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Payment and Settlement Systems (Finality and Netting) Bill

Bill No. 41/2002

Read the first time on 31st October 2002.

PAYMENT AND SETTLEMENT SYSTEMS (FINALITY AND NETTING) ACT 2002

(No. of 2002)

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A BILL

i n t i t u l e d

An Act to make provision for the protection of payment and settlement systems from disruptions that may lead to risks to the financial system and for purposes connected therewith, and to make related amendments to the Banking Act (Chapter 19 of the 1999 Revised Edition), the Monetary Authority of Singapore Act (Chapter 186 of the 1999 Revised Edition) and the Securities and Futures Act 2001 (Act 42 of 2001).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

- 5 **1.** This Act may be cited as the Payment and Settlement Systems (Finality and Netting) Act 2002 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

- 2.—**(1) In this Act, unless the context otherwise requires —

10 “Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap.186);

“book-entry Government securities” means any securities issued by the Government under any written law transferable by a book-entry on a register or otherwise;

15 “default arrangements” means the arrangements put in place by a designated system to limit systemic and other types of risk which arise in the event of a participant appearing to be unable, or likely to become unable, to meet its obligations in respect of a transfer order, including any arrangements for —

(a) netting; or

20 (b) the closing out of open positions;

“defaulter” means a person in respect of whom action has been taken by a designated system under its default arrangements;

25 “designated system” means a system that is designated by the Authority under section 3 to be a designated system for the purposes of this Act;

“disposition of property” includes a payment made into or out of an account of a participant;

30 “netting” means 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;

“operator”, in relation to a designated system, means the person specified in the order referred to in section 3(1) as the operator of the designated system;

“participant” means a party to an arrangement that establishes a system;

“relevant office holder” means —

(a) the Official Assignee exercising his powers under the Bankruptcy Act (Cap.20);

(b) a person acting in relation to a company as its liquidator, receiver, receiver and manager, judicial manager or an equivalent officer; or

(c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property or an equivalent officer;

“settlement institution”, in relation to a designated system, means a body corporate providing accounts for the participants of the designated system to hold funds and to settle transactions between participants in the designated system;

“system” means a system established for —

(a) the clearing or settlement of payment obligations; or

(b) the clearing, settlement or transfer of book-entry Government securities;

“transfer order” means —

(a) an instruction by a participant to place at the disposal of a recipient an amount of money by means of a book-entry on the accounts of a settlement institution for a designated system, or an instruction which, when settled, results in the assumption or discharge of a payment obligation as defined by the rules of a designated system; or

(b) an instruction by a participant to transfer book-entry Government securities.

(2) A reference in this Act to the law of insolvency shall be construed as a reference to —

- (a) the Bankruptcy Act (Cap.20);
- (b) Parts VIIIA, IX and X of the Companies Act (Cap.50); and
- 5 (c) any other written law or rule of law whether of Singapore or a place outside Singapore which is concerned with or in any way related to the bankruptcy, winding up or insolvency of a person.

Designation of system

10 **3.**—(1) The Authority may, by order published in the *Gazette*, designate a system to be a designated system for the purposes of this Act, subject to such terms and conditions as may be prescribed in the order.

(2) Any order made under subsection (1) shall specify the operator of the designated system.

Revocation of designation

15 **4.**—(1) The Authority may, by order published in the *Gazette*, revoke the designation of a designated system if —

- (a) the Authority is satisfied that —
 - (i) the designated system has ceased to operate as a system;
 - (ii) the operator of the designated system has knowingly
20 furnished information or documents to the Authority in connection with the designation of the system which is or are false or misleading in any material particular;
 - (iii) the operator or settlement institution of the designated
25 system is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (iv) the operator or settlement institution of the designated system has entered into a compromise or scheme of arrangement with its creditors, whether in Singapore or elsewhere;
 - 30 (v) a receiver, receiver and manager, judicial manager or an equivalent officer has been appointed, whether in Singapore

or elsewhere, in relation to or in respect of any property of the operator or settlement institution of the designated system; or

(vi) any of the terms and conditions referred to in section 3(1) has been contravened; or

(b) the Authority considers that it is in the public interest to revoke the designation.

