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Payment and Settlement Systems (Finality and Netting) (Amendment) Bill

Bill No. 44/2017.

Read the first time on 6 November 2017.

A BILL

i n t i t u l e d

An Act to amend the Payment and Settlement Systems (Finality and Netting) Act (Chapter 231 of the 2003 Revised Edition).

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

Short title and commencement

1. This Act is the Payment and Settlement Systems (Finality and Netting) (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 2

2. Section 2(1) of the Payment and Settlement Systems (Finality and Netting) Act (called in this Act the principal Act) is amended —

(a) by deleting the definitions of “book-entry Government securities” and “default arrangements” and substituting the following definitions:

““book-entry securities” means any securities that —

(a) are issued —

(i) by the Government, or a statutory board, under any written law; or

(ii) by a corporation; and

(b) are transferable by a book-entry, on a register or otherwise;

“business day”, in relation to a designated system —

(a) in any case where the Rules of the designated system specify what constitutes a business day for that case, has the same meaning as in those Rules; or

(b) in any other case, means any day other than a Saturday, Sunday or public holiday;

“collateral holder”, in relation to a designated system, means any person who has possession, control or ownership of any collateral security

of the designated system under an arrangement with the operator of the designated system relating to that collateral security;

“collateral security”, in relation to a designated system, means any property held by or deposited with a collateral holder for the purpose of securing any liability arising directly in connection with ensuring — 5

(a) the clearing or settlement of payment obligations by the designated system; or 10

(b) the clearing, settlement or transfer of book-entry securities by the designated system;

“default arrangements” means the arrangements made by the operator of a designated system to limit systemic and other types of risks that arise when a participant is or is likely to become unable to meet its obligations in respect of a transfer order, examples of which include any of the following arrangements: 15 20

(a) any arrangements for netting;

(b) any arrangements for the closing out of open positions;

(c) any arrangements relating to collateral security;” 25

(b) by inserting, immediately after the definition of “relevant office holder”, the following definition:

“ “Rules”, in relation to a designated system, means any rules, regulations, by-laws or other similar body of written statements, by whatever name called, and whether or not contained in the constituent documents of the designated 30

system, that govern the activities and conduct of —

(a) the designated system; and

(b) any other persons in relation to the designated system;”;

(c) by deleting the definition of “settlement institution” and substituting the following definition:

“ “settlement institution”, in relation to a designated system, means any body corporate that —

(a) provides accounts for the participants of the designated system, or facilitates the settlement of transfer orders between the participants in the designated system; and

(b) is specified in an order under section 3(1) to be the settlement institution of the designated system;”;

(d) by deleting the word “Government” in paragraph (b) of the definition of “system”; and

(e) by deleting the definition of “transfer order” and substituting the following definition:

“ “transfer order” means —

(a) an instruction by a participant, which may be carried out in or through one or more designated systems —

(i) 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

- (ii) that, 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 securities.”.

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Repeal and re-enactment of section 3

3. Section 3 of the principal Act is repealed and the following section substituted therefor:

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“Designation of system

3.—(1) The Authority may, by order in the *Gazette*, designate a system to be a designated system for the purposes of this Act, if the Authority is satisfied that a disruption in the operations of the system may —

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- (a) trigger, cause or transmit disruption to other participants;
 - (b) trigger or cause systemic disruption to the financial system of Singapore; or
 - (c) affect public confidence in the payment systems of Singapore or in the financial system of Singapore.
- (2) Any order made under subsection (1) —
- (a) must specify the operator and settlement institution of the designated system; and
 - (b) has effect until the order is revoked by the Authority.”.

