

**ACT**  
**No. 124/2002**  
of 13 March 2002  
**on Transfers of Funds, Electronic Payment Instruments and Payment Systems**  
**(the Payment System Act)**

As amended by Act No. 257/2004 Coll.

Parliament has passed this Act of the Czech Republic:

**PART ONE**  
**INTRODUCTORY PROVISIONS**

Article 1

**Subject**

This Act regulates:

- a) transfers of funds in the Czech currency within the territory of the Czech Republic and cross-border transfers (Article 2(2)),
- b) the issuing and use of electronic payment instruments,
- c) the establishment and operation of payment systems in any currency and the rights and obligations of the participants in such systems if the participants agree that such payment systems are to be governed by Czech law, and certain obligations of the participants in the payment systems operated under the laws of the member states of the European Union and of the other states constituting the European Economic Area.

**PART TWO**  
**TRANSFERS OF FUNDS**

Article 2

**Basic provisions**

- (1) This part of the Act governs:
  - a) banks, branches of foreign banks and other undertakings which by way of business execute or intermediate transfers of funds, provided that such activities are carried on within the territory of the Czech Republic (hereinafter referred to as the “transfer institution”),
  - b) natural or legal persons which give transfer orders (Article 4) directly to a transfer institution (hereinafter referred to as the “originator”) or which are the final recipients of a transfer (hereinafter referred to as the “beneficiary”). In the case of cross-border transfers pursuant to paragraph 2, banks, branches of foreign banks or other

undertakings which by way of business execute or intermediate transfers of funds, undertakings authorised to provide investment services pursuant to a special legal rule<sup>1</sup>, insurance companies, investment companies, investment funds, pension funds and other undertakings which have their registered offices or places of business outside the Czech Republic and which by way of business carry on similar activities shall not be deemed originators.

- (2) “Cross-border transfer” shall mean a transfer of funds from one member state of the European Union or the European Economic Area to another member state of the European Union or the European Economic Area in a national currency of a member state of the European Union or state of the European Economic Area up to the equivalent of EUR 50,000. The equivalent shall be calculated according to the exchange rate announced by the European Central Bank as of the date of effectiveness of the transfer order.

### Article 3

#### **Transfer**

- (1) For the purposes of this Act, “transfer” shall mean a transaction carried out on the basis of an order given by an originator to its transfer institution with a view to transferring funds to a beneficiary.
- (2) A transfer may be carried out, in particular, by way of debiting the originator’s account or by the originator making a cash payment, and by crediting the beneficiary’s account or making a cash payment to the beneficiary. The originator and the beneficiary may be one and the same person.
- (3) Save for cross-border transfers, the following shall not be deemed transfers:
- a) postal remittances as defined in a special legal rule,<sup>2</sup>
  - b) payments of taxes and fees as defined in a special legal rule,<sup>3</sup>
  - c) payments of social security contributions and state employment policy contributions as defined in a special legal rule,<sup>4</sup>
  - d) payments of general health insurance contributions as defined in a special legal rule.<sup>5</sup>

### Article 4

#### **Transfer order**

For the purposes of this Act, “transfer order” shall mean:

- a) an unconditional order given by an originator to a transfer institution to execute a transfer,

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<sup>1</sup> Article 8 of Act No. 591/1992 Coll., on Securities, as amended.

<sup>2</sup> Article 2(b) of Act No. 29/2000 Coll., on Postal Services and Amendments to Certain Acts (the Postal Services Act).

<sup>3</sup> Act No. 337/1992 Coll., on the Administration of Taxes and Fees, as amended.

<sup>4</sup> Act No. 589/1992 Coll., on Social Security Contributions and State Employment Policy Contributions, as amended.

<sup>5</sup> Act No. 592/1992 Coll., on General Health Insurance Contributions, as amended.

- b) an order given by an originator to a transfer institution to execute a transfer in respect of which all the conditions required by the originator have been fulfilled.

#### Article 5

##### **Date of effectiveness of a transfer order**

- (1) The “date of effectiveness” of a transfer order shall mean the date of fulfilment by the originator of all the contractual terms and conditions required by the originator’s transfer institution as to the execution of the transfer, of the conditions laid down in this Act (Article 6(1)) and of any other conditions laid down in special legal rules.
- (2) Where the originator specifies a date on which the funds should be debited to its account under the transfer order, the transfer order shall become effective on that date, provided that the conditions of effectiveness of the order have been fulfilled.

#### Article 6

##### **Conditions of effectiveness of a transfer order**

- (1) The securing of adequate cover of the amount of the transfer and the submission of the documents required by the transfer institution to execute the transfer shall constitute the conditions of effectiveness of the transfer order.
- (2) In its business terms and conditions, the transfer institution may, in particular, provide for an obligation of the originator to submit the transfer order prior to its date of effectiveness, a time limit for submitting the order, and the business hours during which transfer orders may be submitted.

