Law of 5 August 2005 on financial collateral arrangements

– transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;

– amending the Commercial Code;

– amending the Law of 1 August 2001 on the circulation of securities and other fungible instruments;

– amending the Law of 5 April 1993 on the financial sector;

– amending the Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of the Grand-ducal Regulation of 17 February 1971 on the circulation of securities;

– repealing the Law of 21 December 1994 concerning repurchase agreements;

– repealing the Law of 1 August 2001 on the transfer of ownership for security purposes

(Mém. A 2005, No 128)

as amended by:

- the Law of 20 May 2011
  - transposing:
    - Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;
    - Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims;
  - amending:
    - the Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems;
    - the Law of 5 August 2005 on financial collateral arrangements;
    - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
    - the Law of 5 April 1993 on the financial sector, as amended;
    - the Law of 23 December 1998 establishing a financial sector supervisory commission, as amended;

  (Mém. A 2011, No 104)

- the Law of 28 July 2014 on the immobilisation of shares and units in bearer form and the keeping of the register of registered shares and the register of shares in bearer form and amending 1) the Law of 10 August 1915 on commercial companies, as amended, and 2) the Law of 5 August 2005 on financial collateral arrangements, as amended;

  (Mém. A 2014, No. 161)

- the Law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes,
  1. transposing Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC,

2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council;

2. transposing Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes;
3. amending:
   (a) the Law of 5 April 1993 on the financial sector, as amended;
   (b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
   (c) the Law of 5 August 2005 on financial collateral arrangements:
      - transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;
      - amending the Commercial Code;
      - amending the Law of 1 August 2001 on the circulation of securities and other fungible instruments;
      - amending the Law of 5 April 1993 on the financial sector;
      - amending the Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of the Grand-ducal Regulation of 17 February 1971 on the circulation of securities;
      - repealing the Law of 21 December 1994 concerning repurchase agreements;
      - repealing the Law of 1 August 2001 on the transfer of ownership for security purposes;
   (d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids; and
   (e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies;

(Mém. A 2015, No 246)

- the Law of 27 February 2018 implementing Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, and amending:
  1. the Law of 5 April 1993 on the financial sector, as amended;
  2. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  3. the Law of 5 August 2005 on financial collateral arrangements, as amended;
  4. the Law of 11 January 2008 on transparency requirements for issuers, as amended;
  5. the Law of 10 November 2009 on payment services, as amended;
  6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  7. the Law of 12 July 2013 on alternative investment fund managers, as amended;
  8. the Law of 7 December 2015 on the insurance sector, as amended;
  9. the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and
  10. the Law of 23 December 2016 on market abuse;

(Mém. A 2018, No 150)

- the Law of 30 May 2018 on markets in financial instruments and:
  1. transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
  2. transposing Article 6 of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits;
  3. implementing Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;
  4. amending:
     (a) the Law of 5 April 1993 on the financial sector, as amended;
     (b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
     (c) the Law of 5 August 2005 on financial collateral arrangements, as amended;
     (d) the Law of 7 December 2015 on the insurance sector, as amended; and
     (e) the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services; and

5. repealing the Law of 13 July 2007 on markets in financial instruments, as amended, with the exception of its Article 37;

(Mém. A 2018, No 466)

- the Law of 20 July 2022

  1° amending:

  (a) the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services, as amended;
  (b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  (c) the Law of 5 August 2005 on financial collateral arrangements, as amended;
  (d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended;
  (e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in listed companies, as amended;
  (f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
  (g) Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of Grand-ducal Regulation of 17 February 1971 on the circulation of securities; and

  2° implementing Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132;

  (Mém. A 2022, No 371)

- the Law of 15 March 2023:

  1° amending:

  (a) the Law of 5 April 1993 on the financial sector, as amended;
  (b) the Law of 5 August 2005 on financial collateral arrangements, as amended;
  (c) the Law of 30 May 2018 on markets in financial instruments, as amended;

  2° implementing Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU;

  (Mém. A 2023, No 147)

- the Law of 7 August 2023 on the preservation of companies and the modernisation of the bankruptcy law, amending:

  1° Book III of the Commercial Code;
  2° Book II, Title IX, Chapter II, Section I of the Penal Code;
  3° Articles 257 and 555 of the New Civil Procedure Code;
  4° the Law of 10 August 1915 on commercial companies, as amended;
  5° the uniform law on bills of exchange and promissory notes, as amended, as introduced into national legislation by the Law of 8 January 1962;
  6° the Law of 7 July 1971 establishing sworn experts, translators and interpreters, company conciliators and court officers in law enforcement and administrative matters, and supplementing the legal provisions on the swearing-in of experts, translators and interpreters, as amended;
  7° the Law of 23 July 1991 regulating subcontracting activities, as amended;
  8° the Law of 8 June 1999 on the State budget, accounting and treasury, as amended;
  9° the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
  10° the Law of 5 August 2005 on financial collateral arrangements, as amended;

  (Mém. A 2023, No 521)

- by the Law of 15 July 2024 on the transfer of non-performing loans, and:

  1° transposing Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers, and amending Directives 2008/48/EC and 2014/17/EU;
  2° implementing Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy

and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities;

3° amending:

(a) the Consumer Code;

(b) the Law of 5 April 1993 on the financial sector, as amended;

(c) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;

(d) the Law of 22 March 2004 on securitisation and amending

- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
- the Law of 27 July 2003 on trusts and fiduciary contracts;
- the Law of 4 December 1967 on income tax, as amended;
- the Law of 16 October 1934 on wealth tax, as amended;
- the Law of 12 February 1979 on value added tax, as amended;

(e) the Law of 5 August 2005 on financial collateral arrangements, as amended;

(f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

(Mém. A 2024, No 292)

PART I: General provisions

Article 1. For the purpose of this law:

(1) "collateral" means financial instruments and claims;

(2) "close-out netting provision" means a contractual arrangement or, in the absence of any such arrangement, any statutory rule pursuant to which the occurrence of an enforcement event may lead either to the effective realisation of the collateral provided under a financial collateral arrangement or to the netting of the parties' respective claims or positions in financial instruments, whether through the operation of netting or set-off or otherwise and triggers the following effects:

(i) the obligations of the parties are accelerated so as to be immediately due and expressed as a mere obligation to pay an amount representing their estimated value, or are terminated and replaced by an obligation to pay such an amount; or

(ii) an account is taken of what is due from each party 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.

