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SATURDAY 5TH FEBRUARY, 2022

THE OFFICIAL GAZETTE 5TH FEBRUARY, 2022
LEGAL SUPPLEMENT — B

GUYANA

No. 3 of 2022

REGULATIONS

Made Under

THE BANK OF GUYANA ACT

(Cap. 85:02)

IN THE EXERCISE OF THE POWER CONFERRED UPON THE BANK BY SECTIONS 5, 38, 39(2), 40,41,47,52, 64 AND 65 OF THE BANK OF GUYANA ACT, THE BANK HEREBY MAKES THE FOLLOWING REGULATIONS: -

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PART I
GENERAL PROVISIONS

Citation.

1. These Regulations may be cited as the Bank of Guyana (Settlement and Treatment of Collateral) Regulations 2022.

Interpretation.

2. In these Regulations-

"Automated Teller Machine (ATM)" means a device providing services including cash withdrawal, balance enquiry and funds transfer using a payment card or other machine-readable instrument as a means of customer authentication;

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"bank" shall have the same meaning assigned to it in the Financial Institutions Act;

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"Bank" means the Bank of Guyana established under the Bank of Guyana Act;

"Bank Securities Settlement System" means any system which the Bank from time to time employs for the settlement of transactions in securities of the Bank and the Government of Guyana held in book-entry or electronic form in its books;

"branch" means a place of business of a participant, other than its head office, which forms a legally dependent part of the institution and which carries out directly all or some of the transactions inherent in its business;

"clearing house" means an entity responsible for the calculation of the net positions of institutions, and the delivery of the transactions constituting those net positions to the receiving institutions;

"collateral" means an asset or third-party commitment that is accepted by the collateral taker to secure an obligation of the collateral provider vis-à-vis the collateral taker and includes those securities pledged in the central securities depository by individual participants of the G- RTGS;

"collateral taker" means the Bank or a financial institution that is subject to prudential supervision by the regulatory authority established under Act;

"court" means the judicial body responsible for adjudications relating to the financial services industry;

"direct participant" shall have the same meaning assigned to it in the National payments Systems Act;

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"electronic" includes electrical, digital, magnetic, wireless, optical, electro-magnetic, biometric, photonic and similar capabilities;

"electronic money" shall have the same meaning assigned to it in the National payments Systems Act;

"enforcement event", in relation to a financial collateral arrangement, means a default or any similar event on the occurrence of which, under the arrangement or by operation of law-

(a) the collateral taker is entitled to realise or appropriate the financial collateral; or

(b) a close-out netting provision takes effect;

"finality" means the point when a financial electronic transaction becomes irrevocable;

"financial collateral" means cash or financial instruments provided under a financial collateral arrangement, but does not include shares in a company whose exclusive purpose is-

(a) to own its own means of production that are essential for the collateral provider's business; or

(b) to own real property;

"financial collateral arrangement" means a title transfer financial collateral arrangement or a security financial collateral arrangement, whether or not covered by a master agreement or by general terms and conditions;

"funds" means banknotes and coins, scriptural money, and electronic money;

"Guyana Automated Clearing House (G-ACH)" means the interbank payment system infrastructure owned and operated by the Bank and which consists of G-EFT which processes electronic funds transfers and G-ECC which processes truncated cheques;

"Guyana Central Securities Depository (G-CSD)" means the depository maintaining the Register of Bank and Government of Guyana issued securities and through which transactions evidencing the sale, purchase, transfer of such securities is processed by book entry, primary market auction facilities and all associated linkages owned and operated by the Bank;

"Guyana Electronic Cheque Clearing (G-ECC)" means a deferred net settlement system owned and operated by the Bank which processes truncated cheques;

"Guyana Electronic Funds Transfer system (G-EFT)" means a deferred net settlement system owned and operated by the Bank which processes electronic funds transfers;

"Guyana Real Time Gross Settlement system (G-RTGS)" means the interbank high-value settlement system owned and operated by the Bank;

"notice" means a notice in writing;

"operator" of a payment system means the entity that has legal ownership of a payment system and which –