#### Article 7

##### **Reporting duty of the transfer institution**

- (1) The transfer institution shall supply the public in advance with clear information in writing, including where appropriate by electronic means, and in a readily comprehensible form on its premises on the general terms and conditions for transfers. Such information shall include at least:
  - a) the time needed for the amount of the transfer to be credited to the account of the beneficiary’s transfer institution, or the manner of calculation of that period; the start of that period must be clearly indicated,
  - b) the time needed for the amount of the transfer credited to the account of the beneficiary’s transfer institution to be credited to the beneficiary’s account or for the amount of the transfer to be made available to the beneficiary,
  - c) the amount, or the manner of calculation thereof, of any charges payable by the customer for the transfer,
  - d) the date on which the amount of the transfer will be debited to the customer’s account where the customer is the originator, and the date on which the amount of the transfer will be credited to the customer’s account or on which it will be made available to the customer where the customer is the beneficiary,

- e) details of complaints and redress procedures, including information on procedures for the settlement of disputes (Article 12),
  - f) information on exchange rates used.
- (2) Unless it does not wish to execute a transfer, the transfer institution must, at an interested person's request, give it an undertaking concerning the time within which the transfer will be executed and charges payable by the interested person for the transfer.
- (3) The transfer institution shall subsequently supply its customer, unless the latter expressly forgoes this, with clear information in writing, including where appropriate by electronic means, and in a readily comprehensible form on transfers executed. The information shall include at least:
- a) a reference allowing the customer to identify the transfer,
  - b) the amount of the transfer as given in the transfer order,
  - c) the amount of the charges for the transfer payable by the customer,
  - d) the date on which the amount of the transfer was debited to the customer's account or the date on which the amount of the transfer was credited to the customer's account.
- (4) Where the originator has specified that the charges for the transfer are to be wholly or partly borne by the beneficiary (Article 10), the latter shall be informed thereof by his own transfer institution. Where any amount has been converted, the transfer institution which converted it shall inform its customer of the exchange rate used.

## Article 8

### **Time limits for transfers**

- (1) Transfer institutions shall execute transfers within the time limits laid down in paragraphs 2, 3 and 5 unless there are legal grounds for an extension.<sup>6</sup>
- (2) Where the originator's transfer institution transfers funds in the Czech currency within territory of the Czech Republic:
- a) between different transfer institutions, it shall ensure that the amount of the transfer be credited to the account of the beneficiary's transfer institution and submit the documents required by the beneficiary's transfer institution to credit the amount of the transfer to the beneficiary no later than on the banking business day following the date of effectiveness of the transfer order, unless a shorter time limit has been agreed,
  - b) within the same transfer institution, it shall credit the amount of the transfer to the beneficiary on the date of effectiveness of the transfer order or on the following banking business day if the date of effectiveness of the transfer order is not a banking business day.
- (3) Where the originator's transfer institution executes a cross-border transfer, it shall ensure that the amount of the transfer be credited to the account of the beneficiary's transfer institution and submit the documents required by the beneficiary's transfer institution to credit the amount of the transfer to the beneficiary within the time limit

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<sup>6</sup> e.g. Article 6 of Act No. 61/1996 Coll., on Certain Measures Against Money Laundering and on the Amendment of Related Acts, as amended by Act No. 159/2000 Coll.

agreed with the originator; in the absence of such a time limit, it shall do so within five banking business days following the date of effectiveness of the transfer order.

- (4) “Banking business day” shall mean a day on which all the transfer institutions participating in the execution or intermediation of the relevant part of the transfer usually carry on their activities.
- (5) The beneficiary’s transfer institution shall credit the amount of the transfer to the beneficiary’s account or ensure that the amount of the transfer be made available to the beneficiary no later than on the banking business day following the date on which the amount of the transfer was credited to the account of the beneficiary’s transfer institution and on which that transfer institution received the documents it required to credit the amount of the transfer to the beneficiary, unless a shorter time limit has been agreed.
- (6) If the beneficiary’s transfer institution is unable to identify the beneficiary of the amount of the transfer, it shall refund the amount of the transfer to the originator’s transfer institution at the earliest opportunity.
- (7) If the beneficiary does not take receipt of the amount of the transfer made available to him, or if the amount of the transfer cannot be delivered to the beneficiary because of obstructions on the part of the beneficiary, the beneficiary’s transfer institution shall refund the amount of the transfer to the originator’s transfer institution within three banking business days following the expiry of six weeks from the date on which the amount was credited to the account of the beneficiary’s transfer institution, save as agreed otherwise between the beneficiary and his transfer institution or the originator and his transfer institution.

