PAYMENT AND SETTLEMENT SYSTEMS (FINALITY AND NETTING) ACT 2002

(No. of 2002)

ARRANGEMENT OF SECTIONS

A BILL

intituled

An Act to make provision for the legal protection of payment and settlement systems and for purposes connected therewith.

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 section 3 of the Monetary Authority of Singapore Act (Cap. 186);

"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;

"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 ;

"government securities" means any securities issued by the Government under any written law;

"participant " means a party to an arrangement that establishes a system for —

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

(*b*) the clearing, settlement and transfer of government securities;

"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, provisional 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;

"system" means a system established for —

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

(*b*) the clearing, settlement and transfer of 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 the operator of a designated system, or an instruction which 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 government securities.

(2) Any 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

3. The Authority may, in the prescribed manner, designate a system to be a designated system for the purposes of this Act, subject to such terms and conditions as it thinks fit.

PART II

TRANSACTIONS EFFECTED THROUGH DESIGNATED SYSTEM

Application of this Part

4. This Part shall apply to such transactions or class of transactions cleared or settled in the designated system, and to such extent, as may be prescribed by the Authority.

Transactions effected through designated system are final and irrevocable

5. Notwithstanding anything to the contrary in any written law or rule of law, where the rules of a designated system provide that the transfer of funds, settlement of any payment obligation or the settlement and transfer of government securities through an entry to or a payment out of an account of a participant kept with the operator of the designated system is final and irrevocable, the entry or payment made through the designated system shall not be reversed, repaid or set aside and no order shall be made by any court for the rectification or stay of such entry or payment.

Proceedings of designated system shall take precedence over law of insolvency

6.—(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or in the administration of an insolvent estate:

(*a*) a transfer order;

(*b*) the default arrangements of a designated system; or

(*c*) the rules of a designated system as to the settlement of transfer 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 —

(*a*) the settlement in accordance with the rules of a designated system of a transfer order not dealt with under its default arrangements; or

(*b*) any action taken under its default arrangements.

Disclaimer of property

7. Section 110 of the Bankruptcy Act (Cap. 20) and section 332 of the Companies Act (Cap. 50) shall not apply to a transfer order, or any disposition of property in pursuance of a transfer order.

Adjustment of prior transactions

8. No order shall be made by a court under —

(*a*) section 98 or 99 of the Bankruptcy Act;

(*b*) section 227T, 329 or 331 of the Companies Act (Cap. 50; or

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

in relation to any matter to a transfer order, or any disposition of property in pursuance of a transfer order.

Netting

9. Notwithstanding the provisions of the law of insolvency, if the proceedings for the bankruptcy or winding up of a participant of a designated system have commenced —

(*a*) the operator may do anything permitted or required by the rules of the designated system in order to net obligations incurred before or on the day on which the proceedings commenced;

(*b*) the obligations that are netted under the rules of the designated system shall be disregarded in the proceedings;

(*c*) any net obligation owed to the participant under the rules of the designated system that has not been discharged is provable in the proceedings and may be recovered for the benefit of the creditors; and

(*d*) the netting made by the operator and any payment made by the participant under the rules of the designated system shall not be voidable in the proceedings.

Insolvency not to affect transactions carried out on day of winding up, etc.

10. Notwithstanding the provisions of the law of insolvency, where —

(*a*) proceedings are commenced for the bankruptcy or winding up of a participant;

(*b*) a transfer order is executed through the designated system at any time of the day on which the proceedings commenced; and

(*c*) the transfer order involves the payment of money or transfer of an asset by the participant,

the payment or transfer has the same effect as it would have had if the proceedings had commenced on the next day.

Law of insolvency in other jurisdictions

11. 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,

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.

PART III

MISCELLANEOUS

Power to make regulations

12.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for and with respect to —

(a) the criteria for the designation of a system;

(b) the manner in which the designation is to be made; and

(c) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

Transitional provisions

13. 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 make provision for the legal protection of payment and settlement systems. Proper regulation of such systems is critical to the effective functioning of the whole 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 systemically important payment and settlement systems. These designated systems will be exempted from the application of the various rules under 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 in the prescribed manner, subject to such terms and conditions as it thinks fit.

PART II

TRANSACTIONS EFFECTED THROUGH DESIGNATED SYSTEM

Clause 4 relates to the extent of application of Part II. Part II deals with transactions effected through a designated system and will apply only to transactions or class of transactions cleared or settled in the designated system and to such extent as may be prescribed by the Authority.

Clause 5 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 6 relates to the proceedings of a designated system namely, transfer 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 provides that such proceedings shall not be invalid at law on the ground of inconsistency with the law of insolvency. 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 7 provides that the law of insolvency enabling the disclaimer of onerous property in insolvency proceedings shall not apply to the specified matters or proceedings involving a designated system.

Clause 8 provides that the law of insolvency enabling the adjustment of prior transactions in insolvency proceedings shall not apply to the specified matters or proceedings involving a designated system.

Clause 9 allows the operator of a designated system to net obligations incurred before or on the day a participant undergoes insolvency proceedings such that a net amount becomes payable.

Clause 10 exempts the payment of money or transfer of asset by a participant from the application of the zero hour rule in the event that the participant is subject to insolvency proceedings. It provides that the payment or transfer has the same effect it would have had if the insolvency proceedings had commenced on the next day.

Clause 11 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 insofar as such order or act would be prohibited under this Bill for a court in Singapore or a relevant office holder.

PART III

MISCELLANEOUS

Clause 12 empowers the Authority to make regulations for carrying out the purpose and provisions of the Bill and for the due administration thereof.

Clause 13 empowers the Authority to prescribe transitional, savings or other consequential provisions by way of regulations.

EXPENDITURE OF PUBLIC MONEY

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