

# Decision on the Law on Payment Transactions of the Republika Srpska

*In the exercise* of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

*Recalling* paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

*Bearing in mind* that the Peace Implementation Council at its meeting in Madrid on 16 December 1998 urged the authorities of Bosnia and Herzegovina to co-operate fully and without reservation with the international community on a comprehensive and coherent structural reform of the Payment

Bureaux, to be completed by 31 December 2000;

**Noting** that the Republika Srpska Secretariat for Legislature approved the Draft Law on Payment Transactions on 21 July 2000;

**Noting however,** that the Republika Srpska National Assembly has failed to discuss the Draft Law on Payment Transactions;

**Considering** that the entry into force of the Law on Payment Transactions is essential to ensure the necessary legislative framework for the above mentioned Payment Bureaux reform in general, and the regulation of operations between institutions that carry out payment transactions in particular;

All this recalled, considered, borne in mind and noted, I hereby issue the following Decision. The Law which is hereinafter set out shall enter into force as provided for in Article 40 thereof on an interim basis, until such time as the National Assembly of Republika Srpska adopts this Law in due form, without amendments and with no conditions attached.

Pursuant to, and as an integral part of this my Decision herein, I require the appropriate authorities of Republika Srpska to take all necessary steps to ensure that all laws and regulations of Republika Srpska are and remain fully harmonized with the Law on Payment Transactions of the Republika Srpska hereinafter set out.

This Decision, which has immediate effect, shall be published without delay in the Official Gazette of Republika Srpska.

## **DECISION**

### **ON THE LAW ON PAYMENT TRANSACTIONS OF THE REPUBLIKA SRPSKA**

#### **I GENERAL PROVISIONS**

##### **Article 1**

##### **Scope**

This Law governs performance of payment transactions in Konvertible Marka and determines behavior of participants in payment transactions.

## **Article 2**

### **Definitions**

In this Law:

1. "Account" means any account opened under an agreement or a contract between a customer and a bank, whether current, giro, or otherwise, and includes an account under an ad hoc relationship created solely for the purpose of generating a single payment transaction;
2. "Adequate Cover" means the availability of sufficient funds to process payment orders from which the payment order is executed. Funds recorded as mere provisional credit to the originator's Account do not constitute part of the required cover;
3. "Agreement" means the contractual or other agreed relationship between a bank and customer which governs the operation of Account (such as opening, its duration, and modification) and use of payment orders;
4. "Bank" in terms of this Law means (i) a legal entity that is engaged in the business of receiving money deposits or other repayable funds either under a banking license issued by the competent authority, or established by law as a bank; (ii) a legal entity other than a bank as defined in point (i) of this Article, authorized by law to receive deposits or participating in the Payment Transactions; or (iii) the Central Bank. A branch or other organization as part of a bank is a separate bank for the purpose of computing the time within which, or determining the place at or to which, action may be taken or notice or order must be given;
5. "Banking Day" means the part of the day during which the bank is open for the receipt, processing, and transmission of

payment orders and other messages relating to payment transactions;

6. "Central Bank" means the Central Bank of Bosnia and Herzegovina;

7. "Clearing" means exchanging and processing Interbank payment orders for the purpose of calculating either bilateral or multilateral netted amounts owed by or to each bank for the settlement of payment orders included at each clearing cycle;

8. "Konvertible Marka" means the domestic currency of Bosnia and Herzegovina issued by the Central Bank;

9. "Customer" means an individual and any legal or physical person, including a Bank, having an Account with a bank;

10. "Destination Bank" means the Bank identified in a payment order in which payment to the payee in a credit transfer is to take place, or the payor's Account in which a debit

transfer is held. It is the Bank which is to receive the last payment order in a payment transaction. In a credit transfer the Destination Bank is the payee's Bank. In a debit transfer the Destination Bank is the payor's Bank;

11. "Electronically" means the way of transfer by either on-line telecommunication or the off-line physical delivery of tapes, diskettes, or similar devices;

12. "Execution" means the carrying out the instructions contained in a payment order;

13. "Intermediary Bank" means a receiving bank other than the originating or Destination Bank;

14. "Funds" includes cash and deposits kept in Bank Accounts;

15. "Legal Entity" includes an enterprise, company, business association, or a public institution;

