

LAW
No. 133/2013, dated 29.04.2013
ON PAYMENT SYSTEM¹

Pursuant to Article 78 and paragraph 1 of Article 83 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

The law seeks to promote the security, stability and efficiency of Albania's domestic payment system.

Article 2
Scope

1. The law lays down the main standards on licensing, regulation and oversight of important components of Albania's domestic payment system, and lays down the rules for the protection of the systems.

2. In particular, provisions of Chapter IV of the law govern all cases of financial collateral agreements.

Article 3
Inter-institutional cooperation

The Bank of Albania, in performing its tasks laid down in this law, cooperate with any domestic and/or foreign authority, in order to exchange information, coordinate activities, or other cooperation agreements as it deems necessary.

¹ This law is fully approximated with:

- Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 "On settlement finality in payment and securities settlement systems", amended. CELEX number: 31998L0026, Official Journal of the European Union, Series L, Nr. 166, dated 11.6.1998, pp. 45 – 50.
- Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 "On financial collateral arrangements", amended. CELEX number: 32002L0047, Official Journal of the European Union, Series L, Nr.168, dated 27.6.2002, pp. 43 – 50.

Article 4
National Payment System Committee

The Bank of Albania may establish a national payment system committee, by determining its objectives, functions, duties, composition, and rules for its functioning.

Article 5
Definitions

In this Law the following terms have the following meanings:

- a) 'Bank' is a legal person, including branches of foreign banks, licensed to carry out banking and/or financial activities under the Banking Law.
- b) 'Banking Law' is law no 9662, dated 18.12.2006 'On banks in the Republic of Albania', and/or any law amending it.
- c) 'Bank of Albania' is the central bank of the Republic of Albania, specified in Article 161 of the Constitution of the Republic of Albania, and regulated by the law on the Bank of Albania.
- ç) 'Law on the Bank of Albania' is law no 8269, dated 23.12.1997, amended, and/or any law amending it.
- d) '*Cash*' are money credited to an account in any currency, or similar claims for the repayment of money, such as monetary deposits.
- dh) 'Compensation' ('*netting*') is the conversion into one net claim or one net obligation of claims and obligations with the result that only a net claim can be demanded or a net obligation be owed; netting encompasses bilateral and multilateral netting, be it with or without novation.
- e) '*Close-out netting provision*' means a provision of a financial collateral agreement, or of an arrangement of which a financial collateral agreement forms part, by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise:
 - (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or
 - (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.
- ë) 'Financial collateral' means cash and financial instruments.
- f) 'Financial instruments' means domestic or foreign shares and other titles equivalent to shares, bonds and other forms of debt instruments, if these are negotiable on the capital market, other titles which are normally negotiated and which give the right to trade stocks, bonds or other titles through registration, purchase or exchange or that allow cash settlement (excluding payment instruments), including quotas in collective investment societies, money market instruments, precious metals credited to an account, and claims relating to or rights arising from the above mentioned elements.
- g) 'Financial collateral arrangement' is a title transfer agreement, or a pledge, whether or not covered by a master agreement or general terms and conditions, and which applies to financial collateral to ensure the fulfillment of a financial obligation.
- gj) 'Title transfer arrangement' means an arrangement, including repurchase agreements which are regulated by Repo Law, under which a collateral provider transfers full

ownership of financial collateral, to a collateral taker for the purpose of securing or otherwise covering the performance of guaranteed obligations.

h) 'Collateral provider' is a legal person that provides financial collateral under a title transfer agreement, or a pledgor.

i) 'Collateral taker' is a legal person being provided with financial collateral under a title transfer agreement, or a pledge.

j) 'Enforcement event' is the event of failure to fulfill an obligation, or any other similar event between the parties, the occurrence of the which entitles the collateral taker, that based on the financial collateral arrangement, or under the law, or when a close-out netting provision comes into effect, to realize financial collateral.

k) 'Financial institution' is a legal person licensed to carry out financial activities under the law no. 9572, dated 03.07.2006 "On the Financial Supervision Authority" and/or under the Banking Law.

l) 'Participant' means the Bank of Albania, a foreign central bank, a bank, a financial institution, a foreign institution similar to banks and financial institutions, a settlement agent, an operator, a domestic or international public authority, or a system.

ll) 'Indirect participant' is a legal person with a contractual relationship with a participant in a system executing transfer orders, enabling him to pass transfer orders through the system.

