

ACT

of 24 August 2001

on Settlement Finality in Payment and Securities Settlement Systems and the Rules of Oversight of these Systems¹⁾

(Official Journal of 25 October 2001)

Charter 1

General provisions

Art. 1. The following terms as used in this Act shall mean as follows:

- 1) payment system: legal relationships, governed by Polish laws, between at least three institutions, of which at least one must be an institution referred to in subparas. 5 letters a to e and h, except an indirect participant, with common rules, applicable to the participants, for the execution of settlement orders as referred to in subpara. 12 a,
- 2) securities settlement system: legal relationships governed by Polish laws, between at least three institutions, of which at least one must be an institution referred to in subparas. 5a to e or 5h, except an indirect participant, with common rules, applicable to the participants, for the execution of settlement orders referred to in subpara. 12 b;
- 3) system: any of the systems referred to in subparas. 1 or 2 above,
- 4) an other Member Country: a country other than the Republic of Poland which is the member of the European Union, as well as Iceland, Liechtenstein and Norway,
- 5) institution: any of the entities enumerated below, which participates in a payment system or in a securities settlement system and is responsible for discharging obligations arising from settlement orders within the system
 - a) the National Bank of Poland, referred to hereinafter as NBP
 - b) the central Bank of another state,
 - c) a domestic bank, a branch of a foreign bank or a credit institution within the meaning of the Banking Law of 29 August, 1997 (Journal of Laws [Dz.U.] No. 140/1997, item 939; Nos. 160/1998, item 1063 and 162/1998, item 1118; Nos. 11/1999, item 95 and 40/1999, item 399; Nos. 93/2000, item 1027; 94/2000, item.1037; 114/2000, item 1191; 116/2000, item 1216; 119/2000, item 1252; 122/2000, item 1316; and Nos. 8/2001, item 64; 100/2001, item 1084; and 111/2001, item 1195) together with co-operative credit unions and the National Co-operative Credit Union
 - d) ⁽¹⁾ a brokerage house within the meaning of the Law on Public Trading in Securities of 21st August, 1997 (Journal of Laws [Dz.U.] No. 49/2002, item 447, with further amendments),
 - e) ⁽²⁾ a foreign legal person referred to in art. 52 of the Law mentioned in letter d above conducting brokerage activities on the territory of the Republic of Poland;
 - f) ⁽³⁾ a foreign investment company conducting brokerage activities on the territory of the Republic of Poland, under art. 4, item 25 of the Law referred to in letter d above
 - g) – an insurance company within the meaning of the provisions on insurance activities, or
– an investment fund within the meaning of the provisions on investment funds, or
– a pension fund within the meaning of the provisions on the organisation and operation of pension funds,

that is domiciled on the territory of the Republic of Poland and places money on its own behalf on the securities market,

- h) a public authority,
- i) publicly guaranteed undertakings,
- j) ⁽⁴⁾ an entity domiciled outside the territories of other Member States, conducting activities similar to that of a credit institution referred to in letter c above, or a foreign investment company referred to in art. 4, item 25 of the Law referred to in letter d above,
- k) a participant in the securities settlement system, other than the one referred to in letters a to j above, responsible for discharging obligations arising from settlement orders in the system, provided that at least three participants in the system are entities as referred to in letters a to c above,
- 6) central counterparty: an entity that operates within the system and acts as the exclusive counterparty of institutions with regard to their settlement orders,
- 7) settlement agent: an entity holding settlement accounts within the system for institutions or the central counterparty, through which settlement orders are settled and – within vested powers – credit extended for settlement purposes to those institutions and the central counterparty,
- 8) clearing house: an entity responsible for the calculation of the net obligations or claims of institutions, the central counterparty or the settlement agent,
- 9) participant: an institution, a central counterparty, a settlement agent and a clearing house,
- 10) indirect participant: an entity referred to in subpara 5c above, bound by a contract with an institution, which enables the institution to transfer that entity's settlement orders to the system,
- 11) securities: securities within the meaning of art. 3 of the Law referred to in subpara 5d above,
- 12) settlement order:
 - a) any instruction by a participant to place an amount of money on a recipient's account held by a settlement agent or another instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or
 - b) an instruction by a participant to transfer securities by means of relevant book entries to a register of securities, or otherwise,
- 13) foreign insolvency proceedings: any court or administrative proceedings held under the laws of another Member State, including proceedings for securing creditor's claims, in the course of which the property of the participant in the system is subject to control or administration exercised by a court or another body in order to re-organise or wind up the participant, where the aforementioned proceedings result in the suspension of the execution of settlement orders or the imposition of limitations on them,
- 14) declaration of bankruptcy of:
 - a) a domestic participant: a declaration of bankruptcy made by a court competent to exercise insolvency pursuant to regulation of the President of the Republic of Poland from 24 October 1934 – The Bankruptcy Laws (Journal of Laws [Dz. U.] No 118/1991, item 512, No. 1/1994, item 1, No. 85/1995, item 426, Nos. 6/1996, item 43, 43/1996, item 189, 106/1996, item 496 and 149/1996, item 703, Nos. 28/1997, item 153, 54/1997, item 349, 117/1997, item 751, 121/1997, item 770 and 140/1997, item 940, No. 117/1998, item 756, Nos. 26/2000, item 306, 84/2000, item 948, 94/2000, item 1037 and 114/2000, item 1193/2000 and No. 3/2001, item 18),
 - b) foreign participant: a ruling, judgement or decision made by a foreign court or body, whereby the participant forfeited or was limited in his right to administer his property or his property became subject to supervision in order to re-organise or wind up the participant in the course of proceedings referred to in subpara. 13 above,
- 15) competent authorities – bodies supervising entities referred to in subparas 5c to 5g and 5i - 5k above,