(3) "relevant account" means in relation to book entry securities collateral which is subject to a financial collateral arrangement, the register or account - which may be maintained by the collateral taker - in which the entries are made by which that book entry securities collateral is provided to the collateral taker;

(4) "financial collateral arrangement" means a pledge agreement, a title transfer collateral arrangement, a repurchase agreement or a fiduciary transfer arrangement governed by this law;

(Law of 15 July 2024)

"(4a) "national or foreign provisions" means the national provisions, the provisions of another State that is a contracting party to the European Economic Area Agreement, or of another State;"

(5) "right of use" means the right of the pledgee to dispose of the pledged collateral as the owner of it in accordance with the terms of the pledge agreement;

(6) "enforcement event" means an event of default or any other event "whatsoever"[1] as agreed between the parties on the occurrence of which, under the terms of a financial collateral arrangement or the relevant financial obligation agreement or by operation of law, the collateral taker is entitled to realise or appropriate financial collateral or a close-out netting provision comes into effect;

(7) "equivalent collateral":

(i) in relation to monetary claims, means a payment of the same amount and in the same currency;

(ii) in relation to financial instruments, means financial instruments of the same issuer or debtor, forming part of the same issue or class and of the same nominal amount, currency and description or, where a financial collateral arrangement provides for the transfer of other assets, those other assets;

(8) "financial instruments" has the broadest possible meaning, including:

(a) all securities and other instruments, including, but not limited to shares in companies and other securities equivalent to shares in companies, participations in companies and units in collective investment undertakings, bonds and other forms of debt instruments, certificates of deposit, loan notes and payment instruments;

(b) securities which give the right to acquire shares, bonds or other securities by subscription, purchase or exchange;

(c) term financial instruments and instruments giving rise to a cash settlement (excluding instruments of payment), including money market instruments;

[1] Law of 20 July 2022

(d) all other instruments evidencing ownership rights, claim rights or securities;

(e) all other instruments related to financial underlyings, indices, commodities, precious metals, produce, metals or merchandise, other goods or risks;

(f) claims relating to the items described in sub-paragraphs (a) to (e) above or rights in or in respect of these items,

whether these financial instruments are in physical form, dematerialised, transferable by book entry", including the securities accounts maintained within or through secured electronic registration mechanisms, including distributed ledgers or electronic databases,"[2] or delivery, bearer or registered, endorseable or not and regardless of their governing law;

(Law of 15 July 2024)

"(8a) "foreign law" means the law of another State that is a contracting party to the European Economic Area Agreement, or of another State;"

(9) "reorganisation measures" means measures which involve any intervention by administrative or judicial authorities which are intended to preserve or restore the financial situation and which affect pre-existing rights of third parties, including but not limited to measures involving a suspension of payments, suspension of enforcement measures or reduction of claims;

(Law of 15 July 2024)

"(9a) "reorganisation measure, winding-up proceedings or any other similar national or foreign proceedings" means a reorganisation measure, winding-up proceedings or any other national or foreign proceedings of another State that is a contracting party to the European Economic Area Agreement, or of another State;"

(10) "relevant financial obligations" means the obligations which are secured by a financial collateral arrangement and which give a right to cash settlement and/or delivery of financial instruments or to assets underlying such financial instruments. Relevant financial obligations may consist of or include:

(i) present or future, actual or contingent or prospective obligations, without the need to specifically describe them;

(ii) obligations owed to the collateral taker by a person other than the collateral provider; or

(iii) obligations of a specified class or kind arising from time to time;

(Law of 20 July 2022)

"(10a) "trading venue" means a regulated market, a Multilateral Trading Facility or an Organised Trading Facility;"

(11) "winding-up proceedings" means collective proceedings involving realisation of the assets and distribution of the proceeds among the creditors, shareholders or members as appropriate, which involve any intervention by administrative or judicial authorities, including where the collective proceedings are terminated "by a collective agreement pursuant to the Law of 7 August 2023 on the preservation of companies and the modernisation of the bankruptcy law"[3] or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;

(12) "financial sector professional" means

(a) a public authority, including:

(i) public sector bodies charged with or intervening in the management of public debt;

(ii) public sector bodies authorised to hold accounts for customers;

(b) a central bank, the European Central Bank, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund, the World Bank, the

[2] Law of 15 March 2023
[3] Law of 7 August 2023

European Investment Bank, and all other national or international organisations of a public nature operating in the financial sector;

(c) a financial institution, including:

(i) a credit institution;

(ii) an investment firm;

(iii) an insurance or reinsurance undertaking;

(iv) an undertaking for collective investment;

(v) a management company for one or more undertakings for collective investment;

(Law of 20 July 2022)

"(vi) a payment institution or an electronic money institution;"

(d) a central counterparty, settlement agent or clearing house, including institutions acting in the futures, options and derivatives markets, and a person who acts in a trust or representative capacity on behalf of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (a) to (h);

(e) a commercial or industrial undertaking benefiting from a professional access to the financial market;

(f) a pension fund;

(g) a securitisation undertaking or an entity or other undertaking involved in securitisation transactions;

(h) another professional of the financial sector not included in points (a) to (g).

