

THE EXCHEQUER AND AUDIT (AMENDMENT)
BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Exchequer and Audit Act, Chap.69:01 “the Act”) to facilitate payments by and to the Government of Trinidad and Tobago by means of electronic funds transfer.

Clause 1 of the Bill contains the short title.

Clause 2 would define the references to the Act in the Act for which this is the Bill.

Clause 3 of the Bill would provide that the Act would come into force by Proclamation.

Clause 4 of the Bill seeks to amend section 2 of the Act by the insertion of definitions of new words and terms.

Clause 5 of the Bill would amend the Act by inserting a new Part IVA entitled “Electronic Funds Transfer”.

Proposed section 23A seeks to provide for the electronic transfer of money by or to the State subject to the general or specific directions of the Treasury.

Proposed section 23B seeks to prohibit the use of credit cards for issues out of the Exchequer Account or other public moneys.

Proposed section 23C would require persons who engage in business with the Government to designate the financial entities or agents through which payments or issues are to be made and provide information regarding the entities or agents to the relevant Ministry or Department of Government with which they are transacting business involving the electronic transfer of funds.

Proposed section 23D would oblige the State to designate the Central Bank, a financial entity or an agent which would receive electronically transferred funds to be credited to the Exchequer Account and to inform the persons making the payments accordingly.

Proposed section 23E would empower the Treasury to authorize the provision of bank cards or electronic money to accounting officers and receivers of revenue and to stipulate credit limits with respect to such cards and money. Proposed subsection (2) would provide that the cards and money are to be used solely in accordance with the appropriate law and any conditions imposed by the Treasury. Proposed subsections (3) and (4) would remove any requirement for parliamentary approval for the electronic transfer of funds by the Government.

Proposed section 23F would empower the Minister to make such Regulations, subject to a negative resolution of Parliament, relating to electronic funds transfer that are necessary to give effect to the Act for which this is the Bill. The Regulations would provide, *inter alia*, for the conditions relating to electronic funds transfer, adequate processes and controls for ensuring authentication and access to information, appropriate controls to support the use of electronic signatures, appropriate guidelines and controls, and the liabilities of parties.

Proposed section 23G seeks to provide for the legality and enforceability of electronic funds transfers.

Proposed section 23H seeks to provide that the Electronic Transactions Act is to apply to electronic signatures used by the Government.

Clause 6 of the Bill would validate all actions done pursuant to Part IVA prior to the commencement of the Act for which this is the Bill.

THE EXCHEQUER AND AUDIT (AMENDMENT) ACT, 2011

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Commencement
3. Interpretation
4. Section 2 amended
5. Part IVA inserted
6. Validation

BILL

AN ACT to amend the Exchequer and Audit Act, Chap. 69:01 to provide for payments into and issues out of the Exchequer Account and for payments of other public moneys howsoever held, by means of electronic funds transfer and for related matters

- Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:
- Short title 1. This Act may be cited as the Exchequer and Audit (Amendment) Act, 2011.
- Commencement 2. This Act comes into operation on such date as is fixed by the President by Proclamation.
- Interpretation
Chap. 69:01 3. In this Act, “the Act” means the Exchequer and Audit Act.
- Section 2
amended 4. Section 2 of the Act is amended by inserting in the appropriate alphabetical sequence the following definitions:
- “bank card” means any instrument, token, device or card, whether known as a bank service card, banking card or debit card or by any other similar name, issued with or without a fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value or for use in an automated banking device, to obtain money or any of the other services offered through the device;
- “credit card” means an instrument, token, card or other device, whether known as a charge card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining goods, services or anything else of value on credit from a creditor or for use in an automated banking facility to obtain money or services offered through the facility;
- “data message” means any document, correspondence, memorandum, book, plans, map, drawing, diagram, pictorial or graphic work, photograph, audio or video recording and machine-readable symbols generated, sent, received or stored by any electronic means by or on behalf of the person it represents;

“electronic form” means a digital or intangible state capable of creation, storage, transmission or receipt of information by magnetic, wireless, optical, biometric or other similar means;

“electronic funds transfer” means any transfer of funds, other than a transfer by means of cash, cheque or other paper instrument, that is initiated by an instruction in electronic form authorizing the Central Bank or a financial entity to debit or credit an account through an electronic terminal, telephone, computer, magnetic tape or other device;

Chap. 79:09

“electronic money” has the meaning assigned to it in section 2 of the Financial Institutions Act;

“electronic signature” means information in electronic form affixed to, or logically associated with a data message which may be used to –

- (a) identify the signatory in relation to that data message; or
- (b) indicate the signatory’s approval of the information contained within that data message;

“electronic terminal” means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer and includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

“financial entity” has the meaning assigned to it in section 2 of the Financial Institutions Act;

“information” includes data, codes, computer programme, software and databases;

“issuer” includes a financial institution or any other person who issues a card;

“Minister” means the Minister to whom responsibility for finance is assigned;

“signatory” means a person who may or may not hold a signature-creation device and acts either on his own behalf or on behalf of another person to create an electronic signature.