16. "Originating Bank" means the Bank which receives the first payment order initiating a payment transaction. In a credit transfer the Originating Bank is the payor's Bank. In a debit transfer the Originating Bank is the payee's Bank;

17. "Originator" means the Sender of the first payment order initiating the payment transaction. In a credit transfer the Originator is the payor. In a debit transfer the Originator is the payee;

18. "Passbook Account" is an Account under which debits and credits are advised to the Customer by the bank recording them in a Passbook originally given by the Bank to the customer and presented to the Bank by the customer (client) each time the account is changed;

19. "Payee" means the party who is to receive payment in a payment transaction;

20. "Payment Order" means an unconditional instruction given to a Bank to pay or collect a specific sum of money out of a designated Account;

21. "Payment Transaction" means a transfer of Funds from the Payor's Account to the Payee or to the Payee's Account. The Payor and Payee in a Payment Transaction may be the same or two different individuals or Legal Entities;

22. "Payor" means the party who is to make payment in a Payment Transaction;

23. "Receiver" means the participant whose Bank is to receive the last Payment Order in the Payment Transaction. In a credit transfer the Receiver is the Payee. In a debit transfer the Receiver is the Payor;

24. "Receiving Bank" means the bank to which the Sender's payment order is addressed;

25. "Reserve Account" means the Reserve Account that under the

Law of the Central Bank of Bosnia and Herzegovina a Bank must open and maintain on the books of the head office and main units of the Central Bank;

26. "Sender" means an individual or Legal Entity giving a Payment Order to a Receiving Bank;

27. "Third Party Processor" means a Bank or other Legal Entity authorized to perform Payment Operations and to provide clearing and/or settlement via computer or electronic communications services;

28. "Value date" means the Banking Day on which a Payment Order is to be acted on as instructed by the Originator;

29. "Restitution" is an action, which restores the previous situation by providing compensation to the injured party. Compensation for damages could involve two components: the actual damage sustained and lost profits. Restitution can be performed as in-kind restitution and as monetary reimbursement. This law envisages only monetary reimbursement;

30. "Inter-bank settlement", for the purpose of this law, means payments of the amounts due from the payment orders, amongst banks, after the completion of the clearing process.

## **Article 3**

### **Konvertible Marka Accounts**

Individuals and legal entities may open accounts in the Konvertible Marka and conduct payment transactions through these accounts under conditions as agreed. An individual or legal entity may have more than one account and in more than one bank.

## **II PAYMENT TRANSACTIONS**

### **Article 4**

#### **Credit and Debit Transfers**

1. A Payment Transaction may be either a credit or debit transfer of Funds and is initiated by the Originator's Payment Order given to the Originating Bank, instructing it to carry out the Payment Transaction;
2. A Credit Transfer is a Payment Transaction originated by the Payor, who issues a Payment Order to his or her Bank instructing it to transfer Funds out of the Payor's Account to the Payee or to the Payee's Account;
3. A Debit Transfer is a Payment Transaction originated by the Payee, based on the Payor's authority, instructing the Payee's Bank to collect money from the Payor's Account.

## **Article 5**

### **In-House and Interbank Transfers**

1. An In-House transfer is a transfer between a Payor and a Payee when their accounts are in the same Bank. An Interbank transfer is a transfer between a Payor to a Payee when their accounts are in different Banks;
2. A Payment Transaction is carried out by the Payor's Bank debiting the Payor's Account and the Payee's Bank either crediting the Payee's Account or otherwise placing the Funds at his or her disposal, as instructed by the Originator. In an Interbank transfer, for each interbank Payment Order, the sending Bank settles with the Receiving Bank as provided in Article 13.

## **Article 6**

### **Participants in Payment Transactions**

1. Participants in an in-house transfer are the Originator, a bank acting as both Originating and Destination Bank, and Receiver. Participants in an Interbank Transfer are the Originator, Originating Bank, Destination Bank, and Receiver, and may include one or more Intermediary Banks;
2. In a Credit Transfer, the Originator is the Payor, the Originating Bank is the Payor's Bank, the Destination Bank is the Payee's Bank, and the Receiver is the Payee;

3. In a Debit Transfer, the Originator is the Payee, the Originating Bank is the Payee's Bank, the Destination Bank is the Payor's Bank, and the Receiver is the Payor;
4. In an Interbank Transfer, beside acting for a Customer, a Bank may act for its own account and in its own name;
5. At least one Intermediary Bank is required in a Payment Transaction whenever the Originating Bank does not settle directly with the Destination Bank;
6. In a Payment Transaction a Bank may act for a Customer or correspondent Bank located outside Bosnia and Herzegovina, in accordance with existing regulations;
7. A Payment Transaction may be out of or into an Account held at the Central Bank in which case this Law applies as if the Central Bank is a Bank.