- 16) netting: the conversion into one net claim or one net obligation of each participant's mutual obligations and claims resulting from the exchange of settlement orders between the participants,
- 17) settlement account: a bank account, cash account, securities account, security deposit-account at a settlement agent used to carry out settlements between participants in a system,
- 18) the subject of security: realisable assets
- a) provided under a pledge, guarantee deposit or other security in connection with the participation in a system or
- b) accepted by the NBP, the central bank of another Member State or the European Central Bank in connection with their performance of the responsibilities of a central bank,
- 19) entity operating the system: a central counterparty, a settlement agent, a clearing house or any other entity which specifies principles of settlements of orders common for the participant in the system.

Art. 2. ⁽⁵⁾ The provisions of the Act concerning securities shall also apply to property rights referred to in art. 2 subparas 2d and 2e of the act of 26 October 2000 on commodity exchanges (Journal of Law [Dz. U] No. 103/2000, item 1099, as amended).

Art. 3. According to the rules of the system, the same participant may act as a central counterparty, a settlement agent or a clearing house, and carry out part or all of their tasks.

Chapter 2

Finality of settlements

Art. 4. 1. The provisions of the Act concerning the consequences of the declaration of bankruptcy of a domestic participant shall apply respectively in the case of a decision on the opening of arrangement proceedings, or a ruling or decision concerning winding up, suspension of, or the imposition of limitations on the activities of the participant, involving the suspension of, or the imposition of limitations on the execution of the participant's settlement orders in the system.

2. The provisions of the Act concerning the consequences of the declaration of bankruptcy of a foreign participant shall respectively apply to rulings, judgements or decisions made with regard to a participant by a foreign court or other body in the course of insolvency proceedings.

Art. 5. Legal consequences arising from a foreign insolvency proceedings being opened against an entity that is domiciled in the Republic of Poland and participates in a system governed by the laws of another Member State concerning the rights and obligations of the entity related to its participation in the system shall be determined by the law governing that system.

Art. 6. A settlement order that has entered the system may not be effectively revoked by a participant or by a third party from the moment defined by the rules of that system.

Art. 7. To the extent regulated by the Act, the consequences of the declaration of bankruptcy of a domestic participant shall become effective after the NBP is notified that such declaration of bankruptcy has been made, or that a decision on the opening of arrangement proceedings has been undertaken, or that a court or a competent body has ruled or decided

that the activities of the participant should be wound up, suspended or restricted, involving the suspension of, or the imposition of limitations on the execution of the participant's settlement orders in the system.

Art. 8-10. ⁽⁶⁾ (repealed).

Art. 11. ⁽⁷⁾ Save for the provisions of Art. 12, in the event that a participant in the system is declared bankrupt, his rights and obligations related to the participation in the system shall be governed by Polish laws.

Art. 12. 1. ⁽⁸⁾ (repealed).

2. Where securities are provided as security to a participant in the system, the NBP, the central bank of another Member State or the European Central Bank, then the rights of these entities with respect to the securities shall be determined according to

- 1) Polish laws, provided that the securities have been recorded in the register or on an account held on the territory of the Republic of Poland,
- 2) the laws of another Member State, provided that the securities have been recorded in the register or on an account held on the territory of that Member State.

Art. 13. 1. Decisions on the declaration of bankruptcy of participants or indirect participants in the system shall be notified to the NBP by courts on the day on which the decision on the declaration of bankruptcy is made, along with the hour and minute on which the decision was issued.

2. The obligation to notify the NBP, as referred to in para. 1 above shall apply to courts and competent bodies, where they make a ruling, judgement or decision on the winding up, suspension of or the imposition of limitations on the activities of a participant resulting in the suspension of or the imposition of limitations on the execution of the participant's settlement orders in the system.