m) 'Insolvency proceedings' any collective measure defined in the laws of the Republic of Albania or any other country either to wind up a legal person or to reorganize it, where such measure involves the suspending of, or imposing limitations on transfers or payments.

n) 'Operator' is a legal person in charge, alone, or in cooperation with other legal persons of the operation of a licensed system.

m) 'Payment instrument' is an instrument or collective procedures that enable the transfer of funds from the authoriser/authorizer to the recipient, where the authoriser/authorizer and the recipient may be the same person.

nj) 'System' is a payment system, securities settlement system, or a clearing house.

o) 'Payment system' is a formal arrangement or a regulatory framework, which is binding between 3 or more participants, with common rules and standardised arrangements, for the execution of transfer orders of cash between the participants.

p) 'Securities settlement system' is a formal arrangement, which is binding between 3 or more participants, with common rules and standardised arrangements for the execution of transfer orders of financial instruments between the participants.

q) 'Clearing house' is a legal person responsible for the calculation and/or establishment of net positions for payments, securities transfers or agreements relating to financial transactions; calculation and/or such positions can be based on the clearing house being the buyer to every seller and the seller to every buyer in a specified set of financial transactions.

r) 'Repo Law' is law no 9974, dated 28.7.2008 'On securities repurchase agreement' and/or any law amending it.

rr) 'Settlement account' is an account in the books of the Bank of Albania, or in the books of a settlement agent, used to hold cash or financial instruments, and to settle transfer orders between participants in a system.

s) 'Settlement agent' is a legal person that provides participants in the system with settlement accounts, in order to settle the transfer orders in the system, and occasionally may extend credit to those participants for settlement purposes.

t) 'Transfer order' is:

i) an instruction by a participant to place at the disposal of a recipient an amount of cash by means of a book entry or electronic transfer to an account at a bank, a central bank or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system; and/or

ii) an instruction by a participant to transfer the title to, or interest in, financial instruments by means of a book entry on a register, or otherwise.

th) '*Truncation*' is the removal of an original check, bill of exchange or promissory note and its replacement by a substitute or, by agreement, information relating to the initial instrument, whether with or without the delivery of the original instrument.

CHAPTER II REGULATION AND OVERSIGHT OF SYSTEMS

Article 6

Licensing

1. No natural or legal person may operate a system in Albania without being licensed to operate that system by the Bank of Albania pursuant to this Law.

2. The Bank of Albania lay down the necessary criteria and procedures for the licensing systems to be operated in the Republic of Albania.

3. In case of licensing a securities settlement system and a securities clearing house, the person licensed by the Bank of Albania, pursuant to paragraph 1 of this Article, shall commence its activity only after being licensed by the Albanian Financial Supervision Authority, pursuant to the relevant legislation.

Article 7

Revocation or suspension of license

1. The Bank of Albania may revoke or suspend the license of a system if, in its opinion:

a) the operator has not commenced its activities within 12 months from the date of the granting of the license;

b) the operator has ceased performing its activity for a period longer than 1 month;

c) the operator has obtained the license for the system through false statements or other irregular means;

d) the system operator does not meet one or more applicable licensing criteria;

e) the operator enter into insolvency proceeding;

f) the system threatens the stability of financial system in Albania;

g) the system is no longer in the public or in the interest of the participants.

2. Immediately after the decision to revoke or suspend a license, the Bank of Albania shall notify the operator concerned and shall publish a notice in such manner as the Bank of Albania deems appropriate.

Article 8

Oversight and regulation of systems

1. The Bank of Albania shall regulate and oversee the licensed systems, adopting regulation in this concern

2. The Bank of Albania may impose other standards and requirements on operators, systems, participants and indirect participants.

3. The Bank of Albania and the Albanian Financial Supervision Authority, upon a bilateral agreement, shall specify the role of each institution, with regard to the regulation, oversight and inspection of the securities settlement system and the securities clearing house.

Article 9

Investigative power of the Bank of Albania

1. With a view to ensure compliance with this law and the subsidiary legislation issued under it, the staff of the Bank of Albania, as well as other qualified persons, appointed by it, may visit the offices of the systems, operators, participants and indirect participants, to examine such accounts, books, documents and other records, to obtain such information and data from them, and to take such other actions that the Bank of Albania may deem necessary.