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Amendment of section 4

4. Section 4 of the principal Act is amended —

- (a) by inserting the word “or” at the end of subsection (1)(a)(iv);
- (b) by deleting the word “or” at the end of subsection (1)(a)(v);
- (c) by deleting sub-paragraph (vi) of subsection (1)(a);

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(d) by inserting, immediately after paragraph (a) of subsection (1), the following paragraph:

“(aa) the Authority is no longer satisfied that a disruption in the operations of the system may have any effect mentioned in section 3(1)(a), (b) or (c); or”; and

(e) by deleting the words “section 5” in subsection (4) and substituting the words “section 5(1)”.

New section 4A

5. The principal Act is amended by inserting, immediately after section 4, the following section:

“Prohibition against holding out as operator or settlement institution of designated system

4A.—(1) A person must not hold out that the person is an operator or a settlement institution of a designated system, unless —

(a) the person is an operator or a settlement institution (as the case may be) of a system; and

(b) the Authority has designated the system to be a designated system under section 3.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.”.

Amendment of section 5

6. The principal Act is amended by renumbering section 5 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) Despite subsection (1), the Authority is exempt from complying with any requirement imposed on a participant, an operator, a settlement institution or a collateral holder of a designated system by section 15A, 15B, 16, 19A or 20A, when the Authority acts in the capacity of a participant, an operator, a settlement institution or a collateral holder of a designated system.”.

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Amendment of section 6

7. Section 6(1) of the principal Act is amended by deleting the word “rules” in paragraph (b) and substituting the word “Rules”.

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Amendment of section 7

8. Section 7 of the principal Act is amended —

(a) by deleting the word “rules” in subsection (1) and the section heading and substituting in each case the word “Rules”;

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(b) by deleting the word “settlement” in subsection (1)(b) and substituting the words “netting or settlement”;

(c) by deleting the word “Government” in subsection (1)(c); and

(d) by deleting the words “transfer or settlement” wherever they appear in subsection (2) and substituting in each case the words “transfer, netting or settlement”.

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Amendment of section 8

9. Section 8 of the principal Act is amended —

(a) by inserting the word “or” at the end of subsection (1)(b);

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(b) by deleting paragraphs (c) and (d) of subsection (1) and substituting the following paragraph:

“(c) any action taken under the Rules of a designated system.”; and

(c) by deleting paragraphs (a) and (b) of subsection (2) and substituting the following paragraphs:

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“(a) the netting or settlement of a transfer order in accordance with the Rules of a designated system; or

(b) any other action taken under the Rules of a designated system.”.

Amendment of section 9

10. Section 9 of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (a); and

(b) by deleting the full-stop at the end of paragraph (b) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(c) a court must not make an order under section 211D of the Companies Act in relation to any disposition of property pursuant to a transfer order.”.

Amendment of section 10

11. Section 10 of the principal Act is amended by inserting, immediately after paragraph (a), the following paragraph:

“(aa) section 211E of the Companies Act (Cap. 50);”.

Amendment of section 12

12. Section 12 of the principal Act is amended by deleting the words “the day on which” and substituting the words “one business day after”.

Amendment of section 13

13. Section 13 of the principal Act is amended by deleting the words “before or on the day on which” in paragraph (a) and substituting the words “up to and including one business day after”.

Amendment of section 15

14. Section 15(2) of the principal Act is amended by deleting the word “rules” in paragraph (c) and substituting the word “Rules”.

New section 15A

15. The principal Act is amended by inserting, immediately after section 15, the following section:

“Provision of information to Authority

15A.—(1) If the Authority is of the opinion that it requires any information or statement for the proper discharge of its functions under this Act, the Authority may by notice in writing, require any of the following persons (each called in this section a relevant person) to furnish to the Authority that information or statement within such time and in such manner as the Authority may specify: 5 10

(a) any participant;

(b) any operator of a designated system, or any person acting on behalf of that operator;

(c) any settlement institution of a designated system. 15

(2) Any relevant person to whom the Authority issues a notice under subsection (1) must comply with the notice.