3. The NBP, immediately after having been notified about a ruling, judgement or decision referred to in paras. 1 and 2 above shall notify:

- 1) an entity operating the system,
- 2) the Polish Securities and Exchange Commission (Komisja Papierów Wartościowych i Giełd), hereinafter called KPWiG, if a decision relates to a participant in the securities settlement system,
- 3) competent authorities of other Member States notified by these Member States to the European Commission.

4. Provision of the para. 3 applies respectively to the information about rulings, judgements and decisions in respect of foreign bankruptcy proceedings, received by the NBP from competent authorities of other Member States.

5. The Council of Ministers will determine by means of a regulation a way of notifying, as referred to in the paras. 1, 2 and 3, subparas. 1 and 2, as well as paragraph 4, taking into consideration peculiarities of the proceedings, where a ruling, judgement or decision was made, and the possibilities of using telecommunication means.

Art. 14. Institutions referred to in Article 1 subparas. 5c to 5k shall provide anyone with a legitimate interest with information about the systems in which they participate and the main rules governing the functioning of those systems.

 **Art. 15. 1.** ⁽⁹⁾ The provisions of art. 4 to 7 and art. 11 to 14 of this Act and art. 22 para. 1 subpara. 4, art. 66, 67, 80 and 135 to 137 of the Bankruptcy and Rehabilitation Law of 28th

February, 2003 (Journal of Laws [Dz.U.] No. 60/2003, item 535) shall apply to securities settlement systems operated by the National Depository for Securities (Krajowy Depozyt Papierów Wartościowych S.A.), called hereinafter the National Depository and to systems operated by the NBP.

2. The provisions of art. 4 to 7 and art.11 to 14 of this Act and art. 22 para. 1 subpara. 4, Articles 66, 67, 80 and 135 to 137 of the Bankruptcy and Rehabilitation Law of 28th February, 2003 (Journal of Laws [Dz.U.] No. 60/2003, item 535) shall also apply to those securities settlement systems operated by entities other than the NBP and the National Depository that the minister competent in respect with financial institutions may determine by means of a regulation issued after having heard opinions from the President of the NBP and the Polish Securities and Exchange Commission.

3. The minister competent in respect with financial institutions by issuing a regulation as referred to in the paragraph 2, points to those systems where there is a risk of non-performing obligations by a participant in the system which may result in non-performing the obligations by an other participant or participants in the system (system risk).

Charter 3

Rules of Oversight

Art. 16. 1. An approval of the President of the NBP shall be required to operate payment systems, except for systems operated by the NBP.

2. An approval of the Polish Securities and Exchange Commission, issued after consultation with the President of the NBP, shall be required to operate securities settlement systems, except for systems operated by the NBP and the National Depository.

3. An approval shall also be required to implement changes to the rules of systems the operation of which is subject to the approval. The provisions of art. 17 to 19 shall apply as appropriate.

Art. 17. 1. Proceedings for the issue of getting approval referred to in articles 16 paras. 1 and 2 shall be initiated at the request of an entity intending to operate the system.

2. The petition shall be submitted to a body competent to issue an approval, not later than 3 months before the date scheduled for the commencement of the operation of the system. The petition should specify the name and principles of operation of the system and it should include a document indicating:

- 1) tasks of the entity that will operate the system or the entity operating the system,
- 2) criteria for participation in the system,
- 3) the moment of entry of a settlement order into the system and the moment from which a settlement order may not be revoked by a participant, or by a third party,
- 4) principles regulating the transfer, entry and execution of settlement orders in the system,
- 5) the scope of mutual responsibilities of the participants and the entity operating the system,
- 6) the legal form of the entity intending to operate the system.

3. A list of participants and – if possible – a list of indirect participants in the system shall be attached to the petition, along with the details of their names (business names), places of domicile and places of business.

4. Entities operating the systems shall immediately inform the body competent to issue an approval of any change specified in para 3 above, however not later than within 3 days following the date on which the change occurred.

Art. 18. 1. The approval referred to in article 16 paras. 1 and 2 above shall be refused where the rules governing the functioning of the system

- 1) do not comply with Polish laws and regulations, or
- 2) do not ensure the effective and safe operation of the system.

2. The approval may be revoked, where

- 1) the operation of the system infringes Polish laws and regulations,
- 2) the operation of a system is grossly inefficient or unsafe for the functioning of the system,
- 3) the principles of operation of the system have been changed without a permit referred to in art. 16 para. 3 above.

3. In the event that the approval is revoked, the entity operating the system is obliged to close the system in a specified term.

