

# CONSULTATION PAPER

P015 - 2017

August 2017

## **Proposed Amendments to the Payment and Settlement Systems (Finality and Netting) Act**

MAS

Monetary Authority of Singapore

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## 1 Preface

1.1 **The Payment and Settlement Systems (Finality and Netting) Act (“FNA”) was enacted in 2002 to ensure the finality and irrevocability of transactions made through payment and settlement systems** designated by the Monetary Authority of Singapore (“MAS”) by “carving out” the relevant insolvency rules. The FNA also provided for the enforceability of netting arrangements in these designated systems<sup>1</sup> (“DS”). These legal protections promoted confidence in a DS in order to enhance Singapore’s position as a major financial centre.

1.2 **Since 2002, both international practices and domestic circumstances have evolved considerably**, with improved insolvency protection and coverage over system wide important retail payment systems. In order for our laws to remain ready and relevant to the new landscape, MAS proposes to amend the FNA to incorporate global best practice developments from leading jurisdictions such as the United Kingdom, European Union, Canada and Australia; industry feedback from both local and global participants of payment and settlement systems; and developments in Singapore’s payment and settlement landscape.

### **Proposed Amendments to the FNA**

1.3 The proposed amendments cover three main policies:

1.3.1 **Improve protection** by extending insolvency protection to transfer orders, netting and settlement in a DS, immunity to officers and employees of an operator, settlement institution (“SI”)<sup>2</sup>, or collateral holder of a DS, insolvency protection to collateral security and inserting/clarifying key legal terms to allow for more comprehensive insolvency protection and payment finality;

1.3.2 **Set out clear designation criteria** for payment and settlement systems; and

1.3.3 **Strengthen administrative powers** of MAS.

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<sup>1</sup> The list of designated systems is in Annex B.

<sup>2</sup> The FNA defines a settlement institution of a DS as a body corporate which (i) provides accounts for the participants of the DS, or facilitates the settlement of transfer orders between these DS participants; and (ii) is specified in the designation order to be the SI of the DS. The settlement institutions are MAS (for SGD Cheque Clearing System, Interbank GIRO System and Fast And Secure Transfers System) and Citibank NA (for USD Cheque Clearing System).

1.4 We shall elaborate on these three areas in Parts 2, 3 and 4 below. **Annex C** (in a separate document) sets out the **proposed legislative amendments to the FNA** in the form of an Amendment Bill<sup>3</sup>.

1.5 MAS invites comments from banks, non-bank financial institutions, legal counsels, payment system operators, settlement institutions, collateral holders and other interested parties.

**Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.**

1.6 Please submit comments via email by 31 August 2017 (4 weeks) to:

FNA Consultation  
FinTech and Innovation Group Department  
Monetary Authority of Singapore  
10 Shenton Way, MAS Building  
Singapore 079117  
Fax: (65) 62203973  
Email: [fnaconsult@mas.gov.sg](mailto:fnaconsult@mas.gov.sg)

1.7 Electronic submission is encouraged. We would appreciate that you use the suggested format provided in **Annex D** (separate file) for your submission to streamline our collation efforts.

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<sup>3</sup> The proposed amendments to the FNA are still in draft form and are subject to clearance by the Attorney General's Chambers.

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## 2 Improve protection to DS

2.1 Under the current FNA, finality protection for transfer orders does not apply beyond 2359Hr Singapore time on the day of insolvency<sup>4</sup> even though some DS may operate beyond the day of insolvency to process, net and settle transfer orders.

2.2 MAS proposes to enhance protection of key elements in a payment cycle, such as extending insolvency protection of transfer orders, netting and settlement in a DS by one business day after the day of insolvency. This extended protection will comprehensively cover a wider range of scenarios such as insolvency being declared over the weekend or where a local DS participant is impacted by insolvency of its global parent headquartered in a different timezone. The extended protection also gives additional protection to a DS which operates across multiple timezones (e.g. Continuous Linked Settlement System) or a DS which operates 24 by 7 to process transfer orders but only nets and settles them during working hours (e.g. Fast And Secure Transfers System (“FAST System”)). With the enhanced insolvency protection, a DS will have sufficient time to close out, net and settle transfer orders. This proposal is consistent with the laws of European Union and is aligned with feedback received from domestic and international payment and settlement systems.