## Article 9

### **Interest on late payment**

- (1) Where the originator’s transfer institution fails to comply with the time limit for executing the transfer laid down in Article 8(2) or (3), it shall pay interest on late payment to the originator. Where the beneficiary’s transfer institution fails to comply with the time limit for crediting the amount of the transfer to the beneficiary laid down in Article 8(5), it shall pay interest on late payment to the beneficiary.
- (2) Where non-compliance with the time limit for executing the transfer to the account of the beneficiary’s transfer institution laid down in Article 8(2)(a) or Article 8(3) is attributable to an intermediary transfer institution, that institution shall pay interest on late payment to the originator’s transfer institution.
- (3) The interest on late payment shall be calculated on the basis of the amount of the transfer; the interest rate laid down in a special legal rule<sup>7</sup> shall be applied when calculating the interest on late payment.

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<sup>7</sup> Government Order No. 142/1994 Coll., stipulating interest on late payment and late charges pursuant to the Civil Code.

- (4) The originator's transfer institution or, as the case may be, the beneficiary's transfer institution shall pay interest on late payment even if it has not caused the failure to comply with the time limit, unless it can establish that the failure to comply with the transfer time limit is attributable to the originator or, as the case may be, the beneficiary of the amount of the transfer, or if the failure to comply with the transfer time limit is attributable to the circumstances referred to in Article 13.
- (5) In addition to interest on late payment, the originator, the beneficiary or the transfer institution shall be entitled to damages; this shall be without prejudice to their other rights.

#### Article 10

##### **Prohibition of making deductions from the amount of the transfer**

- (1) The originator's transfer institution, any intermediary transfer institution or the beneficiary's transfer institution shall each be obliged to execute the transfer for the full amount thereof without any deductions. This shall be without prejudice to the right of the beneficiary's transfer institution to levy a charge on the beneficiary relating to the administration of his account, provided that such a charge is not used to avoid the provisions of the first sentence, and in particular that such a charge in the case of a cross-border transfer does not exceed that for a transfer executed within the territory of the Czech Republic.
- (2) Paragraph 1 shall not apply if the originator has specified that the costs of the transfer are to be borne wholly or partly by the beneficiary.
- (3) Where the originator's transfer institution or an intermediary transfer institution breaches the obligation set out in paragraph 1, the originator's transfer institution shall, at the originator's request, credit, free of all deductions and at its own cost, the amount deducted or charged in an unauthorised manner to the beneficiary, unless the originator requests that the amount be credited to him.
- (4) Where an intermediary transfer institution breaches the obligation set out in paragraph 1, it shall credit the amount deducted or charged in an unauthorised manner, free of all deductions and at its own cost, to the originator's transfer institution or, if the originator's transfer institution so requests, to the beneficiary.
- (5) Where the beneficiary's transfer institution breaches the obligation set out in paragraph 1, it shall credit the amount deducted or charged in an unauthorised manner, free of all deductions and at its own cost, to the beneficiary.

#### Article 11

##### **Obligation in the event of non-execution of a transfer**

- (1) If, following the date of effectiveness of a transfer order, the transfer is not executed within the time limit laid down in Article 8(2) or (3) nor is the amount of the transfer refunded pursuant to Article 8(6) or (7), the originator's transfer institution shall, at the originator's request, credit the originator with the amount of the transfer plus interest

on late payment and the charges relating to the transfer paid by the originator. The originator's transfer institution shall discharge this obligation within fourteen banking business days following the date of delivery of the originator's request, unless the amount of the transfer has in the meantime been credited to the account of the beneficiary's transfer institution. If the originator's transfer institution fulfils this obligation, it is no longer obliged to complete the transfer.

- (2) The interest on late payment shall be calculated on the basis of the amount of the transfer for the period between the date of effectiveness of the transfer order and the date on which the amount pursuant to paragraph 1 is credited to the originator. The interest rate laid down in a special legal rule<sup>7</sup> shall be applied when calculating the interest on late payment. Where interest on late payment pursuant to paragraphs 1 or 3 has been paid, neither the originator nor the transfer institution shall be entitled to interest on late payment pursuant to Article 9.
- (3) Each intermediary transfer institution which has accepted a transfer order from another transfer institution owes an obligation to refund at its own cost the amount of the transfer, including the related costs and interest, to the transfer institution which instructed it to carry out the order. In the case of a cross-border transfer, the intermediary transfer institution owes an obligation to refund the transfer institution which instructed it to carry out the order with an amount only up to an equivalent of EUR 12,500 plus interest on late payment and charges relating to the transfer that it has received.
- (4) If the transfer was not completed because of its non-execution by a transfer institution chosen by the beneficiary's transfer institution, paragraph 1 shall not apply. The beneficiary's transfer institution shall be obliged to make the amount of the transfer available to the beneficiary. The obligation of the originator's transfer institution to execute the transfer is thereby discharged.
- (5) If the transfer was not completed because of an error or omission in the instructions given by the originator to his transfer institution or because of non-execution of the transfer by a transfer institution chosen by the originator, paragraph 1 shall not apply. All transfer institutions involved in the transfer shall endeavour as far as possible to find and refund the amount of the transfer to the originator's transfer institution. These transfer institutions shall not refund the charges and interest paid for the intermediation of the transfer and are entitled to reimbursement of the costs incurred in refunding the amount of the transfer to the originator's transfer institution. If the amount of the transfer has been recovered by, or refunded to, the originator's transfer institution, it shall refund the amount of the transfer to the originator minus any costs incurred.
- (6) In addition to the payment of the amount of the transfer and interest on late payment, the originator, the beneficiary or the transfer institution shall be entitled to damages; this shall be without prejudice to their other rights.

