

UNOFFICIAL TRANSLATION

**ACT
ON SETTLEMENT FINALITY
IN PAYMENT AND FINANCIAL INSTRUMENTS
SETTLEMENT SYSTEMS**

September 2008

I GENERAL PROVISIONS

Subject matter and scope of the Act

Article 1

(1) This Act regulates settlement finality in the transfer order settlement systems and the effects of insolvency proceedings against a participant in a system on the rights and obligations arising from, or in connection with the participation of a participant in a system, as well as the rights of the holders of collateral security in the event of insolvency proceedings against the provider of collateral security.

(2) This Act shall apply to all systems that meet the criteria set forth in Article 2 of this Act and to all participants in these systems, as well as to any collateral security provided in connection with the participation in those systems or with the operation of the Croatian National Bank in its function as a central bank.

(3) This Act shall also apply to any collateral security provided in connection with the operations of the European Central Bank or the central banks of the Member States in their functions as central banks.

(4) For the purpose of this Act, Member State shall be a Member State of the European Union and a state signatory to the Agreement on the European Economic Area.

Systems and field of competence

Article 2

(1) For the purpose of this Act, a system shall be any system that meets the following criteria:

1. consists of at least three participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant;
2. applies common rules and standardised arrangements for the execution of transfer orders;
3. the rules of the system define the moment of entry and the moment of irrevocability of a transfer order; and
4. it has been established by law or by a regulation enacted pursuant to a law, or it operates on the basis of the authorisation issued by a competent authority pursuant to a special law and in accordance with a written agreement between the participants of which at least one has its head office in the Republic of Croatia.

(2) The system referred to in the previous paragraph shall operate in financial instruments or in kuna, as well as, unless otherwise provided by a special law, in euro or any other currency, or in various currencies which the system converts one against the other.

(3) In the case of a system referred to in Article 4, paragraph (2) of this Act, the decision on the compliance of that system with the criteria referred to in paragraph (1) of this Article shall fall within the field of competence of the Croatian National Bank which shall take the decision by virtue of office, and shall publish it in the Official Gazette.

(4) In the case of a system referred to in Article 4, paragraph (3) of this Act, the decision on the compliance of that system with the criteria referred to in paragraph (1) of this Article shall fall within the field of competence of the Croatian Financial Services Supervisory Agency which shall take the decision in accordance with the law regulating the capital markets, and shall publish it in the Official Gazette.

(5) The operator of a system shall without delay notify the competent authority referred to in paragraph (3) or paragraph (4) of this Article of any change in participants and in possible indirect participants in the system.

(6) Indirect participants shall be the institutions referred to in Article 3, paragraph (2), items 1, 2 and 8 of this Act with a contractual relationship with an institution referred to in Article 3, paragraph (2) of this Act participating in a system referred to in Article 4, paragraph (2) of this Act, which enables an indirect participant to pass transfer orders through the system.

Participants in the system

Article 3

(1) For the purpose of this Act, participants in the system shall be institutions, settlement agents, central counterparties and clearing houses. The same participant may act within a system as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks.

(2) Institutions shall be the following entities which participate in a system and are responsible for discharging the financial obligations arising from transfer orders within that system:

1. credit institutions with registered offices in the Republic of Croatia as provided by the law regulating credit institutions;

2. credit institutions of a Member State or a third country as provided by the law regulating credit institutions;

3. branches of foreign credit institutions with registered offices in the Republic of Croatia;

4. investment firms with registered offices in the Republic of Croatia as provided by the law regulating the capital markets;

5. investment firms with registered offices outside the Republic of Croatia as provided by the law regulating the capital markets;

6. public authorities of the Republic of Croatia and legal persons whose liabilities are guaranteed by the Republic of Croatia pursuant to law. For the purpose of this Act, public authorities shall be government bodies, bodies of the units of local and regional self-government, legal persons with public authority and other persons entrusted with public authority;

7. public authorities of a Member State and entities whose liabilities are guaranteed by the Member State;

8. institutions specified in Article 2 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

(3) Only the firms subject to the law regulating the capital markets shall be considered as investment firms referred to in paragraph (2), items 4 and 5 of this Article.