**Question 1. Extended insolvency protection.** MAS seeks comments on the proposed extension of insolvency protection for transfer orders, netting and settlement in a DS by one additional business day after the day of insolvency.

2.3 The officers and employees of DS operators, settlement institutions (“SI”) and collateral holders rely on a variety of rules, arrangements and by laws to effect smooth functioning of the DS during normal business-as-usual and default situations. MAS proposes to confer protection from personal liability on officers and employees of DS operators, SI and collateral holders for anything done or omitted to be done with reasonable care and in good faith in the execution of any function, duty or power of that individual under the FNA or under the rules of a DS. This allows the officers and employees of DS operators, SI and collateral holders to effectively carry out their functions in accordance with these rules, allowing for swift action during times of crisis, without potential litigation risk. Foreign jurisdictions also provide similar protection from personal liability.

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<sup>4</sup> The day on which (a) a court made an order for bankruptcy, judicial management or winding up in respect of the participant; or (b) a resolution for the voluntary winding up of the participant was passed.

2.4 MAS proposes to insert/amend the definitions of new/existing terms in the FNA, including:

2.4.1 “business day” – a new definition which defines a business day as that set out in the Rules of a DS or, where the Rules of a DS does not specify what constitutes a business day, any day other than a Saturday, Sunday or public holiday;

2.4.2 “book entry securities” – an amendment to the existing definition to include protection for transactions involving non-government securities;

2.4.3 “collateral security” – a new definition inserted into the FNA to recognise collateral held by or deposited with a collateral holder in the context of a DS;

2.4.4 “Rules” – a new definition inserted into the FNA to recognise the rules, arrangements, regulations or by laws of a DS;

2.4.5 “system” – an amendment to the existing definition to include systems which are established for the clearing, settlement or transfer of non-government securities; and

2.4.6 “transfer order” – an amendment to the existing definition to include an instruction by a participant to transfer non-government securities.

2.5 These new and amended definitions will provide greater certainty and clarity. For example, the definition of “collateral security”<sup>5</sup> will allow for the explicit protection of a DS which utilises collateral for settlement.

**Question 2. Provision of immunity to officers and employees of DS operators, SI and collateral holders from personal liability.** MAS seeks comments on this proposal to provide protection to the officers and employees of the DS operators, SI and collateral holders, in the course of carrying out their functions, duties or powers in accordance with the FNA or the DS’ Rules.

**Question 3. Definition of “business day”.** The insertion of such a definition seeks to align the definition of a “business day” with that set out in the rules of the respective DS. MAS seeks comments on the inclusion of such a definition.

**Question 4. Definitions of “book entry securities”, “system” and “transfer order”.** The existing definitions will be amended to allow for protection for non-Government-issued securities such as those issued by a corporation. MAS seeks inputs on the expanded protection of securities beyond Government-issued securities.

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<sup>5</sup> “collateral security” means any property held by or deposited with a collateral holder for the purpose of securing any liability arising directly in connection with ensuring (a) the clearing or settlement of payment obligations by the DS; or (b) the clearing, settlement or transfer of book-entry securities by the DS.

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**Question 5. Definition of “Rules”.** The insertion of such a definition is to clearly recognise the various rules, arrangements, regulations, by laws, or other similar body of statements, that govern the activities and conduct of the DS and the persons related to the DS. MAS seeks inputs on the inclusion of such a definition.

**Question 6. Protection of collateral security.** MAS seeks comments on according protection to collateral security by the DS.