Article 2. (1) Financial collateral arrangements and netting agreements entered into either by a merchant or a non-merchant are presumed to be commercial transactions.

They may be evidenced among the parties and *vis-à-vis* third parties, in writing or by any other legally equivalent manner as determined by Article 109 of the Commercial Code.

(2) The provision of collateral must be capable of being evidenced in writing. The written instrument evidencing the provision of collateral, which may be in electronic format or any other durable medium, must allow the identification of the collateral to which it applies. With regard to book entry financial instruments and cash claims collateral, it is sufficient to prove that they have been credited to, or form a credit in a designated account. "Without prejudice to Articles 4 and 13, the registration on a list of claims submitted in writing, or in a legally equivalent manner, to the collateral taker is sufficient to identify the claims and to evidence the provision of the claims provided as financial collateral against the debtor and third parties."[4]

(3) References in this law to financial collateral being "provided", or to the "provision" of financial collateral, are to the financial collateral being delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker's behalf. "Any right of substitution or right to withdraw excess collateral in favour of the collateral provider, right to collect the proceeds thereof by the collateral provider until further notice and right reserved to the collateral provider to give instructions on the collateral, shall not prejudice the financial collateral having been provided to the collateral taker as mentioned in this law."[5]

(4) Collateral may be provided in favour of a person acting for the account of the beneficiaries of the collateral, a fiduciary or a trustee, to secure the claims of third-party beneficiaries, present or future, provided such third-party beneficiaries are determined or determinable. Without prejudice to their duties towards the third-party beneficiaries of the financial collateral arrangements, the persons acting for the account of the beneficiaries of the financial collateral, the fiduciary or the trustee, enjoy the same rights as those granted to direct beneficiaries of the financial collateral referred to under this law.

[4] Law of 20 May 2011
[5] Law of 20 May 2011

(Law of 20 May 2011)

"(5) The debtor of a claim provided as financial collateral may waive, in writing or in a legally equivalent manner, his rights of set-off as well as any other exceptions vis-à-vis the creditor of the claim provided as collateral and vis-à-vis persons to whom the creditor assigned, pledged or otherwise mobilised the claim as collateral. Such waiver shall be valid between parties and enforceable against third parties.

(6) The parties in a financial collateral arrangement may agree that the financial collateral provider waives all claims it may have against the debtor of the relevant financial obligations in case of an enforcement event. Such waiver shall be valid between parties and enforceable against third parties."

(Law of 18 December 2015)

""**Article 2-1.** This law shall apply without prejudice to Part I of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and Part IV of the Law of 5 April 1993 on the financial sector, as amended or to the laws and regulations of another Member State which transpose Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (hereinafter referred to as "Directive 2014/59/EU")", as well as to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (hereinafter referred to as "Regulation (EU) 2021/23")"[6].

In particular, Articles 10, 11, 13, 14, 18, 19 and 20(1) to (3) shall not impede any restriction on the enforcement of financial collateral arrangements, on the effect of a security financial collateral arrangement and on any close-out netting or set-off provision that is imposed by virtue of Part I, Title II, "Chapter VII or VIII"[7] of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, or by virtue of the laws and regulations of another Member State in accordance with Title IV, "Chapter V or VI"[8] of Directive 2014/59/EU "or by virtue of Title V, Chapter III, Section 3, or Chapter IV of Regulation (EU) 2021/23"[9], or any restriction that is imposed by virtue of similar powers in the law of another Member State to facilitate the orderly resolution of any entity referred to in sub-point (iv) of point (c) and in point (d) of Article 1(2) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements which is subject to safeguards at least equivalent to those set out in Articles 61 to 70 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended", or in Title V, Chapter V of Regulation (EU) 2021/23"[10]."[11]"

PART II: Pledge

Article 3. This law applies to pledge agreements over collateral.

Article 4. Parties to a pledge agreement may agree that, in order to collateralise the relevant financial obligations of a debtor, all collateral presently or in the future owned by the collateral provider are or will be subject to the pledge without the need to specifically designate it.

Article 5. (1) The privilege shall only remain on the pledged collateral if such collateral has been and has remained or shall be deemed to have remained in the possession of the pledgee or an agreed upon third party.

(2) If financial instruments are pledged, the transfer of possession of such financial instruments from the collateral provider and the enforceability of the pledge against third parties may be done as follows:

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[6] Law of 20 July 2022
[7] Law of 20 July 2022
[8] Law of 20 July 2022
[9] Law of 20 July 2022
[10] Law of 20 July 2022
[11] Law of 27 February 2018

"(a) The transfer of possession of book entry financial instruments shall be validly effected by:

(i) the conclusion of a pledge agreement if the custodian of such financial instruments is the pledgee;

(ii) an agreement between the collateral provider, the pledgee and the custodian or by an agreement between the collateral provider and the pledgee notified to the custodian according to which the custodian will act in compliance with the pledgee's instructions relating to these financial instruments and without any further agreement of the collateral provider;

(iii) the book entry registration of these financial instruments to an account of the pledgee;

(iv) the book entry registration of these financial instruments, without number specification, to an account maintained by a custodian in the name of the collateral provider or a third party to be agreed upon acting as third-party custodian, the financial instruments being designated, in the custodian's books, individually or collectively by reference to the relevant account in which they are registered as pledged.

