Text consolidated by Valsts valodas centrs (State Language Centre) with amending laws of:

3 March 2011 [shall come into force on 30 June 2011];

22 March 2012 [shall come into force on 25 April 2012];

25 September 2014 [shall come into force on 22 October 2014];

19 May 2016 [shall come into force on 9 June 2016];

14 September 2017 [shall come into force on 13 October 2017];

30 September 2021 [shall come into force on 29 October 2021].

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*1 has adopted and

the President has proclaimed the following law:

**On Settlement Finality in Payment and Financial Instrument Settlement Systems**

**Chapter I**

**General Provisions**

**Section 1.** (1) The following terms are used in this Law:

1) **payment and financial instrument settlement system (hereinafter – the system) –** a mechanism for the execution of transfer orders of payments and financial instruments that operates in accordance with an agreement and meets all of the following conditions:

a) it is an agreement among at least three participants, excluding a system operator, a settlement agent, a central counterparty, a clearing house, or an indirect participant, on the execution of transfer orders among participants or netting, whether or not via a central counterparty, in accordance with uniform rules and standardised procedures;

b) it is governed by a law of the Republic of Latvia or a European Union Member State, or a country of the European Economic Area (hereinafter – the Member State) which is selected by the participants;

c) Latvia or another Member State, in accordance with laws whereof the system operates, has determined it as the system and informed the European Securities and Markets Authority of this decision;

2) **institution**– an entity that participates in the system and is responsible for the fulfilment of financial obligations arising from the transfer orders within such system and meets at least one of the following conditions:

a) it is a bank, a branch, a branch of a foreign bank, a central bank, a savings and loan association, or a postal operator registered in the Republic of Latvia or another Member State that has the right to provide payment services in accordance with laws and regulations;

b) it is an investment firm, a branch, or a branch of a foreign investment firm registered in a Member State;

c) it is a State administration authority or a State or local government capital company;

d) [3 March 2011];

3) [30 September 2021];

4) **settlement agent**– an authority that opens settlement accounts for institutions or the central counterparty for the purpose of settlements regarding transfer orders processed in the system and, where necessary, may provide a credit for settlements of the respective institutions or the central counterparty;

5) **clearing house**– an authority that is responsible for the calculation of net positions of institutions and calculation of net positions of the central counterparty or settlement agent if the respective institutions are also parties to an agreement and the relevant agreement provides for the calculation of net positions;

6) **participant –** an institution, a central counterparty, a settlement agent, a clearing house, a system operator, or a clearing member of a central counterparty that has received an authorisation for the activity of the central counterparty in accordance with the procedures laid down in Article 17 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (hereinafter – Regulation No 648/2012);

7) **indirect participant**– an institution, a central counterparty, a settlement agent, a clearing house, or a system operator which can be identified by the system and which has an agreement with a participant for the execution of transfer orders within the framework of the relevant system;

8) **system operator**– an entity that is responsible for ensuring operation of the system;

9) **systemic risk**– a risk that inability of one participant of the system to fulfil its obligations will cause inability of other participants or financial institutions to fulfil their obligations within the specified period. Such situation can create significant liquidity or credit problems but this in turn can pose a threat to the stability of the financial market;

10) **transfer order**– an instruction which meets one of the following conditions:

a) an instruction by a participant to place at the disposal of a recipient an amount of money by means of an accounting record on the account of a bank, a central bank, a central counterparty, or a settlement agent, or an instruction to accept a payment or discharge payment obligations in accordance with the system rules;

b) an instruction by a participant to transfer the title to financial instruments or right to financial instruments by means of an entry in the register or otherwise;

11) **insolvency proceedings –** any measure, including insolvency proceedings, that is provided by laws of a Member State or a foreign country for the winding-up of the relevant participant, and also for the restriction or restoration of the participant’s activity if this includes suspension or restriction of the transfers of financial instruments or cash transfers;

12) **initiation of insolvency proceedings**– a moment when a relevant judicial or administrative institution of a Member State or a foreign country has taken a decision or judgement to initiate insolvency proceedings;

