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**PAYMENT SYSTEM  
SETTLEMENT FINALITY LAW**

**DIFC LAW NO. 1 OF 2009**

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**PART 1: GENERAL**

**1. Title**

This Law may be cited as the "Payment System Settlement Finality Law 2009".

**2. Legislative Authority**

This Law is made by the Ruler of Dubai.

**3. Application of the Law**

This Law applies in the jurisdiction of the DIFC.

**4. Purpose**

This Law sets forth the process for, and the effects of, designation of a payment system that is important to the monetary and financial stability of the DIFC and the U.A.E. or the functioning of the DIFC as an international financial centre. The powers and duties conferred on the Designating Body by this Law must be exercised for the purpose of (a) promoting the maintenance of a sound and efficient financial system in the DIFC and (b) avoiding significant damage to the financial system in the DIFC that could result from the failure of a participant in a designated payment system.

**5. Date of Enactment**

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

**6. Commencement**

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

**7. Interpretation**

Schedule 1 contains:

- (a) interpretative provisions which apply to this Law; and
- (b) a list of defined terms used in this Law.

## **PART 2: DESIGNATION**

### **8. Application for designation**

- (1) A person who wishes to have a payment system which is established in the DIFC declared as a designated payment system may apply to the Designating Body.
- (2) An application must be accompanied by:
  - (a) a copy of the rules of the payment system and any information required by the Designating Body; and
  - (b) the application fee (if any) that is determined by the Designating Body.

### **9. Consideration of application**

- (1) The Designating Body must consider any application made in accordance with Article 8.
- (2) In considering an application, the Designating Body may have regard to any or all of the following matters:
  - (a) the purpose of this Law;
  - (b) the purpose and scope of the payment system;
  - (c) the rules of the payment system;
  - (d) any laws or regulatory requirements relating to the operation of the payment system and the extent to which the payment system complies with those laws or regulatory requirements;
  - (e) the importance of the payment system to the financial system; and
  - (f) any other matters that the Designating Body considers appropriate.

### **10. Decision on application**

- (1) After considering an application in accordance with Article 10, the Designating Body may:
  - (a) declare any payment system to be a designated payment system; or
  - (b) refuse to make that declaration.
- (2) If Article 10(1)(a) applies, the Designating Body may determine any conditions to which the designation is to be subject, and its declaration must specify:
  - (a) the payment system that is the subject of the designation;
  - (b) the documents that evidence the rules of that payment system;
  - (c) the name or title of a person to whom notices relating to the designation must be given (the **Designated Contact**); and

- (d) those conditions to which the Designating Body has determined the designation is subject.
- (3) If Article 10(1)(b) applies, the Designating Body must give notice in writing to the applicant stating:
  - (a) that the Designating Body refuses to make a declaration that the payment system to which the application relates be a designated payment system under this Law; and
  - (b) the reasons for the refusal.

### **PART 3: EFFECT OF DESIGNATION**

#### **11. Rules of designated payment system are valid and enforceable**

- (1) The rules of a designated payment system are valid and enforceable notwithstanding any enactment or rule of law to the contrary.
- (2) However, Article 11(1) applies only to the extent that the rules provide for:
  - (a) the basis on which payment instructions are given;
  - (b) the basis on which payments are calculated;
  - (c) the basis on which settlements are effected (including whether on a gross basis or using netting);
  - (d) the basis on which collateral security is to be provided in connection with the designated payment system; and
  - (e) any action to be taken if a participant in the designated payment system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following:
    - (i) an operator of the designated payment system;
    - (ii) another participant in the designated payment system; and
    - (iii) any other party to those rules,including, without limitation, any action to be taken for the realisation and disposal of any applicable collateral security.
- (3) The claim of the secured parties to any collateral security provided in connection with a designated payment system shall rank and be paid in priority to the claims of all other persons notwithstanding any enactment or rule of law to the contrary, unless the terms on which the collateral security was provided expressly provide that such other persons are to be paid in priority.

#### **12. Settlements and provision of collateral security must not be reversed, etc**

- (1) A settlement or the provision or enforcement of collateral security that is effected under the rules of a designated payment system must not, whether in whole or in part, be reversed, repaid, recovered or set aside notwithstanding any enactment or rule of law to the contrary.