The transfer of possession provided for in points (ii), (iii) and (iv) shall be considered as a waiver by the custodian of its pledge's ranking over such financial instruments, unless otherwise agreed or notified to the custodian in accordance with point (ii)."[12]

(b) The transfer of possession of bearer financial instruments, the assignment of which is done by physical delivery of such financial instruments, may be done by the delivery of such financial instruments to the pledgee or to an agreed upon third party. "The transfer of possession of bearer financial instruments held in custody with a depositary pursuant to Article 42 of the Law of 10 August 1915 on commercial companies may be done by entering the pledge over the financial instruments in the register of the depositary."[13]

(c) The transfer of possession of registered financial instruments, the assignment of which is effected by the registration of the transfer on the financial instruments registers of the issuer, may be done by entering the pledge over the financial instruments in such registers.

(d) The transfer of possession of financial instruments payable "to the order of" may be effected by a regular endorsement indicating that the financial instruments have been pledged.

(3) "If the pledge is over financial instruments other than those listed in paragraph 2, the transfer of possession is effected as against all third parties when the pledge has been notified to or acknowledged by the issuer of the pledged financial instruments or, if the financial instruments are held by a third-party custodian, when the pledge has been notified to or acknowledged by the third-party custodian."[14]

The notification and the acknowledgement of the pledge are made either in authentic form or under private seal. In this latter case, if a third party challenges the date of notification or acknowledgement of the pledge, such date may be evidenced by any means.

Even before the notification or the acknowledgement, the pledge may be enforced against the debtor if it can be evidenced that he was aware of such pledge.

(Law of 20 May 2011)

"(4) If the pledge is over claims, the transfer of possession is effected as against the debtor and the third parties by the mere conclusion of the pledge contract. Nonetheless, the debtor of a pledged claim may validly discharge his obligation to the collateral provider as long as he has no knowledge of the mere conclusion of the pledge. The pledge of a claim implies the right for the pledgee to exercise the rights of the collateral provider linked to the pledged claim."

("5"[15]) The pledgee benefits in all cases of a retention right over the collateral pledged in his favour.

[12] Law of 20 May 2011
[13] Law of 28 July 2014
[14] Law of 20 May 2011
[15] Law of 20 May 2011

("6"[16]) The priority of pledges is determined by the date on which they became enforceable against third parties.

Article 6. (1) If collateral subject to a pledge in favour of a prior pledgee is pledged by the collateral provider in favour of another pledgee, the provision of the collateral to such other pledgee is effected as follows:

(a) for financial instruments transferable by book entry, pledged in accordance with Article 5(2)(a) in favour of a prior pledgee:

"(i) if the relevant account is in the collateral provider's name, with the consent of the prior pledgees;"

(ii) if the relevant account is in a prior pledgee's name, by the latter's consent and by the consent of any other prior pledgee;

(iii) if the relevant account is in the name of a third party, by the consent of the third party to act as an agreed upon third party and by the consent of the prior pledgees;

(b) for bearer financial instruments, pledged in accordance with Article 5(2)(b) in favour of a prior pledgee:

(i) if the financial instruments have been transferred to a prior pledgee, by the latter's consent to act as agreed upon third party and by the consent of all prior pledgees;

(ii) if the financial instruments have been transferred to an agreed upon third party, by the prior pledgees' consent;

(c) for registered financial instruments, pledged in accordance with Article 5(2)(c) in favour of a prior pledgee, in accordance with the provisions of that article;

(d) for financial instruments payable "to the order of", by regular endorsement indicating that the financial instruments have been pledged in favour of the subordinate pledgee;

"(e) for financial instruments other than those provided for in Article 6(1)(a) to (d), pledged in accordance with Article 5(3) in favour of prior pledgees, by consent of or notification to the addressee of the notice required pursuant to Article 5(3) and by the consent of the prior pledgees."[17]

(Law of 20 May 2011)

"(f) for claims pledged in accordance with Article 5(4) in favour of prior pledgees, by the consent of these pledgees. Nonetheless, the debtor of a pledged claim may validly discharge his obligation to the collateral provider or any other pledgee as long as he has no knowledge of the mere setting up of the pledge."

(2) The agreed upon third-party custodian must be informed of each pledge.

(3) The collateral provider may not re-pledge collateral already pledged in favour of a prior pledgee to another pledgee, if the prior pledgee has a right of use over the collateral.

(4) If an enforcement event occurs in favour of the first priority pledgee, he will be allowed to realise his pledge in accordance with Article 11. If the proceeds of the realisation exceed his secured claim, the balance will remain pledged in favour of the other pledgees and shall be handed over to an agreed upon third-party custodian or if the agreed upon third-party custodian is the first priority pledgee, the balance shall be handed over to the other pledgees in accordance with their agreement, unless the first priority pledgee agrees to continue acting as the agreed upon third-party custodian. If the pledgees do not come to an agreement within a period of time set by the first priority pledgee, the latter shall deposit the balance in safe-keeping with a credit institution established in Luxembourg as administrator for the benefit of the subordinate pledgees.

[16] Law of 20 May 2011
[17] Law of 20 May 2011

(5) If an enforcement event occurs in favour of a pledgee other than the first priority pledgee, this pledgee shall try to come to an agreement with the senior pledgees on the method of realisation of the pledged collateral, on the settlement order and on the distribution of the proceeds.

If the pledgees do not come to an agreement, the most diligent pledgee may petition the chairman of the *Tribunal d'arrondissement* (District Court), sitting in summary proceedings, joining the other pledgees, in order to determine the method of realisation of the pledged collateral, the settlement order and the distribution of the proceeds among the pledgees.

The share of the realisation proceeds belonging to the pledgees who did not enforce their pledge shall remain pledged in their favour.

Appeal and opposition to the order rendered in summary proceedings are governed by Article 939 of the New Code of Civil Procedure. The decision on appeal may not be appealed from.