## **Article 7**

### **Receiver's Authority in a Debit Transfer**

1. A Receiver in a Debit Transfer may revoke his or her authority to the Originator by advising the Destination Bank of the revocation of authority in writing or electronically before the completion of the Payment Transaction;
2. In a Debit Transfer, the advice of the Receiver's death or adjudication of legal incapacity received by the Destination Bank has the same effect as the Receiver's advice of revocation of authority under paragraph (1) of this Article;
3. A Customer whose Account was debited with the amount of a Payment Order carrying out a Debit Transfer, who contests the Originator's authority and who objects to the debit in writing within seven days of learning of the debit to his or her Account, is entitled to the reversal of the debit unless the Destination Bank has been provided with evidence of the authority given by the Customer to the Originator.

## **III PAYMENT ORDERS**



## **Article 8**

### **Choice of Law**

In matters not provided for by this Law, a Payment Order is governed by the law of the Entity where the organizational unit of the Receiving Bank to which the Payment Order is given is located.

## **Article 9**

### **Format**

1. A Payment Order may be given in writing or electronically;
2. The Originator in a Payment Order must accurately identify the Receiver and Destination Bank. Where the Payment Order identifies any participant in the Payment Transaction by name and number, a Receiving Bank is not obliged to confirm the consistency between the name and number and may carry out the payment on the basis either of the name or the number.

## **Article 10**

### **A Payment Transaction and Payment Orders**

A Payment Transaction is initiated by the Originator's Payment Order given to the Originating Bank. In an in-house transfer there is a single Payment Order. In an Interbank Transfer there are at least two Payment Orders, with each Receiving Bank other than the Destination Bank executing its Sender's Payment Order by issuing a corresponding Payment Order to a Receiving Bank, with the last Payment Order sent to the Destination Bank. In an Interbank Transfer each Payment Order instructs the Receiving Bank to carry out the Payment Transaction as instructed in the Originator's Payment Order.

## **Article 11**

### **Receiving Bank's Duties**

1. In a Credit Transfer, a Receiving Bank is obligated to carry out the Sender's Payment Order, only where there is

adequate cover in the Sender's Account;

2. In a Debit Transfer, the Originating Bank shall carry out the Originator's Payment Order, only upon being presented with proof as to the authority given by the Receiver and proof of Funds. Unless otherwise agreed, the Originating Bank is not obligated to provide the Originator with Funds or even provisional credit prior to the completion of the Debit Transfer. If the Originator's Account is credited by the Originating Bank before the completion of the Debit Transfer, credit is provisional, and the Originator's Account may be debited in the amount of the credit if the Debit Transfer is not completed as provided in Article 22 of this Law;

3. A Receiving Bank is obligated to carry out only a Payment Order which (i) is properly filled in and authorized or authenticated; (ii) properly identifies the Destination Bank; and (iii) describes the Receiver with reasonable certainty;

4. A Receiving Bank which declines to carry out its sender's Payment Order is required to promptly advise the Sender of its refusal or rejection;

5. A Receiving Bank is obligated to carry out instructions contained in a Payment Order either on the Banking Day it received it or on its Value Date, if any, whichever is later. A Receiving Bank may establish a cut off hour not earlier than 12.00 noon after which any Payment Order received is deemed to be received on the following Banking Day;

6. An Originating Bank in a Credit Transfer and a Destination Bank in a Debit transfer that has received in the course of a Banking Day more than one Payment Order or other lawful instructions for the withdrawal of Funds from an Account, may process them in any sequence unless otherwise provided in any Law;

7. In receiving a Payment Order and acting in a Payment Transaction, and notwithstanding any agreement to the

contrary, a Receiving Bank is obligated to comply with this Law and any applicable regulation, to act diligently and in good faith, to comply with common banking standards, and assist participants to complete satisfactorily the Payment Transaction. It must maintain confidentiality and act to the best interest of its Sender.

