

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

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**Bill No. /2017.**

*Read the first time on .*

**THIS VERSION OF THE BILL IS IN DRAFT FORM AND IS  
SUBJECT TO CLEARANCE BY THE ATTORNEY  
GENERAL'S CHAMBERS.**

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 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

### 5 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 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
- (b) the clearing, settlement or transfer of book-entry securities by the designated system;

10 “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

- 15 arrangements:
- (a) any arrangements for netting;
- (b) any arrangements for the closing out of open positions;
- 20 (c) any arrangements relating to collateral security;”;

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

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

- 30 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 a body corporate that —

- 5 (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
- 10 (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

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

““transfer order” means —

- (a) an instruction by a participant —
- 20 (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
- 25 (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.”.

### **Repeal and re-enactment of section 3**

30 **3.** Section 3 of the principal Act is repealed and the following section substituted therefor:

**“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 —

- 5 (a) trigger, cause or transmit disruption to other participants;
  - (b) trigger or cause systemic disruption to the financial system of Singapore; or
  - 10 (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
  - 15 (b) has effect until the order is revoked by the Authority.”.

**Amendment of section 4**

4. Section 4(1) of the principal Act is amended —

- (a) by inserting the word “or” at the end of paragraph (a)(iv);
  - 20 (b) by deleting the word “or” at the end of paragraph (a)(v);
  - (c) by deleting sub-paragraph (vi) of paragraph (a); and
  - (d) by inserting, immediately after paragraph (a), the following paragraph:
- 25 “(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”.

**New section 4A**

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

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

5 **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.

10 (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  
15 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:

20 “(2) Despite subsection (1), in any case where the Authority is a participant, an operator, a settlement institution or a collateral holder of a designated system, sections 4A, 15A, 15B, 16, 16A, 17, 17A, 17B, 19A and 20A do not apply to the Authority in its capacity as such participant, operator, settlement institution or  
25 collateral holder.”.

**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”.

30 **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”;
- (b) by deleting the word “settlement” in subsection (1)(b) and substituting the words “netting or settlement”;
- 5 (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”.

#### **Amendment of section 8**

- 10 **9.** Section 8 of the principal Act is amended —
- (a) by inserting the word “or” at the end of subsection (1)(b);
  - (b) by deleting paragraphs (c) and (d) of subsection (1) and substituting the following paragraph:
    - 15 “(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:
    - 20 “(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**

- 25 **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 a semi-colon, and by inserting immediately thereafter the following paragraph:
    - 30 “(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**

5 **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**

10 **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**

15 **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 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”.

20 **New section 15A**

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

**“Provision of information to Authority**

25 **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 at such time and in such manner as the Authority may  
30 specify:



- (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.

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

(3) Any relevant person who 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,  
10 to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(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  
15 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.

(5) Where a relevant person is guilty of an offence under  
20 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  
25 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  
30 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**

5       **15B.**—(1) 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:

- 10           (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
- 15           or specified in written directions issued under section 20A.

              (2) 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.”.

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**New section 16A**

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

**“General penalty**

25       **16A.** Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$50,000.”.

**Amendment of section 17**

30       **18.** Section 17 of the principal Act is amended —

- (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
- 5 (b) by deleting the words “to the Authority” in subsection (4) and substituting the words “into the Consolidated Fund”.

**New sections 17A and 17B**

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

10 **“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 —

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

- 20 (a) who is —
- (i) an officer of the corporation; or
- (ii) an individual who is involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the offence; and
- 25 (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 that 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 (1) 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 was a director of the corporation;

“state of mind” of a person includes —

- 5 (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**

10 **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 —

- 15 (a) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of his or her 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.

20 (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;
  - 25 (ii) a partner in the partnership; or
  - (iii) an individual who is involved in the management of the unincorporated association or partnership and who is in a position to influence the conduct of the unincorporated association or partnership (as
  - 30 the case may be) 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;
- 5 (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
- 10 (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 (as the case may be), and shall be liable on conviction to be punished accordingly.

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(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.

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

- (a) Chapters V and VA of the Penal Code (Cap. 224); or
- 25 (b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (1) 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.

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(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**

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

#### **“Protection from personal liability**

**17C.**—(1) No liability shall be incurred by any officer or employee of an operator, a settlement institution or a collateral holder of a designated system 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 officer or employee (as the case may be) under this Act or under the Rules of the 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 the operator, settlement institution or collateral holder.”.

**New section 19**

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

**“Appointment of assistants**

5 **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 —

- 10 (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 —

- 15 (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.

20 (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**

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

**“Power of Authority to approve Rules of designated system**

30 **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 the Authority's written approval under subsection (1) —

5       (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 with a written legal opinion that —

          (i) is given by a solicitor who is qualified to practise Singapore law; and

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

15       (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 matters that the Authority considers relevant.

20       (4) Subject to subsection (5), the Authority must not refuse any application for the Authority's written approval under subsection (1) without giving the applicant an opportunity to be heard.

25       (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 thereof during which the offence continues after conviction.

30       (6) Where any Rules of a designated system are implemented before the date of commencement of section 22 of the Payment and Settlement Systems (Finality and Netting) (Amendment) Act 2017 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**

5 **23.** Section 20 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(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.”.

10 **New section 20A**

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

**“Power to issue written directions**

15 **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):

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

25 (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:

- 30 (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;
- 5 (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:

- 10 (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;
- 15 (c) the conditions that will apply if any function of an operator or settlement institution of a designated system is outsourced.

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

- 20 (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 thereof during which the offence continues after conviction.”

### **New section 20B**

- 30 **25.** 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 —

- (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*.”.

### **Repeal of sections 22 and 23**

**26.** Sections 22 and 23 of the principal Act are repealed.

### **Saving and transitional provision**

**27.** 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.

### EXPLANATORY STATEMENT

This Bill seeks to amend the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231) ...

[The Explanatory Statement will be inserted after the text of the Bill is finalised.]

### EXPENDITURE OF PUBLIC MONEY

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

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