(a) contracts with participants for use of its facilities and in turn agrees to provide specific levels of service;

(b) may or may not manage the technical operations of the payment system itself;

"participant" shall have the same meaning assigned to it in the National payments Systems Act;

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"payee" means a person who is the intended recipient of funds which have been the subject of a payment transaction;

"payer" means a person who –

(a) holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or

(b) where there is no payment account, a person who gives a payment order;

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

"payment instrument" is a means of exchange that facilitates the transfer of funds and includes any-

(a) personalized device or computer application used to initiate payment transactions;

(b) personalized set of procedures agreed between the payment service user and the payment service provider, used by the payment service user in order to initiate a payment order;

(c) but is not limited to, cheques, funds transfers initiated by any paper device or paperless device such as a payment card, computer system or application on a mobile device;

"payment service user" means a person utilising services in the capacity of either payer or payee or both;

"payment system" shall have the same meaning assigned to it in the National payments Systems Act;

"payment transaction" means an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;

"provision of financial collateral" means the financial collateral delivered or to be delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker's behalf, for example via a pledge on assets held in a securities depository;

"rules of the system" means the rules as established under the National Payments System Act and includes the contractual documentation, in the widest sense of the term, governing the use and operation of a Payment and Settlement System, including but not limited to Terms and Conditions, Rules and Procedures, Technical Annexes, Agreement Letters, Instructions and Operating Circulars;

"securities" means any securities issued by the Bank under the Act and any savings bond, debenture, treasury bill, tax certificate or treasury note issued by the Government of Guyana;

"security financial collateral arrangement" means an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, but only if the full ownership of the collateral remains with the collateral provider after the security right is established;

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"settlement account" means any cash or securities account that is debited or credited by a payment system which is earmarked as "systemically important" by the Bank pursuant to the finality provisions of the Bank, or the Bank Securities Settlement System, in order to settle payment or settlement orders processed within such system;

"system" shall have the same meaning assigned to it in the National payments Systems Act;

"winding-up proceedings" means collective proceedings whether founded on bankruptcy or are voluntary or compulsory, involving the intervention of an administrative or judicial authority, taken for the purpose of realising assets and distributing the proceeds among creditors and members as appropriate and includes collective proceedings taken for that purpose where the proceedings are terminated by a composition or other similar arrangement.

Bank's obligation.

3. (1) Pursuant to section 5 of the Act, the Bank shall-

(a) maintain domestic currency and price stability;

(b) foster development of a competitive market based financial system in order to promote sustainable growth; and

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(c) develop a sound banking and credit system including the operation of the interbank settlement system.

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(2) By virtue of section 38 of the Act, the Bank shall be responsible for the supervision and regulation of licensed financial institutions under the Act and the Financial Institutions Act.

Scope and objective of Regulations.

4. (1) These Regulations shall apply to all participants of the G-RTGS, G-CSD, G-ECC and G-EFT systems.

(2) These Regulations expand the legal framework for final settlement, use of collateral and supervision of participants in the G-RTGS, G-CSD, G-ECC and the G-EFT systems.

(3) The Bank shall through these Regulations -

(a) foster the maintenance of confidence in the value of the currency and its function as a means of exchange through safeguarding and licensing;

(b) ensure conformity with International Best Practise for governance and oversight of the systems;

(c) develop and maintain arrangements for settlement safeguarding;

(d) promote a sound and efficient payment system;

(e) ensure equitable and fair access to payment systems for both service providers and service users;

(f) ensure guaranteed settlement through finality and collateral rules such that these Regulations and the system rules shall define when a payment or transfer becomes irrevocable and cannot be unwound.

Principles for finality in payment and securities settlement.

5. (1) Final settlement of financial obligations shall be effected through the G-RTGS either directly, via clearing in the G-ACH or through a settlement agent.

(2) Where a participant enters money and securities transfer orders into a payment or securities settlement system recognized as such by the Bank, there shall be finality in payment and securities settlement systems.