2. Operators, participants and indirect participants shall furnish the Bank of Albania with accounts, books, documents and other records required by this law or by subsidiary legislation issued under it, or any additional information and records, as the Bank of Albania deems necessary.

Article 10

Decision-making power of the Bank of Albania

In accordance with the law on the Bank of Albania, other relevant legal and sublegal acts, the Bank of Albania may issue orders, instructions and decisions, requiring systems, operators, participants and indirect participants to act, or abstain from acting, in any manner the Bank of Albania deems necessary or advisable.

Article 11

Sanctions

1. The Bank of Albania shall take oversight and preventive measures, shall order the discontinuation of offensive actions and the remedy of the resulting consequences on operators, participants or indirect participants, for breach of obligations established by this law and by the subsidiary legislation issued under this law.,

2. The Bank of Albania shall lay down the detailed conditions and methods on taking measures set out in paragraph 1 of this Article.

Article 12

Administrative sanctions

1. In addition to provisions of paragraph 1 of Article 11, the Bank of Albania may impose money penalty to operators, participants and indirect participants, for breaches of provisions stipulated in this law.

2. The Bank of Albania may fine the subjects specified in paragraph 1 of this Article from ALL 500 000 (five hundred thousand) to ALL 3 000 000 (three million), when the person:

- a) breaches paragraph 1 of Article 6 of this law;
- b) breaches paragraph 2 of Article 9 of this law;
- c) obstructs the Bank of Albania in undertaking the investigations set out in paragraph 1 of Article 9 of this law;
- ç) infringes the measures imposed by the Bank of Albania, according to Article 11 of this law;

- d) breaches Article 15 of this law;
- dh) breaches other obligations set out in this law.

3. When the breaches set out in letters 'b' to 'f' of paragraph 2 in this Article or when the money penalty is not paid within the deadline, according to the procedure set out in the law "On administrative contraventions", the Bank of Albania may double the money penalty and may:

- a) suspend the system's license for up to 6 months;
- b) revoke the system's license.

4. Money penalties under this Article are disbursed on behalf of the Bank of Albania.

5. If an administrative sanction imposed by the Bank of Albania is challenged, the operator, participant or indirect participant may appeal or request the annulment or amendment of this act to the Governor of the Bank of Albania, within 15 days from the date when he has received the notification of the act, or from the date of its publication.

Article 13 **Systems of the Bank of Albania**

1. This chapter does not apply to systems owned and/or operated by the Bank of Albania.

2. Without prejudice to the preceding paragraph, the systems owned and/or operated by the Bank of Albania shall comply with the oversight rules adopted by the Bank of Albania that apply to similar licensed systems.

Article 14 **List of systems**

1. The Bank of Albania shall publish and administer a list of the licensed systems and operators subject to its oversight.

2. The list of systems is updated following any change that occurs according to paragraph 1 of Article 6 and paragraph 2 of Article 7 of this law.

Article 15 **Regulation and oversight of payment instruments**

1. With a view to ensure their safety, soundness and efficiency, the Bank of Albania may regulate and oversee the issuance and use of payment instruments, as part of the domestic payment system.

2. The provisions of this law shall apply to such regulation and oversight where appropriate.

Article 16 **Indirect participant**

If warranted on the grounds of systemic risk and on condition that the indirect participant is known to the system, the Bank of Albania may decide that, for the purposes of this law, an indirect participant shall be considered as a participant with respect to a particular system.

CHAPTER III PROTECTION OF SYSTEMS

Article 17

Insolvency proceeding

1. Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from, or in connection with, its participation in a system earlier than the moment of opening of such proceeding.

2. For the purpose of this law, the moment of opening of insolvency proceeding against a participant in the system shall be the moment when:

a) the operator of the system is notified by the Bank of Albania on the opening of such proceeding, pursuant to paragraph 2 of Article 21 of this law; and

b) the Bank of Albania operates a system:

i) the Bank of Albania has been notified by the chancellor, pursuant to paragraph 1 of Article 21 of this law, or

ii) when the Bank of Albania takes the decision for the conservatorship or the mandatory liquidation against a bank.

