

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Diliman, Quezon City

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5260

Introduced by ATTY. MAGTANGGOL T. GUNIGUNDO I

EXPLANATORY NOTE

Payment and settlement system is the mechanism through which money is transferred between savers and borrowers, buyers and sellers or from one party to another party.

Payment and settlement system is a vital component of the country's economic and financial infrastructure. It must be efficient so that funds can move quickly among market participants and economic agents for productive use to improve the economy, in general, and in financial system, in particular; and it must also be safe so that the public will have confidence in the financial system, thus bringing financial stability in our country.

However, payment and settlement systems can also be exposed to significant risks due to design or operational flaw. The Bangko Sentral ng Pilipinas (BSP), in advocating safe, efficient, and reliant payment and settlement systems, should be able to effectively oversee the activities of all parties involved in the payment and settlement systems.

Philippines has several payment and settlement systems, ranging from paper-based systems to the most sophisticated electronic fund transfer systems that offer real-time settlement. According to global standards, which the central banks around the world have established, our payment and settlement systems are not being properly regulated and supervised. It has been part of best practices around the world that supervision and regulation of payment and settlement systems in a country is being done by its central monetary agency, a practice that we have not yet been observing. **Since payment and settlement systems in the Philippines are owned and operated by non-bank enterprises, our central monetary authority, the BSP, has no jurisdiction over them.**

Non-regulation of payment and settlement systems has been detrimental to the lives of the Filipinos. An example would be the high cost imposed on various financial transactions like overseas remittances from our OFWs, as well as domestic money transfers from our rural folks to their dependents in the urban areas and vice versa. Not only that it makes financial transactions expensive for the common Juan dela Cruz, payment and settlement systems that are not properly regulated and supervised are also more prone to be used for illegal transactions like money laundering.

We need to create a legal framework to guarantee that our payment and settlement systems are efficient, safe, reliable , affordable and of meeting global standards. The BSP should be empowered to prescribe policies relating to the regulation and supervision of all types of payment and settlement systems and, set standards for the existing and future systems.. The same should be communicated to all payment system operators.

Payment and settlement systems are the backbone of the financial infrastructure of the nation, enhance globalization and act as tools of economic empowerment by financial inclusion. Efficient and effective payment and settlement systems are critical for the financial performance of the institutions and are strategic to the stability of the financial systems. We need to ensure that payment and settlement systems are benchmarked with the best in the world, in terms of the structure, processes and operations.

In view of the importance of this Bill, its earliest approval is earnestly sought.

A handwritten signature in black ink, appearing to read 'Magtanggol T. Gunigundo', written in a cursive, flowing style.

ATTY. MAGTANGGOL T. GUNIGUNDO I

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AN ACT
CREATING THE LEGAL FRAMEWORK
FOR PAYMENT AND SETTLEMENT SYSTEMS
AND FOR OTHER PURPOSES

TITLE AND DECLARATION OF POLICY

SECTION 1. *Short Title.* – The short title of this Act shall be the “The Payment and Settlement Systems Act of 2011”.

SECTION 2. *Declaration of Policy.* – The State recognizes that payment and settlement systems are crucial parts of the financial infrastructure of the country and it is essential that they function safely and efficiently for the stability and effectiveness of the monetary and financial system. In furtherance thereof, it shall promote the advancement of properly designed systems to operate in a safe and efficient manner in order to control systemic risk and provide an environment conducive to the sustainable growth of the economy.

SECTION 3. *Responsibility and Objectives.* – The oversight of payment and settlement systems is the responsibility of the *Bangko Sentral ng Pilipinas* whereby the objectives of safety and efficiency are promoted by monitoring existing and planned systems, assessing them against these objectives and, where necessary, inducing change.

SECTION 4. *Definition of Terms.* – Unless otherwise indicated in this Act, the following terms shall have the meanings stated hereunder:

A. “Access” means the eligibility of a person to become participant in a payment system based on terms and conditions imposed by the *Bangko Sentral ng Pilipinas*.

B. “Bangko Sentral” means the *Bangko Sentral ng Pilipinas* established under Republic Act No. 7653.

C. “Director” means any member of the board of directors of a participant to the payment system, or a person considered as such under *Bangko Sentral* regulations.