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### 3 Clarify designation criteria

3.1 FNA protection is conferred when MAS designates a specific payment and settlement system for protection under the FNA. We propose to set out the broad criteria for the designation of a DS under the FNA to provide clarity and certainty to the industry and stakeholders<sup>6</sup>. The broad designation criteria is proposed to cover systemically important payment systems (“SIPS”), where the absence of insolvency protection could cause wider systemic risks to the greater financial system. The broad designation criteria will also cover system-wide important payment systems (“SWIPS”), upon which a disruption could impact the public’s confidence in Singapore’s payment systems and financial systems. Setting out the designation criteria by way of legislation is a common practice in key foreign jurisdictions with insolvency protection as well as in other domestic legislation which adopt a designation regime. The proposed broad designation criteria is in Annex C, clause 3(1) of the draft Amendment Bill. For ease of reference, it is also footnoted below<sup>7</sup>.

3.2 Taking into account the legal significance attached to designation of SIPS and SWIPS, MAS proposes to prohibit undesignated systems from claiming to be a DS. This prevents system entities from financially benefiting from such misrepresentation and causing confusion to the industry and stakeholders.

3.3 In addition, because the DS’ SI is a key entity, MAS proposes that the designation order should identify the SI and indicate that certain relevant powers and obligations under the FNA will apply to the SI.

<p><b>Question 7. Designation criteria for DS.</b> MAS seeks comments on the inclusion of broad designation criteria for SIPS and SWIPS to provide clarity and certainty to the industry and stakeholders.</p> <p><b>Question 8. Prohibition on undesignated systems from claiming to be a DS.</b> MAS seeks views on prohibiting an undesignated system and its entities from claiming to be a DS.</p> <p><b>Question 9. Identifying the SI in the designation order, and indicating the powers and obligations which are relevant to the SI under the FNA.</b> MAS intends to</p>
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<sup>6</sup> The criteria and guidance on the designation of payment and settlement systems under the FNA may be set out in regulations or guidelines.

<sup>7</sup> Draft Amendment Bill – Designation Criteria – clause 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 —

- (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.



identify the SI in the designation order and indicate that certain relevant powers and obligations under the FNA will apply to the SI (e.g. information gathering powers or immunity being conferred on the SI's officers and employees). MAS seeks views on this proposed change.

## 4 Strengthen administrative powers of MAS

4.1 MAS proposes to introduce administrative powers in the FNA to enable MAS to address potential risks and ensure effective administration of the FNA. These powers include information gathering powers and direction making powers to the operator, SI, collateral holder and participant. This will allow MAS to monitor a DS' exposure or system status and require the necessary action to be taken to comply with regulatory requirements. MAS also proposes requiring a DS to notify MAS of certain events, such as material changes to the DS' exposure or increased likelihood of default. These proposed powers and obligations are common among foreign jurisdictions and in other domestic legislation.

**Question 10. Information gathering powers, direction making powers and obligation to inform MAS of certain events.** MAS seeks comments on introducing these standard regulatory powers for the effective administration of the FNA.

4.2 MAS proposes to impose a requirement on the DS operator, SI and collateral holder to seek MAS' approval before implementing or amending any DS' rules, including its netting and settlement rules, default arrangements, by laws and arrangements for collateral security. The application<sup>8</sup>, submitted by the DS operator, SI or collateral holder to MAS for the approval of the DS' rules, must be accompanied by a written legal opinion from a solicitor who is qualified to practise law in Singapore.

4.3 MAS proposes to introduce a general penalty clause in the FNA to apply to a breach by a DS operator, SI, collateral holder or participant, of any FNA provision for which no specific penalty applies. For instance, the failure by a participant to notify the DS operator of the occurrence of an order for bankruptcy, judicial management or winding up of itself, will result in a penalty. As the FNA currently does not provide any penalties for such breaches, a general penalty clause is proposed.

**Question 11. Approval of DS rules.** MAS seeks comments on imposing a requirement on a DS operator, SI and collateral holder to obtain MAS' approval before implementing or amending any DS rules.

**Question 12. General penalty.** MAS seeks comments on the introduction of a general penalty to ensure compliance with the FNA. The general penalty is relevant where a FNA provision does not have a specific penalty set out therein.

