

Payment and Settlement Systems (Finality and Netting) Bill

Table of Contents

Bill No: 41/2002

Read the first time: 31st October 2002

Long Title

Enacting Formula

Part I PRELIMINARY

1 Short title and commencement

2 Interpretation

3 Designation of system

4 Revocation of designation

5 Application of this Act

Part II TRANSACTIONS EFFECTED THROUGH DESIGNATED SYSTEM

6 Modifications of law of insolvency

7 Transactions under rules of designated system are final and irrevocable

8 Proceedings of designated system shall take precedence over law of insolvency

9 Disclaimer of property, restriction on dispositions of property, etc.

10 Adjustment of prior transactions

11 Net sum payable on completion of action taken under default arrangements

12 Transfer orders entered into designated system after insolvency

Part III NETTING

13 Netting

Part IV MISCELLANEOUS

14 Law of insolvency in other jurisdictions

15 Preservation of rights, etc.

16 Obligation to notify designated system of insolvency

17 Immunity of Authority and its employees, etc.

18 Power to make regulations

19 Settlement system deemed to be designated system under this Act

20 Related and consequential amendments

21 Consequential amendments to other written laws

22 Transitional provisions

Explanatory Statement

Expenditure of Public Money

Table of Derivations

Payment and Settlement Systems (Finality and Netting) Bill

Bill No. 41/2002

Read the first time on 31st October 2002.

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

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 —

“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;

“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

(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;

“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;

“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
- (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

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

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 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 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