D. “End-user” refers to any person who is a transferor or receiver of funds in a payment and settlement system.

E. “Fund” includes any unit of value that forms the consideration or object of transactions over goods or services.

F. **“Issuer”** refers to a juridical person who undertakes the responsibility for the payment of an obligation arising from the issuance of a payment instrument.

G. **“Monetary Board”** refers to the Monetary Board of the *Bangko Sentral*.

H. **“Officer”** means any person who is an employee and holds management position in any of the participants to the payment system, or a person considered as such under *Bangko Sentral* regulations.

I. **“Operator”** refers to a juridical person who is responsible for the operations of a payment system.

J. **“Participant”** means either the issuer, operator, service provider, or any person other than the end-user who accesses the payment and settlement system.

K. **“Payment and settlement system”** means a system that facilitates the transfer and movement of funds and includes any instrument, processes and procedures that relate to the system.

L. **“Payment instrument”** means any instrument or mechanism, whether tangible or intangible in nature, that enables a person to obtain value or to otherwise make a payment.

M. **“Person”** means a natural or juridical person.

N. **“Service provider”** refers to an entity that provides process arrangements, technology or infrastructure to operators of a payment and settlement system.

O. **“Settlement”** means the payment arrangement/agreement between and among participants to settle transactions.

P. **“Systemic risk”** means the risk that (i) the inability of one of the participants to meet its obligations as they become due, or (ii) any disruption in the system itself, that could result in the inability of other participants or of financial institutions in other parts of the financial system, to meet their obligations as they become due: provided, that, such inability or disruption could threaten the stability of the system or of financial markets: provided, further, that the determination of the *Bangko Sentral* that a particular risk threatens the stability of the system or financial markets shall be conclusive.

Q. **“Systemically important payment system”** refers to a payment system where, if the system were insufficiently protected against risk, disruption within it could trigger or transmit further disruptions among the participants or the disruptions thereon will widely affect the financial system.

R. **“Netting”** refers to the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant either issues to, or receives from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed.

S. Words and phrases used and not defined in this act, but defined in Republic Act No. 7653 or Republic Act No. 8791, shall have the same meanings as in those acts.

AUTHORITY AND POWERS OF THE BANGKO SENTRAL

SECTION 5. *Grant of Authority to the Bangko Sentral.* – The *Bangko Sentral*, in the performance of its mandate as the central monetary authority, shall have the power to authorize, oversee and supervise the payment and settlement systems in the Philippines. The Monetary Board, however, may exclude certain payment and settlement systems from the coverage of this Act if determined not to be systemically important.

SECTION 5.1. *Powers of the Bangko Sentral.* – In the performance of its mandate under this act, the *Bangko Sentral* shall have, in addition to its powers under Republic Act No. 7653, the following powers:

A. Issue, through the Monetary Board, rules and regulations governing the following:

- i. The standard of operation of payment and settlement systems and the conduct of examination of their operations, in such frequency as may be prescribed by the Monetary Board, to determine compliance with laws and regulations;
- ii. The minimum capital requirements for operators, issuers and service providers of payment and settlement systems to ensure that payment and settlement systems have a high degree of security and operational reliability and have contingency requirements for timely completion of daily processing;
- iii. The qualifications and disqualifications of individuals elected or appointed as directors or officers of payment and settlement systems with particular regard to their integrity, experience, education, training and competence. After due notice, the Monetary Board may disqualify, remove or suspend any director or officer found unfit for the position;
- iv. The appropriate measures to ensure the confidentiality of payment and settlement information which are, under existing laws, considered confidential;
- v. The necessary measures to avoid and/or detect the use of the payment and settlement systems for money laundering offenses as defined in Republic Act No. 9160, as amended, otherwise known as the Anti-Money Laundering Act of 2001;
- vi. The settlement of disputes between and among the different participants of the payment and settlement system;
- vii. The protection of the right of the end-users/consumers and participants to the payment and settlement system which shall include provisions for the rights and responsibilities of the different participants, and the mechanism for resolution of issues and complaints;
- viii. Pricing structures and/or mechanisms in payment and settlement systems; and
- ix. Other pertinent matters to be determined by the Monetary Board.

B. Require operators of payment and settlement systems to provide relevant information and to submit to on-site examination consistent with the rules issued under item a(i) of this sub-SECTION.