## Article 12

### **Settlement of disputes**

Customers may refer any disputes arising between transfer institutions and their customers during the execution of transfers of funds pursuant to this part of the Act to a body authorised to settle such disputes pursuant to a special legal rule. This shall be without prejudice to the customer's right to refer the dispute to a court of law.

## Article 13

### **Situation of force majeure**

Where a transfer institution can adduce that it has been prevented from fulfilling its obligations laid down in this part of the Act by unforeseeable circumstances beyond its control and that these circumstances, or the consequences thereof, were unavoidable or insurmountable, it shall be released from any liability for non-fulfilment of those obligations.

## **PART THREE ISSUING AND USE OF ELECTRONIC PAYMENT INSTRUMENTS**

## Article 14

### **Basic provisions**

This part of the Act governs:

- a) banks, branches of foreign banks and other undertakings which by way of business issue electronic payment instruments, provided that such activities are carried on within the territory of the Czech Republic (hereinafter referred to as the "issuer"),
- b) natural or legal persons which, pursuant to a contract with the issuer, use electronic payment instruments (hereinafter referred to as the "holder").

## Article 15

### **Electronic payment instruments and electronic money**

- (1) "Electronic payment instrument" shall mean:
  - a) a remote access payment instrument, the use of which usually requires a personal identification code allocated by the issuer or similar proof of the holder's identity,
  - b) an electronic money instrument.
- (2) "Electronic money instrument" shall mean a payment instrument that stores monetary value in electronic form and is accepted as a means of payment by persons other than the issuer.
- (3) "Electronic money" shall mean monetary value stored on an electronic money instrument.

- (4) The electronic money referred to in paragraph 3 may be issued only by an issuer of electronic money instruments and only on prior receipt of funds of an amount not less in value than the monetary value of such electronic money.

#### Article 16

##### **Model general terms and conditions**

In order to protect holders, the Czech National Bank shall issue model general terms and conditions to govern the mutual rights and obligations of issuers and holders in connection with the issuing and use of electronic payment instruments. The first model general terms and conditions shall be issued by the Czech National Bank as of the date on which this Act takes effect. The model general terms and conditions and amendments thereto shall be published in the Bulletin of the Czech National Bank.

#### Article 17

##### **Issuers' general terms and conditions**

- (1) In good time prior to issuing an electronic payment instrument, the issuer shall communicate to a person interested in the issuing of an electronic payment instrument its general terms and conditions for the issuing and use of electronic payment instruments.
- (2) In the introductory provisions of its general terms and conditions for the issuing and use of electronic payment instruments, the issuer shall state expressly whether those terms and conditions correspond to the model general terms and conditions of the Czech National Bank issued in accordance with Article 16 and shall describe any differences.
- (3) The issuer shall discharge the obligation referred to in paragraph 2 within three months of the date of issue of the model general terms and conditions of the Czech National Bank or any amendments thereto.
- (4) The issuer shall provide its general terms and conditions issued pursuant to paragraphs 1 to 3 to the Czech National Bank at the earliest opportunity following issue thereof or amendment thereto.

#### Article 18

##### **Remote use of electronic payment instruments**

If an electronic payment instrument has been used:

- a) without physical presentation, or
- b) without an identification of the holder with a personal identification code or similar proof of identity where the nature of the electronic payment instrument precludes physical presentation,

and if the holder declares that he did not use the electronic payment instrument himself, he shall be entitled to require the issuer to refund without delay the funds withdrawn as a result of such use of the electronic payment instrument.