(2) Subject to subsection (3), the Authority shall not revoke a designation without giving the operator of the designated system an opportunity to be heard.

(3) The Authority may revoke a designation on any of the grounds described in subsection (1)(a)(iii), (iv) or (v) without giving the operator of the designated system an opportunity to be heard.

(4) A revocation of a designation shall not operate so as to avoid or affect any transaction cleared or settled in the designated system prior to the revocation or preclude the application, in accordance with section 5, of this Act to any such transaction.

Application of this Act

5. This Act shall apply to such transactions or class of transactions cleared or settled in a designated system, subject to such restrictions, as the Authority may by order published in the *Gazette* prescribe.

PART II

TRANSACTIONS EFFECTED THROUGH DESIGNATED SYSTEM

Modifications of law of insolvency

6.—(1) The general law of insolvency shall have effect in relation to —

(a) transfer orders effected through a designated system; and

(b) action taken under the rules of a designated system with respect to such orders,

subject to the provisions of this Part.

(2) This Part shall apply in relation to bankruptcy, judicial management and winding up proceedings only in respect of a participant.

(3) Notwithstanding that rights or liabilities arising from transfer orders are or may be dealt with in bankruptcy, judicial management or winding up proceedings, this Part shall not apply to such proceedings if they are in
5 respect of any person who is not a participant.

Transactions under rules of designated system are final and irrevocable

7.—(1) This section shall apply where the rules of a designated system
10 provide that —

- (a) the transfer of funds into and out of an account of a participant;
 - (b) the settlement of any payment obligation; or
 - (c) the settlement and transfer of book-entry Government securities,
- is final and irrevocable.

15 (2) Notwithstanding anything to the contrary in any written law or rule of law, any transfer or settlement referred to in subsection (1) shall not be reversed, repaid or set aside and no order shall be made by any court for the rectification or stay of such transfer or settlement.

20 **Proceedings of designated system shall take precedence over law of insolvency**

8.—(1) None of the following shall be regarded as to any extent invalid on the ground of inconsistency with the law for distribution of the assets of a person on bankruptcy or winding up, or on the appointment of a receiver, receiver and manager or an equivalent officer over any of the
25 assets of a person:

- (a) a transfer order;
- (b) any disposition of property in pursuance of such an order;
- (c) the default arrangements of a designated system; or
- (d) the rules of a designated system as to the settlement of transfer
30 orders not dealt with under its default arrangements.

(2) The powers of a relevant office holder and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with —

- 5 (a) the settlement of a transfer order in accordance with the rules of a designated system not dealt with under its default arrangements; or
- (b) any action taken under its default arrangements.

(3) A debt or other liability arising out of a transfer order which is the subject of action taken under default arrangements may not be proved in a
10 bankruptcy or winding up until the completion of the action taken under default arrangements.

(4) A debt or other liability which by virtue of subsection (3) may not be proved shall not be taken into account for the purposes of any set-off until the completion of the action taken under default arrangements.

15 **Disclaimer of property, restriction on dispositions of property, etc.**

9. Without prejudice to the generality of section 8 —

- (a) section 110 of the Bankruptcy Act (Cap.20) and section 332 of the Companies Act (Cap.50) shall not apply to a transfer order; and
- 20 (b) section 77 of the Bankruptcy Act and section 259 of the Companies Act shall not apply to a transfer order or any disposition of property in pursuance of such an order.

