

PAYMENT SYSTEMS LAW, 5768-2008

Chapter One: Definitions

Definitions

1. In this Law –

“payment order” – an instruction for the transfer of monies;

“the Governor” – the Governor of the Bank of Israel appointed in accordance with Section 8 of the Bank of Israel Law, 5714-1954¹;

“the Securities Law” – the Securities Law, 5728-1968²;

“system rules” – the rules governing the operation of the payment system;

“the Stock Exchange Clearing House” – a clearing house as defined in Section 50A of the Securities Law;

“payment system” – a system in which payment orders are received, transferred or executed between the system participants, all or some of which have an account at the Bank of Israel;

“controlled system” – a payment system which has been declared in accordance with Section 2;

“designated controlled system” – a controlled system which has been declared in accordance with Section 3;

“operator” of a payment system – an entity in charge of the operation of a payment system;

“participant” – in a payment system – anyone who may give or transfer payment orders directly in the payment system and who is defined as a participant according to the system rules.

Chapter Two:

¹ Sefer HaHukkim (Book of Laws) 5714, page 192.

² Sefer HaHukkim (Book of Laws) 5728, page 234.

Declaration of Controlled System and Designated Controlled System

Declaration of controlled system

2. (a) The Governor may, after giving the payment system operator an opportunity to be heard, declare a payment system, save for the Stock Exchange Clearing House, to be a controlled system for the purposes of this Law, on the fulfillment of the following two conditions:
 - (1) the system's activity is vital to the general payment framework within the economy;
 - (2) there is concern that the improper, inefficient or unreliable activity of the system might affect the payment framework within the economy.
- (b) The Governor may also declare, in accordance with the provisions of Sub-Section (a), a payment system that operates, in whole or in part, outside Israel to be a controlled system; the operator of such a controlled system may manage an account at the Bank of Israel under such terms and conditions as the Governor directs.

Declaration of designated controlled system

3. The Governor may, after giving the payment system operator an opportunity to be heard, declare a controlled system to be a designated controlled system, for the purpose of applying the provisions of Sections 14 and 15 to such system on the fulfillment of all the following conditions:
 - (1) the system's activity is material to the monetary and financial stability in Israel;
 - (2) there is concern that the improper, inefficient or unreliable activity of the system might affect the stability mentioned in Sub-Section (1);
 - (3) the applicability of Sections 14 and 15 to the system is important for the purpose of maintaining stability in accordance with Sub-Section (1).

Declaration considerations

4. In declaring a controlled system and a designated controlled system, in accordance with Sections 2 and 3, the Governor may take into account, *inter alia*, the following considerations:

- (1) the estimated overall amount of the payment orders which will be received or executed in the system, during an ordinary day;
- (2) the estimated number of payment orders which will be received or executed in the system, during an ordinary day;
- (3) the number of system participants;
- (4) whether such system is linked to another controlled system or to the Stock Exchange Clearing House;
- (5) the extent of the influence the system has upon Israeli currency.

Request for information for declaration purposes

5. The Governor or anyone authorized by him for such purpose may demand the operator of a payment system and a participant in such a system for any information required by him for the purpose of a declaration in accordance with Sections 2 and 3, provided that he shall not request information which may expose the identity of anyone receiving service from a system participant.

Abrogation of declaration

6. If any of the conditions in respect of which a declaration pursuant to Sections 2 or 3 was made ceases to exist, the Governor shall abrogate the declaration, after providing the operator of the payment system with an opportunity to be heard; the abrogation shall come into effect 15 days after notice to the system operator.

Publication in the Official Gazette

7. Notice of a declaration in accordance with Sections 2 and 3 and of the abrogation of a declaration in accordance with Section 6 shall be published in the Official Gazette and on the Bank of Israel's Internet site and shall include the identity details of the system operator; the publication on Bank of Israel's Internet site shall take place shortly after the declaration or its abrogation.

Chapter Three: Control

Duties of a controlled system operator

8. The operator of a controlled system shall be responsible for complying with the conditions and requirements applicable in respect of the system pursuant to this Law, including the following conditions:

- (1) the formulation of rules ensuring the system's stability, efficiency and proper functioning, including rules concerning the continued participation in the system of a participant against which liquidation proceedings are being conducted, and concerning the means to enforce said rules;
- (2) the system's operation in a manner ensuring its stability, efficiency and proper functioning;
- (3) the existence of means for the management, prevention and mitigation of risks which might exist or which in fact exist in the system;
- (4) the existence of back-up arrangements in the system in the event of emergency.

