

# ACT

## on the Security of Transfer Orders in Payment Systems and Securities Settlement Systems]<sup>1)</sup>

<sup>1)</sup> Act 159/2012, Art. 10.

**Entered into force on 10 December 1999.** *EEA Agreement:* Annex IX, Directive 98/26/EC. *Amended by:* Act 159/2012 (entered into force on 3 January 2013; *EEA Agreement:* Annex IX, Directive 98/26/EC, 2009/44/EC). Act 15/2018 (entered into force on 1 October 2018; *EEA Agreement:* Annex IX, Regulation 648/2012). Act 91/2019 (entered into force on 1 January 2020 except Art. 133 which entered into force on 16 July 2019). Act 137/2019 (entered into force on 31 December 2019). Act 7/2020 (entered into force on 21 February 2020; *EEA Agreement:* Annex IX, Regulation 909/2014, 236/2012). Act 115/2021 (entered into force on 1 September 2021 except Article 39 which entered into force on 1 November 2021 and the fifth paragraph of Article 48 which enters into force on 28 February 2023; for conflict of law see Article 147; *EEA Agreement:* Annex IX, Directive 2014/65/EU, 2016/1034/EU, Regulation 600/2014, 2016/1033, 2017/565, 2017/567). Act 38/2022 (entered into force on 1 July 2022 except Article 76, point (a) of Article 82, point (d) of Article 177, point (d) of Article 206 and Article 65 which shall enter into force on the instructions of Article 215. *EEA Agreement:* Annex IX, Regulation 575/2013, 2015/62, 2016/1014, 2017/2188, 2017/2395, 2019/630, 2019/876, 2020/873).

Any mention in this Act of a Minister or Ministry, without specifying or referring to the function, refers to the **Minister of Finance and Economic Affairs** or the **Ministry of Finance and Economic Affairs**, which administers this Act.

### CHAPTER I

#### Scope and definitions

##### Art. 1

[The objective of this Act is to ensure the security of settlement of transactions in payment systems and securities settlement systems.

This Act applies to payment systems and securities settlement systems operated in Iceland that have been notified in accordance with Article 3].<sup>1)</sup>

<sup>1)</sup> Act 159/2012, Art. 1.

##### Art. 2

For the purpose of this Act the following definitions shall apply:

1. *[System:* Payment and securities settlement systems meeting the following criteria:
  - a. There are three or more participants, excluding the system operator of that system, the possible settlement agent, intermediary, clearing house or indirect participant.
  - b. There are common rules and standardised arrangements for the clearing or execution of orders, regardless of whether or not through a central counterparty or between the participants.

- c. The participants have agreed that Icelandic law should govern the system, provided that at least one of the participants has its head office in Iceland.
  - d. The system satisfies legal requirements and has been notified to the EFTA Surveillance Authority (ESA), in accordance with the second paragraph of Article 3, [and the European Securities Market Authority (ESMA)].<sup>1)</sup><sup>2)</sup>
2. *[Institution:* The following entities participating in the system and responsible for the execution of orders within it:
    - a. A financial undertaking authorised [under the Act on Financial Undertakings or the Act on Markets in Financial Instruments].<sup>3)</sup>
    - b. The Central Bank of Iceland ...<sup>4)</sup> or a publicly guaranteed institution.
    - c. Any undertaking whose head office is outside the European Economic Area and carrying out a similar type of activity as a financial undertaking as defined in point (a).<sup>2)</sup>
  3. *Intermediary:* An entity which intermediates on behalf of an institution in [a system]<sup>2)</sup> and has the exclusive right to transmit the [transfer orders]<sup>2)</sup> of the institution in question.
  4. *Settlement agent:* An entity providing settlement accounts to institutions and central counterparties and executing their [transfer orders]<sup>2)</sup> and, as the case may be, extending credit to them for this purpose.
  5. *Netting:* The conversion into one claim or one obligation of claims and obligations resulting from [transfer orders]<sup>2)</sup> which participants either issue to, or receive from, one or more other participants with the result of generating only a single (net) claim or obligation for payment to or owed from the participant.
  6. *Settlement account:* An account held at a central bank, a central counterparty or a settlement agent used to hold [funds or financial instruments]<sup>2)</sup> and to settle payments between participants in a payment system.
  7. *[Transfer order:*
    - a. Any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system.
    - b. An instruction by a participant to transfer the title to, or interest in, financial instruments using book entry, or other similar instructions.]<sup>2)</sup>
  8. *Clearing house:* An entity who processes [transfer orders]<sup>2)</sup> received from institutions and who is responsible for their netting, also, if applicable, a possible central counterparty or a possible settlement agent.
  9. *[Participant:* An institution, a central counterparty, a clearing house, a settlement agent or a system operator. The same participant may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks.]<sup>2)</sup>
  10. *[Indirect participant:* An institution, a central counterparty, a clearing house, a settlement agent or a system operator with a contractual relationship with a participant in a system which enables the indirect participant to pass transfer orders through the system, provided that it is known to the system operator.]<sup>2)</sup>
  11. *Collateral security:* All realisable assets, including bank deposits, [financial instruments, financial guarantees under Act No 46/2005 on Financial Collateral Arrangements],<sup>2)</sup> and repurchase or similar agreements made or provided as collateral in a payment system or to central banks.
  12. *Central Bank:* A Central Bank of a Member State of the European Economic Area or the European Central Bank.
  13. *[Financial instrument:* Financial instruments within the meaning of the Act on Markets in Financial Instruments.]<sup>5)</sup>
  14. *System operator:* The entity or entities legally responsible for the operation of a system. A system operator may also act as a central counterparty, clearing house or a settlement agent.
  15. *Interoperable systems:* Two or more systems whose system operators have entered into an arrangement with one another that involves cross-system execution of orders.
  16. *Business day:* Covers both day and night-time settlements and shall encompass all events happening during the business cycle of a system.]<sup>2)</sup>