Adjustment of prior transactions

25 **10.** Without prejudice to the generality of section 8, no order shall be made by a court under —

- (a) section 98 or 99 of the Bankruptcy Act;
- (b) section 227T of the Companies Act read with section 98 or 99 of the Bankruptcy Act;
- 30 (c) section 329 of the Companies Act read with section 98 or 99 of the Bankruptcy Act, or section 331 of the Companies Act; or

(d) section 73B of the Conveyancing and Law of Property Act (Cap.61),

in relation to a transfer order or any disposition of property in pursuance of such an order.

5 **Net sum payable on completion of action taken under default arrangements**

11.—(1) This section shall apply with respect to any net sum owed by or to a defaulter on the completion of the action taken under default arrangements.

10 (2) Notwithstanding section 87 or 88 of the Bankruptcy Act (Cap.20) and section 327 of the Companies Act (Cap.50), where a court has made an order for bankruptcy or winding up of a participant or a resolution for the voluntary winding up of a participant has been passed, the net sum referred to in subsection (1) shall be —

- 15 (a) provable in the bankruptcy or winding up or, as the case may be, payable to the relevant office holder; and
- (b) taken into account, where appropriate, under section 88 of the Bankruptcy Act or section 327 of the Companies Act.

Transfer orders entered into designated system after insolvency

20 **12.** This Part shall not apply in relation to any transfer order given by a participant which is entered into a designated system after the expiry of the day on which —

- (a) a court made an order for bankruptcy, judicial management or winding up in respect of the participant; or
- 25 (b) a resolution for the voluntary winding up of the participant was passed.

PART III

NETTING

Netting

5 **13.** Notwithstanding any provision of the law of insolvency, if a court has made an order for bankruptcy or winding up of a participant of a designated system or a resolution for the voluntary winding up of such participant has been passed —

- 10 (a) the operator of the designated system may effect the netting of all obligations owed to or by the participant incurred before or on the day on which the court made the order for bankruptcy or winding up of the participant or the resolution for the voluntary winding up of the participant was passed;
- (b) the obligations that are netted shall be disregarded in the bankruptcy or winding up proceedings;
- 15 (c) any net obligation owed to or by the participant that has not been discharged —
 - (i) is payable to the participant and may be recovered for the benefit of the creditors; or
 - (ii) is provable in the bankruptcy or winding up,
 - 20 as the case may be; and
- (d) the netting made by the operator of the designated system and any payment made by the participant pursuant thereto shall not be voidable in the bankruptcy or winding up proceedings.

PART IV

25 MISCELLANEOUS

Law of insolvency in other jurisdictions

14. Notwithstanding any written law or rule of law, a court shall not recognise or give effect to —

- (a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Singapore; or
- (b) an act of a person appointed in a place outside Singapore to perform a function under the law of insolvency there,

5 in so far as the making of the order or doing of the act would be prohibited under this Act for a court in Singapore or a relevant office holder.

Preservation of rights, etc.

15.—(1) Except to the extent that it expressly provides, this Act shall not operate to limit, restrict or otherwise affect —

- 10 (a) any right, title, interest, privilege, obligation or liability of a person resulting from the underlying transaction in respect of a transfer order which has been entered into a designated system; or
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

15

(2) Nothing in subsection (1) shall be construed to require —

- (a) the unwinding of any netting done by the operator of a designated system, whether pursuant to its default arrangements or otherwise;
- 20 (b) the revocation of any transfer order given by a participant which is entered into a designated system; or
- (c) the reversal of a payment or settlement made under the rules of a designated system.

Obligation to notify designated system of insolvency

25 **16.—**(1) A participant shall notify the operator of a designated system as soon as practicable after the occurrence of any of the following events:

- (a) the making of an order for bankruptcy, judicial management or winding up of the participant;
- (b) the passing of a resolution for the voluntary winding up of the participant.

30

(2) Any participant who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

(3) A participant does not contravene subsection (1) if—

(a) he took reasonable steps to comply with that subsection; or

5 (b) the operator of the designated system was already aware of the relevant event referred to in subsection (1)(a) or (b) by the time the participant was required to notify the operator under that subsection.