- (2) No claim or right arising, and no account or other record maintained, pursuant to the rules of a designated payment system shall be attached, charged, assigned, executed upon, distrained or otherwise made the subject of an adverse legal process notwithstanding any enactment or rule of law to the contrary, unless expressly permitted by those rules.
- (3) Articles 12(1) and 12(2) extend to any application made to a designated payment system or a DIFC court by:
  - (a) a court,
  - (b) an insolvency officer,
  - (c) a creditor, or
  - (d) another interested person,

in each case from a jurisdiction outside the DIFC, where that application relates to insolvency proceedings or debt recovery proceedings in that jurisdiction and whose purpose is:

- (i) to reverse, repay, recover or set aside a settlement or the provision or enforcement of collateral security (whether in whole or in part); or
- (ii) to attach, charge, assign, execute upon, distrain or otherwise make the subject of an adverse legal process any claim or right arising, or any account or other record maintained, pursuant to the rules of a designated payment system, unless expressly permitted by those rules.

**13. Limits on application of Article 12(1)**

- (1) Article 12(1) does not apply to a settlement or the provision of collateral security that is effected under the rules of a designated payment system if:
  - (a) a participant in the designated payment system in respect of which the settlement is effected becomes insolvent under the insolvency laws applicable in the jurisdiction where that participant is incorporated and, if it is acting through a branch, the jurisdiction where that branch is located; and
  - (b) the settlement or the provision of collateral security is effected after the opening of insolvency proceedings in respect of the participant, unless the Designated Contact did not have notice of the opening of those insolvency proceedings at the time that the settlement or the provision of collateral security was effected.
- (2) For the purposes of Article 13(1):
  - (a) a settlement or the provision of collateral security is treated as effected when the relevant payment instruction or collateral instruction is incapable of being revoked by any party to the rules of the designated payment system in accordance with those rules; and
  - (b) a Designated Contact is taken to have notice of the opening of insolvency proceedings if, without limitation:

- (i) he fails to make any inquiries into the matter that an honest and reasonable person would have made in the circumstances; or
- (ii) he fails to have regard to any public notice of the opening of insolvency proceedings that an honest and reasonable person would have had regard to in the circumstances (including the place where and the means by which that public notice has been given and the location of the Designated Contact).

**14. Netting is valid and enforceable**

If the rules of a designated payment system provide for netting, any netting under those rules is valid and enforceable notwithstanding any enactment or rule of law to the contrary.

**15. Limits on effect of Articles 11, 12 and 14**

- (1) Nothing in Article 11, 12 or 14 prevents:
  - (a) the operation of any enactment or rule of law in relation to an underlying transaction (including, without limitation, Articles 97 to 101 of the Insolvency Law); or
  - (b) any party from taking action against another party that has acted fraudulently or dishonestly so long as the remedy sought or obtained in respect of that action does not affect the application of Articles 11, 12 and 14.
- (2) If a person brings an action under any enactment or rule of law in relation to an underlying transaction (including, without limitation, Articles 97 to 101 of the Insolvency Law), that person may produce evidence of a settlement before the court for the purpose of proving that:
  - (a) a participant received value by means of that settlement; and
  - (b) the value received was an element of the underlying transaction.
- (3) In this section, **underlying transaction**:
  - (a) means a transaction that gives rise to:
    - (i) a payment; or
    - (ii) a payment obligation; but
  - (b) does not include:
    - (i) a payment instruction; or
    - (ii) a settlement in accordance with the rules of a designated payment system.

**PART 4: VARIATION OR REVOCATION OF DESIGNATION**

**16. Variation of designation**

The Designating Body may vary any designation made under Article 10(1)(a):

- (a) by amending any of the matters referred to in Article 10(2)(b) or (c);

- (b) by revoking or amending any condition to which the designation is subject; or
- (c) by making the designation subject to a new condition.

**17. Revocation of designation**

The Designating Body may revoke any designation made under Article 10(1)(a).

**18. Settlement and netting not affected by variation or revocation of designation**

The variation or revocation of a designation made under Article 10(1)(a) does not affect the application of Articles 11, 12 and 14 to settlements that were effected, and netting that took place, before the variation or revocation.

**19. Matters Designating Body may have regard to in recommending variation or revocation of designation**

In determining whether to make a recommendation that any designation made under Article 10(1)(a) be varied or revoked, the Designating Body may have regard to any or all of the following matters:

- (a) the purpose of this Law;
- (b) the purpose and scope of the designated payment system;
- (c) the rules of the designated payment system;
- (d) any laws or regulatory requirements relating to the operation of the designated payment system and the extent to which the designated payment system complies with those laws or regulatory requirements;
- (e) the importance of the designated payment system to the financial system;
- (f) any failure to comply with any condition to which the designation is subject; and
- (g) any other matters that the Designating Body considers appropriate.