(3) Any relevant person who without reasonable excuse contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction. 20

(4) Any relevant person who in purported compliance with a notice under subsection (1) furnishes to the Authority any information or statement that is false or misleading in a material particular, and that the relevant person knows is false or misleading in a material particular, or is reckless as to whether it is so, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000. 25 30

(5) Where a relevant person is guilty of an offence under subsection (3) or (4), any individual who is charged with the duty of securing the relevant person’s compliance with the applicable

subsection, and is in a position to discharge that duty, shall also be guilty of an offence and shall be liable on conviction —

(a) if the individual committed the offence wilfully, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 12 months or to both; or

(b) if the individual did not commit the offence wilfully, to a fine not exceeding \$125,000.

(6) Any relevant person who fails to take reasonable care to ensure the accuracy of any information or statement furnished to the Authority in purported compliance with a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000.”.

New section 15B

16. The principal Act is amended by inserting, immediately before section 16, the following section:

“Obligation to notify Authority of certain events

15B.—(1) Subject to subsection (2), a person (being a participant, an operator, a settlement institution or a collateral holder of a designated system) must notify the Authority of the occurrence of any event mentioned in the following paragraphs, as soon as practicable after the occurrence of that event:

(a) the person becomes, or is likely to become, insolvent or unable to meet the person’s obligations (whether financial, statutory, contractual or otherwise);

(b) any other event in relation to the person, being an event that is prescribed by regulations made under section 20 or specified in written directions issued under section 20A.

(2) The person need not notify the Authority under subsection (1) of the occurrence of an event mentioned in subsection (1)(a), if the person has already notified the Authority, under any other written law administered by the Authority, of the occurrence of that event.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000.”.

Amendment of section 17

17. Section 17 of the principal Act is amended —

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- (a) by deleting the words “a sum not exceeding \$10,000” in subsection (1) and substituting the words “a sum of money not exceeding half of the amount of the maximum fine prescribed for that offence”; and
- (b) by deleting the words “shall be paid to the Authority” in subsection (4) and substituting the words “must be paid into the Consolidated Fund”.

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New sections 17A and 17B

18. The principal Act is amended by inserting, immediately after section 17, the following sections:

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“Offences by corporations

17A.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

- (a) an officer, employee or agent of the corporation engaged in that conduct within the scope of his actual or apparent authority; and

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(b) the officer, employee or agent had that state of mind, is evidence that the corporation had that state of mind.

(2) Where a corporation commits an offence under this Act, a person —

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- (a) who is —

- (i) an officer of the corporation; or

- (ii) an individual involved in the management of the corporation and in a position to influence the

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conduct of the corporation in relation to the commission of the offence; and

(b) who —

(i) consented or connived, or conspired with others, to effect the commission of the offence;

(ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the corporation; or

(iii) knew or ought reasonably to have known that the offence by the corporation (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall be guilty of the same offence as is the corporation, and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the corporation if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the corporation would bear.

(4) To avoid doubt, this section does not affect the application of —

(a) Chapters V and VA of the Penal Code (Cap. 224); or

(b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (2) also does not affect the liability of the corporation for an offence under this Act, and applies whether or not the corporation is convicted of the offence.

(6) In this section —

“corporation” includes a limited liability partnership within the meaning of section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“officer”, in relation to a corporation, means any director, partner, chief executive, manager, secretary or other similar officer of the corporation, and includes —

(a) any person purporting to act in any such capacity; and

(b) for a corporation whose affairs are managed by its members, any of those members as if the member were a director of the corporation;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

Offences by unincorporated associations or partnerships

17B.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(a) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of his actual or apparent authority; and

(b) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

(2) Where an unincorporated association or a partnership commits an offence under this Act, a person —

(a) who is —

- (i) an officer of the unincorporated association or a member of its governing body;
- (ii) a partner in the partnership; or
- (iii) an individual involved in the management of the unincorporated association or partnership and in a position to influence the conduct of the unincorporated association or partnership in relation to the commission of the offence; and

(b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the offence;
- (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the unincorporated association or partnership; or
- (iii) knew or ought reasonably to have known that the offence by the unincorporated association or partnership (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall be guilty of the same offence as is the unincorporated association or partnership, and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the unincorporated association or partnership if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the unincorporated association or partnership would bear.