#### Article 19

#### **Conditions for the issuing of electronic money instruments**

- (1) Undertakings other than banks, branches of foreign banks and undertakings authorised to issue electronic money instruments under a single licence pursuant to a special legal rule<sup>8</sup> may only issue electronic money instruments subject to the prior consent of the Czech National Bank and to the following conditions:
  - a) the electronic money instrument issued to the holder is used to store electronic money of an amount of not more than CZK 4,500 and the total amount of the issuer's liabilities relating to outstanding electronic money never exceeds CZK 150,000,000;
  - b) the electronic money instruments are accepted only by a limited number of service providers which are parent undertakings or subsidiaries of the issuer or are subsidiaries of the same undertaking as the issuer or have a close financial or business relationship with the issuer, such as a common marketing or distribution scheme.
- (2) For the purposes of management of monetary policy and for statistical purposes, undertakings issuing electronic money instruments pursuant to paragraph 1 shall notify the Czech National Bank of the volume of electronic money issued during the past six months and the number of electronic money instruments issued as of 30 June and 31 December of each calendar year, no later than by the end of the calendar month following the end of the reporting period. At the request of the Czech National Bank, such undertakings shall also provide other details concerning the issuing of electronic money instruments and electronic money.
- (3) Prior consent to the issuing of electronic money instruments shall be issued by the Czech National Bank on the basis of an application in administrative proceedings. The Czech National Bank shall set forth in a decree the essential elements of the application.
- (4) Where the Czech National Bank establishes that an issuer is in breach of the conditions referred to in paragraph 1, it may withdraw, in administrative proceedings, the prior consent to the issuing of electronic money instruments granted to the issuer.
- (5) The Czech National Bank may set forth in a decree further details that are subject to reporting pursuant to paragraph 2, define the structure of such details, and stipulate the manner and time limits for submission thereof.

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<sup>8</sup> Article 5a of Act No. 21/1992 Coll., on Banks, as amended by Act No. 126/2000 Coll.

## Article 20

### **Redeemability of electronic money**

- (1) The issuer shall, during the period of validity of the electronic money instrument, at the holder's request, redeem electronic money at par value in coins or bank notes or by a transfer to an account free of charges other than those strictly necessary to carry out the redemption.
- (2) The issuer may stipulate a minimum threshold for redemption. This may not exceed CZK 300.
- (3) The conditions for redemption of electronic money shall be stated in a clear and readily comprehensible form in the issuer's general terms and conditions.

## Article 21

### **Settlement of disputes**

Holders may refer any disputes arising between issuers and holders in connection with the issuing and use of electronic payment instruments to a body authorised to settle such disputes pursuant to a special legal rule. This shall be without prejudice to the holder's right to refer the dispute to a court of law.

## Article 22

### **Fine**

In the event of a breach of the obligations laid down in this part of the Act, the Czech National Bank may impose a fine of up to CZK 1,000,000 on an issuer.

## **PART FOUR PAYMENT SYSTEMS**

## Article 23

### **Basic provisions**

- (1) For the purposes of this Act, a payment system (hereinafter referred to as the "system") shall mean a system which allows for the transfer of funds, provided that:
  - a) it has:
    1. three or more participants, without counting those referred to in Article 24(2)(a) to (c), or
    2. two participants, without counting those referred to in Article 24(2)(a) to (c) where it allows for interconnection of systems included in the list referred to in Article 29(1), settlement systems pursuant to a special legal rule<sup>9</sup> or settlement

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<sup>9</sup> Article 70b of Act No. 591/1992 Coll., as amended.

- systems included in the list of the Commission of the European Communities and where one such system is governed by this Act;
- b) it is operated pursuant to a written agreement made between all the participants in the system or pursuant to written agreements made between the system operator and the other participants in the system (hereinafter referred to as the “payment system agreement”);
  - c) the system operator is the holder of a licence to operate a payment system (Article 30);
  - d) it executes transfers of funds pursuant to the rules provided for in this Act and pursuant to standardised arrangements agreed between the participants in the system;
  - e) the Czech National Bank notifies the Commission of the European Communities of the existence of the system and of its name.
- (2) The system must be operated on the principle of settlement of individual items combined with verification of coverage thereof, or on the principle of settlement of the differences (balances) calculated from the mutual claims and obligations of the participants in the system or, as the case may be, a combination of those principles; it must also comply with the conditions set forth for those settlement principles by the Czech National Bank in a decree.
- (3) The interbank payment system operated by the Czech National Bank shall be deemed a system operated pursuant to this Act.

#### Article 24

##### **Participants in the system**

- (1) Participants in the system may be:
- a) banks and branches of foreign banks,
  - b) other undertakings authorised to receive deposits from the public and grant credits pursuant to a special legal rule,<sup>10</sup>
  - c) undertakings authorised to provide investment services pursuant to a special legal rule,<sup>1</sup>
  - d) public authorities and publicly guaranteed undertakings,
  - e) undertakings authorised to issue electronic money under a single licence pursuant to a special legal rule,<sup>8</sup>
  - f) foreign undertakings whose functions correspond to those of the undertakings referred to in subparagraphs a) to c) and e),
- (hereinafter referred to as “financial institutions”) which participate in the system and are responsible for discharging the financial obligations arising from orders accepted by the system.
- (2) A participant in the system may furthermore be:
- a) an entity which accepts the orders of the financial institutions in the system and which acts as the exclusive counterparty of these financial institutions (hereinafter referred to as the “central counterparty”);
  - b) an entity providing to institutions and/or a central counterparty participating in the system, accounts through which transfer orders within such systems are settled and, as

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<sup>10</sup> Act No. 87/1995 Coll., on Savings and Loan Associations and Certain Related Measures and on the Amendment of Czech National Council Act No. 586/1992 Coll., on Income Tax, as amended, as amended.