(3) Where there is finality in a payment or securities settlement system under subregulation (2), transfer orders shall be legally enforceable and binding on third parties if the transfer orders become irrevocable before a bankruptcy decision takes effect.

(4) A transfer order entered into a funds or securities settlement system becomes irrevocable at the time defined by the rules of that system.

(5) A participant shall allow the Bank to appropriate, at an agreed value, any securities held by that participant in the G-CSD or otherwise that are pledged as a guarantee for settlement under the financial collateral arrangement and to deliver cash to the participant's settlement account to assure settlement.

PART II
REGULATION OF PAYMENT SYSTEMS IN GUYANA

Application.

6. These Regulations apply to those systems owned and operated by the Bank and gives force to all and any instructions issued by the Bank with regard to those systems and participation in them.

Smooth functioning of payment system.

7. The Bank shall ensure the smooth functioning of the National Payments System in general and of the Interbank Payment Systems in particular.

Regulation and Supervision.

8. The Bank may, from time to time, issue general or individual instructions to operators of payment systems, including those it owns and operates, imposing specific oversight standards and requiring actions in order to establish and maintain the safety and soundness of such systems.

Systemically Important Systems.

9. (1) The Bank shall designate the systemically important payment systems.

(2) The designation under paragraph (1) is made based primarily on-

(a) the role played in the system landscape;

(b) the potential economic effects in the event of a failure;

(c) the potential to undermine public confidence in systems and in the domestic currency in general; and

(d) the volume, value and risk of transactions processed.

(3) Any system which is designated as systemically important shall observe the Committee of Payments and Market Infrastructures (CPMI) – International Organisation of Securities Commissions (IOSCO) Principles for Financial Market Infrastructures (PFMIs) and the standards set out therein including-

(a) having a sound legal basis under the laws of Guyana and all other relevant jurisdictions;

(b) having rules and procedures which enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it;

(c) having clearly defined procedures for the management of credit risk and liquidity risk, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks;

(d) promoting prompt irrevocable and final settlement on the day of value as defined in these Regulations and the G-RTGS system rules, preferably during the day and at a minimum at the end of the day;

(e) in cases where multilateral netting takes place, being capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation, through use of identified reserves or collateralized intraday loan (Intraday Liquidity Facility);

(f) the use as the settlement asset "money on account" with the Bank in the manner defined in these Regulations which describes the use of collateral to assure adequate settlement funds;

(g) ensuring a high degree of security and operational reliability with contingency arrangements for timely completion of daily processing;

(h) having objective and publicly disclosed criteria for participation, which permits fair and open access;

(i) having governance arrangements which are effective, accountable and transparent.

(4) The Bank may, at its sole discretion, impose by way of direction any of the CPMI-IOSCO PFMIs standards referred to in subregulation (3) on operators of payment systems which are not classified as "systemically important" including its own system operator units.

(5) The Bank shall implement oversight standards for the payment systems, considering in particular the nature, scope, and complexity of operation of systems with respect to the types of participants, the type of payment services cleared or settled and the risk exposure of systems, taking into account in particular the exposure to systemic risk.

(6) The Bank shall conduct continuous and ad-hoc assessments for compliance with these standards by the overseen systems.

Access to the system.

10. Without prejudice to the principles of Open Membership in the CPMI-IOSCO PFMIs issued in April, 2012, and notwithstanding the rule book of a system, direct participation in the Bank's Interbank Payment Systems is strictly limited to-

(a) Bank of Guyana;

(b) banks;

(c) Ministry of Finance;

(d) Foreign central banks; and

(e) International financial institutions.

Compliance.

11. (1) In the performance of its duty of supervision under the Act, the Bank shall have the authority in the manner and at the times chosen to conduct off-site surveillance and on-site examinations of system related functions of participants in order to monitor compliance with obligations arising under these Regulations and instructions issued hereunder.

(2) The Bank shall have the authority in the performance of its oversight duty under the Act to conduct both off-site surveillance and on-site examinations of payment system operators, including its own system, and all their branches, agents and third parties to which activities and functions have been outsourced.

Cross border supervision.

