

THE EXCHEQUER AND AUDIT (ELECTRONIC FUNDS
TRANSFER) REGULATIONS, 2015

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LEGAL NOTICE NO. 68

REPUBLIC OF TRINIDAD AND TOBAGO

THE EXCHEQUER AND AUDIT ACT, CHAP. 69:01

REGULATIONS

MADE BY THE MINISTER UNDER SECTION 23B OF THE EXCHEQUER AND
AUDIT ACT AND SUBJECT TO NEGATIVE RESOLUTION OF PARLIAMENT

THE EXCHEQUER AND AUDIT (ELECTRONIC FUNDS
TRANSFER) REGULATIONS, 2015

PART I

GENERAL

1. These Regulations may be cited as the Exchequer and Audit ^{Citation}
(Electronic Funds Transfer) Regulations, 2015.

2. In these Regulations—

^{Interpretation}

“Automated Clearing House” means an electronic clearing system in which payment orders or instructions are exchanged among financial institutions and processed in batches by a data processing centre, primarily through magnetic media or telecommunications networks;

“business days” means Monday through Friday, excluding public holidays;

“cash receipting system” means an electronic system through which receipts are issued and records of moneys collected by receivers of revenue are kept;

“collector of revenue” means any person appointed by a receiver of revenue to collect public moneys and includes any person to whom a collector may delegate as part of his duties;

“credit” has the meaning assigned to it in section 2 of the Electronic Transfer of Funds Crime Act;

“Financial Intermediary” means a financial institution as defined by section 2 of the Financial Institutions Act or such other institution that may be approved by the Treasury;

“Financial Regulations” means the Financial Regulations made under the Act;

“Government Payment System” means the system operated by the Treasury that facilitates payment by a Department;

“gross settlement” means a settlement of funds, or a securities transfer order or instruction, which occurs individually on an order by order basis;

“information system” has the meaning assigned to it in section 2 of the Electronic Transactions Act;

“instructions” means instructions given under section 4 of the Act;

“misdirected payment” means a payment applied to an incorrect account;

“return payment” means a payment returned by a financial intermediary to an issuer;

“Real Time Gross Settlement” means an automated system in which funds are transferred among financial institutions on a gross settlement basis in real time;

“State Banker” means the Central Bank of Trinidad and Tobago; and

“unauthorized transactions” means transactions which are not authorized by the client but does not apply to any transaction carried out by the client or by anyone performing a transaction with the knowledge and consent of the client.

Application

3. (1) These Regulations apply to electronic funds transfers in relation to—

- (a) processes and controls for ensuring valid and reliable authentication and access to information;
- (b) environmental and application controls to support the use of electronic signatures;
- (c) guidelines and controls to ensure protection for clients and Departments; and
- (d) liabilities of the State and dispute resolution.

(2) Nothing in these Regulations shall prevent a person from conducting business with a Department in the manner in which such business was conducted prior to the coming into force of section 23B of the Act.

(3) For the purposes of these Regulations, electronic funds transfer does not include, in respect of—

- (a) cheques, any transfer of funds originated by cheque, draft or similar paper instrument at an electronic terminal; and

- (b) cheque guarantee or authorization, any transfer of funds that guarantees payment or authorizes acceptance of a cheque, draft, or similar paper instrument but that does not directly result in a debit or credit to an account of a consumer.

4. Until such time as Regulations which govern electronic signatures and authentication under the Electronic Transactions Act are prescribed, instructions, developed in consultation with the Minister with responsibility for information and communication technology, will guide the use of electronic signatures and authentication procedures.

5. The Treasury shall, in consultation with the Minister with responsibility for information and communication technology, issue instructions requiring Departments to comply with all requirements for the security of information systems, processes and resources for electronic funds transfer, which include but are not limited to—

- (a) the protection of payment-related data;
- (b) the management of system vulnerabilities;
- (c) access control measures;
- (d) business continuity planning and management; and
- (e) security reporting requirements.

6. The provision of “electronic funds transfer services” to the Treasury are subject to such terms and conditions which clearly outline the associated liabilities and responsibilities of all parties concerned as are agreed to between the Treasury and the State Banker or the Treasury and the financial intermediary as the case may be.

7. Electronic signatures, as defined in Part IV of the Electronic Transactions Act, may be used as part of the authentication and authorization processes.