Control authority

9. The Bank of Israel shall oversee a controlled system in order to verify its stability and efficiency in accordance with Section 10 and its proper activity; for such purpose, it shall examine, *inter alia*, the system's compliance with the provisions of this Law and the appropriateness of the system rules.

Examination of the controlled system's stability and efficiency

10. (a) The controlled system's stability shall be examined, *inter alia*, in accordance with the following:
 - (1) the system's reliability;
 - (2) the system's accessibility;
 - (3) the integrity, reliability and security of the information in the system;
 - (4) in a designated controlled system – the existence and content of system rules regulating the time and conditions on the fulfillment of which a payment transaction, within the meaning thereof in Section 14(a), will be deemed irrevocable, or on the fulfillment of which an obligation due to which a payment order was received in the system shall be deemed an obligation which has been fulfilled.
- (b) The controlled system's efficiency shall be examined, *inter alia*, in accordance with the following:
 - (1) the swiftness and efficiency of the payment order's execution;

- (2) the overall cost of participation in the system, per participant, having regard to the services which the system provides to participants;
- (3) the reasonableness of the conditions for participation in the system.

Directions to a controlled system operator

11. (a) If the Governor believes that the operator of a controlled system is not performing any of its duties in accordance with Section 8, he may, after giving the system operator and the system participants an opportunity to be heard, direct it to perform the said duty, in the manner and within the time directed by him, and *inter alia* direct it to introduce or change rules, in accordance with the provisions of Section 8, or to operate the system in accordance with the provisions of the said Section.
- (b) If the operator of a designated controlled system does not carry out any direction given to it by the Governor in accordance with Sub-Section (a) for the introduction or change of rules, the Governor may introduce or change them; if the Governor introduces or changes rules in accordance with this Sub-Section, he shall notify the system operator thereof and publish the rules introduced or changed as aforesaid, or notice thereof, on the Bank of Israel's Internet site; the system operator shall give notice of the introduction or change of the rules to the system participants in accordance with the system rules; the rules or changes shall take effect on the date specified by the Governor in the notice or publication as aforesaid.

Reporting and information

12. The Governor or anyone authorized by him for such purpose may request from a controlled system operator or from a controlled system participant, save for the Stock Exchange Clearing House, at such time and in such manner as he directs, any information and document required by him for the purpose of implementing the provisions of this Law, including information regarding the amount and scope of the payment orders received or executed in the system, and information regarding the system rules, provided that information which may expose the identity of anyone receiving service from a system participant shall not be requested, unless, in the Governor's opinion such exposure is vital for implementing the provisions under this Law.

Exemption

13. Where it is proved to the Governor's satisfaction that another authority, which has powers similar to those vested in the Governor and the Bank of Israel pursuant to this Law, is in fact carrying out due control of a controlled system and of the system

operator, the Governor may exempt such system, the system operator and the system participants from the provisions of this Law, in whole or in part, save for the provisions of Sections 14 and 15; notice of the intention to grant an exemption and of granting it as aforesaid shall be published on Bank of Israel's Internet site.

Chapter Four: Finality of Payment and Participant's Liquidation Proceedings

Finality of payment

14. (a) Where a payment order is received in a designated controlled system, payment is transferred to the operator of such system for the purpose of executing a payment order or a payment order is executed in the system (in this chapter – payment transactions), and the payment transactions are considered irrevocable by the system rules, the system operator may not be required to annul or alter the entry in the system of these transactions, save in accordance with the system rules, and the system operator may not be held liable for any restitution or compensation by reason of the payment transactions' execution, if it acted in accordance with the system rules.
- (b) Where a payment order is received in a designated controlled system, and the system rules prescribe that the obligation due to which such instruction was received shall be deemed an obligation performed between system participants on a particular date, the obligation shall be deemed to have been performed on such date, provided that the Governor has published notice in the Official Gazette regarding the said date; such notice shall also be published on the Bank of Israel's Internet site.