Immunity of Authority and its employees, etc.

10 **17.** No suit or other legal proceedings shall lie against the Authority or any officer or employee of the Authority or any person acting under the direction of the Authority—

(a) for any act done in good faith—

15 (i) in the performance, or intended performance, of any function or duty; or

(ii) in the exercise, or intended exercise, of any power, in the capacity of the Authority as the designating authority under this Act; or

20 (b) for any neglect or default in the performance or exercise in good faith of such function, duty or power.

Power to make regulations

25 **18.—**(1) The Authority may make such regulations as may be necessary or expedient for carrying out the purposes and provisions of this Act and for prescribing anything that may be required or authorised to be prescribed by this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for the following purposes:

(a) ensuring the integrity of and the fair and orderly conduct of designated systems; and

30 (b) disclosure and provision to the Authority of such information as may be prescribed by the Authority.

Settlement system deemed to be designated system under this Act

19. A settlement system operated by the Authority under section 59A of the Banking Act (Cap.19) immediately before the date of commencement of this Act shall be deemed to be a designated system under this Act.

5 Related and consequential amendments

20.—(1) Section 59A of the Banking Act is repealed.

(2) The Monetary Authority of Singapore Act (Cap.186) is amended by inserting, immediately after section 29, the following section:

“Real-time gross settlement system

10 **29A.—**(1) The Authority may establish and operate one or more real-time gross settlement systems for the transfer of funds, settlement of payment obligations and the transfer and settlement of book-entry securities and instruments between or among participants approved by the Authority.

15 (2) A settlement system may be linked to another system in Singapore or elsewhere for the clearing or settlement of payment obligations, securities or instruments and whether or not such system is operated on a real-time gross settlement basis.

20 (3) The Authority may enter into agreements with participants of a settlement system and issue to the participants in writing rules for the operation of the settlement system and such rules shall not be deemed to be subsidiary legislation.

(4) Without prejudice to the generality of subsection (3), such rules may provide —

25 (a) for the appointment of the Authority as a certification authority for the purpose of issuing certificates for participants;

(b) for the conduct of participants;

30 (c) for the authentication of transactions carried out electronically;

(d) for the Authority, if it considers it necessary in the interests of the system, to stop or suspend the operation of the system

or to stop or suspend the privileges or rights of any participant or class of participants;

(e) for the appointment of auditors or inspectors for the auditing or inspection of the operating systems of participants in respect of the settlement system; and

(f) for the payment of fees to the Authority.

(5) The Authority, any officer or employee of the Authority, or any person acting under the direction of the Authority, shall not be liable for any loss or damage suffered by any person or participant arising from, directly or indirectly, the use of a settlement system by any participant unless such loss or damage results from a reckless act or omission or any intentional misconduct of any officer or employee of the Authority or any person acting under the direction of the Authority.

(6) The Payment and Settlement Systems (Finality and Netting) Act 2002 shall have effect in relation to a settlement system established and operated by the Authority under this section if the settlement system is designated under section 3 of that Act.

(7) A settlement system established and operated by the Authority under section 59A of the Banking Act (Cap.19) before the date of commencement of the Payment and Settlement Systems (Finality and Netting) Act 2002 shall continue and be deemed to have been established and operated by the Authority under this section.

(8) In this section —

“book-entry securities and instruments” means any securities and instruments that are transferable by a book-entry on a register or otherwise, and are —

(a) issued by the Government under any written law; or

(b) approved by the Authority for clearing, settlement or transfer through or under a settlement system;

“certificate” has the same meaning as in the Electronic Transactions Act (Cap.88);

“certification authority” has the same meaning as in the Electronic Transactions Act (Cap.88);

“participant” means a person approved by the Authority to be a participant of a settlement system and shall include the Authority where it participates in the settlement system;

“real-time gross settlement system” means a system which can effect final settlement of funds, payment obligations and book-entry securities and instruments on a continuous basis during such operating hours of a processing day as the Authority may determine and on a transaction-by-transaction basis;

“settlement system” means any real-time gross settlement system established under subsection (1).”.