(4) To avoid doubt, this section does not affect the application of —

(a) Chapters V and VA of the Penal Code (Cap. 224); or

(b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (2) also does not affect the liability of an unincorporated association or a partnership for an offence under this Act, and applies whether or not the unincorporated association or partnership is convicted of the offence.

(6) In this section —

“officer”, in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, and includes —

(a) any person holding a position analogous to that of president, secretary or member of a committee of the unincorporated association; and

(b) any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person’s reasons for the intention, opinion, belief or purpose.”.

New section 17C

19. The principal Act is amended by inserting, immediately before section 18, the following section:

“Protection from liability

17C.—(1) No liability shall be incurred by a relevant person for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the execution or purported execution of any function, duty or power of that

relevant person under this Act or under the Rules of a designated system.

(2) In this section —

“officer”, in relation to an operator, a settlement institution or a collateral holder of a designated system, means any director, partner, chief executive, manager, secretary or other similar officer of that operator, settlement institution or collateral holder;

“relevant person” means —

(a) an operator, a settlement institution or a collateral holder of a designated system; or

(b) any officer or employee of an operator, a settlement institution or a collateral holder of a designated system.”.

New section 19

20. The principal Act is amended by inserting, immediately after section 18, the following section:

“Appointment of assistants

19.—(1) Subject to subsection (2), the Authority may appoint any of its officers to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except —

(a) the power of appointment conferred by this subsection; and

(b) the power to make subsidiary legislation.

(2) The Authority may, by notification in the *Gazette*, appoint one or more of its officers to exercise —

(a) the power under section 20B(2) to grant an exemption to a particular person; or

(b) the power under section 20B(3) to revoke an exemption granted under section 20B(2), or to add to, vary or revoke any condition of such an exemption.

(3) Any officer appointed by the Authority under subsection (1) or (2) is deemed to be a public servant for the purposes of the Penal Code (Cap. 224).”.

New section 19A

21. The principal Act is amended by inserting, immediately before section 20, the following section:

“Power of Authority to approve Rules of designated system

19A.—(1) An operator, a settlement institution or a collateral holder of a designated system must, before implementing or amending any Rules of the designated system, obtain the written approval of the Authority to do so.

(2) An application for approval under subsection (1) —

(a) must be made in such form and manner as the Authority may specify in a written direction issued under section 20A(1); and

(b) must be accompanied by a written legal opinion that —

(i) is given by a legal practitioner who is any of the following individuals, and whom the Authority is satisfied is qualified to give that opinion:

(A) an advocate and solicitor;

(B) a foreign lawyer as defined in section 2(1) of the Legal Profession Act (Cap. 161);

(C) a legal counsel as defined in section 3(7)(a) of the Evidence Act (Cap. 97); and

(ii) certifies that the proposed implementation or amendment of the Rules of the designated system will satisfy the criteria mentioned in subsection (3)(a).

(3) The Authority may, when determining whether to grant its written approval under subsection (1), have regard to —

(a) such criteria as may be prescribed in regulations made under section 20 or specified in written directions issued under section 20A; and

(b) any other matter that the Authority considers relevant.

(4) The Authority must not refuse any application for approval under subsection (1) without giving the applicant an opportunity to be heard.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

(6) Where any Rules of a designated system are implemented before the date of commencement of section 21 of the Payment and Settlement Systems (Finality and Netting) (Amendment) Act 2018 by any operator, settlement institution or collateral holder of the designated system, those Rules are deemed by this subsection to be implemented with the written approval of the Authority under subsection (1).”.