<sup>1)</sup> Act 7/2020, Art. 34. <sup>2)</sup> Act 159/2012, Art. 2. <sup>3)</sup> Act 38/2022, Art. 151. <sup>4)</sup> Act 137/2019, Art. 19. <sup>5)</sup> Act 115/2021, Art. 148.

### **Art. 3**

The Central Bank of Iceland makes a recommendation to the Minister for a [system]<sup>1)</sup> which it considers satisfies the provisions of this Act and shall be recognised, pursuant to the second paragraph, upon application by the entity operating the [system]<sup>1)</sup> in Iceland.

The Minister shall, by means of a notice published in the Icelandic Legal Gazette, announce the domestic [systems]<sup>1)</sup> which have been recognised and which are subject to this Act [and the associated system operators]<sup>2)</sup> and shall submit notice thereof to ESA [and ESMA].<sup>3)</sup>

Entities operating [systems]<sup>1)</sup> under this Article are obliged to provide the Central Bank of Iceland with information on direct and indirect participants to the system, as well as any changes thereto.

[The system operator of each system is obliged to inform the Central Bank of Iceland of the laws applicable to participants in its system, including any indirect participants, as well as any changes in them.

An institution shall, on request, inform anyone with a legitimate interest of the systems in which it participates and provide information about the main rules governing the functioning of those systems.]<sup>2)</sup>

[The Act on the European System of Financial Supervision applies to the cooperation and disclosure of information by domestic parties, both vis-à-vis ESMA and EEA bodies.]<sup>3)</sup>

<sup>1)</sup> Act 159/2012, Art. 2. <sup>2)</sup> Act 159/2012, Art. 3. <sup>3)</sup> Act 7/2020, Art. 34.

#### **[Art. 3 a**

Systems, as defined in the second paragraph of Article 3, which meet the criteria of points (1)(a) and (b) of Article 2 and execute orders in a securities settlement system and transfer orders relating to other financial instruments may be recognised, provided such recognition is considered desirable in terms of systemic risk.

Notwithstanding point (1)(a) of Article 2, in special cases, payment systems and securities settlement systems with two participants, with the exception of the possible settlement agent, central counterparty, clearing house or indirect participant, may be recognised, provided such recognition is considered desirable in terms of systemic risk.]<sup>1)</sup>

<sup>1)</sup> Act 159/2012, Art. 4.

#### **[Art. 3 b**

An indirect participant may be considered a participant if this is desirable in terms of systemic risk, but this does not limit the liability of a participant who allows an indirect participant to pass transfer orders through the system.]<sup>1)</sup>

<sup>1)</sup> Act 159/2012, Art. 4.

## **CHAPTER II Netting and transfer orders**

### **Art. 4**

All [transfer orders],<sup>1)</sup> and netting, shall be binding on third parties even in the event of liquidation of the participant who gave the order, provided that transfer orders were entered into the [system]<sup>1)</sup> before the bankruptcy decision is issued. [This shall apply even in the event of insolvency proceedings against a participant (in the system concerned or in an interoperable system) or against the system operator of an interoperable system which is not a participant.]<sup>1)</sup>

[Where transfer orders are entered into the system after the moment of opening of insolvency proceedings and are carried out within the business day during which the opening of such proceedings occur, they shall be binding on third parties only if the system operator can prove that, at the time that such transfer orders become irrevocable, it was neither aware, nor should have been aware, of the opening of such proceedings.]<sup>1)</sup>

[Systems]<sup>1)</sup> must define the moment of entry of a [transfer order]<sup>1)</sup> into a system and, after the time limit specified in the rules of the system, their revocation is prohibited.