12. In pursuit of its policies regarding the soundness of payment systems, the Bank may co-operate with foreign central banks, prudential supervisors and other monetary authorities.

Penalties.

13. Infringements of obligations or prohibitions arising under these Regulations, or directions issued under these Regulations may be sanctioned by the Bank pursuant section 11(1) (e) of the Financial Institutions Act.

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Rule book.

14. (1) Rule books and modifications thereto shall be subject to prior review and approval of the Bank and rule books which have been duly approved by the Bank as Regulator are enforceable and shall be complied with by participants.

(2) In accordance with sections 25 and 26 of the National Payments System Act, the absence of prior approval by the Bank of the rules of a system or modification of such rule book shall not be effective or enforceable in the courts and tribunals of Guyana.

Part III
Bank of Guyana's Payment Systems

System oversight.

15. Any payment system operated by the Bank shall comply with the same oversight standards as are imposed on any similar payment system operated locally which is subject to local and international standards.

Operational role of the Bank.

16. By virtue of section 39 (2) of the Act, the Bank shall own and operate the following systems-

(a) The Guyana-Real Time Gross Settlement System (G-RTGS) for Guyana dollar and US Dollar payments;

(b) Guyana Electronic Cheque Clearing system (G-ECC), as an Automated Clearing House and Guyana Electronic Funds Transfer System (G-EFT System) for Guyana dollar or US dollar payments executed by credit transfer order, cheque and direct debit; and

(c) The Guyana Central Securities Depository (G-CSD), as a registration, settlement and trading system for primary and secondary market transactions in Bank and Government of Guyana securities.

Access to G-RTGS.

17. (1) Appropriate components of the G-CSD, G-ECC and G-EFT systems shall have access to the G-RTGS for the settlement of net or gross inter-bank balances as appropriate.

(2) Third party systems, which provide settlement services, such as the Guyana Stock Exchange may also, at the Bank's discretion, be granted direct access to G-RTGS for the settlement of positions between participants on a gross or net basis.

Value Date.

18. Participants in the Bank's Interbank Settlement System and the G-EFT components shall credit the accounts of their customers, for any payment which has been received in favour of such customers and duly settled, no later than one G-RTGS Business Day following settlement in the utilised system or earlier as may be required by the system's rule book.

G-RTGS Calendar.

19. Prior to the 1st of December of each year, the Bank shall publish on its website and in the *Gazette* the calendar of the G-RTGS Business Days for the following calendar year.

Part IV
EFFICIENCY OF PAYMENT INSTRUMENTS

Standards.

20. To facilitate the settlement of cheques by the G-ECC system operating pursuant to regulation 16, all cheques offered for payment to another bank other than the bank of the drawer must take the form as defined in the G-ECC operating rules.

Legal force of electronic copy.

21. Pursuant to the National Payments Systems Act, in case of any dispute or litigation with regards to the payment of a cheque, a party may lawfully prove the existence of a cheque or other paper instrument, as well as its content and

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form, by electronic or optical copy, microfilm or any other equivalent and technologically adequate method, without having to produce the paper cheque.

Standard Bank Account.

22. In order to facilitate the smooth functioning of payment systems, the bank account numbers of all cash bank accounts of all customers will conform to Bank standards as issued from time to time.

Part V
SETTLEMENT OF MONETARY OBLIGATIONS

Collateral.

23. Participants in the Guyana settlement systems shall provide collateral for their settlement positions in conformity with the regulations pertaining to collateral.

Finality according to System Rules.

24. (1) Between the debtor and the creditor of a monetary obligation, the payment of the amount due by credit transfer, direct debit or cheque is completed when the cash bank account of the payee, that is the creditor or his agent, is definitively credited.

(2) The cash bank account of a payee is definitively credited when the credit is final according to the system rules of G-RTGS And from that moment the debt for which payment has been made is definitively extinguished.

(3) If the bank of the payee or of the payee's agent, becomes insolvent after the credit transfer, direct debit or cheque has been settled in the Bank's Settlement System, the payment of the amount due, and therefore the satisfaction of the concerned monetary obligation, is deemed to have taken place at the time of the interbank settlement as per the system rules.