8. (1) Departments shall maintain client records and transaction details which can be used to verify the accuracy of information provided as well as assist in the prevention and detection of fraud.

(2) The maintenance of the records under subsection (1) shall be governed by the applicable laws and regulations in relation to the collection, retention, sharing and disposal of records.

(3) A client of a Department shall advise that Department of any change required to be made to his records.

Requirements for records relating to payments and receipts

9. (1) All records relating to—
- (a) the making of electronic funds transfer payments on behalf of an accounting officer; and
 - (b) receipts by electronic funds transfer,
- shall be—
- (c) transmitted in a secure environment;
 - (d) transmitted by the accounting officer or a person designated in writing by the accounting officer; and
 - (e) stored in an easily retrievable electronic form.

(2) In addition to the requirements under subsection (1), records shall meet any other requirement as specified by the Treasury.

Security of access codes

10. Where a client has been issued an access code to facilitate electronic funds transfers, the client shall keep such access code safe and not disclose or otherwise make the access code available to anyone not authorized to sign on to his accounts.

PART II

PAYMENTS

Methods for making electronic payments

11. Public moneys may be paid electronically using—
- (a) Automated Clearing House;
 - (b) Real Time Gross Settlement; or
 - (c) any other method of transferring funds electronically as approved by the Treasury.

Treasury to issue instructions for electronic funds transfer method

12. (1) The Treasury shall issue instructions to the Departments for each electronic funds transfer method.

- (2) Instructions issued under subsection (1), may include, but are not limited to—
- (a) approval of terms and conditions of electronic funds transfer services;
 - (b) definitions of useful terms and concepts associated with the particular payment method;
 - (c) the procedure for payment submission and acceptance;
 - (d) details of information required for the processing of the particular payment method;
 - (e) provision for treatment of exception items;
 - (f) schedules for processing deadlines;
 - (g) authorized documentation for payment requests;

- (h) applicable fees;
- (i) retention schedules for payment records; and
- (j) such other information as may be necessary for the execution of a payment to the client.

13. A Department shall provide the terms and conditions of electronic funds transfer services before the client agrees to use those services.

Department to provide terms and conditions

14. Issues out of the Exchequer Account and other public accounts to make payments may be done electronically using—

Issues from the Exchequer Account

- (a) the Government Payment System; or
- (b) such other means as approved by the Treasury.

15. The electronic payment of public money shall be made solely for items of expenditure authorized by an Appropriation Act or any other written law and be subject to such conditions as may be determined by the Treasury.

Payment to be solely of authorised expenditure

16. The issuance of payments using electronic funds transfer shall be administered by the appropriate accounting officer, in accordance with the Financial Regulations, where applicable, and executed in a secure manner as approved by the Treasury.

Financial Regulations to be followed

17. (1) An accounting officer shall submit reports to the Treasury as specified in the relevant instructions for the funds transferred electronically for each payment method referred to in regulation 11.

Accounting officer to report on electronic transfers made

(2) An accounting officer shall include information on electronic funds transfer payments for the financial year as well as a report on compliance with section 23B of the Act, when preparing an Appropriation Account.

18. Where activities relating to the authorization of payments and the processing of those payments are conducted they shall not be performed by the same person.

Segregation of duties

19. The Treasury shall develop appropriate guidelines and controls to hold accounting officers accountable for actions which they have authorized in relation to electronic funds transfers.

Guidelines for accountability of accounting officers

20. An accounting officer shall submit to the Treasury and the Auditor General—

Accounting officer to submit names of authorised persons

- (a) a list of names of the officers approved by him to conduct transactions by means of electronic funds transfer; and
- (b) any change to the list of approved officers referred to in paragraph (a).

Financial Intermediaries to be nominated

21. (1) In the issuance of an electronic funds transfer, the client shall designate a Financial Intermediary in the form specified by the Treasury, to act as a receiver on his behalf.

(2) A client using an electronic funds transfers to conduct a transaction under subsection (1), shall be responsible for providing correct information to facilitate the electronic funds transfer.

Department to communicate when accounts are being debited

22. Where issues are made out of the Exchequer Account or other public account for electronic funds transfer payments referred to in regulation 14, the Department shall communicate with the client the details of the payment made in such form and within such time as specified by the Treasury.

Treasury exempt from liability

23. The Treasury shall not be responsible for delays in payment or errors due to factors outside the reasonable control of the Treasury.