## **Article 12**

### **Cancellation and Withdrawal of a Payment Order**

1. A Payment Order is cancelled by the Sender where a properly authorized or verified cancellation order sent by the Sender or on the Sender's behalf is received by the Receiving Bank at a time and in a manner which enables it to initiate cancellation before carrying out the Sender's original instructions contained in the Payment Order;
2. After the execution of a Sender's Payment Order, at the request of the Sender, the executing Receiving Bank may nevertheless issue to its own Receiving Bank its own cancellation order, which is governed by paragraph (1) of this Article. A cancellation order issued to the Destination Bank by its Sender in the Payment Transaction is effective only it reaches the Destination Bank before the Payment Transaction is completed;
3. A cancellation order must accurately identify the Payment Order it seeks to cancel and may be given to the Receiving Bank in writing or electronically;
4. A Payment Order that has not been carried out by the Receiving Bank is withdrawn in the following cases: (i) at the close of the fifth Banking Day of the Receiving Bank after its receipt or Value Date, whichever is later, (ii) where the Receiving Bank learns of the death or adjudication of the legal incapacity of the Sender or (iii) where the Receiving Bank has been closed by the supervisory authorities;
5. No cancellation or withdrawal of a Payment Order is effective after the completion of the Payment Transaction.

## **Article 13**

### **Interbank Settlement**

1. Settlement for Interbank Payment Orders may take place:
  - a) On banks' Reserve Accounts with the Central Bank, in which case it is governed by the Central Bank Law;
  - b) By posting a Debit or Credit to an Account, other than a Reserve Account, one bank has with the other or with a third bank. Such debit or credit may be either for each Payment Order individually or for batches of Payment Orders in which case it may be at the end of a clearing cycle; or
  - c) By any other means in which an obligation is satisfied.
2. The time for settlement under paragraph (1) of this Article is as follows:
  - a) Settlement under paragraph (1)(a) occurs when settlement is completed under the Central Bank Regulation on the operation of Reserve Accounts;
  - b) Settlement under paragraph (1)(b) by means of a debit to an Account occurs when the debit is posted to the Account;
  - c) Settlement under paragraph (1)(b) by means of credit to an Account occurs when the credit is posted to an Account;
  - d) Settlement under paragraph (1)(c) occurs as determined by the principles of law that determine when the obligation is satisfied.
3. Notwithstanding paragraph (2) of this Article, where settlement under paragraph (1)(b) is for bilaterally or multilaterally netted amounts of Payment Orders, in pursuance to an agreement or rules governing interbank clearing and settlement other than in the Central Bank, settlement occurs when settlement is completed according to the agreement or rules.

## **IV AGENT, THIRD-PARTY PROCESSORS**

## **Article 14**

### **Function**

In carrying out any function in a Payment Transaction, a Bank may employ a Third-Party Processor. As authorized by the Bank, a Third-Party Processor may act on behalf of the authorizing Bank as (i) a communication facility; (ii) an interbank clearing facility, which may further transmit interbank settlement information to the Central Bank; (iii) a managing or operating agent for the Bank of Bank Customers' Accounts; and/or (iv) a sending and receiving point for Payment Orders sent or received by the Bank, which may be accessed directly by Bank Customers for sending and receiving Payment Orders.

## **Article 15**

### **Requirements**

1. A Third-Party Processor must be authorized to perform Payment Operations and in providing clearing and/or settlement communication services, it must further comply with the Central Bank Law and other regulations;
2. A Bank and any other Organization Authorized to Perform Payment Operations may act as a Third-Party Processor on behalf of another Bank.

## **Article 16**

### **Bank Responsibility for Third-Party Processors**

Apart from being responsible for its relations with the Third-Party Processor, a Bank is fully responsible for any action or omission of a Third-Party Processor.