C. Such other powers as may be reasonably necessary to meet the objectives of this Act.

SECTION 5.2. *Conformity to International Standards and Practices.* – The *Bangko Sentral* shall ensure that payment and settlement systems authorized shall conform as closely as possible to internationally accepted standards and practices, such as those of the Bank for International Settlements (BIS).

SECTION 5.3 *Protection of Confidential Information.* – The *Bangko Sentral* shall appropriately protect confidential information obtained from the payment and settlement systems: Provided, however, That the *Bangko Sentral* may, upon prior authorization from the Monetary Board or the Governor of the *Bangko Sentral*, disclose these information as may be necessary in the course of its coordination with other Philippine and foreign regulators as provided under SECTIONS 8 and 9 of this Act or when public interest so requires.

SECTION 5.4. *Bangko Sentral Authority to Operate a Payment and Settlement System.* – The *Bangko Sentral* may itself operate a payment and settlement system whenever such is deemed to be in the broad public interest: Provided, That it shall be subject to oversight consistent with this Act: Provided, further, That the unit operating the payment and settlement system is separate from the unit performing oversight functions.

SECTION 6. *Prohibition on the Operation and Use of Unauthorized Payment and Settlement System.* – No person or entity shall be allowed to act as an operator of a payment and settlement system without prior authority from the *Bangko Sentral*, except those that may be specifically excluded by the Monetary Board under SECTION 5 of this Act. The determination of whether a person or entity is acting as an operator of a payment and settlement system without *Bangko Sentral* authority shall be decided by the Monetary Board. To resolve such issue, the Monetary Board may cause the examination of the operators, accounts and records of such person or entity. No issuer or participant shall directly or indirectly make use of any facility of a payment and settlement system in the Philippines to effect any transactions, unless such system is authorized or otherwise exempt under SECTION 5 of this Act.

SECTION 7. *Advisory Council.* – The *Bangko Sentral* is hereby authorized to create an advisory council for payment and settlement systems that shall advise the Monetary Board in the formulation, adoption, and monitoring of payment and settlement systems policies and regulations in the implementation of this act.

SECTION 7.1. *Composition.* – The Advisory Council shall consist of five (5) members, at least three (3) of whom shall come from the private sector who shall be appointed by the Monetary Board, and two (2) from the public sector who shall be designated by the President of the Philippines upon the recommendation of the Monetary Board. The Monetary Board shall appoint the Chairman of the Advisory Council from among representatives from the private sector.

SECTION 7.2. *Terms of Office.* – The Chair and members of the Advisory Council shall each be appointed to a term of two (2) years and may be reappointed, unless their term is sooner terminated on account of death, incapacity, resignation or removal.

SECTION 7.3. *Logistical Support.* – The *Bangko Sentral* shall provide for the necessary logistical support to the Advisory Council. The Chair and members of the Advisory Council shall be entitled to receive allowances, per diems and other benefits as may be authorized by the Monetary Board in accordance with appropriate rules and regulations.

SECTION 8. *Coordination with Other Government Agencies.* – The *Bangko Sentral* shall coordinate with other regulators and other concerned government agencies to avoid gaps, inefficiencies, duplications and inconsistencies in the regulation of other systems which are related or interconnected with the payment and settlement systems.

SECTION 9. *Coordination with Other Foreign Regulators.* – The *Bangko Sentral* shall endeavor to coordinate with the regulators or overseers of payment and settlement systems of other countries to facilitate efficient and safe crossborder payments and settlements transactions.

ORGANIZATION AND AUTHORIZATION OF PAYMENT AND SETTLEMENT SYSTEMS

SECTION 10. *Organization.* – Only stock corporations created for the primary purpose of operating a payment and settlement system that meet the minimum requirements set forth in SECTION 11 of this Act and such other requirements as may be prescribed by the Monetary Board shall be authorized to act as such.

SECTION 11. *Certificate of Authority.* – The Securities and Exchange Commission shall not register the articles of incorporation of any operator of a payment and settlement system or any amendment thereto, or otherwise issue license to do business in the Philippines unless accompanied by a certificate of authority issued by the Monetary Board, under its seal.