(6) A pledgee who receives proceeds from the realisation of a pledge and who legitimately ignored the presence of a senior pledgee, may retain the proceeds in an amount sufficient to satisfy his secured claim.

A pledgee who, after realisation of his pledge, has remitted the proceeds or the collateral exceeding the amount of his secured claim to the collateral provider, and who was not put on notice of the presence of other pledgees, cannot be held liable therefore.

Article 7. The collateral provider is presumed to be the owner of the financial instruments pledged. The validity of a pledge is not compromised by the lack of ownership of the collateral provider over the pledged financial instruments, except if the pledgee has been notified, in advance and in writing, of the lack of ownership of the collateral provider. The rule set out in the preceding sentence is without prejudice to the liability of the collateral provider. If the collateral provider has notified the pledgee that it is not the owner of the pledged financial instruments, the validity of such pledge is subject to the confirmation by the collateral provider that it has obtained the consent to the pledging from the owner of the financial instruments.

The provisions of the preceding subparagraph also apply to the other financial collateral arrangements and close-out netting provisions provided for by this law.

Article 8. Unless otherwise agreed, the first priority pledgee is entitled to receive, when they fall due, the principal and, where applicable, the revenues and proceeds of the pledged collateral, and to either apply them to satisfy his claim or retain them as pledged in his favour.

"**Article 9.** The assignment of the rights attached to the pledged financial instruments is governed by the parties' agreement.

In the absence of contrary agreement, these rights remain with the collateral provider, except if a right of use has been granted to the pledgee in which case these rights accrue in his favour."[18]

Article 10. (1) Parties may agree that the pledgee has a right of use over the financial instruments and the monetary claims pledged in his favour. Except with the consent of all prior pledgees, no right of use may be granted to a pledgee other than the first ranking pledgee.

(2) If a right of use is granted to the pledgee: (i) he thereby incurs an obligation to transfer, at the latest on the due date for the performance of the relevant financial obligations, equivalent collateral to replace the financial instruments and monetary claims initially pledged, or (ii) if agreed upon by the parties, he has the right to realise the value of pledged financial instruments and monetary claims by setting off such value against or by applying such amount to discharge the relevant financial obligations. If an enforcement event occurs while the obligation described in (i) above is outstanding, such obligation may be subject to close-out netting.

(3) Pledged financial instruments and monetary claims are deemed to remain in possession of the pledgee regardless of the exercise of his right of use. The equivalent collateral transferred in accordance with paragraph 2 is subject to the same pledge agreement as the financial instruments and monetary claims initially provided and is considered as having been provided at the time the collateral was initially provided in accordance with the pledge agreement.

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[18] Law of 20 May 2011

(4) If the pledged assets are provided as book entry securities and the pledgee exercises its right of use over such financial instruments by way of pledge, transfer of title for security purposes or repurchase agreement, the transfer of possession in favour of the new pledgee or, as the case may be, the transfer of title in favour of the transferee can be done by way of designation in the account of the original collateral provider on the books of the custodian.

Article 11. (1) If an enforcement event occurs, the pledgee may, unless otherwise provided for, without prior notice:

"(a) appropriate the "pledged collateral"[19] or have the "pledged collateral"[20] appropriated by a third party at a price determined, before or after their appropriation, by the agreed upon valuation method";[21] or

"(b) assign or cause the pledged collateral to be assigned:

(i) by private sale in a commercially reasonable manner;

(ii) on a trading venue on which it is admitted to trading; or

(iii) by public auction; or"[22]

(c) cause a judgement to be issued ordering that he retain the pledged collateral as payment up to the amount of his claim, in accordance with an expert valuation; or

(d) proceed with netting in accordance with Part V hereafter; or

"(e) appropriate the pledged financial instruments or have the pledged financial instruments appropriated by a third party:

(i) at the market price, where such instruments are admitted to trading on a trading venue;

(ii) where they are units or shares of an undertaking for collective investment, at the price referred to in point (i) or at the price of the last net asset value published by or for this undertaking for collective investment, provided that the last publication of the net asset value does not exceed one year; or"[23]

(Law of 20 July 2022)

"(f) request the redemption of the pledged units or shares of an undertaking for collective investment at the redemption price in accordance with the instruments of incorporation of this undertaking for collective investment; or

(g) exercise all the rights arising under the pledged insurance contract, including, in the case of a life insurance contract or a capital redemption operation, the right to surrender, or request the insurance undertaking to pay any sums due pursuant to the insurance contract."

"(2) In the case of a public auction, the auction shall, unless provided otherwise, be effected as follows:

(a) the pledge creditor shall appoint, among the *huissiers* (bailiffs) or notaries sworn in the Grand Duchy of Luxembourg, an auctioneer in charge of operating the public auction;

(b) the day of the auction shall be set by the auctioneer and shall be announced at least eight working days prior to that day by including in one or several national newspapers a notice containing:

(i) the designation of the pledged collateral to be sold;

(ii) the day, location and time of the auction, as well as the name and qualification of the auctioneer;

(iii) the currency in which the auction will be held;

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[19] Law of 20 July 2022
[20] Law of 20 July 2022
[21] Law of 20 May 2011
[22] Law of 20 July 2022
[23] Law of 20 July 2022

(iv) any specific conditions applicable to the auction, particularly the existence of a reserve price, the need for a deposit or bank guarantee and, where applicable, the indication that the pledge creditor reserved the right to waive at any time prior to the auction these specific conditions or some of them;

(v) the costs and fees of the auctioneer unless they are borne by the pledge creditor, the debtor or the pledgor.

Upon the request of the pledge creditor, the auctioneer may also make inclusions or publications in foreign newspapers.