13) **netting**– transformation of claims and obligations in a single net claim or a single net obligation so that only a net claim may be brought and only a net obligation must be executed if the claims and obligations result from transfer orders which are executed by one or more participants in favour of one or more other participants of the system or which the participants receive from other participants of the system;

14) **settlement account**– an account with a central bank, a settlement agent, or a central counterparty that is used by participants of the system to hold funds or financial instruments or to settle mutual transactions between the participants of the system;

15) **collateral**– realisable assets, including financial means, financial instruments, and credit claims that are provided for the purpose of exercising rights and fulfilling obligations which may arise in connection with participation in the system, or collateral provided to a central bank;

16) **central bank**– Latvijas Banka, a central bank of another Member State, or the European Central Bank;

17) **clearing**– transmission, reconciliation, and, where necessary, confirmation of transfer orders prior to settlements, and also netting of a transfer order and establishment of the net positions according to which settlements will be made;

18) **clearing system**– a set of procedures by means of which participants in a clearing house or another specific place exchange information or documents related to money transfers or transfers of financial instruments. In order to ensure settlements of obligations of the participants by netting, the set of procedures may also include procedures for calculating net positions of the participants;

19) **net position**– a difference between the total transfers received and made by a participant of the clearing system within a specific period. If this difference is positive, a net credit position or net claim arises but if this difference is negative a net debt position or net obligation arises;

20) [3 March 2011];

21) **working day**– a period provided for in the system rules when execution of a transfer order is possible within the framework of the relevant system;

22) **interoperable systems**– two or more systems the system operators of which have mutually agreed on the procedures that cover execution of transfer orders between the systems.

(2) The term “credit claims” used in the Law conforms to the term “credit claims” explained in the Financial Collateral Law.

(3) The term “central counterparty” and the term “clearing member” conform to the terms used in Regulation No 648/2012.

[*3 March 2011; 19 May 2016; 30 September 2021*]

**Section 2.** The purpose of the Law is to ensure:

1) stability of the financial market by promoting safe and efficient operation of the payment and financial instrument settlement systems of the Republic of Latvia and of the cross-border payment and financial instrument settlement systems by limiting the systemic risk and minimising, to the extent possible, disruptions to the system which could be caused by the initiation of insolvency proceedings against any of the participants;

2) finality of netting and settlements, their legal effect in the system and the right to freely execute the collateral provided for participation in the system or transactions with the central bank, and also in the case of insolvency proceedings against a participant.

**Section 3.** This Law shall apply to:

1) the systems the operation of which is ensured by Latvijas Banka or which have been determined as the systems by the Financial and Capital Market Commission (hereinafter – the Commission) after having reviewed the rules of such systems and having informed the European Securities and Markets Authority of this decision;

2) all participants of the systems referred to in Clause 1 of this Section;

3) the collateral which is provided for participation in the systems referred to in Clause 1 of this Section or which is used by the central bank in transactions when performing the functions of the central bank.

[*19 May 2016*]

**Section 4.** (1) The Commission may also deem the following agreement to be the system within the meaning of Section 1, Clause 1 of this Law:

1) the task of which is to execute the transfer orders referred to in Section 1, Clause 10, Sub-clause “b” of this Law and which executes orders to a limited extent in respect of another type of financial instruments if such decision is based on the systemic risk;

2) between two participants, excluding a settlement agent, a central counterparty, a clearing house, or an indirect participant, if such authorities are parties to the agreement, on execution of transfer orders if such decision is based on the systemic risk.

(2) An agreement between interoperable systems shall not constitute a separate system.

[*3 March 2011; 30 September 2021*]

**Section 5.** (1) The Commission may also determine as the institution within the meaning of Section 1, Clause 2 of this Law a commercial company that participates in the relevant system within which the transfer orders referred to in Section 1, Clause 10, Sub-clause “b” of this Law are executed, and also the payments resulting from such orders if this commercial company is liable for financial obligations arising from the transfer orders within this system, unless at least three participants in such system are the institutions referred to in Section 1, Clause 2 of this Law, and such decision is based on the systemic risk.

(2) [3 March 2011].

[*3 March 2011*]

**Section 6.** [30 September 2021]

**Section 7.** The same participant may act as a central counterparty, a settlement agent, or a clearing house or perform a part or all of the tasks of such participants provided that the system rules envisage such possibility.