5. The Act is amended by inserting after section 23, the following Part:

“PART IVA

ELECTRONIC FUNDS TRANSFER

Electronic
funds transfer

23A. Notwithstanding any other law and subject to section 23B, a payment into or issue out of-

- (a) the Exchequer Account; or
- (b) other public moneys,

howsoever held, may be made by means of electronic funds transfer and shall be subject to the general or specific directions of the Treasury.

23B. No issue out of –

- (a) the Exchequer Account; or
- (b) other public moneys,

howsoever held, shall be made by means of a credit card.

Designation of
financial entity

23C. Persons who, by means of electronic funds transfer, make payments to the State or are in receipt of issues out of the Exchequer Account or other public money's howsoever held, shall -

- (a) designate one or more financial entity or other authorized agent through which such payments or issues shall be made; and
- (b) provide to the relevant Ministry or Department of Government such information as may be necessary to effect an electronic funds transfer through each entity or agent designated under paragraph (a).

Designation of
Central Bank

23D. For the purposes of receiving, by means of electronic funds transfer, payments from persons to be credited to the Exchequer Account or other public moneys, the relevant State entity shall-

- (a) designate the Central Bank or one or more financial entities or other authorized agent through which such payments shall be received; and
- (b) provide the persons with such information as may be necessary to effect an electronic funds transfer through the Central Bank or each financial entity or authorized agent designated under paragraph (a).

Bank cards,
credit cards
and electronic
money

23E.(1) The Treasury may authorize -

- (a) the provision of bank cards or electronic money to accounting officers and receivers of revenue; and
- (b) the granting of credit limits in respect of such cards or electronic money.

(2) The bank cards, or electronic money, referred to in subsection (1), shall be used solely for items of expenditure authorized by an Appropriation Act or any other written law and subject to such conditions as may be imposed by the Treasury.

(3) Section 15 does not apply to the use of bank cards or electronic money authorized by the Treasury under subsection (1).

(4) Electronic funds transfers made or received pursuant to subsection (1) shall not be regarded as an advance to which the requirements of section 15 applies.

Regulations
Re: sections
23A, 23B, 23C
and 23D

23F. (1) The Minister may make Regulations relating to electronic funds transfer as he considers necessary to give effect to sections 23A, 23B, 23C and 23D for –

- (a) the conditions relating to electronic funds transfer, including the use of bank cards, or electronic money;
- (b) adequate processes and controls for ensuring valid and reliable authentication and adequate access to information;
- (c) appropriate environmental and application controls to support the use of electronic signatures;
- (d) appropriate guidelines and controls to ensure adequate protection for the public, the content and timing of disclosures and identification of appropriate documentation with respect to electronic funds transfer;
- (e) the liabilities of all parties concerned with respect to-
 - (i) unauthorized electronic funds transfer;
 - (ii) fraudulent or negligent conduct and the treatment of losses occurring as a result of such conduct;
 - (iii) notification of loss, theft or unauthorized use of devices;
 - (iv) system malfunction or failure; or
 - (v) dispute resolution; and

(f) all other matters for which Regulations are required under this Act.

(2) Regulations made under this section shall be subject to negative resolution of Parliament.

Validity of payment

23G. Notwithstanding any other law, any electronic funds transfer made in accordance with this Act shall be legally enforceable and binding.

Electronic Transactions Legislation to apply

23H. The law that seeks to give legal effect to electronic documents, electronic records, electronic signatures and electronic transactions shall apply to electronic signatures used for electronic funds transfer.”.

Validation

6. Notwithstanding any rule of law, all actions done pursuant to Part IVA, prior to the commencement of this Act, are deemed to have been lawfully and validly done and no legal proceedings shall be entertained in respect of, or in consequence of, the actions.

Passed in the House of Representatives this day of , 2011.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2011.

Clerk of the Senate

I confirm the above.

President of the Senate