Settlement finality.

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25. Settlement finality in the payment and settlement systems operated by the Bank are hereby recognised according to section 38 of the National Payments System Act 2018 and the system rules of the G-RTGS.

Part VI
CONFLICT OF LAWS

Insolvency proceedings.

26. Where insolvency proceedings are commenced against a participant in a settlement system, the rights and obligations arising from, or in connection with, the participation of that participant in such system shall be entirely determined by section 38 (2) of the National Payments System Act and managed according to the system rules of that payment system as approved by Bank.

Insolvency in foreign payment.

27. Where insolvency proceedings are commenced against a Guyanese participant in a foreign payment or securities settlement system, the rights and obligations arising from, or in connection with, the participation of that participant in such system shall be entirely determined by the law governing that system.

Governing law.

28. The agreements establishing cash bank accounts, held in Guyana with banks established in Guyana, whether at the head office or branch, shall be exclusively governed by the Laws of Guyana.

Prohibition of attachment.

29. No settlement account, nor any amount credited on such account, may be seized or attached by any party other than the settlement institution in whose books such accounts are held.

Part VII
TREATMENT OF COLLATERAL

Loans against collateral and government securities.

30. By virtue of sections 40 and 41 of the Act the Bank may provide loans against collateral and by sections 47 and 52 of the Act it may buy, sell and repurchase its own or government securities.

Purpose of Part VII.

31. This Part provides the regulatory basis for protection of the validity of financial collateral arrangements and of financial collateral and the primary focus of this arrangement is protection of the settlement through the G-RTGS system, that is the arrangement between settlement participants and settlement accounts at the Bank.

The purpose of collateral for G-RTGS Settlement.

32. For those participants in G-RTGS with insufficient available funds on their settlement account to cover their debit position in the G-RTGS, the Bank may ensure that the G-CSD pledged securities provide collateral to guarantee a Bank intraday liquidity facility by providing additional funds on the settlement account of the participants concerned.

Interpretation for Part VII.

33. In this Part-

"book entry securities collateral" means financial collateral provided under a financial collateral arrangement that consists of financial instruments, title to which is evidenced by entries in a register or account kept by or on behalf of an intermediary;

"close-out netting provision" means-

(a) a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part; or

(b) in the absence of such a provision as referred to in paragraph (a), a provision of financial collateral under an enactment or statutory instrument as a result of which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise -

(i) the obligations of the parties to the arrangement are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing the current value of the obligations;

(ii) the obligations of the parties to the arrangement are terminated and replaced by an obligation to pay such an amount; or

(iii) an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other party a net amount equal to the balance of the account;

"financial instruments" means any of the following-

(a) shares in companies;

(b) securities equivalent to shares in companies;

(c) bonds and other forms of debt instruments if these are negotiable on the capital market;

(d) any other securities-

(i) that are normally dealt in and give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange; or

(ii) that give rise to a cash settlement excluding instruments of payment;

(e) units in collective investment undertakings;

(f) money market instruments;

(g) claims relating to, or rights in or in respect of, shares, securities, bonds, instruments of a kind referred to in paragraphs (a) to (d);

"G-RTGS Business Days" means any calendar day on which the G-RTGS is functioning and processing interbank payments;

"right of use", in relation to a security financial collateral arrangement, means the right of the collateral taker as owner to use and dispose of financial collateral provided under the arrangement in accordance with the arrangement;

"supervised financial institution" means a financial institution that is subject to prudential supervision by the regulatory authority established under the Act;

"writing" shall be construed as including printing, lithography, typewriting or by any other medium of representing or reproducing words in visible form including recording by electronic means.

Application to financial collateral arrangements.

34. (1) This regulation applies to a financial collateral arrangement and to financial collateral only if the arrangement and collateral are within the Bank's jurisdiction, according to the Act.