**20. Procedure for variation or revocation of designation**

(1) Before making a recommendation that any designation made under Article 10(1)(a) be varied or revoked, the Designating Body must, unless it considers that the financial system may be prejudiced as a result:

- (a) give the Designated Contact notice of:
  - (i) the reasons for proposing to vary or revoke the designation; and
  - (ii) the fact that the Designated Contact may make submissions to the Designating Body in relation to the proposed variation or revocation;
- (b) give the Designated Contact an opportunity to make those submissions within a time period that the Designating Body considers reasonable in the circumstances; and
- (c) consider any submissions made by the Designated Contact during that time period.



- (2) The notice referred to in Article 20(1)(a) may be given either in writing or orally depending on the circumstances of the particular case.

## **PART 5: SUPPLY OF INFORMATION**

### **21. Supply of information relating to designated payment system**

- (1) The Designating Body may, by notice in writing, require any or all of the following persons to supply it with any information relating to any designated payment system:
  - (a) an operator of the designated payment system;
  - (b) a participant in the designated payment system; and
  - (c) the Designated Contact of the designated payment system.
- (2) The Designating Body may exercise the power conferred on it by Article 21(1) only if it considers that the information is reasonably required to enable it to perform its functions and duties under this Law.
- (3) A notice under Article 21(1) may specify:
  - (a) the periods for which, and the form in which, the information must be supplied; and
  - (b) the manner in which the information must be verified.
- (4) The Designating Body may require any information to be provided under this Article 21, and any other communication to which it is a party, to be in English.
- (5) Where the Designating Body considers that a person has contravened this Article 21, it may impose by written notice given to the person a fine, in respect of the contravention, of such amount as it considers appropriate but not exceeding \$1,000,000, which shall be payable within the time period specified in the notice. If, within that specified period:
  - (a) the person pays the prescribed fine to the Designating Body, then no proceedings may be commenced by the Designating Body against the person in respect of the relevant contravention; or
  - (b) the person has not paid the prescribed fine to the Designating Body, then the Designating Body may apply to the Court for recovery as a debt due so much of the fine as is not paid.

### **22. Designated Contact must be notified of insolvency proceedings**

- (1) This Article applies if:
  - (a) insolvency proceedings are or have been opened in respect of a participant in a designated payment system (**participant A**); or
  - (b) insolvency proceedings are or have been opened in respect of any other participant whose settlements are effected by participant A through that designated payment system.
- (2) If this Article applies, participant A must, as soon as practicable after becoming aware of the existence of the insolvency proceedings, notify that fact to the Designated Contact.

- (3) It is sufficient compliance with the requirement to notify the Designated Contact under Article 22(2) if:
  - (a) participant A takes all reasonable steps to comply with that requirement; or
  - (b) the Designated Contact was already actually aware of the opening of the relevant insolvency proceedings by the time participant A had to notify the designated payment system under that Article.
- (4) The Designated Contact shall notify the Designating Body promptly if he receives a notice under Article 22(2) or otherwise becomes actually aware of the opening of insolvency proceedings in respect of a participant in a designated payment system.

## **PART 6: MISCELLANEOUS**

### **23. Exemption from liability**

Neither the Central Bank nor the Designating Body, nor any of their respective officers, employees and agents, shall be held liable for anything done or omitted to be done in the performance or purported performance of their functions under this Law unless proven that the same has been in bad faith.

### **24. Applicable law relating to securities held as collateral security**

Where:

- (a) securities (including rights in securities) are provided as collateral security to a party to the rules of a designated payment system pursuant to those rules; and
- (b) a register, account or centralised deposit system located in a country records the entitlement of that person to the collateral security,

the rights of that person as a holder of collateral security in relation to those securities shall be governed by the law of the country where the register, account or centralised deposit system is located.

### **25. Designating Body and Central Bank**

When exercising its powers, duties and discretions under this Law, the Designating Body may consult with and have regard to the views of the Central Bank and may share any documents or information received by the Designating Body under this Law with the Central Bank, with any other jurisdiction's central bank or monetary authority and with any jurisdiction's banking or financial services regulatory body.

### **26. Regulations**

- (1) The Designating Body may, from time to time, make, amend, waive and revoke Regulations in respect of any matters related to the objectives, powers or functions of the Designating Body or which facilitate the administration of, or to further the purpose of, this Law.
- (2) The Designating Body shall publish draft Regulations by means of a notice which must include the following:
  - (a) the draft text of the Regulations;

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- (b) a statement of the substance and purpose of the material provisions of the draft Regulations; and
  - (c) a summary of the draft Regulations.
- (3) Unless the Designating Body is satisfied that it is inappropriate or unnecessary to do so, it must publish a notice under this Article 26 in such a way as it considers appropriate for bringing the notice to the attention of those likely to be affected by it.
- (4) The persons affected by any Regulations made in accordance with this Article 26 shall comply with those Regulations for so long as those Regulations are in force.