- the case may be, extending credit to those institutions and/or central counterparties for settlement purposes (hereinafter referred to as the “settlement agent”);
- c) an entity responsible for the calculation of the mutual claims and obligations of the orders of financial institutions, a possible central counterparty and/or a possible settlement agent (hereinafter referred to as the “clearing house”);
  - d) the Czech National Bank, the central banks of other states, and the European Central Bank.
- (3) The same participant may act as a central counterparty, a settlement agent or a clearing house in the system, or carry out part or all of these tasks.
- (4) The participants in the system shall designate the system operator in the payment system agreement; the system operator must be one of the participants in the system referred to in paragraphs 1 or 2.

## Article 25

### **Rules of the system**

The rules of the system shall form an integral part of the payment system agreement. Such rules shall always stipulate:

- a) who is the system operator;
- b) who may be a participant in the system and on what terms;
- c) the rights and obligations of the participants in the system;
- d) the method for ensuring liquidity for clearing orders entered into the system;
- e) the method for clearing the mutual claims and obligations of participants in the system;
- f) the moment of acceptance of an order by the system, the method for transferring orders, and a specification of the hours during which the system accepts orders;
- g) the currency or currencies in which the system is operated.

## Article 26

### **Order**

For the purposes of this part of the Act, “order” shall mean any instruction by a participant in the system for the transfer through the system of funds to a beneficiary and for clearing thereof in compliance with the rules of the system.

## Article 27

### **Irrevocability of an order**

- (1) An order accepted by the system may not be revoked by a participant in the system, nor by a third party, from the moment of acceptance of the order defined by the rules of the system.
- (2) An adjudication of bankruptcy in respect of the assets of a participant in the system or a suspension and/or restriction of payments due to any other measures against a participant in the system (hereinafter referred to as a “suspension of payments”) shall

not affect the right to use funds from that participant's account maintained in that system to fulfil that participant's obligations in the system in order to complete clearing in the system on the date of the adjudication of bankruptcy or suspension of payments.

- (3) An adjudication of bankruptcy in respect of the assets of a participant in the system or a suspension of payments shall not affect the obligation of the system to process the orders of that participant in the system or the validity or enforceability of those orders in respect of third parties, provided that the orders were accepted by the system in compliance with the rules of the system:
  - a) before the moment of adjudication of bankruptcy or suspension of payments;
  - b) at the moment of adjudication of bankruptcy or at the moment of suspension of payments, and after that moment where the orders are carried out on the day of the adjudication of bankruptcy or suspension of payments, only if the entities referred to in Article 24(2)(a) to (c) can prove that they were not aware of such adjudication of bankruptcy or suspension of payments even as a result of a notice pursuant to Article 29(4)(b) or Article 29(5).
- (4) An adjudication of bankruptcy in respect of the assets of a participant in the system or a suspension of payments shall not affect the rights to collateral security provided by that participant in the system to:
  - a) another participant in connection with that system,
  - b) the Czech National Bank,
  - c) central banks of other member states of the European Union or states of the European Economic Area or the European Central Bank,including the possibility of realising that collateral security.
- (5) For the purposes of this part of the Act, "collateral security" shall mean the rights to an asset serving to secure obligations.

## Article 28

### **Reporting duties of the system operator and of participants in the system**

- (1) Without prejudice to Article 23(1)(a), the system operator shall notify the Czech National Bank in writing at the earliest opportunity of any changes to the name, registered office or place of business of any participant in the system and of any reduction in the number of participants in the system.
- (2) The system operator shall be required to submit to the Czech National Bank an application for prior consent to any change pertaining to the participants in the system other than the changes referred to paragraph 1.
- (3) The system operator shall be required to submit to the Czech National Bank an application for prior consent to any amendment to the payment system agreement or to the rules of the system.
- (4) At the written request of a person who proves a legitimate interest, participants in the system shall be required to provide information about the systems operated pursuant to this Act in which they participate and about the rules of those systems.

- (5) The obligation referred to in paragraph 4 shall also apply to all entities having their registered offices or places of business in the Czech Republic which participate in systems operated under the laws of any other member state of the European Union or state of the European Economic Area. Such entities shall also be required to notify the Czech National Bank of any changes to their registered offices or places of business at the earliest opportunity after such changes take effect.

