

This is an English translation.

The original Icelandic text, as published in the Law Gazette (Stjórnartíðindi), is the authoritative text. Should there be discrepancy between this translation and the authoritative text, the latter prevails.

Act No 90/1999 respecting the Security of Transfer Orders in Payment Systems

[TRANSLATED FROM ICELANDIC]

The President of Iceland makes known:- The Althingi (Legislative Assembly) has passed the present Act and I have ratified it with my approval:-

SECTION I

Validity and Definitions

Article 1

The provisions of the present Act apply to the payment system currently operated in this country and which has been notified in conformity with Article 3 of the Act.

Article 2

The following definitions apply in this Act:-

1. System:- Formal arrangement between three or more participants based on common rules and a standardized arrangement for the execution of *transfer orders* between these, provided that at least one of the participants has its head office in this country and that the system satisfies the requirements which are made and notice thereof has been given to the EFTA Surveillance Authority (ESA), cf. the provisions of Art. 3.
2. Institution:-
 - a. A commercial bank or savings bank having obtained an operating licence under Act No. 113/1996 respecting Commercial Banks and Savings Banks.
 - b. A firm having obtained an operating licence in accordance with Act No. 123/1993 respecting Credit Institutions other than Commercial Banks and Savings Banks.
 - c. A firm engaged in securities services in accordance with Act. No. 13/1996 respecting Securities Transactions.
 - d. A department or departments in an institution cf. subpara. a - c hereinbefore which are not considered to be special legal persons, but belong to a foreign institution subject to supervision and which has an operating licence or a branch in this country.
 - e. The Central Bank of Iceland or an institution subject to State guarantee authorized to engage in part or in full in operations coming under subpara. a - c.
3. Central counterparty:- An entity which is interposed between an institution and a system and acts as the exclusive counterparty with regard to the institution concerned.
4. Settlement agent:- An entity providing and arranging for settlement accounts for institutions and central counterparties and seeing to the execution of transfer orders of these parties and extending, as the case may be, credit for that purpose.
5. Netting:- The conversion into one net claim or obligation out of numerous claims or obligations resulting from transfer orders which a participant or participants either issue to, or receive from one or more other participants with the result that only a net claim or obligation can be founded and demanded concerning a participant's payment or payment obligation.
6. Settlement account:- An account at a central bank, with a central counterparty or a settlement agent used to hold funds and securities and to settle payments between participants in a system.
7. Transfer order:- Any instructions by a participant to place at the disposal of a recipient referred to therein funds by means of a book entry of a specific amount in a credit institution, central bank or a settlement agent, or any instructions obligating him or releasing him from the duty to effect a payment as further defined in the rules of the system or a participant's instructions to transfer direct or indirect titles to securities by means of electronic registration of assets or other comparable instructions.
8. Clearing house:- An entity responsible for processing transfer orders received from institutions and undertaking netting between these as well as a central counterparty or settlement agent, if applicable.
9. Participant:- An institution, a central counterparty, a settlement agent or a clearing house.
10. Indirect participant:- A credit institution coming under the definition of institution in para. 2, subpara. a or b

concerning definition of an institution having concluded a contractual relationship with an institution participating in a system enabling the credit institution to send transfer orders through the system.

11. Collateral securities:- All realisable assets, including money deposits, securities and repurchase or other comparable contracts concluded or submitted as collateral security in a system or in central banks.

12. Central bank:- A central bank in a Member State of the European Economic Area or the European Central Bank.

Article 3

The Central Bank of Iceland submits proposals to the Minister concerning a system which the Bank deems to meet the provisions of the present Act and which shall be designated, cf. para. 2, after receipt of application from the parties operating systems in this country.

The Minister shall by means of an announcement published in the "Legal Gazette" announce the domestic systems which have been designated and come under the provisions of the present Act and send a notification thereof to the EFTA Surveillance Authority (ESA).

Entities operating systems in accordance with the present Article are obliged to grant the Central Bank of Iceland information concerning direct and indirect participants who are parties to the system as well as changes thereof.

SECTION II Netting and Transfer Orders

Article 4

All transfer orders as well as netting shall in every respect be binding on a third person, even in the event of insolvency proceedings against a participant having given the instructions, provided that the instructions have arrived at the system prior to the pronouncement of an insolvency decree.

The same applies as it pertains to transfer orders arriving at the system on the date of opening of insolvency proceedings of the participant's estate, but after the time specified in Art. 6, provided that a clearing house, a central counterparty or a settlement agent has proved that it has neither known nor been able to know thereof. Systems shall define the moment of entry of a transfer order into the system and withdrawal thereof is not permitted after the time-limit specified in the rules of the system.

Article 5

A settlement agent takes care of the settlement of transfer orders in a system. All deposits or securities in settlement accounts or credit facilities connected therewith are available for a settlement agent to fulfil a participant's obligations against a system on the day of opening of the insolvency proceedings, cf. however, para. 2, Art. 4.

SECTION III Provisions Respecting Insolvency Proceedings

Article 6

In case the estate of an institution has been taken for insolvency proceedings a District Judge shall forthwith give notice of the decision to the Financial Supervision Authority and the Central Bank of Iceland by means of a telegram, facsimile message or by electronic means, provided that it be possible to verify and confirm the subject and receipt of the notification. The decree concerning insolvency as well as notification thereof shall disclose an accurate specification of the time at which the decree was pronounced concerning the insolvency proceedings of an institution. Notification given in accordance with the present Article shall forthwith be sent by the Financial Supervision Authority to the authorities concerned within the European Economic Area and which the Member States have specified as recipient of such notices.

Article 7

A participant's rights and obligations arising from the participation in a system and against whom insolvency proceedings have been opened shall be determined by the law governing that system.

SECTION IV The Protection of the Rights of Holders of Collateral Security from the Effects of the Insolvency of the Provider

Article 8

Insolvency proceedings against a participant's or central counterparty's estate shall in no way abridge the right of other participants or central banks to collateral.

It is at all times permissible forthwith to realize collaterals in accordance with the present Article for the satisfaction of claims of other participants or central banks.

Article 9

Collateral security provided in electronic or foreign securities which are electronically recorded in an accepted manner under Law shall in every respect be in accordance with the Laws of the State where the electronic recording of the securities is undertaken.

SECTION V Providing Information on Account of Participation in a System et al.

Article 10

A participant in a system shall inform anyone with a legitimate interest to safeguard and requesting this as to in which system he is participating and provide information about the main rules governing the functioning of the system concerned.

Article 11

By means of Regulations the Minister may further stipulate the implementation of the present Act.

Article 12

A contract by an indirect participant relating to participation in a system is subject to Icelandic Laws.

SECTION VI

Entry into Force et al.

Article 13

The present Act enters into force forthwith.

The present Act is being laid down in conformity with the Joint EEA Committee's decision No. 53/1999 and in order to transpose to domestic Laws the provisions of the Directive of the European Parliament and the Council No. 26 of 19 May 1998 on settlement finality in payment and securities settlement systems and payments in financial transactions.