

VOLUME: X

NATIONAL CLEARANCE AND SETTLEMENT SYSTEMS

Part ID: IV Winding-Up, Judicial Management or Curatorship of Participants in Recognised System (ss 12-15)

CHAPTER: 46:06

An Act to provide for the recognition, operation, regulation and supervision of systems for the clearing of transfer instructions b

12. Central Bank to be notified of winding-up, judicial management or curatorship

Where a participant in a recognised system is wound up or placed under judicial management or provisional judicial management in terms of the Companies Act, the person at whose instance the winding-up order or the order placing the participant under judicial management or provisional management, as the case may be, was issued shall lodge a copy of the order with the Central Bank.

13. Winding-up or judicial management not to affect finality of prior settlements

Notwithstanding anything to the contrary in the Insolvency Act or the Companies Act, the winding up of a participant in a recognised system, or the placing of such a participant under judicial management or provisional judicial management, shall not affect the finality or irrevocability of any payment or transfer which became final and irrevocable in terms of section 10 before the copy of the relevant order was lodged with the Central Bank in terms of section 14.

14. Rules, etc., of recognised systems binding on liquidator, judicial manager or curator

(1) Notwithstanding anything to the contrary in the Insolvency Act, or the Companies Act, where a participant in a recognised system-

(a) is wound up or placed under judicial management or provisional judicial management in terms of the Companies Act; or

(b) is placed under curatorship in terms of the Banking Act, any provision relating to clearance or settlement to which the participant is a party shall be binding upon the participant's liquidator, judicial manager, provisional judicial manager or curator, as the case may be.

(2) Subsection (1) shall apply to the extent that it applies to any payment obligation or settlement obligation which-

(a) was determined through clearance or settlement before the issue of the winding up order or the order placing the participant under judicial management, provisional judicial management or curatorship, as the case may be; and

(b) was either-

(i) to be discharged or transferred on or after the issue of that order; or

(ii) was overdue for settlement on the date of that order.

15. Priority of certain instruments on winding-up of participant in recognised systems

(1) In this section "priority transfer instruction" means a transfer instruction issued by a participant in a recognised system.

(2) Notwithstanding anything to the contrary in the Insolvency Act or the Companies Act, but subject to this section, where a participant in a recognised system is wound up in terms of the Companies Act, the following items shall be paid from the participant's estate, in the following order -

(a) undelivered transfer instructions, other than priority transfer instructions, that were drawn on the participant and cleared through the system before the making of the winding up order; and

(b) undelivered priority transfer instructions that were drawn on the participant and cleared through the system before the making of the winding up order,

and shall rank in preference above any other unsecured claim against the estate.

(3) No payment or transfer shall be made pursuant to subsection (2) in preference to any other claim against an estate unless a request for such payment has been made within sixty days after the making of the winding up order in regard to the participant concerned.

(4) Subsection (2) shall not be construed as permitting a transfer instruction to be satisfied in preference to any other claim against an estate, where the instruction was -

(a) certified by the participant concerned; or

(b) in the case of a priority payment instruction, was issued by the participant concerned,

with a view to giving the drawee of the instruction a preference over the participant's other creditors.