The public auction may be organised in the form of a sale of sets of pledged collateral with the same characteristics. The publication of the list of sets for sale shall be made by way of a notice published according to same publication arrangements as those for the public auction notice. Where there are several sets of pledged collateral presented for sale, they may be combined into one set during the auction.

On the day indicated for the auction, it shall be carried upon the request of the pledge creditor.

The bids are made by all persons except the debtor and other persons who are known to be insolvent or persons unknown to the auctioneer. The bidder ceases to have an obligation if his bid is covered by another, even if this other bid becomes null.

The pledged collateral shall be sold in the condition in which it is.

The sale shall be made to the highest bidder, by payment in cash or by any other means of payment provided for in the specific conditions of the auction, including by way of set-off against relevant financial obligations.

Once the sale takes place, it is no longer possible to outbid.

The auctioneer shall draw up, within three working days as from the auction, the minutes which shall include the names and addresses of the successful bidder, the number and designation of the assigned pledged collateral, their sale price and any relevant indications concerning the auction. A copy of the minutes shall be addressed to the pledgor, the debtor and pledge creditor, without it being necessary to be subject to publication. A fixed fee shall be charged for the minutes and their annexes.

If the sale must be subject to an agreement or absence of opposition by a public authority, any potential buyer of this pledged collateral shall, under the conditions laid down in the auction notice, submit his bid to a suspensive condition of obtaining the authorisation or of absence of opposition by this authority, without prejudice to his obligations with respect to fulfilling this condition.

In the event this condition is not fulfilled within the time-frame set in the auction notice, the pledge creditor may agree to one or several additional deadlines. In the absence of such additional deadline or if the last deadline expired without the condition being fulfilled, or in case of opposition or refusal by the authority, the offer and auction shall be null and void. In the cases referred to above, the pledge creditor shall then be free to enforce again the pledge in accordance with this article.

In case the sale is made under suspensive condition, the auctioneer shall draw up the first minutes at the latest within the three working days as from the auction, and then the second on the first working day following:

(a) the day on which the decision of the public authority referred to in the tenth subparagraph is notified to the auctioneer;
(b) the day on which the response deadline has expired; or
(c) the day on which the deadline set in order to fulfil the suspensive condition expires."[24]

(3) If the pledged financial instruments are held by an agreed upon third-party custodian, such third-party custodian shall transfer these financial instruments to the pledgee upon notice of an enforcement event, without having to obtain the consent of the collateral provider or having to inform him in advance. If the pledged monetary claim is owed by a third party, the pledgee may, under the same conditions,

[24] Law of 20 July 2022

demand payment of his claim from the third party up to the amount of his claim, without prejudice to Article 1295 of the Civil Code.

(4) The right granted by the pledgee to the collateral provider to dispose of the pledged collateral does not affect the transfer of possession of the collateral of which the collateral provider does not dispose of.

(Law of 20 July 2022)

"(5) Where the relevant financial obligations are not due at the time the pledge is realised following an event agreed between parties as constituting an enforcement event, the proceeds of the realisation shall be, unless otherwise agreed, applied to satisfy the relevant financial obligations."

Article 12. Notwithstanding the provisions of Article 189 of the Law of 10 August 1915 on commercial companies, approval of the shareholders' general meeting is not required in the event of the total or partial realisation of a pledge of all the shares of a *société à responsabilité limitée* (private limited liability company) and granted, upon provision, to one or more persons within the scope of one transaction.

In all other cases, the approval may be given in accordance with Article 189 of the Law of 10 August 1915 on commercial companies at any time prior to the realisation in favour of one or more persons or groups of persons whether identified or not. Such approval is irrevocable.

If the shares are assigned to an unidentified person approved in accordance with the preceding paragraph in the course of the realisation of the pledge, and if the realisation of the pledge is not effected through public auction notified in advance in writing to the company, its members, excluding the assignor and the assignee, may, within one month after the notification of the assignment to the company, either buy the shares at the realisation price or cause the company to buy the shares at the realisation price.

PART III: Transfer of title for security purposes

Article 13. This law applies to transactions involving a transfer of title to collateral for security purposes, including by way of fiduciary transfer. If the transfer is done on a fiduciary basis, the fiduciary must be a financial sector professional.

The transactions referred to in the preceding paragraph consist in the transfer of title to collateral presently or in the future owned by the transferor, without need to specially designate the collateral, by the transferor to the transferee in order to secure the relevant financial obligations of the transferor or of a third party (…)[25] and include an undertaking of the transferee to retransfer the collateral transferred or equivalent collateral as agreed by the parties, except in the event of total or partial non-performance of the relevant financial obligations.

They also consist in the transfer of title to collateral intended to secure, during the term of the contract, the balance agreed between the parties' obligations, either for a specific transaction, or globally for all or part of the transactions between the contracting parties.

(Law of 30 May 2018)

"Credit institutions, in the framework of providing investment services or performing investment activities, and investment firms are prohibited, under penalty of nullification, from concluding a transfer of title for security purposes with a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients."

(Law of 30 May 2018)

"Article 13-1. (1) Credit institutions and investment firms shall properly consider, and be able to demonstrate that they have done so, the use of title transfer for security purposes in the context of the existing relationship between the "transferor's"[26] relevant financial obligations to the credit institution or investment firm and the "transferor's"[27] assets subjected to the title transfer for security purposes by the credit institution or investment firm.