**SCHEDULE 1**

**INTERPRETATION**

**1. Rules of Interpretation**

- (1) In the Law, unless the contrary intention appears, a reference to:
  - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
  - (b) a person includes any natural person, body corporate or body unincorporated, including a company, partnership, unincorporated association, government or state;
  - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the Law, include publishing or causing to be published in printed or electronic form;
  - (d) unless stated otherwise, a day means a calendar day;
  - (e) a calendar year shall mean a year of the Gregorian calendar;
  - (f) a reference to the masculine gender includes the feminine; and
  - (g) a reference to 'dollars' or '\$' is a reference to United States Dollars.
- (2) The headings in the Law shall not affect its interpretation.

**2. Legislation in the DIFC**

References to legislation in the Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC; and
- (d) the Law is the Payment System Settlement Finality Law, DIFC Law No. 1 of 2009 made by the Ruler.

### 3. Defined Terms

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

<b>Term</b>	<b>Definition</b>
Central Bank	the Central Bank of the United Arab Emirates.
collateral instruction	an instruction by a participant in a payment system: <ul style="list-style-type: none"> <li>(a) that is made in accordance with the rules of that payment system; and</li> <li>(b) that results, or is intended to result, in the provision of collateral security being effected.</li> </ul>
collateral security	any realisable assets provided under a charge or a repurchase or similar agreement or otherwise (including money provided under a charge) for the purpose of securing rights and obligations potentially arising pursuant to the rules of a designated payment system.
Designated Contact	in relation to a designated payment system, has the meaning set out in Article 10(2)(c).
designated payment system	a payment system that is declared as a designated payment system under Article 10(1)(a).
Designating Body	the Dubai International Financial Centre Authority.
DIFC	the Dubai International Financial Centre.

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Insolvency Law	the Insolvency Law (DIFC Law No 7 of 2004), as amended from time to time.
insolvency officer	any liquidator, provisional liquidator, receiver, administrative receiver, receiver and manager, supervisor, administrator or similar officer appointed under any insolvency proceedings in relation to a participant in a designated payment system.
insolvency proceedings	any collective measure provided for under any law, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments (including, without limitation, the Insolvency Law).
netting	<p>the conversion into one net claim or obligation, or the set off, of different claims or obligations between participants in a payment system that results from the issue and receipt of payment instructions involving two or more participants in the payment system or that is otherwise provided for under the rules of the payment system:</p> <ul style="list-style-type: none"> <li>(a) whether on a bilateral or multilateral basis;</li> <li>(b) whether or not through the interposition of an operator of the payment system;</li> <li>(c) whether or not the obligations or claims constitute mutual credits, mutual debts or other mutual dealings; and</li> <li>(d) irrespective of the currency in which the obligations or claims are denominated.</li> </ul>
payment instruction	<p>an instruction by a participant in a payment system:</p> <ul style="list-style-type: none"> <li>(a) that is made in accordance with the rules of that payment system; and</li> </ul>

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	<p>(b) that results, or is intended to result, in one or more settlements being effected.</p>
<p>Regulations</p>	<p>regulations made by the Designating Body in accordance with Article 26.</p>
<p>rules</p>	<p>(a) in relation to a payment system, means the rules of the payment system (whether made under bylaws, agreements, procedures, contracts, or other documents) that are evidenced in writing and that provide, among other things, for:</p> <ul style="list-style-type: none"> <li>(i) the basis on which payment instructions are given;</li> <li>(ii) the basis on which payments are calculated;</li> <li>(iii) the basis on which settlements are effected (whether on a gross basis or using netting); and</li> <li>(iv) any action to be taken if a participant in the payment system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following: <ul style="list-style-type: none"> <li>(A) an operator of the payment system;</li> <li>(B) another participant in the payment system; and</li> <li>(C) any other party to those rules; and</li> </ul> </li> </ul> <p>(b) in the case of a designated payment system, means the rules of that payment system that are contained in documents specified in the declaration under Article 10(1)(a), including any amendments to those rules that have been notified to, and agreed to in writing by, the Designating Body.</p>

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settlement	<p>means:</p> <ul style="list-style-type: none"><li>(a) the making of a payment:<ul style="list-style-type: none"><li>(i) that is done in accordance with a payment instruction;</li><li>(ii) that is on a gross basis or that uses netting; and</li><li>(iii) whether by way of book entry on the accounts of a central bank, another bank, the operator of a designated payment system or otherwise; or</li></ul></li><li>(b) any other act that discharges a payment obligation in accordance with a payment instruction or as contemplated by the rules.</li></ul>