(2) The collateral taker and the collateral provider who are the parties to the financial collateral arrangement must each be one of the following-

(a) the Bank;

(b) a supervised financial institution;

(c) a central counterparty, Central Securities Depository, settlement agent or clearing house, or any similar entity that is operating in the futures, options or derivatives markets provided that the entity is regulated under the laws of Guyana;

(3) For these rules to apply to a financial collateral arrangement, there must be evidence in writing of the arrangement.

(4) For this regulation to apply to financial collateral, there shall be evidence in writing of the provision of the collateral which identifies the financial collateral concerned.

(5) For the purpose of subregulation (4), it is sufficient to prove that the relevant -

(a) book entry securities collateral has been credited to, or forms a credit in, the relevant G-CSD account which regsiters securities earmarked for a specific collateral purpose; and

(b) cash collateral has been credited to, or forms part of, a participants settlement account.

Principles governing G-RTGS settlement.

35. (1) If a participant has insufficient funds in their G-RTGS settlement account to finalise settlement, where the participant agrees, the Bank may use agreed value securities held by that participant in the G-CSD that are pledged as a guarantee for settlement under the financial collateral arrangement and to deliver intraday liquidity to the participant's settlement account to assure settlement.

(2) Each G- RTGS participant shall, as necessary, set up such collateral in the form of pledged financial instruments as defined above in its G-CSD account for guaranteeing the settlement and the G-CSD shall automatically register the value of pledged securities in the participant's G-RTGS collateral account.

(3) Participants may also register other forms of collateral in the G-RTGS collateral account, such as foreign exchange reserves and eligible deposits at the Bank.

(4) Each participant may set up in G-RTGS a general reserve and a cash reserve for its own liquidity management purposes and establishment of a reserve has the effect of moving funds from available funds in the settlement account in G-RTGS into a reserve account in G-RTGS where they can only be used for the designated purpose of settlement.

(5) A right under a financial collateral arrangement to substitute or withdraw excess financial collateral in favour of the collateral provider does not prejudice the financial collateral that is provided to the collateral taker as mentioned in this regulation.

(6) Financial collateral arrangements, netting agreements and close-out netting provisions shall be valid and enforceable in accordance with their terms.

(7) Where the prior collateral taker is the Bank, the collateral provider may not make further financial collateral arrangements using the same collateral if the prior collateral taker still has right of use.

Formal requirements with respect to financial collateral arrangements and the provision of financial collateral.

36. (1) Participants governed by the Laws of Guyana hereby explicitly acknowledge that in accordance with these Regulations, the creation, validity, perfection, enforceability and admissibility in evidence of the collateral in regulation 35 is not dependent on the performance of any formal act and that the collateral is considered provided to and under the control of the Bank, which is the collateral taker, by reserving the credit balances in the available funds or in the relevant reserves of the Participants, and by registration of the collateral over government securities in the G-CSD.

(2) For the purposes of this Regulation, "formal act" includes any judicial act, registration, notification, note in any public registry, acknowledgement, advertisement published in any newspaper or journal, any form of delivery or any similar act.

(3) Subregulation (1) does not prejudice the application of this instruction to financial collateral that has been provided so long as that provision is capable of being evidenced in writing and the relevant financial collateral arrangement is also capable of being evidenced in writing.

Regulation 35(2) and (3) not to limit other Laws of Guyana.

37. Nothing in regulations 35(2) and (3) limits any requirement imposed by any other Law of Guyana to the effect that the realisation or valuation of financial collateral and that the calculation of the relevant financial obligations shall be conducted in a commercially reasonable manner.

Part VIII
ENFORCEMENT OF FINANCIAL COLLATERAL ARRANGEMENTS

Right of collateral taker to enforce security financial collateral arrangement

38. (1) On the occurrence of an enforcement event relating to a security financial collateral arrangement, the collateral taker under the arrangement has a right to realise the financial collateral provided under the arrangement where -

(a) the collateral is in the form of a financial instrument, by sale or appropriation and by setting off the instrument's value against, or applying that value in discharge of, the relevant financial obligations, and

(b) the collateral is in the form of cash, by setting off the amount of cash against, or applying it, in discharge of the relevant financial obligations.