[*30 September 2021*]

**Section 7.1** (1) Latvijas Banka shall perform supervision of the systems.

(2) The system operator shall be obliged to provide Latvijas Banka with the information necessary for the supervision of the system.

[*14 September 2017*]

**Chapter II**

**Netting and Transfer Orders**

**Section 8.** (1) Netting and transfer orders shall be legally enforceable and binding on third persons also if insolvency proceedings have been initiated against a participant of the system or interoperable system or an interoperable system operator other than the participant, provided that the transfer orders are entered into the system prior to initiating insolvency proceedings.

(2) If the transfer orders are entered into the system after initiating insolvency proceedings against a participant and they are executed on the same working day when the insolvency proceedings are initiated, they shall only be legally enforceable and binding on third persons if the system operator is able to prove that at the time when such transfer orders became irrevocable in accordance with the system rules it was neither aware, nor should have been aware of the initiation of such proceedings.

(3) Laws and regulations providing for the setting aside of legal transactions shall not be applicable to netting of the claims and obligations resulting from participation in the system and arising prior to initiating the insolvency proceedings against a participant.

(4) The moment of entry of a transfer order into a system shall be defined by the rules of that system.

(5) In interoperable systems, the rules of each system shall determine the moment when a transfer order is entered into the system. Rules of one system regarding the moment of entering into of a transfer order shall not be affected by the rules of another system, unless it is provided for in the rules of all the systems involved.

[*3 March 2011*]

**Section 9.** Initiation of insolvency proceedings against a participant or an interoperable system operator shall not prevent the following:

1) use of funds or financial instruments available on the settlement account of the participants to allow the participant to fulfil its obligations arising from its participation in the system or interoperable system which it has on the working day of initiation of the insolvency proceedings;

2) reduction of a participant’s credit related to the system against a collateral available in the system or interoperable system to fulfil the obligations of the participant of the relevant system.

[*3 March 2011*]

**Section 10.** (1) The system rules shall determine the moment when a transfer order may not be revoked unilaterally.

(2) In interoperable systems, the rules of each system shall determine the moment when a transfer order may not be revoked unilaterally. Rules of one system regarding the moment of irrevocability shall not be affected by the rules of another system, unless it is provided for in the rules of all the systems involved.

(3) A transfer order shall be irrevocable and settlement shall be final from the moment determined in the rules of the relevant system.

[*14 September 2017*]

**Chapter III**

**Provisions for Insolvency Proceedings Against Participants**

**Section 11.** (1) A court of the Republic of Latvia shall, in accordance with the procedures laid down in the Civil Procedure Law, inform the Commission of the initiation of insolvency proceedings against a participant.

(2) When an administrative institution to which such rights have been granted by the law takes the decision to initiate insolvency proceedings against a participant, it shall immediately – on the same day – inform the Commission of this fact.

(3) The Commission shall immediately – on the same day when it has received the decision or judgement of a court of the Republic of Latvia or of an administrative institution on the initiation of insolvency proceedings against a participant – inform the following of this fact:

1) system operators in the systems whereof the participant participates;

2) relevant authorities which have been appointed as recipients of such information by Member States and in respect of which Member States have informed the European Securities and Markets Authority;

3) the European Systemic Risk Board and the European Securities and Markets Authority.

[*3 March 2011, 22 March 2012; 19 May 2016*]

**Section 12.** Insolvency proceedings shall not affect such rights and obligations of a participant, including a participant in an interoperable system or an interoperable system operator other than the participant, that arise from the participation in the system or are related thereto and have arisen prior to initiation of the insolvency proceedings. Such rights and obligations of a participant may not be recognised as invalid.

[*3 March 2011*]

**Chapter IV**

**Protection of the Rights of a Collateral Taker in the Case of Insolvency Proceedings of a Collateral Provider**

**Section 13.** (1) The right of a system operator or participant to the collateral provided thereto in relation to the system or interoperable system, or the right of a central bank to the collateral shall not be affected by he insolvency proceedings initiated against the participant, the interoperable system operator other than the participant, a counterparty of the central bank, or any third person who has provided the collateral. Such collateral may be exercised immediately for the purpose of exercise of the respective rights, and the restriction of rights to execute the collateral which have been specified in laws and regulations shall not be applicable to such collateral.