[In the case of interoperable systems, each system determines in its own rules the moment of entry into its system, in such a way as to ensure, to the extent possible, that the rules of all interoperable

systems concerned are coordinated in this regard. Unless expressly provided for by the rules of all the systems that are party to the interoperable systems, one system's rules on the moment of entry shall not be affected by any rules of the other systems with which it is interoperable.

In the case of interoperable systems, each system determines in its own rules when transfer orders become irrevocable, in such a way as to ensure, to the extent possible, that the rules of all interoperable systems concerned are coordinated in this regard. Unless expressly provided for by the rules of all the systems that are party to the interoperable systems, one system's rules on when transfer orders become irrevocable shall not be affected by any rules of the other systems with which it is interoperable.]<sup>1)</sup>

<sup>1)</sup> Act 159/2012, Art. 5.

#### **Art. 5**

The settlement agent is responsible for the finality of [transfer orders]<sup>1)</sup> in a [system].<sup>2)</sup> The settlement agent may use any deposits or [financial instruments]<sup>1)</sup> available on a settlement account, or related credit facilities, to fulfil that participant's obligations in the [system]<sup>2)</sup> on the day of the opening of the insolvency proceedings, subject to the second paragraph of Article 4.

<sup>1)</sup> Act 159/2012, Art. 6. <sup>2)</sup> Act 159/2012, Art. 2.

### **CHAPTER III**

#### **Provisions relating to insolvency proceedings**

#### **Art. 6**

If the estate of an institution is being liquidated, the district judge shall immediately report it to the...<sup>1)</sup> Central Bank of Iceland by telegram, telefax or electronic means so that the content and receipt of the notification can be verified. A decision on bankruptcy, as well as the notice thereof, shall precisely specify the moment of delivery of the decision to liquidate an institution. A notification made pursuant to this Article shall be forwarded immediately by the Financial Supervisory Authority to the competent authorities in the European Economic Area designated by the Member States as the addressee of such notification, [i.e., ESMA, the European Systemic Risk Board (ESRB) and ESA].<sup>2)</sup>

<sup>1)</sup> Act 91/2019, Art. 131. <sup>2)</sup> Act 7/2020, Art. 34.

#### **Art. 7**

The rights and obligations of a participant in a [system]<sup>1)</sup> subject to insolvency proceedings are subject to the legislation applicable to the [system]<sup>1)</sup> in question.

<sup>1)</sup> Act 159/2012, Art. 2.

### **CHAPTER IV**

#### **Insulation of the rights of holders of collateral security from the effects of the insolvency of the provider**

#### **Art. 8**

[The liquidation of a participant, a system operator of an interoperable system which is not a participant, a central counterparty for a central bank or any third party providing collateral security shall in no way prejudice the rights of other participants, central banks or system operators to the collateral security.]<sup>1)</sup> Collateral security under this Article may always be realised with immediate effect for the satisfaction of the claims of other participants or central banks.

<sup>1)</sup> Act 159/2012, Art. 7.

#### **[Art. 8 a**

The liquidation of a system operator shall be without prejudice to the right of another system operator to the collateral security which the latter has delivered to the former in connection with an interoperable system.]<sup>1)</sup>

<sup>1)</sup> Act 15/2018, Art. 17.

#### **Art. 9**

A collateral security granted in electronic securities, or foreign [book-entry financial instruments]<sup>1)</sup> in a legally recognised manner, shall be governed in all respects by the laws of the State in which the book entry of the [financial instruments]<sup>1)</sup> takes place.

<sup>1)</sup> Act 159/2012, Art. 8.

**CHAPTER V**  
**Disclosure for participation in a payment system etc.**

**Art. 10**

A participant in a [system]<sup>1)</sup> shall inform anyone with a legitimate interest on request of the [system]<sup>1)</sup> in which it participates and about the main rules governing the functioning of the system concerned.

<sup>1)</sup> Act 159/2012, Art. 2.

**Art. 11**

The Minister may provide details for the implementation of this Act by regulation.

**Art. 12**

Icelandic law applies to the contract of an indirect participant for membership in a [system]<sup>1)</sup>.

<sup>1)</sup> Act 159/2012, Art. 2.

**CHAPTER VI**  
**Entry into force, etc.**

**Art. 13**

This Act shall enter into force forthwith.

[This Act incorporates into Icelandic law the provisions of Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems as amended by Directive 2009/44/EC of the European Parliament and of the Council, [provisions of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), and Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012].<sup>1)</sup> [Directive 98/26/EC was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 53/1999, Directive 2009/44/EC was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 50/2010, Directive 2010/78/EU was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 92/2018 and Regulation (EU) No 909/2014 was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 18/2019.]<sup>1)</sup><sup>2)</sup>

<sup>1)</sup> Act 7/2020, Art. 34. <sup>2)</sup> Act 159/2012, Art. 9.