SECTION 12. *Minimum Requirements for the Application for a Certificate of Authority.* – The application for an authority to operate a payment and settlement system shall be in such form and shall contain such relevant information and supporting documents as the *Bangko Sentral* shall prescribe.

SECTION 13. *Transfer and Acquisition of Substantial Shareholdings.* – No person shall acquire shares in an operator of a payment and settlement system that will result in ownership or control of more than twenty percent (20%) of the voting stock of such operator, without first obtaining the approval of the *Bangko Sentral*. Prior to *Bangko Sentral* approval, no such transfer or acquisition of shares shall have legal effect nor shall the same be recognized in the stock and transfer books of the operator or in the records of any government agency.

SECTION 14. *Licensing of Foreign-Owned Payment and Settlement System Operators.* – The Monetary Board may issue rules and regulations providing for the licensing of foreign-owned payment and settlement system operators.

SECTION 15. *Revocation of the Certificate of Authority.* – The Monetary Board may revoke the certificate of authority of a payment and settlement system operator if:

A. The Operator committed a violation of this Act, and the rules, regulations and orders issued by the Monetary Board; or

B. The Operator failed to implement the payment and settlement system's rules, and such violation or failure has been determined by the Monetary Board to pose a risk to the stability of the monetary and financial systems.

OPERATIONS OF PAYMENT AND SETTLEMENT SYSTEMS

SECTION 16. *Responsibilities of the Operator.* – The operator shall be primarily responsible for the maintenance and operation of a safe and efficient payment and settlement system. This includes the development of a process for the selection, monitoring and disciplining of participants to the system which shall be subject to prior *Bangko Sentral* approval.

SECTION 17. *Finality of Settlement.* – Notwithstanding the provisions of existing laws to the contrary, payment and settlement effected in accordance with an authorized payment and settlement system shall be final and irrevocable and shall not be subject to reversal for reason whatsoever: Provided, That, if it is shown and established that any amount of funds so paid and transferred was not legally due, the settlement shall remain and such amount shall constitute a new monetary obligation owed by the payee to the person who caused the payment and settlement.

SECTION 18. *Preservation of Rights.* – The provisions of this Act shall not preclude any person from enforcing his rights under the law in so far as it does not intrude, interfere nor affect the finality of payment and settlement effected by virtue of this Act.

INSOLVENCY, BANKRUPTCY, RECEIVERSHIP AND LIQUIDATION PROCEEDINGS

SECTION 19. *Notification.* – The participant shall notify the operator upon the declaration of insolvency, bankruptcy or placement under receivership or liquidation, as the case may be. Any payment or settlement which became final and irrevocable by virtue of this Act shall not be affected until such time that the operator is notified of such declaration or placement. Such finality and irrevocability shall be binding on the court, quasi-judicial agencies, receiver or liquidator, as the case may be, of the participant or end-user.

SECTION 20. *Netting.* – Notwithstanding the provisions of existing laws to the contrary, when a court or quasi-judicial agency has issued an order or resolution for insolvency, bankruptcy, receivership or liquidation of the participant:

A. The operator may effect the netting of all obligations owed to or by the participant incurred before or on the day on which the court or quasi-judicial agency issued the order or resolution;

B. The obligations that are netted shall be disregarded in the insolvency, bankruptcy, receivership or liquidation proceedings;

C. Any net obligation owed to or by the participant that has been disregarded is payable to the participant and may be recovered for the benefit of the creditors or is provable in the proceeding, as the case may be; and

D. The netting made by the operator and any payment made by the participant pursuant thereto shall not be invalidated in the insolvency, bankruptcy, receivership, receivership or liquidation proceeding.

SECTION 21. *Foreign Insolvency Proceedings.* – Notwithstanding the provisions of existing laws to the contrary, a court shall not recognize or give effect to: (a) an order or a court exercising jurisdiction under the law of bankruptcy or similar proceeding in a place outside the Philippines or (b) an act of a person appointed in a place outside the Philippines to perform a function under the law of insolvency or similar proceeding.

SECTION 22. *Sanctions and Penalties.* – A participant who willfully failed to notify the operator of the declaration of insolvency, bankruptcy or placement under receivership or liquidation shall be subject to the sanctions and penalties provided under SECTIONS 23 and 24 of this Act.