(4) Central counterparties shall be entities interposed between the institutions in the system and acting as the exclusive counterparties of these institutions with regard to their transfer orders.

(5) Settlement agents shall be entities providing for institutions and/or central counterparties participating in the system, settlement accounts through which transfer orders within the system are settled and as the case may be, extending credit to those participants for settlement purposes. Settlement account shall be an account with a central bank, a settlement agent or a central counterparty used to hold funds and financial instruments and to settle transactions between participants in the system.

(6) Clearing houses shall be entities responsible for the calculation of the net positions of institutions, or of a possible central counterparty and a possible settlement agent if they are participants in the system.

(7) Anyone with a legitimate interest may require an institution to inform him of the systems in which it participates and to provide information about the main rules governing the functioning of those systems.

Transfer order

Article 4

(1) For the purpose of this Act, a transfer order shall be:

1. 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 resulting in the assumption or discharge of a payment obligation as defined by the rules of the system,

2. any instruction by a participant to transfer a financial instrument or a title to a financial instrument by means of a book entry on a register, or in another appropriate way.

(2) The systems through which the transfer orders referred to in paragraph (1), item 1 of this Article are settled shall be payment systems.

(3) The systems through which the transfer orders referred to in paragraph (1), item 2 of this Article are settled shall be financial instruments settlement systems. The financial instruments settlement systems may also be used for the settlement of the transfer orders referred to in paragraph (1), item 1 of this Article.

(4) For the purpose of this Act, financial instruments shall be financial instruments as defined by the law regulating the capital markets.

Entry and irrevocability of transfer orders

Article 5

(1) The rules of the system shall define the moment of entry into the system of a transfer order, issued by either a participant in a system or by a third party.

(2) The moment of irrevocability of a transfer order shall mean a moment defined by the rules of the system from which neither a participant in the system nor a third party may revoke a transfer order.

II EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS AGAINST A PARTICIPANT ON THE RIGHTS AND OBLIGATIONS WITH RESPECT TO PARTICIPATION IN A SYSTEM

Insolvency proceedings and the moment of opening of insolvency proceedings

Article 6

(1) For the purpose of this Act, insolvency proceedings against a participant shall be a bankruptcy, a measure to ensure the prohibition of payments from accounts and the prohibition of disposing of financial instruments determined pursuant to the law regulating bankruptcy proceedings and any other collective measure provided for in the law of the Republic of Croatia, of a Member State or a third country, either to wind up the participant or to reorganise it, where such measure involves temporary or permanent suspending of or imposing limitations on payments or transfers of financial instruments.

(2) The moment of opening of insolvency proceedings shall be the moment (day, hour and minute) of the adoption of a relevant decision by a court or another competent authority of the Republic of Croatia, of a Member State or a third country.

(3) The opening of insolvency proceedings shall have no retroactive effects on the rights and obligations of a participant arising from, or in connection with its participation in a system earlier than the moment of opening of insolvency proceedings.

Transfer orders and netting in the event of opening of insolvency proceedings

Article 7

(1) In the event of opening of insolvency proceedings against a participant, transfer orders and netting shall be legally enforceable and binding on third parties, provided that the transfer orders were entered into the system prior to the moment of opening of insolvency proceedings, pursuant to the rules of the system.

(2) Netting shall represent the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net amount can be claimed or owed.

(3) By way of exception from paragraph (1) of this Article, transfer orders entered into a system after the moment of opening of insolvency proceedings against a participant and carried out on the day of opening of such proceedings, shall be legally enforceable and binding on third parties only if, after the time of settlement, the operator of a system can prove that it was not aware, nor should have been aware, of the opening of such proceedings.