(2) For the purpose of this regulation, a collateral taker may appropriate a financial instrument only if the relevant security financial collateral arrangement-

(a) allows appropriation; and
(b) provides for the valuation of the instrument.

(3) Financial collateral may, subject to the terms of the relevant security financial collateral arrangement, be realised under this regulation without the need-

(a) to give prior notice of intention to realise the financial collateral;
(b) for the terms of realisation to be approved by a court, public authority or person;
(c) to conduct the realisation by public auction or by any other means by which an insolvent person's assets may be lawfully realised; or
(d) for any additional period of time to have elapsed.

Financial collateral arrangement to have effect despite winding-up proceedings or resolution measures.

39. A financial collateral arrangement has effect in accordance with its terms despite the commencement or continuation of winding-up proceedings or resolution measures in relation to the collateral provider or collateral taker.

Collateral and finality.

40. (1) G- RTGS participants agree that as soon as a settlement instruction or net settlement instruction from any participant or Clearing House is submitted to the G-RTGS, the Bank shall automatically reserve the available funds in their settlement accounts to enable the immediate settlement of the positions once the instruction is accepted for settlement.

(2) If insufficient funds are available in the settlement account of one or more participants to settle those participants' obligations, the Bank shall calculate the sum of available funds plus the amount held in the reserve in G-RTGS associated with that participant and type of transaction.

(3) Where there is still insufficient funds available after calculations are completed under subregualtion (2), the Bank shall use pledged securities under the security financial collateral arrangement in the G-CSD for the amount of the additional funds required and shall allow the participant to overdraw its G-RTGS settlement account up to the value of pledged collateral available.

(4) Where the situation in subregulation (3) occurs, the G-RTGS shall then accept the settlement instruction for settlement and the participant shall repay the overdraft according to the G-RTGS System Rules.

Financial collateral arrangements and financial collateral not to be invalidated or voided.

41. (1) A financial collateral arrangement, or financial collateral provided under such arrangement, cannot be invalidated, declared void or be reversed because the arrangement was created, or the financial collateral was provided-

(a) on the day on which relevant winding-up proceedings or resolution measures were commenced, but before the making of an order commencing those proceedings or measures; or

(b) during a period before and defined by reference to the commencement of those proceedings or measures or by reference to the making of any order or the taking of any other action or the occurrence of any other event, during those proceedings or measures.

(2) Any financial collateral arrangement or relevant financial obligation that has been created, or any financial collateral that has been provided, on the day on which, but after the moment on which, winding-up proceedings or resolution measures were commenced, is binding on third parties so long as the collateral taker concerned is able to prove that that collateral taker was not aware, and had no reason to believe, that the proceedings or measures had commenced.

Provision of financial collateral not to be invalidated or declared void by certain events.

42. (1) If a financial collateral arrangement contains an obligation to provide financial collateral, or additional financial collateral, in order to take account of changes in the value of the financial collateral, or in the amount of the relevant financial obligations, the provision of financial collateral, or additional, substituted or replacement financial collateral, under such an obligation may not be invalidated or declared void or be reversed only due to a reason in subregulation (2).

(2) The financial collateral in subregulation (1) or (3) may not be invalidated or declared void or be reversed only because -

(a) the provision was made on the day on which winding-up proceedings or resolution measures commenced, but before the making of an order commencing those proceedings or measures, or during a period before, and defined by reference to-

(i) the commencement of winding-up proceedings or resolution measures; or

(ii) the making of an order, or the taking of any other action, or the occurrence of any other event, during the course of those proceedings or measures; or

(b) the relevant financial obligations were incurred before the date on which the financial collateral, or the additional, substituted or replacement financial collateral was provided.

(3) If a financial collateral arrangement contains a right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value, the provision of financial collateral, or additional, substituted or replacement financial collateral, under such a right may not be invalidated or declared void or be reversed only due to a reason in subregulation (2).

Made this 26 day of January 2022.

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Dr. Gobind Ganga
Governor
Bank of Guyana