Liquidation proceedings

15. (a) Where a liquidation order is granted in respect of a participant in a designated controlled system (in this chapter – liquidation proceeding participant), the liquidator shall immediately give notice thereof to the Bank of Israel, which shall immediately give notice thereof to the system operator; the system operator shall give notice thereof to the system participants, in accordance with the system rules, insofar as these rules prescribe a duty to give such notice.
- (b) Section 268 of the Companies Ordinance [New Version], 5743-1983³ shall not apply to payment transactions of a liquidation proceeding participant made before the grant of the liquidation order; however, a court may order annulment of such transaction if it learns that it was made on bad faith,

³ Laws of the State of Israel, New Version 37, page 761.

without consideration or in order to give preference to a particular creditor or to anyone who guaranteed his debt or due to unlawful solicitation or constraint on the part of such creditor or on his behalf.

- (c) The operator of a designated controlled system shall not execute a payment order given by a liquidation proceeding participant prior to granting the liquidation order, on the day after such granting and thereafter or after one hour has passed from the time the system operator received written notice from the Bank of Israel about the granting of the liquidation order, whichever is earlier, and the provisions of Section 14(a) shall not apply to such payment order.
- (d) Notwithstanding the provisions of Section 14(b), an obligation in respect of which a payment order was given to a designated payment system by a liquidation proceeding participant, before the granting of the liquidation order, shall not be deemed, in accordance with the provisions of the said Section, an obligation that was performed between system participants, in respect of the liquidator, unless the following is fulfilled:
 - (1) on the date of granting of the liquidation order, the obligation is considered, pursuant to the system rules, an obligation that has been performed, in accordance with Section 14(b);
 - (2) full payment for the purpose of executing the payment order has been transferred to the credit of the system operator or to the credit of the other participant, before the granting of the liquidation order.
- (e) Where an obligation pursuant to the provisions of Section 14(b) and Sub-Section (d) is considered to have been performed, the system operator may, notwithstanding the provisions of Sub-Section (c), and subject to the system rules, execute the payment order given in connection with the obligation.
- (f) The provisions of Sub-Sections (b) and (d) shall not derogate from the provisions of Section 14(a).
- (g) The grant of a liquidation order in respect of a participant in a designated control system shall not derogate from the system operator's right to deduct from the participant's rights toward the operator, arising prior to granting the liquidation order, the participant's obligations toward the operator arising on the date of liquidation or during one hour after the system operator receives written notice from the Bank of Israel about the granting of the liquidation order, whichever is earlier, provided that the system rules provide that the value of the system operator's obligations or rights toward a system

participant shall be the value of its obligations or rights, less the participant's obligations or rights toward the operator.

- (h) With regard to Sub-Sections (c) and (g) –
- (1) the day after granting the liquidation order, in respect of a controlled system under Section 2(b), shall be deemed to begin upon commencement of said day in accordance with the Israeli clock or in accordance with the clock of the country in which the system is managed, whichever is later;
 - (2) notice from the Bank of Israel to the operator of a designated controlled system, through an electronic system serving the Bank of Israel and the designated controlled system for the purpose of transferring payment orders, shall be deemed to have been received by the system operator on the date on which it was sent, unless the system operator proves that it did not receive the notice or that it received it at some other time, and all due to reasons which were not preventable by appropriate means.

Chapter Five: Miscellaneous Provisions

intra-day credit

16. (a) The Bank of Israel may extend credit to a participant in a designated controlled system, for the purpose of guaranteeing the system's efficient functioning, against a charge submitted as collateral for the participant's undertaking, or against the participant's deposits at the Bank of Israel in respect of which the Bank of Israel has a right of set-off, to the Governor's satisfaction and on such terms as he directs.
- (b) Credit extended in accordance with Sub-Section (a) shall be repaid on the day on which it is extended, and no later than the time the system closes on that day.
- (c) A charge on securities, a charge on a right to securities or a charge on a securities account used as collateral for the undertaking of a participant toward the Bank of Israel, in accordance with Sub-Section (a), shall be governed by the provisions of Section 37 of the Bank of Israel Law, 5770-2010, *mutatis mutandis*.

Request for information

17. The Governor or anyone authorized by him may request information from a payment system operator and from a payment system participant, including information regarding the scope and amount of payment orders, for the purpose of gathering and processing statistical information, provided that such information does not include particulars of a specific participant, of anyone receiving service from such participant or of a specific transaction.