## **Article 17**

### **Transmittal and Receipt of Payment Orders by Third-Party Processors**

1. A Third-Party Processor will reject a Payment Order sent to it directly by a Bank Customer unless: (i) it was so sent

pursuant to the Bank's authority; and (ii) in the case of a Credit Transfer, either the Third-Party Processor acts for the Bank as a managing or operating agent of the Customer's Account and there is Adequate Cover in the Customer's Account, or (iii) the Third-Party Processor has obtained authorization from the Bank;

2. The Customer's Payment Order acted on by the Third-Party Processor is deemed to be an instruction from the Originator to the Originating Bank, executed by the Originating Bank's corresponding Payment Order sent to the Third-Party processor for onward transmittal to the Destination Bank;

3. Where a Bank authorizes a Third-Party Processor to receive Payment Orders sent to the Bank, a Payment Order received by the Third-Party Processor is deemed to have been received by that Bank acting as the Destination Bank.

## **V COMPLETION OF CREDIT TRANSFER AND DISCHARGE**

### **Article 18**

#### **Completion of a Credit Transfer**

A Credit Transfer is completed when funds are credited to the Destination Bank and when a Payment Transaction debits the Originator's Account in the amount specified on the Payment Order. In an Interbank Credit Transfer funds are credited to the Destination Bank once the Interbank settlement is completed, which includes the sending of the Payment Order by the Sending Bank.

### **Article 19**

#### **Payment to the Receiver**

1. Upon the completion of a Credit Transfer, the Destination Bank becomes indebted to the Receiver in the amount of the Payment Order it received, and is obligated to pay him or her promptly;

2. Payment to the Receiver is to be made by crediting his or her Account not later than on the Banking Day following the completion of the Credit Transfer. Where such Account does not

exist or where so instructed, the Destination Bank is to advise the Receiver promptly of the availability of Funds in the Destination Bank's hands and pay him or her as instructed.

## **Article 20**

### **Special Rules**

1. Where the Receiver has no preexisting Account with the Destination Bank, or where such Account has been closed or blocked for incoming payments, the Credit Transfer is completed upon payment of the Destination Bank to the Receiver;

2. Where the Receiver or the Receiver's Account is not identified in the Payment Order received by the Destination Bank with adequate certainty so as to prevent the Destination Bank from being convinced that it is carrying out the Originator's intention, the Destination Bank shall reject the Payment Order and advise its Sender of its rejection;

3. Where the Destination Bank either paid the Receiver or undertook to pay the Receiver prior to being paid, payment to the Receiver or the undertaking to pay is final and irrevocable and the Credit Transfer is deemed to have been completed, except that each Receiving Bank may be owed by its Sender. The Destination Bank's undertaking to pay may be given directly to the Receiver or be under an interbank Agreement.

## **Article 21**

### **Discharge of Debt Paid by Credit Transfer**

Where the Credit Transfer has been made in payment of a debt owed by the Originator to the Receiver, and in the amount of the debt, the debt is discharged upon the completion of the Payment Transaction.

## **VI COMPLETION OF DEBIT TRANSFERS AND DISCHARGE**

### **Article 22**

## **Completion of a Debit Transfer**

1. A Debit Transfer is completed when the Destination Bank debits the Receiver's Account as instructed in the Payment Order it received and has not reversed the debit and rejected the Payment Order until the end of the Banking Day. A shorter time for reversing this debit may be provided by applicable clearing rule, operating procedures, practice, or regulations. Where a payment order instructs the Bank to debit an identifiable Account maintained with it, the debit transfer is completed upon the conclusion of the Banking Day which follows receipt even before a debit is posted to the Receiver's Account, if the Payment Order is not properly rejected until that time;
2. Until the expiration of the time prescribed in paragraph (1) of this Article, the Destination Bank may reject the Payment Order and become entitled from its Sender to a settlement for any amount paid to that Sender, by advising its Sender and the Originating Bank, if these are two separate Banks, of its rejection;
3. Having been advised of the rejection, each Bank Sender in the Payment Transaction other than the Originating Bank is under a corresponding obligation to advise its own Sender, and has a corresponding right, to obtain settlement from that Sender. Each Bank Sender in the Payment Transaction other than the Originating Bank is obligated to advise its own Sender of the rejection not later than on the Banking Day following the day it received notice of the rejection;
4. Having been advised of the rejection, the Originating Bank must promptly, and no later than on the following Banking Day, advise the Originator of the rejection, and may reverse any provisional credit previously accorded to the Originator at his or her Account, or otherwise, recover from the Originator any payment previously made to him or her for the Payment Order;
5. Where rejection of the Payment Order by the Destination



Bank occurs notwithstanding (i) the knowledge of the Destination Bank of the Receiver's authority for the Debit Transfer, (ii) the proper identification in the Payment Order received by the Destination Bank of an existing Receiver's Account held at the Destination Bank and (iii) the availability of Adequate Cover in that Account, the Destination Bank may be liable to the Receiver for wrongfully dishonoring the Payment Order.