(3) Section 69(4) of the Securities and Futures Act 2001 (Act 42 of 2001) is amended by deleting the words “sections 59A, 61 and 62 of that Act” and substituting the words “sections 61 and 62 of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002”.

Consequential amendments to other written laws

21. The Minister may, by order published in the *Gazette*, repeal or amend any written law which appears to him unnecessary having regard to the provisions of this Act or to be inconsistent with any of the provisions of this Act.

Transitional provisions

22. The Authority may, by regulations, prescribe such transitional, savings and other consequential provisions as it may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to protect payment and settlement systems from disruptions that may lead to risks to the financial system. Proper protection of such systems is critical to the effective functioning of the financial system. The Bill provides a conducive environment for the operation of stable and secure payment and settlement systems by empowering the Monetary Authority of Singapore (the Authority) to designate payment

and settlement systems. These designated systems will be exempted from the application of various laws, including the law of insolvency.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 empowers the Authority to designate a system as a designated system, subject to such terms and conditions as may be prescribed in the order.

Clause 4 empowers the Authority to revoke the designation of a designated system in certain circumstances.

Clause 5 relates to the extent of application of the Bill. The Bill will apply only to transactions or class of transactions cleared or settled in the designated system, subject to such restrictions as the Authority may by order prescribe.

PART II

TRANSACTIONS EFFECTED THROUGH DESIGNATED SYSTEM

Clause 6 clarifies that the general law of insolvency applies to transfer orders effected through a designated system and action taken under the rules of a designated system with respect to such orders, subject to the provisions of Part II. The clause further clarifies that Part II applies to bankruptcy, judicial management and winding up proceedings in respect of a participant of a designated system and not other persons.

Clause 7 provides that, in accordance with the rules of a designated system, transactions effected through the designated system are final and irrevocable. Such transactions shall not be reversed, repaid or set aside and no order shall be made by any court for the rectification or stay of such transactions.

Clause 8 relates to the proceedings of a designated system namely, transfer orders, any disposition of property in pursuance of such orders, default arrangements of a designated system and rules of a designated system as to the settlement of transfer orders not dealt with under its default arrangements.

The clause also provides that such proceedings shall not be invalid at law on the ground of inconsistency with the insolvency law principles for the distribution of the assets of a person on bankruptcy or winding up, or on the appointment of a receiver, receiver and manager or an equivalent officer over any of the assets of a person. The clause further forbids a relevant office holder or a court applying the law of insolvency in Singapore from exercising its power to prevent or interfere with the proceedings of the designated system.

Clause 9 addresses specific instances where transactions made through a designated system may be challenged and protects them from such challenge. The clause provides

that the law of insolvency enabling the disclaimer of onerous property in insolvency proceedings and the avoidance of dispositions of property after the commencement of insolvency proceedings shall not apply to transfer orders and dispositions made through a designated system.

Clause 10 also addresses specific instances where transactions made through a designated system may be challenged and protects them from such challenge. The clause provides that the laws enabling prior transactions to be unwound or “clawed back” as an unfair preference, an undervalued transaction or a transaction defrauding creditors shall not apply to transfer orders and dispositions made through a designated system.

Clause 11 provides that it is the net sum payable on completion of action taken under default arrangements that is provable or to be taken into account in the bankruptcy or winding up.

Clause 12 provides that the protection provided in Part II ends on the day a participant goes into insolvency and that transfer orders entered into a designated system after that day will not be protected.

PART III

NETTING

Clause 13 allows a designated system to net obligations if one of its participants becomes insolvent.

PART IV

MISCELLANEOUS

Clause 14 provides that a court in Singapore shall not recognise or give effect to an order of a foreign court made under foreign laws of insolvency or an act of a person appointed outside Singapore to perform a function under foreign laws of insolvency in so far as such order or act would be prohibited under this Bill for a court in Singapore or a relevant office holder.