Appealing the Governor's decision

18. A payment system operator or a payment system participant, who considers itself harmed by a direction given by the Governor pursuant to this Law, may appeal it to the Jerusalem District Court.

Confidentiality

19. (a) A person who has obtained information pursuant to this Law while performing his duty shall maintain its secrecy, shall not disclose it and shall not make any use thereof, save in accordance with the provisions of this Law or any other law, or under a court order.
- (b) Notwithstanding the provisions of Sub-Section (a), the Governor may publish general information which is not liable to identify a specific participant, a receiver of service from such participant or a specific transaction.
- (c) A contravention of this Section shall be subject to one year's imprisonment.

Fines

20. (a) If the Governor has a reasonable basis to believe that the operator of a payment system, save for the Stock Exchange Clearing House, has done any one of the following, he may impose upon it a fine in the amount of NIS 100,000:
- (1) it has not provided information it was requested to provide under Section 5;
- (2) it has breached a direction given by the Governor under Section 11;
- (3) it has not provided information or a document it was requested to provide under Section 12.
- (b) If a payment system operator has been requested to provide information under Section 17, and has failed to do so, the Governor may impose a fine upon it in the amount of NIS 15,000.

- (c) A fine imposed pursuant to Sub-Sections (a) and (b) shall be governed by the provisions of Sections 14-I to 14M and 14-O of the Banking Ordinance, 1941⁴, *mutatis mutandis*.

Implementation and regulations

21. The Minister of Finance shall be in charge of the implementation of this Law and may promulgate regulations for this purpose.

Amendment of the Banking Ordinance – No. 24

22. In the Banking Ordinance, 1941⁵, in Section 8, after Sub-Section (b), the following shall be inserted:

“(b1) The realization of a charge on securities, a charge of a right to securities or a charge of a securities account submitted against the provision of credit to a banking corporation under Sub-Section (a), shall be governed by the provisions of Section 44A of the Bank of Israel Law, 5714-1954, *mutatis mutandis*.”

Amendment to the Bank of Israel Law – No. 22

23. In the Bank of Israel Law, 5714-1954⁶, after Section 44, the following shall be inserted:

“Realization of a charge on securities submitted to secure credit

- 44A. (a) Notwithstanding the provisions of Section 19(b) of the Pledges Law, 5727-1967⁷ (in this Section – the Pledges Law), the Bank shall not realize a charge on securities, a charge of a right to securities or a charge of a securities account, including the securities therein as they shall be from time to time, submitted as collateral for the provision of credit to a banking corporation under this Chapter, pursuant to Section 17(3) of the Pledges Law, until it has given notice of its intention to do so, two business days in advance, to the debtor and any person whose right might be affected by the realization.

⁴ Iton Rishmi (Official Gazette) 1941, Schedule 1, page (Hebrew) 69, (English) 85.

⁵ Iton Rishmi (Official Gazette) 1941, Schedule 1, page (Hebrew) 69, (English) 85; Sefer HaHukkim 5765, page 838.

⁶ Sefer HaHukkim (Book of Laws) 5714, page 192; 5767, page 113.

⁷ Sefer HaHukkim (Book of Laws) 5727, page 48.

- (b) Notwithstanding the provisions of Sub-Section (a), the Bank may realize a charge under the said Sub-Section without giving notice, where, in the opinion of the Governor or anyone authorized by him for such purpose, one of the following conditions exists, provided that the Bank gives notice of such realization shortly thereafter, to the debtor and to any person whose right might be affected by the realization:
 - (1) a delay in the charge's realization might significantly affect the ability to pay the secured obligation through the charge's realization;
 - (2) other conditions exist, obliging the immediate realization of the charge, in whole or in part.
- (c) With regard to the duty to give notice pursuant to this Section, a transfer of the securities charged to the Bank to an account exclusively owned by the Bank shall not be deemed as realization.”