Article 18

The definitive character of payments, clearing and settlement

1. The following shall be valid, enforceable, and binding, against third parties, including the liquidator and the conservator, and may not be challenged on any ground whatsoever:

a) transfer order, the payment of cash and transfer of financial instruments resulting from such transfer order, when the transfer order has entered into a system in accordance with its rules prior to the moment of the opening of the insolvency proceeding, whether such payment or securities transfer took place before or after the moment of opening of insolvency proceeding;

b) the netting of transfer orders, and of the debts and obligations resulting from such transfer orders, when the former have been entered into a system in accordance with its rules prior to the moment of the opening of insolvency proceedings, whether such netting took place before or after the moment of the opening of insolvency proceeding.

2. The moment of entry of a transfer order into a system is defined by the rules of that system.

3. The netting of debts and obligations within a clearing house shall be valid, enforceable, binding against third parties, including the liquidator and the conservator, and may not be challenged on any ground whatsoever, when the debts and obligations to be netted were notified to the clearing house prior to the moment of the opening of insolvency proceeding, whether the netting or the payment or settlement of the net claim or obligation occurred before or after the moment of the opening of insolvency proceeding.

Article 19

Irrevocability of the transfer order

A transfer order entered into a system may not be revoked by a participant in the system, or by any third party, including the liquidator or the conservator, from the moment defined by the rules of that system.

Article 20

Settlement following the insolvency proceeding

Notwithstanding the opening of insolvency proceedings against a participant in a system, and subject to Articles 17 and 18 of this law, the operator or the settlement agent of a system may, if so authorised under the applicable contractual provisions:

- a) make use of cash and financial instruments available on the settlement account of the participant to settle outstanding transfer orders and any net debit balance the participant may owe after netting, thus allowing for final settlement within the system;
- b) make use of credit line granted to the participant, and realize any collateral provided with the aim to secure such credit line.

Article 21

Information on the opening of insolvency proceeding

1. The chancellor of the court initiating insolvency proceeding against an operator, or a participant, shall provide, as soon as reasonably possible, the Bank of Albania a copy of the relevant court order.
2. The Bank of Albania shall notify, as soon as reasonably possible, the operators of systems of the initiation of insolvency proceeding against an operator, a participant, or an indirect participant.
3. When the Bank of Albania is notified by foreign authorities of insolvency proceeding being initiated against foreign system, operator or participant, the Bank of Albania shall notify immediately the operators of systems.

Article 22

Protection of the settlement account

The balance of cash and financial instruments credited to a settlement account shall not be subject to enforcement procedures, unless the enforcement procedure is initiated by the operator or the settlement agent of the system.

Article 23

Applicable law

1. In the event of insolvency proceeding being opened against a foreign participant in a system, operated by the Bank of Albania or licensed by the Bank of Albania, the laws of the Republic of Albania shall apply entirely and exclusively.
2. In the event of insolvency proceeding being opened against an Albanian participant in a foreign system, the law governing that foreign system shall apply entirely and exclusively.

CHAPTER IV FINANCIAL COLLATERAL AGREEMENTS

Article 24

Scope of application of this chapter

1. The provisions of this chapter are applicable to all financial collateral agreements concluded between legal persons, where at least one of the parties is the Republic of Albania,

the Bank of Albania, a foreign central bank, a bank, a financial institution, a foreign institution similar to banks and financial institutions, a settlement agent, an operator, or a domestic or international public authority.

2. Financial collateral agreement may secure all types of obligations, including present or future, actual or contingent or prospective obligations, owed to the collateral taker or his principal, by the collateral provider or by any other person.

Article 25

Validity and acknowledgment (enforceability) of financial collateral agreement

Financial collateral agreement shall be valid, perfected and enforceable against third parties, including the liquidator and the conservator, and can be realised in accordance with its terms, provided that:

a) the agreement can be evidenced in writing or electronically, or in a legally equivalent manner;

b) the possession of the financial instruments, subject to the financial collateral agreement, is transferred to the collateral taker; this condition is met if the financial instruments:

i) are physically delivered to the collateral taker or a person acting on its behalf;

ii) are held, transferred or subject to any measure in such a manner that the collateral taker or a person acting on its behalf has the possession or the control of the financial instruments. This transfer of the possession of financial instruments may also be achieved by means of their crediting to a special book entry account opened in the name of the collateral provider, the collateral taker or a third party, acting as depositor; and/or

c) the possession of the cash, subject to the financial collateral agreement, is transferred to the collateral taker; this condition is met if the cash is transferred to a separate account, is held, transferred or subject to any measure in such a manner that the collateral taker or a person acting on its behalf has the possession or the control of the cash. The transfer of the possession of cash may be achieved by means of a notification by the collateral taker to the debtor of the claim giving rise to the cash or by the express acknowledgement by such debtor of the existence of the financial collateral agreement.