(2) If the system operator has provided a collateral to another system operator in relation to an interoperable system, the right to this collateral held by the system operator who has provided the collateral shall not be affected by the insolvency proceedings initiated against the system operator who has received the collateral.

[*3 March 2011; 25 September 2014*]

**Chapter V**

**Choice of Law**

**Section 14.** In determining a country in accordance with whose laws the system will operate, the participants may only choose such Member State in which at least one participant is registered.

[*3 March 2011*]

**Section 15.** After initiation of insolvency proceedings against a participant, its rights and obligations incurred during participation in the system shall be determined in accordance with laws of a country under which the relevant system operates.

**Section 16.** If financial instruments (also rights arising from financial instruments) are provided as a collateral in favour of participants, the system operator, or the central bank, and the right of such participants (or their representatives, agents, or third persons acting on their behalf) to the financial instruments have been recorded in the register, an account, or a centralised deposit system located in the relevant country, the rights of such subjects – collateral takers – to the respective financial instruments shall be governed by the laws of the relevant country.

[*3 March 2011*]

**Chapter VI**

**System Rules**

**Section 17.** The system operator shall prepare the system rules in writing and include the following information therein:

1) the system operator;

2) the country in accordance with whose laws the system operates;

3) the procedures for making amendments to the system rules and the manner in which the Commission is informed of amendments;

4) the procedures by which participants join the system or terminate their participation therein, and the procedures for terminating participation of a participant in the system;

5) the types of payments and settlements in the system, information on the fact how binding the system rules are on the participants after completion of the settlements;

6) the rights and obligations of the system operator. If there are several system operators, it shall also include information on the mutual division of rights and obligations;

7) the moment when a transfer order is entered into the system;

8) the moment after which a participant may no longer revoke a transfer order unilaterally;

81) the moment when a transfer order is irrevocable and a settlement is final;

9) the collateral provided by a participant and the procedures for managing it;

10) the information on how the system operates in situations of failure and cases where a participant is not able to fulfil its settlement obligations.

[*14 September 2017*]

**Section 18.** (1) Prior to the commencement of operation of the system or entry into force of amendments to the system rules, the system operator shall inform the Commission of the system rules or amendments made thereto.

(2) The obligation referred to in Paragraph one of this Section to inform the Commission shall not apply to the central bank.

[*3 March 2011*]

**Section 19.** (1) The Commission shall determine the systems which operate in accordance with the laws of the Republic of Latvia and conform to the purpose of this Law, and to which provisions of this Law are to be applied.

(2) As regards the systems not maintained by central banks, the Commission shall, upon receipt of an application of the system operator, send documents to Latvijas Banka in order to receive an opinion on the conformity of the system and rules thereof to the requirements of this Law, and shall take a decision after receipt of the relevant opinion.

[*3 March 2011*]

**Section 20.** The Commission shall inform the European Securities and Markets Authority of the system that operates in accordance with the laws of the Republic of Latvia and of the relevant system operator.

[*19 May 2016*]

**Section 21.** The system operator shall inform the Commission of participants of the system, indirect participants, and any changes in the composition of the participants.

**Section 22.** An institution shall, upon request of a person, inform of the systems in which this institution participates and provide information on the main system rules.

**Transitional Provisions**

1. Requirements of this Law shall not apply to insolvency proceedings initiated before coming into force of this Law.

2. System operators the systems of which operate in accordance with the laws of the Republic of Latvia shall, within three months after coming into force of this Law, provide the Commission with the information referred to in Sections 18 and 21 of this Law.

**Informative Reference to European Union Directives**

[*3 March 2011; 22 March 2012; 30 September 2021*]

The Law contains norms arising from:

1) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

2) Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims;

3) 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);

4) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

The time of coming into force of the Law shall be determined by a special law.

The Law has been adopted by the *Saeima* on 11 December 2003.

President V. Vīķe-Freiberga

Rīga, 24 December 2003