Amendment of section 20

22. Section 20 of the principal Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for the purpose of ensuring the integrity of, and the fair and orderly conduct of, designated systems.

(3) Regulations made under this section may provide —

(a) that a contravention of any provision of those regulations shall be an offence; and

(b) for a penalty not exceeding a fine of \$150,000 for each offence.”.

New section 20A

23. The principal Act is amended by inserting, immediately after section 20, the following section:

“Power to issue written directions

20A.—(1) The Authority may, for any of the following reasons, issue written directions, either of a general nature or of a specific nature, to any person or class of persons specified in subsection (2): 5

- (a) the Authority thinks it is necessary or expedient for ensuring the integrity and proper management of a designated system; 10
- (b) the Authority thinks it is necessary or expedient for the effective administration of this Act;
- (c) the Authority thinks it is otherwise in the interests of the public or a section of the public. 15

(2) If the Authority issues any written direction under subsection (1) to any of the following persons or classes of persons, that person or class of persons must comply with that direction:

- (a) any participant or class of participants of a designated system; 20
- (b) any operator or class of operators of a designated system;
- (c) any settlement institution or class of settlement institutions of a designated system; 25
- (d) any collateral holder or class of collateral holders of a designated system.

(3) Without prejudice to the generality of subsection (1), a written direction issued under that subsection may relate to any of the following matters: 30

- (a) the appropriate actions to be taken by any person specified in subsection (2), or by any person

belonging to a class of persons specified in subsection (2), in relation to that person's business;

(b) the Rules of a designated system;

(c) the conditions that will apply if any function of an operator or a settlement institution of a designated system is outsourced.

(4) A written direction issued under subsection (1) need not be published in the *Gazette*.

(5) The Authority may at any time vary or revoke any written direction issued under subsection (1).

(6) Any person who fails to comply with a written direction issued under subsection (1) to that person, or to a class of persons to whom that person belongs, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.”.

New section 20B

24. The principal Act is amended by inserting, immediately before section 21, the following section:

“Exemption

20B.—(1) The Authority may, by regulations made under section 20, exempt any person or class of persons from all or any of the provisions of this Act, subject to such conditions as may be prescribed in those regulations.

(2) The Authority may, on the application of any person, and if the Authority considers it appropriate to do so in the circumstances of the case, by notice in writing exempt that person, subject to such conditions as the Authority may specify by notice in writing, from —

(a) all or any of the provisions of this Act; and

(b) any requirement that —

- (i) is imposed by the Authority under this Act; or
- (ii) is specified in any written direction issued under section 20A(1).

(3) The Authority may at any time, by notice in writing — 5

- (a) revoke any exemption granted under subsection (2); or
- (b) add to, vary or revoke any condition of such an exemption imposed under subsection (2) or this paragraph.

(4) An exemption granted under subsection (2), and every other notice in writing under this section, need not be published in the *Gazette*.” 10

Repeal of sections 22 and 23

25. Sections 22 and 23 of the principal Act are repealed.

Saving and transitional provisions

26.—(1) Where, immediately before the date of commencement of section 3, any system is designated, by an order under section 3(1) of the principal Act as in force immediately before that date, to be a designated system for the purposes of the principal Act, that system continues, on and after that date, to be a designated system for the purposes of the principal Act, until that order is revoked. 20

(2) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient. 25

EXPLANATORY STATEMENT

This Bill seeks to amend the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231) mainly for the following purposes:

- (a) to clarify the criteria for the designation of payment and settlement systems;
- (b) to improve the protection of payment and settlement systems under the Act —
 - (i) by conferring finality on transactions that are transferred, netted or settled in designated systems; and
 - (ii) by protecting transfer orders, netting and settlement from actions taken in accordance with the law of insolvency and certain provisions of the Companies Act (Cap. 50);
- (c) to augment the administrative and regulatory powers of the Monetary Authority of Singapore (the Authority) under the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) —

- (a) to replace the definition of “book-entry Government securities” with a definition for “book-entry securities”, and to make a consequential amendment to the definition of “system”;
- (b) to introduce new definitions for “business day”, “collateral holder”, “collateral security” and “Rules”; and
- (c) to replace the definitions of “default arrangements”, “settlement institution” and “transfer order”.