Article 26

Validity and acknowledgment (enforceability) of “close-out” netting provision

“Close-out” netting provision shall be valid and enforceable, and shall take immediate effect, without prior notice or approval of any court, or action from any other public entity or officer, in accordance with its terms:

a) notwithstanding the opening of insolvency proceeding in respect of the collateral provider, the debtor, the collateral taker, or the creditor;

b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights.

Article 27

Protection of substitution and delivery of additional collateral

1. Financial collateral agreement may contain:

a) an obligation to provide financial collateral or additional financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the guaranteed obligations;

b) a right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value.

2. Delivery of financial collateral pursuant to the obligation or right mentioned in the preceding paragraph is valid, enforceable against third parties, including the liquidator and the conservator, and may not be challenged on any ground in whatsoever way, including when the delivery is made on the day of the opening of insolvency proceeding and at a time the collateral taker was legitimately unaware of the opening of such insolvency proceeding.

3. Delivery of financial collateral according to the obligation or the right set out in paragraph 1 of this Article does not constitute a new agreement between the parties.

Article 28

Realisation of pledged financial collateral

1. Notwithstanding the opening of insolvency proceeding in respect of the pledgee or pledgor, on the occurrence of an enforcement event, the pledgee has the right to immediately realise, without prior notice and without the intervention of any court, or action from any other public entity or officer, or other person, any financial collateral provided under, and subject to the terms agreed in, a pledge:

2. When the financial collateral concerns:

a) financial instrument, it is realised by sale and subsequently setting off their value against or applying their value in discharge of the guaranteed obligations;

b) *cash*, it is realised by setting off the amount against or applying it in discharge of the guaranteed obligations.

Article 29

First ranking right of pledge

The rights of the pledgee over pledged financial collateral shall prevail over the rights of any other creditor of the pledgor.

Article 30

Non-retroactive effect of insolvency proceeding on the provision of financial collateral

The provision of financial collateral may not be declared invalid or void or reversed on account of the opening of insolvency proceeding, provided the financial collateral has been delivered at the latest on the day of the opening of insolvency proceeding and at a time the collateral taker was legitimately unaware of the opening of such insolvency proceeding.

Article 31

Book entry securities

1. In relation to book entry securities, the law of the country in which the relevant account is maintained shall also govern the following matters:

a) the legal nature and proprietary effects of securities;

b) the requirements for perfecting a financial collateral agreement relating to book entry securities, the provision of such securities under such an agreement, and more generally the completion of the steps necessary to render such an agreement and provision effective against third parties;

c) whether a person's title or interest in such book entry securities is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred;

ç) following the occurrence of an enforcement event, the steps required for the realisation of book entry securities provided as financial collateral under a financial collateral agreement.

2. Book entry securities are financial instruments, title to which is evidenced in entries in a register or account maintained by or on behalf of an intermediary.

3. The account in which the book entry securities are held is the register or the account where the securities are recorded on behalf of their holders. This account may be maintained by the collateral taker.

4. The reference to the law of a country is a reference to its domestic law, disregarding any rule under which, in deciding the relevant question, reference should be made to the law of another country.

CHAPTER V EVIDENCE

Article 32

Admissibility of electronic and optical evidence

The existence, the content and the timing of any transfer order, its entry into a system, as well as its execution may be evidenced in all cases, be it civil, criminal or administrative, vis-à-vis any participants or third parties in writing or in a durable medium ensuring its traceability, be it in an electronic or optical form, including the out print of such electronic or optical document.

Article 33

***“Truncation”* procedure**

The Bank of Albania may, through its bylaws, may organise the *“truncation”* procedure of payment instruments, determining also the consequences of such procedure for participants and systems involved in the processing of these instruments.

CHAPTER VI FINAL PROVISIONS

Article 34

Effects on legal provisions

Upon entry into force of this law, the paragraph 5 of Article 116 of law no. 9662, dated 18.12.2006 "On banks in the Republic of Albania", as amended, shall be revoked.

Article 35

Entry into force

This law shall enter into force 15 days after publication in the Official Journal.

Promulgated by Decree No. 8166, dated 13.5.2013 of the President of the Republic of Albania, Bujar Nishani