Art. 19. Provisions of art. 127 § 3 of the Code of Administrative Procedure shall apply accordingly to the decisions referred to in art. 16 and 18.

Chapter 4

Detailed provisions

Art. 20. If a commercial company as defined by the Code of Commercial Companies is the entity operating the system, the approval referred to in art. 16 above is not passed to a taking over company or to a newly set up company.

Art. 21. Regulations of the Act of 19 November 1999 : Business Law (Journal of Laws [Dz. U.] No. 101/1999, item 1178, Nos. 86/2000, item 958, 114/2000, item 1193 and Nos. 49/2001, item 509, 67/2001, item 679 and 102/2001, item 1115) related to permits to run businesses do not apply the operation of the system.

Art. 22. The President of the NBP publishes, by the way of an announcement, a list of entities which are the participants in the systems referred to in art. 15 above, also including indirect participants. A name (business name), place of domicile of each of the entities, as well as respective changes, are included in the announcement.

Art. 23. The President of the NBP shall notify the European Commission about the systems referred to in art. 15 above.

Chapter 5

Penal articles

Art. 24. 1. Whoever operates a system or introduces changes to the principles of operation of the system without the required approval referred to in art. 16, or whoever fails to close the system in a specified term despite the provisions of a decision whereby the permit for the system operation was revoked or a decision whereby the closing of the system was ordered, shall be liable to fine of up to PLN 5,000,000.

2. The same penalty shall apply to anyone who fails to fulfil the duty to deliver documents referred to in art. 27 para. 2.

3. The same penalty shall apply to anyone who commits an act described in paras. 1 and 2 above, for or on behalf of a natural person, legal person or an organisational entity not having personality at law.

Art. 25. 1. Whoever fails to fulfil the obligation to deliver information as referred to in art. 17 para. 4, shall be liable to fine of up to PLN 500,000.

2. The same penalty shall apply to anyone who commits an act described in para. 1 above, for or on behalf of a natural person, legal person or an organisational entity not having of personality at law.

Chapter 6

Amendments in binding regulations, interim and final regulations

Art. 26. The art. 139 in the Act of 21 August 1997 – Public Trading in Securities (Journal of Laws [Dz. U] Nos. 118/1997, item. 754 and 141/1997, item 945, Nos. 107/1998, item 669 and 113/1998, item 715, Nos. 22/2000, item 270, 60/2000, item 702 and 703, 94/2000, item 1037, 103/2000, item 1099, 114/2000, item 1191, 116/2000, item 1216 and 122/2000, item 1315 and No.110/2001, item 1189) shall be deleted.

Art. 27. 1. Provisions of art. 16, paras. 1 and 2 do not apply to the systems as described in art. 1 subparas. 1 and 2 and operated the Act shall enter into force.

2. Entities operating systems referred to in para.1, except the NBP and the National Depository, shall deliver documents referred to in art. 17 para. 2 to NBP or to the National Depository with regard to payment systems or securities settlement systems respectively within 3 months following the date of entry into force of this Act.

3. The rules governing the functioning of systems referred to in para. 1 above, shall be reviewed on the basis of documents delivered pursuant to para. 2 above, in order to determine if

- 1) they comply with Polish Law,
- 2) they ensure the efficient and safe functioning of the system.

4. Where the rules governing the functioning of a system referred to in para 1 above, do not satisfy requirements specified in para. 3 above, the President of the NBP with respect to payment system, or the Polish Securities and Exchange Commission with respect to securities settlement systems after consulting the President of the NBP, shall issue:

- 1) a recommendation to adjust the system, or

2) an order to close the system
in a specified term.

5. Provisions of art. 127 § 3 of the Code of Administrative Procedure shall apply to a decision referred to in para 4. subpara. 2 above.

Art. 28. Before the day on which the Republic of Poland becomes a member of the European Union, a minister competent in respect with financial institutions shall notify the European Commission that the NBP is the entity that shall be notified by courts and competent bodies about rulings, judgements and decisions referred to in article 13 paras. 1 and 2.

Art. 29. ⁽¹¹⁾ Provisions of art. 1 subparas. 4 and 5f and 5j, art. 5, art. 13 para. 3 subpara. 3 and para. 4 as well as art. 23 do apply since the day the Republic of Poland becomes a member of the European Union.

Art. 30. The Act shall enter into force on 1 January 2002.

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The present Act within the scope of its provisions implements Directive 98/26/EC of 19 May 1998 on Settlement Finality in Payment and Security Settlement Systems (OJ/EC L 166, 11.06.1998).

Data related to the publication of the EU legal acts included in the present Act, since the day the Republic of Poland becomes a member of the European Union shall relate the publication of these acts in the Official Journal of the European Union – special release. ⁽¹²⁾