Liability of the State

24. Where an erroneous transfer occurs due to incorrect use of the information of a client by a Department or public official, the Department or public official shall be responsible for—

- (a) making the correct payment;
- (b) paying any penalties that might occur under contractual obligation from the specific transaction and if the client had notified the Department and the Department agreed to the conditions;
- (c) any bank charges that may arise from the specific transaction and where the payee had notified the Department and the Department agreed to said conditions; and
- (d) recovering any misdirected funds.

Responsibility of client

25. A client shall be responsible for—

- (a) providing accurate financial intermediary details; and
- (b) notifying the relevant Department of any changes in the details provided under paragraph (a), as and when they occur, and the Treasury shall not be liable for any loss or damage where the client fails to comply with the requirements of paragraphs (a) and (b).

Client to be informed where electronic funds transfer is not possible

26. (1) In the event that a Department is unable to make payments using electronic funds transfer, the client shall be notified accordingly.

(2) Where a Department is unable to make payment to a client using electronic funds transfer it may make payment by cheque or by such other means as may be agreed between Department and the client.

27. Subject to regulation 25, a client shall be liable for losses incurred as a result of an erroneous electronic funds transfer payment where—

Client liable for losses in certain

- (a) a transfer occurs and the bank details of the client are incorrect; and
- (b) notification of change in the bank details of the client was not made in sufficient time.

28. The Treasury shall promote the use of a reasonably safe and secure environment for a client to transact business with Departments with due regard to issues of client protection.

Treasury to promote secure service

PART III

RECEIPTS

29. Services for the electronic receipt of public moneys shall be subject to such terms and conditions which clearly outline the associated liabilities and responsibilities of all parties concerned as are agreed with the Treasury.

Liabilities and responsibilities of parties to be clear

30. Public moneys may be received electronically using any of the following electronic funds transfer methods:

Methods for receipt of money electronically

- (a) Automated Clearing House;
- (b) Real Time Gross Settlement;
- (c) debit card and credit card payments; or
- (d) any other method of receiving funds electronically as approved by the Treasury.

31. (1) The Treasury shall issue instructions for each method referred to in regulation 30.

Instructions for electronic funds transfer methods

(2) Instructions under subregulation (1) may include but are not limited to—

- (a) definitions of useful terms and concepts associated with the particular receipt method referred to in regulation 30;
- (b) the procedure for accepting revenue received electronically;
- (c) details of information required for the processing of the particular type of receipt;
- (d) provision for the treatment of exception items;
- (e) schedules for issuing receipts for revenue received electronically;
- (f) applicable fees; and
- (g) retention of transaction and receipt records.

Application
and approval
of electronic
funds transfer
method

32. (1) Subject to the electronic funds transfer methods referred to in regulation 30—

- (a) a receiver of revenue shall apply to the Treasury for approval to use an electronic funds transfer method for the purpose of facilitating the receipt of public moneys; and
- (b) the Treasury may, subject to such terms and conditions as it thinks necessary, approve the use of an electronic funds transfer method applied for by a receiver of revenue.

(2) A receiver of revenue shall comply with the terms and conditions of any approval under subsection (1)(b).

Information to
facilitate
receipts of
public funds
using
electronic
funds transfer

33. For the purposes of receiving moneys, by means of electronic funds transfer, from a client for credit to the Exchequer Account or other public account, a Department shall—

- (a) indicate to the Treasury, the Financial Intermediary through which such moneys shall be received;
- (b) provide the client with such information as may be necessary to effect the electronic funds transfer through the Financial Intermediary indicated under paragraph (a); and
- (c) provide the Financial Intermediary with such information as may be necessary to effect the electronic funds transfer.

Maintenance
of accounting
books and
records

34. A receiver of revenue shall—

- (a) ensure proper supervision over the receipt of public funds using electronic funds transfer and bring promptly to account under the proper chart of account classifications, all moneys so received;
- (b) exercise strict supervision over all officers under his authority, entrusted in writing, with receiving public moneys electronically, and implement efficient checks to prevent negligence and fraud;
- (c) ensure that all records are correctly posted and maintained on a timely basis and that such reports and compliance statements as are required by these Regulations are promptly prepared;
- (d) ensure that internal control measures are in place for recording and processing of all moneys received electronically;
- (e) ensure compliance with all written law and provide for the identification, collections and recording of public moneys received using electronic funds transfer; and
- (f) ensure compliance with any other requirements as specified by the Treasury in instructions.