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<sup>8</sup> In reviewing the application, MAS will consider how the rules will be implemented to allow for insolvency protection and the robustness of such rules, amongst other criteria.

4.4 MAS will introduce an exemption power for MAS to disapply relevant FNA provisions on a class or case-by-case basis upon application by a DS operator, SI, collateral holder or participant.

4.5 In line with the approach in the Payment Systems (Oversight) Act and from a regulatory practicality perspective, MAS will be exempted from the application of certain provisions with respect to any DS operated by the MAS, taking into account the internal governance arrangements in place within MAS. In addition, to facilitate the efficient and timely administration of the FNA, MAS also proposes to allow for the delegation of the exercise of powers by the Managing Director to appointed MAS officers.

## **ANNEX A**

### **LIST OF QUESTIONS**

*For responses to MAS, please use the separate document Annex D – Response Template.*

- Question 1. Extended insolvency protection.** MAS seeks comments on the proposed extension of insolvency protection for transfer orders, netting and settlement in a DS by one additional business day after the day of insolvency.....5
- Question 2. Provision of immunity to officers and employees of DS operators, SI and collateral holders from personal liability.** MAS seeks comments on this proposal to provide protection to the officers and employees of the DS operators, SI and collateral holders, in the course of carrying out their functions, duties or powers in accordance with the FNA or the DS’ Rules.....6
- Question 3. Definition of “business day”.** The insertion of such a definition seeks to align the definition of a “business day” with that set out in the rules of the respective DS. MAS seeks comments on the inclusion of such a definition. ....6
- Question 4. Definitions of “book entry securities”, “system” and “transfer order”.** The existing definitions will be amended to allow for protection for non-Government-issued securities such as those issued by a corporation. MAS seeks inputs on the expanded protection of securities beyond Government-issued securities. ....6
- Question 5. Definition of “Rules”.** The insertion of such a definition is to clearly recognise the various rules, arrangements, regulations, by laws, or other similar body of statements, that govern the activities and conduct of the DS and the persons related to the DS. MAS seeks inputs on the inclusion of such a definition.....7
- Question 6. Protection of collateral security.** MAS seeks comments on according protection to collateral security by the DS.....7
- Question 7. Designation criteria for DS.** MAS seeks comments on the inclusion of broad designation criteria for SIPS and SWIPS to provide clarity and certainty to the industry and stakeholders.....8
- Question 8. Prohibition on undesignated systems from claiming to be a DS.** MAS seeks views on prohibiting an undesignated system and its entities from claiming to be a DS...8
- Question 9. Identifying the SI in the designation order, and indicating the powers and obligations which are relevant to the SI under the FNA.** MAS intends to identify the SI in the designation order and indicate that certain relevant powers and obligations under the FNA will apply to the SI (e.g. information gathering powers or immunity being conferred on the SI’s officers and employees). MAS seeks views on this proposed change.....8

**Question 10. Information gathering powers, direction making powers and obligation to inform MAS of certain events.** MAS seeks comments on introducing these standard regulatory powers for the effective administration of the FNA..... 10

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**ANNEX B**

**LIST OF DESIGNATED SYSTEMS**

No.	Designated System under FNA	System Type	Operator	Settlement Institution
1	CLS System	Gross Settlement / Multilateral Netting	CLS Bank International ("CLS")	CLS
2	MEPS+	Real Time Gross Settlement	MAS	MAS
3	SGD Cheque Clearing System	Multilateral Netting	Banking Computer Services Private Limited ("BCS")	MAS
4	USD Cheque Clearing System	Multilateral Netting	BCS	Citibank N.A.
5	Interbank GIRO System	Multilateral Netting	BCS	MAS
6	USD Cheque Settlement System	Multilateral Netting	Citibank N.A.	Citibank N.A.