Amendment of the Securities Law - No. 34

24. In the Securities Law, 5728-1968⁸ –

In Section 50A, Sub-Section (f) shall be replaced by the following:

- “(f) The clearing house may realize a charge pursuant to the provisions of Sub-Section (e) without giving notice to the chargor of its intention to realize the charge; the clearing house shall give the charger notice of the realization shortly thereafter.”.
- (2) After Section 50A, the following Section shall appear:

“Duties of a clearing house

50B. A clearing house as defined in Section 50A shall be responsible for complying with the conditions and requirements applicable thereto pursuant to the provisions of this Law, including the following conditions:

- (1) the formulation of rules ensuring the stability, efficiency and proper functioning of the clearing house, including rules concerning continued membership in the clearing house of anyone who has been approved by it as a member therein (in

⁸ Sefer HaHukkim (Book of Laws) 5728, page 234; 5767, page 312.

this Section – member of a clearing house) against which liquidation proceedings are being conducted, and concerning the means to enforce said rules;

- (2) the operation of the clearing house in a manner ensuring its stability, efficiency and proper functioning;
- (3) the existence of means for the management, prevention and mitigation of risks which might exist or which in fact exist in the clearing house;
- (4) the existence of back-up arrangements in the clearing house in the event of emergency.

The Authority's supervision of the clearing house's operations

- 50C. (a) The Authority shall oversee a clearing house as defined in Section 50A in order to verify its stability and efficiency in accordance with Section 10 of the Payment Systems Law, 5768-2008⁹; for such purpose it shall examine, *inter alia*, the clearing house's compliance with the provisions of Section 50B and this Section, and the appropriateness of the clearing house rules.
- (b) If the Authority believes that a clearing house is not performing any of its duties pursuant to Section 50B, it may, after giving the clearing house and the members of the clearing house, within the meaning thereof in Section 50B(1) an opportunity to be heard, direct the clearing house to perform the said duty, in the manner and within the time as it directs, and *inter alia* direct it to introduce or change rules, in accordance with the provisions of Section 50B or to operate the clearing house in accordance with the provisions of the said Section.
- (c) If the clearing house does not carry out any direction given to it by the Authority in accordance with Sub-Section (b) for the introduction or change of rules, the Authority may introduce or change them; if the Authority introduces or changes rules in accordance with this Sub-Section, it shall notify the clearing house thereof and publish the rules introduced or changed as aforesaid, or notice thereof, on the Authority's Internet site; the clearing house shall give notice of the introduction or change of the rules to the members of the clearing house within the

⁹ Sefer HaHukkim (Book of Laws) 5768, page 184.

meaning thereof in Section 50B(1) in accordance with the clearing house rules; the rules or changes shall take effect on the date specified in the notice or publication as aforesaid.

- (d) The Authority's chairman or anyone authorized by him for such purpose may request the clearing house or a member thereof, within the meaning in Section 50B(1), at such time and in such manner as he directs, any information and document required by the Authority for the purpose of implementing the provisions of this Section, including information regarding the amount and scope of the payment orders received or executed at the clearing house, and information regarding the clearing house rules, provided that which may expose the identity of anyone receiving service from a member of the clearing house shall not be requested, unless exposure as aforesaid is vital, in the opinion of the Authority's chairman, for implementing the provisions under this Section.
 - (e) In this Section, "clearing house rules" – the rules pursuant whereto the clearing house is operated."
- (3) In Section 52-O, after Sub-Section (b), the following shall be inserted:
- “(b1) If the Authority has a reasonable basis to assume that a clearing house as defined in Section 50A has breached any direction given to it by the Authority pursuant to Section 50C(b) or has not given any information or document it has been requested to give pursuant to Section 50C(d), it may impose upon it a fine in the amount prescribed in item 1 of the Sixth Schedule for a corporation rated “E” (in this chapter – the basic amount for a clearing house).”
- (4) In Section 52P, instead of “52-O(a) or (b)”, the words “52-O(a), (b) or (b1)” shall be inserted.
- (5) In Section 52Q, Paragraph (1), after the words “by virtue of a provision as aforesaid”, the words “and with regard to contravention of a provision as set forth in Section 52-O(b1)” shall be inserted, and everywhere, after the words “from the basic amount for a corporation”, the words “or for a clearing house, as the case may be” shall be inserted.

Amendment of the Pledges Law

25. In the Pledges Law, 5727-1967¹⁰, Paragraph 17(3), in the definition of “securities pledge”, at the end of Sub-Paragraph (2), the words “or at a clearing house as defined in section 50A of the Securities Law” shall be inserted.

¹⁰ Sefer HaHukkim (Book of Laws), page 48; 5764, page 886.