## **Article 23**

### **Payment to the Originator**

Upon the completion of a Debit Transfer the Destination Bank and each Receiving Bank that obtained payment from its own Receiving Bank becomes liable to its Sender in the amount of the Payment Order. Each such payment must be made not later than on the Banking Day following the arise of liability. Upon receiving payment and subject to reversal under Article 7(3) of this Law, the Originating Bank becomes indebted to the Originator in the amount of the Originator's Payment Order, and any provisional credit given to the Originator, becomes final. Before such credit becomes final, the Originating Bank is not required to release Funds to the Originator, and unless agreed otherwise, any release of Funds prior to the completion of the Debit Transfer is provisional until the completion.

## **Article 24**

### **Discharge of debt paid by debit transfer**

Where an authorized Debit Transfer has been made in the amount of the debt owed by the Receiver to the Originator, the absolute discharge of that debt occurs when following the completion of the Payment Transaction the Originating Bank becomes indebted to the Originator in the amount of the Originator's Payment Order.

## **VII LIABILITY, DAMAGES, AND RESTITUTION**

## **Article 25**

## **Liability for Authorized or Verified Payment Order or Cancellation Orders**

1. A Sender is responsible for a Payment Order or cancellation order issued by that Sender or under his or her authority, or that has been authenticated by the Receiving Bank under a commercially reasonable security procedure (herein subparagraph (2)) agreed upon between the Bank and that person. It is the responsibility of the Sender to prove that the issue of the Payment Order or cancellation order was made by an unauthorized person;

2. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar devices. Comparison of a signature on a Payment Order or communication with an authorized specimen signature of the Customer is not by itself a security procedure.

### **Article 26**

#### **Sender's Liability**

1. Where a Credit Transfer is properly and timely completed, a Sender shall hold the Receiving Bank harmless, so that the Sender is obligated to reimburse the Receiving Bank for any loss sustained by the Receiving Bank in properly carrying out the Sender's instructions contained in the Payment Order, including but not limited to, covering the amount of the Payment Order, commercially justifiable expenses, fees and interest charges;

2. In a Debit Transfer, each Sender warrants to its Receiving Bank that its own Payment Order is duly authorized, and is in accordance with the authorization of the Originator and Receiver, and that each is effective and valid.

### **Article 27**

#### **Credit Transfer Originator's Release or Refund**

1. Where a Credit Transfer is not completed, the Originator has no liability to the Originating Bank and is entitled to have his or her Account recredited for any amount debited in cover for his or her Payment Order. The Originator is further entitled to recover from the Originating Bank all expenses and fees as well as interest for any amount refunded;
2. An Originating Bank that carried out the Originator's instructions has a corresponding entitlement for the recovery of the amounts due for the Payment Order from each Receiving Bank and from the Destination Bank that did not complete the Payment Transaction;
3. Rights under this Article are irrespective of either the existence or absence of fault on the part of any participant in the Payment Transaction.

## **Article 28**

### **Liability for Loss**

1. In the situation where the Receiving Bank was grossly negligent in carrying out the instructions of the Payment Order, that Bank is responsible for all damages arising from the gross negligence;
2. Where the grossly negligent bank was other than the Originating bank, the Originator is entitled to recover under this Article from either the originating or the grossly negligent Bank. As between the two Banks, vis-U-vis each other, liability is to be allocated to the grossly negligent Bank, and where both were grossly negligent, according to the degree of their respective fault.