The definition of “book-entry Government securities” is replaced with a new definition for “book-entry securities”, and a consequential amendment is made to the definition of “system”, to facilitate the extension of the application of the Act —

- (a) to securities that are issued by a statutory board or a corporation (in addition to securities that are issued by the Government), and that are transferable by a book-entry on a register; and
- (b) to systems established for the clearing, settlement or transfer of such securities.

The new definition of “business day” is inserted to support the amendments in clauses 12 and 13.

The new definition of “collateral holder” is inserted to support the amendments in clauses 6, 16, 19, 21 and 23.

The new definition of “collateral security” is inserted to support the new definitions of “collateral holder” and “default arrangements”.

The definition of “default arrangements” is replaced —

- (a) to clarify that such arrangements are made by the operator of a designated system;
- (b) to clarify that the list of such arrangements in the definition is not exhaustive; and
- (c) to make any arrangements relating to collateral security an example of such arrangements.

The new definition of “Rules” is inserted —

- (a) to specify what constitutes the Rules of a designated system; and
- (b) to facilitate the replacement of references in the Act to the “rules” of a designated system with references to the “Rules” of that system.

The definition of “settlement institution” is replaced —

- (a) to enable a body corporate that provides accounts for the participants of a designated system, or facilitates the settlement of transfer orders between the participants in a designated system, to be a settlement institution in relation to the designated system; and
- (b) to facilitate the specification by the Authority, in an order under the new section 3(1) (to be inserted by clause 3), of such a body corporate as the settlement institution of a designated system.

The definition of “transfer order” is replaced —

- (a) to clarify that an instruction constituting a transfer order may be carried out in or through one or more designated systems (for instance, where the payment obligation and settlement instruction arise from different designated systems); and
- (b) to extend the definition to include an instruction by a participant to transfer any book-entry securities (instead of just book-entry securities that are issued by the Government).

Clause 3 repeals and re-enacts section 3 mainly to restate how the power of the Authority to designate a system as a designated system is to be exercised.

The new section 3(1) empowers the Authority to designate a system as a designated system by enacting an order in the *Gazette*, if the Authority is satisfied that a disruption in the operations of the system may have any of the following effects:

- (a) trigger, cause or transmit disruption to other participants (that is, other parties to the arrangement that establishes the system);

- (b) trigger or cause systemic disruption to the financial system of Singapore;
- (c) affect public confidence in the payment systems of Singapore or in the financial system of Singapore.

The new section 3(2) requires such an order to specify, in addition to the operator of the designated system (as required under the present law), the settlement institution of the system.

The new section 3(2) also clarifies that such an order has effect until revoked by the Authority.

Clause 4(a) to (d) provides for the replacement of the existing section 4(1)(a)(vi) with a new section 4(1)(aa), so as to update the list of conditions in section 4(1) for revoking the designation of a designated system.

Under the new section 4(1)(aa), the Authority may revoke the designation of a designated system if the Authority is no longer satisfied that a disruption in the operations of the system may have any effect mentioned in the new section 3(1)(a), (b) or (c) (to be inserted by clause 3).

Clause 4(e) amends section 4(4) as a consequence of the renumbering of the existing section 5 as section 5(1) (by clause 6).

Clause 5 inserts a new section 4A to make it an offence for a person to hold out that the person is an operator or a settlement institution of a designated system unless —

- (a) the person is an operator or a settlement institution (as the case may be) of a system; and
- (b) the Authority has designated the system as a designated system.