## Article 29

### **Reporting duties of the Czech National Bank**

- (1) The Czech National Bank shall maintain lists of:
- a) the systems operated pursuant to this Act, including the operators thereof and participants therein;
  - b) the systems operated under the laws of any other member states of the European Union and states of the European Economic Area, including participants therein whose registered offices or places of businesses are in the Czech Republic.
- (2) The Czech National Bank shall provide the information contained in the lists referred to in paragraph 1 to the regional and high courts and to the Supreme Court of the Czech Republic and shall disclose such information, also in a manner which allows remote access.
- (3) The Czech National Bank shall notify the Commission of the European Communities of the systems operated pursuant to this Act, their operators and participants, and of the withdrawal of any licence to operate such a system (Article 34).
- (4) If the Czech National Bank receives a notice of suspension of payments or of adjudication of bankruptcy in respect of the assets of a participant in a system operated pursuant to this Act, it shall be required to communicate the same at the earliest opportunity to:
- a) the operator of the system whose participant the order concerns;
  - b) the participants in that system as defined in Article 24(2)(a) to (c).
- (5) The obligation of the Czech National Bank referred to in paragraph 4 shall also apply if it receives a notice of adjudication of bankruptcy in respect of the assets of a participant in a system operated pursuant to this Act or a notice of suspension of payments from the competent authorities of other member states of the European Union or states of the European Economic Area under the law of the relevant state.
- (6) If the Czech National Bank receives a notice of suspension of payments or of adjudication of bankruptcy in respect of the assets of a participant in a system operated under the law of another member state of the European Union or a state of the European Economic Area and the registered office or place of business of that participant in the system is in the Czech Republic, it shall be required to communicate the same at the earliest opportunity to the competent authorities of other member states of the European Union and states of the European Economic Area under the law of the relevant state.

## Article 30

### **Licence to operate a payment system**

- (1) An application for a licence to operate a payment system (hereinafter referred to as the “licence”) or an application for an amendment thereto shall be submitted by the system operator, in writing, to the Czech National Bank. The payment system agreement, including the rules of the system, shall be submitted together with the application for a licence or an amendment thereto.
- (2) A licence may be granted if:
  - a) the system operator is a joint-stock company having its registered office in the Czech Republic;
  - b) the system operator has paid-up capital of at least CZK 500,000,000, comprising pecuniary contributions in at least this amount;
  - c) the assets used to pay the capital are of transparent and unexceptionable origin;
  - d) the system operator is an entity capable of ensuring irrevocability of orders pursuant to Article 27;
  - e) the system operator has the technical and organisational prerequisites for pursuing the activities of the system, including functional management and control mechanisms and a risk management system commensurate with the scope of the intended system;
  - f) the persons nominated for executive managerial positions of the system operator with which are associated the powers and responsibilities laid down in the Articles of Association, and the members of the system operator’s statutory body, are competent, credible and experienced individuals;
  - g) the system operator has in place a strategy and programme of operations for the intended system based on realistic economic calculations;
  - h) the liquidity of the clearing of orders accepted by the system is ensured, the financial risks are secured, and the systemic risks have been eliminated.
- (3) The licence shall be granted to the system operator for an indefinite period and shall not be transferable to any other entity, nor shall it pass on to a legal successor.
- (4) The Czech National Bank may stipulate in the licence the conditions to be complied with when operating the system.
- (5) The Czech National Bank shall set forth in a decree the essential elements of the licence application.

## Article 31

### **Supervision of the system and the confidentiality obligation**

- (1) The activities of systems operated pursuant to this Act shall be subject to supervision by the Czech National Bank.
- (2) The system operator and the participants in the system shall provide the persons authorised to exercise supervision of the system with the required information and necessary co-operation.

- (3) All persons exercising supervision of the system shall maintain confidentiality regarding all information acquired in the context of the performance of their occupation, employment or duties. They may divulge to third parties information in aggregate form only such that the specific system or person in question cannot be identified. The obligation of confidentiality shall persist even after their occupation, employment or duties have ceased.
- (4) The persons referred to in paragraph 3 may use information acquired when performing their duties solely for executing tasks pursuant to this Act or in court proceedings concerning actions against decisions made in the context of exercising supervision of systems or in like proceedings before an international authority.
- (5) Subject to compliance with the statutory conditions, disclosure of information acquired in the context of exercising supervision of systems to an authority responsible for supervising banks, financial institutions or financial markets in the Czech Republic or in another state and to an authority responsible for supervising payment systems in another state shall not be deemed a breach of the confidentiality obligation.
- (6) Subject to compliance with the statutory conditions, disclosure of information acquired in the context of exercising supervision of systems to public authorities and other entities in the Czech Republic shall not be deemed a breach of the confidentiality obligation, provided that the information is disclosed for the performance of their duties:
  - a) as an authority involved in the liquidation or bankruptcy of a bank or financial institution,
  - b) of supervision of the authority referred to in subparagraph a),
  - c) as auditor of the statutory financial statements of a bank or financial institution,
  - d) of supervision of the authority referred to in subparagraph c),
  - e) of supervision of compliance with company law,
  - f) in combating money laundering,
  - g) as a law enforcement authority,
  - h) as a central bank responsible for monetary policy,
  - i) as a system of insurance of deposit claims and insurance of investors.The same shall apply with respect to public authorities and other entities in other member states of the European Union and other states of the European Economic Area.
- (7) Information acquired in the context of exercising supervision of systems may also be disclosed to European Union bodies where necessary to meet the obligations of an international treaty which has been passed by Parliament, ratified and promulgated and which is binding on the Czech Republic, or pursuant to any similar international treaty that entered into force before 1 January 1993 (hereinafter referred to as an “international treaty”) and to other entities with whom the Czech Republic has entered into an agreement on exchange of information pursuant to an international treaty.
- (8) The information referred to in paragraphs 5 to 7 may be disclosed only on condition that the relevant institution has in place a regime of information protection at least within the scope of this Act.