35. A receiver of revenue who has obtained an approval under regulation 32 shall maintain electronically, all accounting books and records relating to the receipt of public moneys whether by electronic funds transfer or otherwise, and in accordance with the provisions of the Financial Regulations.

Duties of receiver of revenue

36. (1) A receiver or collector of revenue shall issue an acknowledgement of payment to the client upon receipt of confirmation from the Financial Intermediary.

Issue of acknowledgement

(2) The date endorsed on the acknowledgement given under subregulation (1) shall be deemed to be the effective date of payment.

37. (1) A receiver of revenue shall issue a receipt to a client upon receiving verification that the funds or public moneys have been transferred to the Exchequer Account.

Issue of official receipt

(2) A receiver has the right to cancel a receipt issued under subregulation (1) or an acknowledgement issued under regulation 36, where the transfer of funds is incomplete due to an action of the client.

38. A Department shall ensure that where a receipt is issued, it shall contain all of the following information:

Receipt of Department

- (a) the amount of the transaction;
- (b) the date and time, if practicable, of the transaction;
- (c) the type of transaction;
- (d) data that enables the Department to identify the client and the transaction;
- (e) where possible, a number or symbol that enables the financial intermediary to be identified;
- (f) the receipt number; and
- (g) other means, which will facilitate reconciliation.

39. A Department shall notify its clients of their duty to check all entries on statements and to report promptly any apparent error or possible unauthorized transaction to the relevant Department.

Department to notify clients of possible errors

40. The Treasury shall make all necessary arrangements with the State Banker in respect of the amounts transferred to the Exchequer Account on a daily basis.

Treasury to make arrangements with State Banker

41. The Treasury shall make all necessary arrangements with Financial Intermediaries in respect of electronic funds transfers.

Treasury to make arrangements with Financial Intermediaries

- Electronic monies to be reconciled with daily bank statement 42. A receiver of revenue shall, for each day, reconcile the public moneys received through electronic funds transfer.
- Requirement to submit report to Treasury 43. A receiver of revenue shall submit a report to the Treasury in accordance with the relevant instructions.
- Person to be assigned to receive revenue electronically 44. A receiver of revenue or an officer delegated by him shall assign authority in writing to a collector of revenue to receive moneys electronically.

PART IV

DISPUTE RESOLUTION

- Department to provide client with certain information 45. A Department shall ensure that a client has been provided with information on the means to activate complaint investigation and resolution processes.
- Restrictions on Departments 46. A Department shall not seek to restrict or deny the rights of a client to make claims or to attempt to impose time limits on clients to detect errors or unauthorized transactions beyond the scope of the Instructions issued under these Regulations.
- Department to obtain information where client makes complaint 47. Where a client raises a complaint concerning the authorization of a transaction or an information system malfunction, the Department will make reasonable efforts to obtain from the client, the information which is relevant to the investigation and resolution of the complaint.
- Requirements when complaint made 48. A Department shall, where a complaint is made—
 (a) complete the investigation and advise the client in writing, of the outcome of the investigation; or
 (b) where there are exceptional circumstances, advise the client in writing, of the need for more time to complete its investigation,
 within the time frame as specified by the instructions.
- Procedure where client's account incorrectly credited or debited 49. (1) Where, on completion of an investigation of a complaint, the Department decides that the account of the client has been incorrectly credited or debited, having regard to the provisions of these Regulations, the Department will notify the client in writing of the steps to be taken to address the complaint.
 (2) A client under subsection (1) shall be required to authorize the financial intermediary to adjust the account of the client, including appropriate adjustments for interest or charges.

PART V

MISCELLANEOUS

50. Part XIX of the Financial Regulations is applicable to these Regulations for any reasonable determination of fraud or negligence and resultant losses.

Application of
Part XIX of the
Financial
Regulations

51. The offences and penalties set out in the Act apply to breaches of these Regulations.

Offences and
penalties

52. A copy of these Regulations shall be kept in all accounting offices and Departments.

Copy of
Regulations to
be kept

53. Receivers of revenue, collectors of revenue and accounting officers shall ensure compliance with these Regulations.

Requirement to
ensure
compliance

54. The Treasury shall prepare instructions to give effect to these Regulations.

Treasury to
prepare
instructions

Dated this 7th day of May, 2015.

L. HOWAI

Minister of Finance and the Economy