Clause 6 inserts a new subsection (2) into section 5 to exempt the Authority from complying with any requirement imposed on a participant, an operator, a settlement institution or a collateral holder of a designated system by the existing section 16, or by the new section 15A, 15B, 19A or 20A (to be inserted by clauses 15, 16, 21 and 23, respectively), when the Authority acts in any such capacity.

Clauses 7 and 8(a) make editorial amendments to sections 6(1)(b) and 7, respectively, that are consequential to the renaming of the rules of a designated system as “Rules”.

Clause 8(b) and (d) amends section 7(1)(b) and (2) so that where the Rules of a designated system provide that the netting of any payment obligation is final and irrevocable, then, despite anything to the contrary in any written law or rule of law —

- (a) that netting cannot be reversed, repaid or set aside; and

(b) a court must not order the rectification or stay of that netting.

Clause 8(c) amends section 7(1)(c) to extend the application of section 7 to certain book-entry securities that are not issued by the Government.

Clause 9(a) and (b) provides for the replacement of the existing section 8(1)(c) and (d) with a new section 8(1)(c), so as to update the list of matters in section 8(1) that are not to be regarded as 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, a receiver and manager, or an equivalent officer, over any assets of a person.

Under the new section 8(1)(c), any action taken under the Rules of a designated system is not to be regarded as invalid on the ground mentioned in section 8(1).

Clause 9(c) replaces section 8(2)(a) and (b) to restate the matters that the exercise of the powers of a relevant office holder, and the exercise of the powers of a court under the law of insolvency, must not prevent or interfere with.

Under the new section 8(2)(a) and (b), those powers must not be exercised in such a way as to prevent or interfere with —

- (a) the netting or settlement of a transfer order in accordance with the Rules of a designated system; or
- (b) any other action taken under the Rules of a designated system.

Clause 10 introduces a new section 9(c) to prevent a court from making an order under section 211D of the Companies Act in relation to any disposition of property pursuant to a transfer order. Under section 211D of the Companies Act, the High Court (or a judge of that Court) may, on the application of a creditor of a company in respect of which a moratorium under section 211B(1) or (8) or 211C(1) of that Act is in force, make an order restraining certain disposals of property of, or a transfer of shares in, the company.

Clause 11 introduces a new section 10(aa) to prevent a court from making an order under section 211E of the Companies Act in relation to a transfer order or any disposition of property in pursuance of a transfer order. Under section 211E of the Companies Act, the High Court (or a judge of that Court) may, on an application by a company that has made an application under section 210(1) or 211B(1) of that Act, order that debt arising from any rescue financing obtained or to be obtained by the company is to have priority (as described in section 211E(1)(a) or (b) of that Act) over some or all of the preferential debts specified in section 328(1) of that Act, or is to be secured by a security interest (as described in section 211E(1)(c) or (d) of that Act).

Clause 12 amends section 12 so that —

- (a) the protection provided in Part II ends one business day after (instead of the day on which) a participant goes into insolvency; and

- (b) transfer orders entered into a designated system after the expiry of that business day will not be protected.

Clause 13 amends section 13(a) to enable the operator of a designated system to net all obligations that are owed to or by a participant of the designated system, and are incurred up to and including one business day after (instead of before or on the day on which) that participant becomes insolvent.

Clause 14 makes an editorial amendment to section 15(2)(c) that is consequential to the renaming of the rules of a designated system as “Rules”.

Clause 15 introduces a new section 15A to empower the Authority to require, by notice in writing, any of the following persons to furnish to the Authority any information or statement that the Authority is of the opinion the Authority requires for the proper discharge of the Authority’s functions under the Act:

- (a) any participant;
- (b) any operator of a designated system, or any person acting on behalf of that operator;
- (c) any settlement institution of a designated system.