- (9) Information acquired in the context of exercising supervision of systems from authorities in the Czech Republic which are subject to the statutory duty of confidentiality or from the authorities of other countries may be used solely for the purposes for which it was provided and may not be disclosed to any other person without the consent of the provider.

## Article 32

### **Remedial measures and penalties**

- (1) Should the Czech National Bank detect any shortcomings in the operation of a system, it may, according to the nature and seriousness of the shortcoming:
- a) require that the system operator remedy the situation within a specified period,
  - b) suspend the performance of activities ensuing from the licence until the system operator remedies the situation,
  - c) order the system operator to ensure an extraordinary audit of the system or its participants at the expense of the system operator,
  - d) order the system operator to expel one or more of the participants from the system,
  - e) impose a fine of up to CZK 100,000,000 on the system operator,
  - f) revoke the licence of the system operator.
- (2) “Shortcoming in the operation of a system” shall mean:
- a) failure to comply with the conditions stipulated in the licence or to fulfil the conditions under which the licence was granted,
  - b) failure to comply with this Act, special legal rules and the provisions issued by the Czech National Bank,
  - c) endangering of the safety and soundness of the system,
  - d) management of the system by persons who are not sufficiently competent or who are not trustworthy,
  - e) a fall in capital below the limit provided for in Article 30(2)(b).

## Article 33

### **Revocation of the licence**

- (1) If the licence was obtained on the basis of false information stated in the application or if the system operator did not commence the activities of the system within 18 months of being granted its licence, the Czech National Bank shall revoke the licence.
- (2) The decision to revoke the licence shall specify the date as of which the licence is revoked; the decision shall be published in the Commercial Bulletin.
- (3) The Czech National Bank shall serve its decision to revoke the licence on the operator.

## Article 34

### **Expiry of the licence**

A licence shall cease to be valid on the day:

- a) as of which it was revoked,

- b) as of which the system operator is wound up,
- c) from which, in accordance with a decision adopted by the General Meeting, the system operator will cease to carry on any activity for which the licence is required,
- d) as of which the number of participants in the system drops below the limit provided for in Article 23(1)(a).

## **PART FIVE JOINT PROVISIONS**

### Article 35

- (1) Save as otherwise provided in this Act, the Czech National Act shall observe the Administrative Procedure Code when exercising its powers pursuant to Part Three and Part Four of this Act.
- (2) The Administrative Procedure Code shall not apply to the procedure referred to in Article 32(1)(a).
- (3) The party to the proceedings pursuant to Part Three of this Act shall be the issuer; the party to the proceedings pursuant to Part Four of this Act shall be the system operator.
- (4) When imposing the fine referred to in Article 22 or Article 32(1)(e), the Czech National Bank shall take into consideration the nature, seriousness, manner, duration and consequences of the unlawful action and economic relations of the entity being fined.
- (5) The imposition of the fine referred to in Article 22 or Article 32(1)(e) shall be without prejudice to liability under special legal rules.
- (6) Proceedings to impose a fine may be commenced up to one year from the detection of the shortcoming, but no later than ten years from the date on which the shortcoming arose. A fine may be imposed repeatedly.
- (7) A fine shall constitute a state budget revenue.
- (8) Proceedings pursuant to Article 32 or 33 may also be opened by the serving of a decision.
- (9) The time limit for execution of a decision issued pursuant to Article 32 shall be at least 24 hours.
- (10) An appeal may be filed against a decision of the Czech National Bank pursuant to Part Three and Part Four of this Act. Decisions concerning appeals shall be made by the Bank Board of the Czech National Bank. The appeal shall not have suspensory effect, save for appeals against decisions on the granting of prior consent, decisions on the granting of, or amendment to, a licence and decisions to impose a fine.

**PART SIX**  
**EFFECT**

Article 36

This Act shall take effect on 1 January 2003, save for Article 8(2)(b), which shall take effect on 1 January 2004, and save for the second sentence of Article 2(1)(b), Article 2(2), Article (8)(3), the second sentence of Article 11(3), Article 23(1)(e), Article 27(4)(c), Article 28(5), Article 29(1)(b), Article 29(3), (5) and (6), and the last sentence of Article 31(6), which shall take effect on the date the Treaty of Accession of the Czech Republic to the European Union enters into force.

**Klaus**  
**Havel**  
pp **Rychetský**