MAS

Monetary Authority of Singapore

# RESPONSE TO FEEDBACK RECEIVED

NOVEMBER 2017

## Response to Feedback Received – Proposed Amendments to the Payment and Settlement Systems (Finality and Netting) Act

MAS

Monetary Authority of Singapore



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## 1 Preface

1.1 On 3 August 2017, MAS issued a Consultation Paper on Proposed Amendments to the Payment and Settlement Systems (Finality and Netting) Act (“FNA”). The proposed amendments covered three main policies:

1.1.1 **Improve protection** by extending insolvency protection to transfer orders, netting and settlement in a designated system<sup>1</sup> (“DS”), immunity to officers and employees of an operator, settlement institution (“SI”)<sup>2</sup>, or collateral holder of a DS, insolvency protection to collateral security and inserting/clarifying key legal terms to allow for more comprehensive insolvency protection and payment finality;

1.1.2 **Set out clear designation criteria** for payment and settlement systems; and

1.1.3 **Strengthen administrative powers** of MAS.

1.2 Final comments were received on 12 September 2017. MAS would like to thank all respondents for their contributions.

1.3 The respondents are supportive of the proposed amendments as they recognise that the proposed amendments to the FNA will enhance protection to the key elements in a payment and settlement cycle. Where MAS agrees with the feedback, the feedback will be incorporated accordingly. Comments that are of wider interest, together with MAS’ responses, are set out below.

## 2 Improve protection to DS

2.1 Respondents are supportive of various improvements to protect the DS as well as the key stakeholders involved in the clearing and settlement process.

### (a) Clarity of “business day”

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<sup>1</sup> A “designated system” means a system that is designated by the Authority under section 3 to be a designated system for the purposes of the FNA.

<sup>2</sup> The FNA defines a settlement institution of a DS as a body corporate which (i) provides accounts for the participants of the DS, or facilitates the settlement of transfer orders between these DS participants; and (ii) is specified in the designation order to be the SI of the DS. The settlement institutions are MAS (for SGD Cheque Clearing System, Interbank GIRO System and Fast And Secure Transfers System) and Citibank NA (for USD Cheque Clearing System).

2.2 Respondents enquired if the second limb of the definition of “business day” took precedence over how a DS defined its business day.

MAS’ Response

2.3 The amended FNA will give precedence to the definition of “business day” as set out in a DS’s system’s Rules. If it is not defined in those Rules, the second limb of the definition of “business day” in the amended FNA will apply.

**(b) Clarity on “transfer order”**

2.4 Some respondents requested guidance on whether the proposed amendment to the “transfer order” definition allowed for both a payment obligation and settlement instruction to arise from the same DS, as well as from another DS which forms part of the clearing and settlement process.

MAS’ Response

2.5 MAS confirms that the proposed “transfer order” definition is intended to include a transfer order that originates from the same DS or from a different DS but which forms part of the clearing and settlement process.

**3 Clarify designation criteria**

3.1 Respondents looked forward to greater clarity in the designation of systems and agreed that the criteria focused on the relevant type of systems.

**(a) Impact on existing DS**

3.2 Some respondents sought clarity on whether existing DSs will continue to be designated after the amendments are in place.

MAS’ Response

3.3 MAS will grandfather existing DSs, and the amendments to the FNA will apply to existing DSs when the Bill comes into effect.

**4 Strengthen administrative powers of MAS**

4.1 Respondents welcomed the improved powers for MAS, noting that it enhanced the integrity and consistency of the FNA and ensured non-DSs were not able to claim insolvency protection under the FNA.

**(a) Approval of “Rules” of the DS**

4.2 Respondents enquired if approval of “Rules” could also encompass default arrangements or bye-laws of the DS.

MAS’ Response

4.3 The amendment is for MAS to approve the Rules of the DS, where the Rules are to be legally binding and in writing. MAS noted that Rules, determined by the DSs, are likely to include its default arrangements and bye-laws.

**MONETARY AUTHORITY OF SINGAPORE**

6 NOVEMBER 2017

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MAS

Monetary Authority of Singapore

**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:

30

**“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.”.

20

**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 the case may be) in relation to the commission of the offence; and
- 30 (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.

15

(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.

20

(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.

30

(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

5 **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.

10 (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).

15 (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.

20 (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

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

### Saving and transitional provision

30 **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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