[25] Law of 20 July 2022
[26] Law of 20 July 2022
[27] Law of 20 July 2022

(2) When considering, and documenting, the appropriateness of the use of title transfer for security purposes, credit institutions and investment firms shall take into account all of the following factors:

a) whether there is only a very weak connection between the "transferor's"[28] relevant financial obligation to the credit institution or investment firm and the use of title transfer for security purposes, including whether the likelihood of a "transferor's"[29] relevant financial obligation to the credit institution or investment firm is low or negligible;

b) whether the amount of the "transferor's"[30] assets subject to title transfer for security purposes far exceeds the "transferor's"[31] relevant financial obligation, or is even unlimited if the "transferor"[32] has any obligation at all to the credit institution or investment firm; and

c) whether all "transferors' "[33] assets are made subject to title transfer for security purposes, without consideration of what relevant financial obligation each "transferor"[34] has to the credit institution or investment firm.

(3) Where using title transfer for security purposes, credit institutions and investment firms shall highlight to professional clients and eligible counterparties the risks involved and the effect of any title transfer for security purposes on the "transferor's"[35] assets."

Article 14. (1) Restrictions agreed upon between the transferor and the transferee on the exercise of the property rights in the collateral transferred do not affect the nature of the property right granted to the transferee.

(2) Transfer of title for security purposes of book entry financial instruments takes effect between the parties and becomes enforceable against third parties at the latest at the time of recording of the financial instruments in an account opened in the name of the transferee or of an agreed upon third-party custodian acting on behalf of the transferee or by their designation, in an account opened in the name of the transferor, as being owned by the transferee.

Transfer of title for security purposes of financial instruments not in book entry form or of claims takes effect between the parties and becomes enforceable against third parties from the time of the agreement between the parties. Nonetheless, the debtor of an assigned claim may validly discharge his obligation by performance rendered to the transferor as long as he has no knowledge of the transfer of his obligation to the transferee. "Transfer of title for security purposes of a claim entitles the transferee to exercise the rights of the transferor linked to the assigned claim."[36]

(3) In the event of total or partial non-performance of the relevant financial obligations, the transferee is discharged from his obligation of retransfer up to the amount of "these relevant financial obligations in accordance with the terms and conditions of valuation,"[37] the termination or netting provisions agreed between the parties and, unless otherwise agreed, without prior notice.

(4) When a transfer of title for security purposes is agreed upon through fiduciary transfer with a financial sector professional transferee, the provisions of Articles 5 to 9 of the Law of 27 July 2003 on trust and fiduciary contracts are applicable, in addition to the provisions of this law. The parties may contractually agree to exclude the application of Article 7(6) of the Law of 27 July 2003 on trust and fiduciary contracts.

PART IV: Repurchase agreements

Article 15. This law applies to repurchase agreements of assets, including to transfers of assets done during the term of the contract and intended to secure the balance agreed between the obligations

[28] Law of 20 July 2022
[29] Law of 20 July 2022
[30] Law of 20 July 2022
[31] Law of 20 July 2022
[32] Law of 20 July 2022
[33] Law of 20 July 2022
[34] Law of 20 July 2022
[35] Law of 20 July 2022
[36] Law of 20 May 2011
[37] Law of 20 July 2022

of the parties, either for a specific repurchase transaction, or globally for all or part of the transactions between the contracting parties.

(Law of 20 July 2022)

"**Article 15-1.** The prohibition provided for in the fourth subparagraph of Article 13 and the obligations provided for in Article 13-1 also apply to repurchase transactions."

Article 16. (1) A repurchase transaction within the meaning of this law is a transaction in which a transferor transfers to a transferee, against payment of a price, title to an asset and for which the obligation or option of a later retransfer of this asset or of an equivalent asset to the transferor for a pre-agreed price is agreed.

(2) The repurchase transaction may concern any type of tangible or intangible assets.

(3) A repurchase transaction of book entry financial instruments takes effect between the parties and becomes enforceable against third parties at the time of recording of the financial instruments in an account opened in the name of the transferee or of an agreed upon third-party custodian acting on behalf of the transferee, or by their designation, in an account opened in the name of the transferor, as being owned by the transferee.

(4) At the maturity of the repurchase transaction, the transferor is under an obligation to accept redelivery of the transferred assets or of equivalent assets. The transferee has, depending on the conditions laid down by the parties, either the obligation or the option to reassign the transferred asset or an equivalent asset.

(5) If the transferee has the obligation to reassign the asset, the repurchase transaction constitutes a committed purchase and resale agreement.

(6) If the transferee has the option to reassign the asset, the repurchase transaction constitutes a committed purchase agreement with resale option.

Article 17. The assignment and reassignment of an asset in the context of a repurchase transaction constitute an effective property transfer. If the parties so agree, the same rule applies to assets substituted for initial assets transferred or transferred as margin cover during the term of the contract. The reassignment does not retroactively affect the proprietary rights of the transferee in the transferred asset during the term of the repurchase transaction.

PART V: Netting and insolvency proceedings

Article 18. Netting of claims or positions in financial instruments effected in the case of "national or foreign"[38] reorganisation measures, winding-up proceedings or similar proceedings is valid and enforceable against third parties, commissioners, receivers and liquidators or other similar persons whatever the date of maturity, the subject matter or the currency of the claims or positions in financial instruments in question may be, provided that it arises from transactions which are the subject matter of bi-lateral or multilateral netting agreements or provisions concluded between two or more parties. Netting is also valid and enforceable if it is effected through the intervention of public organisations or financial sector professionals in charge of clearing and settlement of payments or financial instruments. The netting may be effected, except if agreed otherwise, without prior notice.

