment systems and instruments. The Act enables Bank Negara Malaysia to identify and monitor systemically important payment systems and important payment instruments, which will be closely regulated under the Act, while giving regulatory flexibility to operators of payment systems and issuers of payment instruments to encourage innovation.

(iii) The financial industry should promote awareness of the electronic payment options and encourage consumers to use electronic payments and instruments by enhancing their confidence in using these means of payments.

transfers are mainly undertaken through the real-time gross settlement system (RENTAS).

General Payment Profile in Malaysia

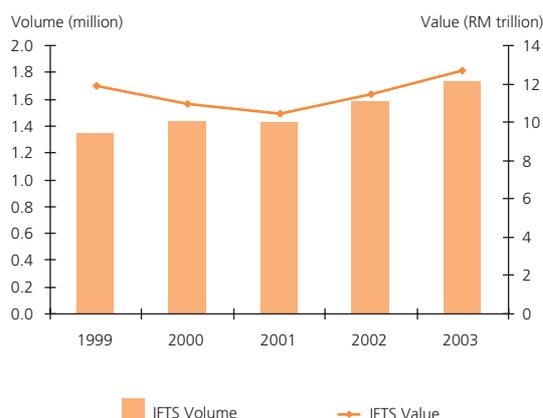
In the financial system, Malaysian consumers are notably heavy users of cheques compared to other payment instruments. The breakdown by percentage for the value and volume of non-cash payment transactions in 2003 is as shown in Table 4.32.

Whilst the banking industry continues to invest significantly in e-payment infrastructures, cheques remained a significant payment instrument. In 2003, cheques accounted for 96.7% of the total non-cash payment value. Although the value of e-purse transactions is negligible in terms of total non-cash payments, its volume accounted for 36.4% of total non-cash payments in 2003. E-purse transactions in Malaysia constituted mainly toll payments, where the Touch ‘n Go contactless card was used. Settlement of retail related payments were made through the financial institutions, whereby interbank fund

Table 4.32
Non-Cash Payments in Malaysia

	Value (%)	Volume (%)
Cheques	96.67	34.04
Credit cards	2.48	27.68
Credit transfers (Giro)	0.63	0.24
Charge cards	0.16	1.42
E-purse - Toll payments	0.05	36.40
- Retail	0.00	0.00
Debit cards	0.01	0.22

Graph 4.44
RENTAS – IFTS Turnover



Graph 4.45
RENTAS – SSTS Turnover