Clause 15 clarifies that this Bill does not affect the rights of persons arising from the underlying transaction or under the general law.

Clause 16 creates an offence where a participant fails to take all reasonable steps to notify the operator of a designated system of its insolvency. The clause is intended to bolster clause 12.

Clause 17 confers immunity from legal proceedings on the Authority and its officers or employees or any person acting under its direction for any act done in good faith or in the exercise of any power as a designating authority under the Bill.

Clause 18 empowers the Authority to make regulations for carrying out the purposes and provisions of the Bill and for the due administration thereof.

Clause 19 provides that a settlement system operated by the Authority under section 59A of the Banking Act (Cap.19) before the date of commencement of the Bill shall be deemed to be a designated system. The Monetary Authority of Singapore Electronic Payment System or “MEPS” is such a settlement system.

Clause 20 makes related and consequential amendments to 3 other Acts. The clause provides for the repeal of section 59A of the Banking Act, amends the Monetary Authority of Singapore Act (Cap.186) by inserting a new section 29A and amends section 69(4) of the Securities and Futures Act 2001 (Act 42 of 2001).

Clause 21 provides for consequential amendments to other written laws.

Clause 22 provides that the Authority may, by regulations, prescribe transitional, savings or other consequential provisions as the Authority may consider necessary or expedient.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

TABLE OF DERIVATIONS

Payment and Settlement Systems (Finality and Netting) Bill 2002		Derivations		
Section Heading	Clause	Securities and Futures Act 2001	UK Financial Markets and Insolvency (Settlement Finality) Regulations 1999	Others
Short title and commencement	1	—	—	—
Interpretation	2	S 49 (modified)	Reg 2 (modified)	Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems Art 2(k)
Designation of system	3	—	—	—
Revocation of designation	4	—	—	—
Application of this Act	5	S 68 (modified)	—	—
Modifications of law of insolvency	6	—	Reg 13 (modified)	—
Transactions under rules of designated system are final and irrevocable	7	—	—	Banking Act S 59A(5)
Proceedings of designated system shall take precedence over law of insolvency	8	S 69 (modified)	Reg 14 (modified)	—

Payment and Settlement Systems (Finality and Netting) Bill 2002		Derivations		
Section Heading	Clause	Securities and Futures Act 2001	UK Financial Markets and Insolvency (Settlement Finality) Regulations 1999	Others
Disclaimer of property, restriction on dispositions of property, etc.	9	S 73 (modified)	Reg 16 (modified)	—
Adjustment of prior transactions	10	S 74 (modified)	Reg 17 (modified)	—
Net sum payable on completion of action taken under default arrangements	11	S 72 (modified)	Reg 15 (modified)	—
Transfer orders entered into designated system after insolvency	12	—	Reg 20 (modified)	—
Netting	13	—	—	Banking Act S 59A(6) (modified), Australia Payment Systems and Netting Act 1998 S 10(2) (modified)
Law of insolvency in other jurisdictions	14	S 78	—	—
Preservation of rights, etc.	15	S 80 (modified)	—	—
Obligation to notify designated system of insolvency	16	—	—	Australia Payment Systems and Netting Act 1998 S 7 (modified)
Immunity of Authority and its employees, etc.	17	S 323 (modified)	Reg 11 (modified)	—

Payment and Settlement Systems (Finality and Netting) Bill 2002		Derivations		
Section Heading	Clause	Securities and Futures Act 2001	UK Financial Markets and Insolvency (Settlement Finality) Regulations 1999	Others
Power to make regulations	18	—	—	—
Settlement system deemed to be designated system under this Act	19	—	—	—
Related and consequential amendments	20	—	—	—
Consequential amendments to other written laws	21	—	—	—
Transitional provisions	22	—	—	—