## **Article 29**

### **Erroneous Completion of a Credit Transfer**

Where a credit transfer is completed, but not as instructed in the originator's payment order, the following rules apply:

1. Where the amount paid to the Receiver exceeds the amount of the Originator's Payment Order, each Sender is responsible for the amount of its own Payment Order. The erring Bank is

entitled to recover from the Receiver the amount of overpayment;

2. Where the amount paid to the Receiver is less than the amount of the Originator's Payment Order, the erring Bank is required to pay the difference and is entitled to recover that amount from the Originator;

3. Where payment was made to a Receiver other than that of the Originator's Payment Order, the Credit Transfer is deemed not to have been completed. The erring Bank must honor the original instruction in the Payment Order but is entitled to recover from the Receiver who has mistakenly been paid the amount of Payment Order.

## **VIII BANK ACCOUNTS**

### **Article 30**

#### **Withdrawals and Payments**

1. Subject to the terms of the Agreement between Bank and Customer a credit balance which constitutes Adequate Cover in an Account may be withdrawn by the Customer or paid by the Bank according to a Payment Order;

2. Paragraph (1) of this Article does not apply where the credit balance in an Account has been subject to a garnishment, seizure or a similar creditor process, where the Account has been closed, suspended or frozen, and where in carrying out the Payment Orders the Bank will be violating any law.

### **Article 31**

#### **Ordinary Care**

1. A bank will exercise ordinary care in handling payment orders;

2. A customer will exercise ordinary care in order to prevent

forgery and unauthorized issue or alteration of payment orders to ensure that Payment Orders are clear and unambiguous;

3. Having exercised ordinary care in the interpretation of ambiguous Payment Orders, a Bank acting in good faith and without knowledge that it acts contrary to what the Sender actually meant, may carry out the Payment Orders.

## **Article 32**

### **Statement of Account**

1. Other than for Passbook Accounts, a Bank will provide its Customer, at minimum, monthly, a statement of Account identifying each credit and debit posted to the Account since the last statement and providing for the final balance;

2. For a Passbook Account, a Bank must facilitate the ongoing update of the Passbook upon presentation of the Passbook by the Customer. In each such an update, each credit or debit is posted to the Account since the previous update, and the final Account balance, must be recorded;

3. The Customer must exercise ordinary care in reviewing the Passbook updates and Account balances and advise the Bank, as soon as the Customer knows of any discrepancy or contested debit or credit. The Bank will investigate any discrepancy or contested credit or debit, and where the facts are agreed or determined, make all necessary adjustments and corrections to the Passbook Account.

## **Article 33**

### **Confidentiality**

A Bank is bound by confidentiality and may not disclose any information on the Account to anyone other than the Customer, except otherwise authorized by the Customer or prescribed by the law.

## **Article 34**

## **Modification**

A Bank will not unilaterally modify the terms of the Agreement unless advising the Customer at least 30 days before the change comes into effect. A modification in breach of this provision is ineffective.

## **Article 35**

### **Variations and Implementation**

1. The provisions of this Law may not be varied or voided by agreement or Regulations except that the agreement or Regulations may (i) increase customer's rights, and (ii) provide for reasonable standards specifying ordinary care by each party, as well as for a reasonable method for giving any advice under this Law, the Regulations, and the Agreement.

## **Article 36**

Provisions of Part VIII of the Law may be applied to the Accounts in any currency, unless otherwise regulated by special law.

## **Article 37**

### **Fair Dealing and Good Faith**

1. To be binding on the Customer, an Agreement must be fair and set out rights and responsibilities clearly and in plain language;
2. The Bank and Customer will exercise duties under this Law, including any Regulations, and their Agreement in good faith.

## **IX TRANSITIONAL AND CLOSING PROVISIONS**

## **Article 38**

The Ministry of Finance, after it obtains the opinion from the Central Bank, shall issue: form and contents of Payment Orders, rules for payment order transfer, the clearing and settlement of interbank Payment Orders, Bank duties, procedures and practices in receiving Payment Orders and carrying out Payment Transactions, elements of the Bank Account Agreement, and information to be provided by Banks to

Customers.

The Ministry of Finance shall appoint authorized organizations to issue and print the prescribed forms for payment operations execution.

### **Article 39**

#### **Lex Specialis**

In the event that it should appear that there is any difference between the law as herein provided and other laws, the provisions of this law shall prevail.

### **Article 40**

#### **Entry Into Effect**

This Law enters into effect on the eighth day after its publication in the Official Gazette of Republic of Srpska.

Sarajevo, 20 December 2000	Wolfgang Petritsch
	High Representative

## **Office of the High Representative**