Clause 16 introduces a new section 15B to require a person (who is a participant, an operator, a settlement institution or a collateral holder of a designated system) to notify the Authority, as soon as practicable, of the occurrence of any of the following events:

- (a) the person becomes, or is likely to become, insolvent or unable to meet the person’s obligations (whether financial, statutory, contractual or otherwise);
- (b) any other event, prescribed by regulations made under section 20 or specified in written directions issued under the new section 20A (to be inserted by clause 23), in relation to the person.

Clause 17(a) amends section 17(1) to alter the maximum sum of money that the Authority may, when compounding an offence under the Act, collect from a person reasonably suspected of having committed the offence. That maximum sum is changed from “\$10,000” to “half of the amount of the maximum fine prescribed for that offence”, so that the maximum composition sum that may be collected for an offence better reflects the gravity of that offence.

Clause 17(b) amends section 17(4) so that all composition sums collected under section 17 must be paid into the Consolidated Fund (instead of to the Authority).

Clause 18 introduces new sections 17A and 17B.

The new section 17A deals with offences by corporate entities (like companies and limited liability partnerships), and attributes criminal liability to officers of corporate entities for offences committed by those entities. Corporate entities can

be held directly liable for, and can be found guilty of and punished for, the commission of an offence. As a separate legal entity, liability for the offence is imposed on the corporate entity itself, and is not generally attributed to its officers and employees, unless there is a provision like the new section 17A.

The new section 17B deals with offences by unincorporated associations and partnerships, and attributes criminal liability to officers of unincorporated associations and partners in partnerships for offences committed by those unincorporated associations and partnerships, respectively.

The new sections 17A and 17B also provide clarity where an offence by a corporate entity or an unincorporated entity requires a mental element to be established.

Clause 19 introduces a new section 17C to provide for the protection, from liability, of a relevant person (that is, an operator, a settlement institution or a collateral holder of a designated system, or any officer or employee of any such operator, settlement institution or collateral holder) when performing any function or duty, or exercising any power, of that relevant person in good faith and with reasonable care.

Clause 20 introduces a new section 19 —

- (a) to enable the Authority to appoint any of its officers to exercise any of its powers (except certain powers specified in the new section 19(1)(a) and (b)) or perform any of its functions or duties under the Act; and
- (b) to deem an officer who is so appointed to be a public servant for the purposes of the Penal Code (Cap. 224).

Clause 21 introduces a new section 19A to require every operator, settlement institution or collateral holder of a designated system to obtain the written approval of the Authority before implementing or amending any Rules of the designated system.

Clause 22 replaces section 20(2) to remove a reference to an existing purpose for which the Authority may make regulations (namely, the disclosure and provision to the Authority of information), as the new sections 15A and 15B (to be inserted by clauses 15 and 16) will make it unnecessary for the Authority to make regulations for that purpose.

The clause also inserts a new section 20(3) so that regulations made under section 20 may provide that a contravention of any provision of those regulations will be an offence, and provide for a penalty not exceeding a fine of \$150,000 for each offence.

Clause 23 introduces a new section 20A to empower the Authority to issue written directions, either of a general nature or of a specific nature, to —

- (a) any participant or class of participants of a designated system;

- (b) any operator or class of operators of a designated system;
- (c) any settlement institution or class of settlement institutions of a designated system; and
- (d) any collateral holder or class of collateral holders of a designated system.

A person who fails to comply with a written direction issued to that person, or to a class of persons to whom that person belongs, will be guilty of an offence.

Clause 24 introduces a new section 20B to empower the Authority —

- (a) to make regulations under section 20 to exempt any person or class of persons from all or any of the provisions of the Act;
- (b) to exempt a person by notice in writing from —
 - (i) all or any of the provisions of the Act; and
 - (ii) any requirement that is imposed by the Authority under the Act, or is specified in any written direction issued under the new section 20A (to be inserted by clause 23); and
- (c) to revoke any exemption granted by notice in writing, or to add to, vary or revoke any condition of such an exemption.

Clause 25 repeals sections 22 and 23, as those sections are spent.

Clause 26 contains saving and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

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