(4) The nullity or voidance of transactions and contracts concluded prior to the moment of opening of insolvency proceedings shall not lead to the unwinding of netting.

(5) In the event of opening of insolvency proceedings against a participant, funds or financial instruments available on the settlement account of that participant may be used to fulfil that participant's obligations in the system on the day of opening of such proceedings.

Notification of the opening of insolvency proceedings

Article 8

(1) A court or another competent authority shall without delay notify the Croatian National Bank and the Croatian Financial Services Supervisory Agency of the moment of opening of insolvency proceedings against a participant.

(2) The Croatian National Bank and the Croatian Financial Services Supervisory Agency shall without delay and within their fields of competence forward the notification referred to in paragraph (1) of this Article to the operator of the system whose participant the notification concerns.

(3) The Croatian National Bank and the Croatian Financial Services Supervisory Agency shall without delay and within their fields of competence send the notification referred to in paragraph (1) of this Article to the competent authorities of other Member States.

(4) The Croatian National Bank and the Croatian Financial Services Supervisory Agency shall without delay forward the notification of the opening of insolvency proceedings against a participant, received from the competent authority of another Member State, to the operator of the system whose participant the notification concerns.

Applicable law
Article 9

In the event of opening of insolvency proceedings against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant in the system shall be determined by the law governing that system.

III RIGHTS OF HOLDERS OF COLLATERAL SECURITY

Rights of holders of collateral security in the event of insolvency proceedings against the provider of collateral security
Article 10

(1) Insolvency proceedings against a participant in a system, or a counterparty to the Croatian National Bank, the central bank of a Member State or the European Central Bank, shall have no effects on the rights to collateral security provided to a participant in connection with the system, and on the rights to collateral security provided to the Croatian National Bank, the central bank of a Member State or the European Central Bank. Such collateral security may be realised for the satisfaction of these rights.

(2) For the purpose of this Act, collateral security shall be financial collateral as provided by the law regulating financial collateral arrangements.

Applicable law
Article 11

Where financial instruments (or rights in financial instruments) are provided as collateral security to participants and/or the Croatian National Bank, the central bank of a Member State or the European Central Bank, and their rights (or the rights of any other person acting on their behalf) with respect to the financial instruments are legally recorded on a register, account or centralised deposit system located in a Member State, the rights of such entities shall be governed by the law of the Member State in which the register, account or centralised deposit system is located.

IV OBLIGATIONS OF THE COMPETENT AUTHORITIES OF THE REPUBLIC OF CROATIA

Register of the systems
Article 12

(1) The competent authorities referred to in Article 2, paragraphs (3) and (4) of this Act shall maintain a register of the systems which are included in the scope of this Act, and shall publish them at their websites.

(2) The register of the systems shall contain at least the following information:

1. the name of the system;
2. the firm and registered office of the operator of the system;
3. a list of participants in the system.

Notification of the European Commission
Article 13

(1) The Croatian National Bank shall notify the European Commission of its field of competence referred to in Article 2, paragraph (3) of this Act and of the payment systems which are included in the scope of this Act.

(2) The Croatian Financial Services Supervisory Agency shall notify the European Commission of its field of competence referred to in Article 2, paragraph (4) of this Act and of the financial instruments settlement systems which are included in the scope of this Act.

V TRANSITIONAL AND FINAL PROVISIONS

Article 14

The provision of Article 3, paragraph (2), item 3 of this Act shall cease to have effect on the date of accession of the Republic of Croatia to the European Union.

Entry into force
Article 15

This Act shall be published in the Official Gazette and shall enter into force on 1 January 2009, with the exception of the provisions referred to in Article 1, paragraph (3), Article 3, paragraph (2), items 2, 7 and 8, Article 8, paragraphs (3) and (4) and Article 13 of this Act, which shall enter into force on the date of accession of the Republic of Croatia to the European Union.