Article 19. Provisions providing for connexity of claims or positions in financial instruments as well as termination provisions, indivisibility provisions, margin provisions, substitution provisions, close-out netting provisions, the terms and conditions of valuation and netting and any other provisions stipulated to enable netting as contemplated under the preceding Article, are also valid and enforceable against third parties, commissioners, receivers and liquidators or other similar persons and are effective:

"(a) notwithstanding the commencement or continuation of a "national or foreign"[39] reorganisation measure", a winding-up proceeding or a similar proceeding"[40] and without regard to the

[38] Law of 20 July 2022
[39] Law of 20 July 2022
[40] Law of 20 July 2022

moment when these provisions "and terms and conditions"[41], including those providing for netting, have been agreed upon or enforced,"[42]

(b) notwithstanding any attachment whether civil, criminal or judicial, or penal confiscation", any sequestration"[43] or other disposition of or in respect of such claims or positions in financial instruments.

Article 20. (1) Financial collateral arrangements as well as the enforcement events, netting agreements and the valuation and enforcement measures agreed upon by the parties in accordance with this law are valid and enforceable against third parties, commissioners, receivers, liquidators and other similar persons notwithstanding reorganisation measures, winding-up proceedings or any other similar national or foreign proceedings.

(2) Termination, valuation, enforcement and netting effected by reason of a procedure for enforcement or of a protective measure, including a measure described under Article 19(b), are considered to have occurred before such a procedure or measure.

(3) Except if otherwise agreed, the commencement of winding-up proceedings, reorganisation measures or any other similar national or foreign proceedings with regard to any one of the parties involved in a repurchase transaction, occurring after the transfer of the asset from the transferor to the transferee, does not excuse the parties from proceeding with the repurchase in accordance with the terms agreed. However, the reorganisation measure, winding-up proceeding or any other similar proceeding releases, in every case, both parties from their respective obligations if and to the extent the repurchase cannot be effected in accordance with the terms agreed or otherwise in accordance with the netting provisions agreed upon by the parties.

(4) With the exception of the provisions of the Law of 8 December 2000 on the over-indebtedness, the provisions of Book III, Title XVII of the Civil Code, of Book I, Title VIII and of Book III of the Commercial Code and national or foreign provisions governing reorganisation measures, winding-up proceedings or other similar proceedings and attachments or other measures referred to in Article 19(b) are not applicable "to financial collateral arrangements, to netting agreements and to waivers referred to in Articles 2(5) and 2(6)"[44], and shall not constitute an obstacle to the enforcement and to the performance by the parties of their obligations, particularly their obligation of retransfer or repurchase.

The same rules apply in the event of death or incapacity of the collateral provider, the debtor of the relevant financial obligations or any one of the parties to a netting agreement.

Article 21. (1) Netting agreements and financial collateral arrangements entered into, as well as the provision of collateral in accordance with a financial collateral arrangement, on the day of commencement of a "national or foreign"[45] winding-up proceeding or reorganisation measure "or a similar proceeding"[46], but before the Court decision ruling the opening of such proceedings or before such measure becomes effective, are valid and enforceable against third parties, commissioners, liquidators, receivers or other similar persons.

(2) Where a netting agreement or a financial collateral arrangement has been entered into or where a relevant financial obligation has come into existence, or financial collateral has been provided on the day of the commencement of "national or foreign"[47] winding-up proceedings or reorganisation measures "or similar proceedings, but after the Court decision ruling the opening of such proceedings or after such measure becomes effective"[48], it shall be legally binding and enforceable against third parties, commissioners, receivers, liquidators and similar persons if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such proceedings or measures.

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[41] Law of 20 July 2022
[42] Law of 20 May 2011
[43] Law of 20 July 2022
[44] Law of 20 May 2011
[45] Law of 20 July 2022
[46] Law of 20 July 2022
[47] Law of 20 July 2022
[48] Law of 20 July 2022

(3) The provisions of paragraphs 1 and 2 apply also to payments made by a person on the day a "national or foreign"[49] winding-up proceeding or reorganisation measure "or similar proceeding"[50] commenced against him.

(4) Petitions for and judicial decisions regarding reorganisation measures or winding-up proceedings must indicate the date and time they become effective.

Article 22. An opposition measure filed in accordance with the law concerning the loss of securities between the date on which the agreed upon notice is sent and the date on which the collateral is realised, which period between these two dates may not exceed one month, is invalid and does not interfere with the realisation of the collateral.

PART VI: Conflict of laws

Article 23. (1) Any question with respect to any of the matters specified in paragraph 2 below arising in relation to "financial collateral"[51] on financial instruments transferable by book entry shall be governed by the law of the country in which the relevant account is maintained. 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.

(2) The matters referred to in paragraph 1 are:

(a) the legal nature and proprietary effects of "financial collateral"[52] on financial instruments transferable by book entry;

(b) the requirements for the provision of "financial collateral"[53] on financial instruments transferable by book entry "under a financial collateral arrangement"[54], and more generally, the completion of the steps necessary to render such an arrangement and provision effective against third parties;

(c) whether a person's title to or interest in "financial collateral"[55] on financial instruments transferable by book entry is extinguished or overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred;

(d) the obligations of the custodian of the relevant account towards a person other than the owner of the relevant account who claims competing rights over book entry financial instruments held with the custodian against the owner of the relevant account or another person;

(e) the conditions for the realisation of book entry securities financial collateral following the occurrence of an enforcement event;

(f) the extent of the financial collateral arrangement in respect of book entry financial instruments collateral over the rights to dividends, income and other distributions, or to reimbursements, assignment proceeds or any other proceeds.

"**Article 24.** The national provisions covered by Article 20(4) are inapplicable where the financial collateral provider or the provider of any other similar collateral under foreign law, or the defaulting party in a repurchase agreement or a netting agreement under foreign law is established or resides in Luxembourg." [56]

[49] Law of 20 July 2022
[50] Law of 20 July 2022
[51] Law of 20 May 2011
[52] Law of 20 May 2011
[53] Law of 20 May 2011
[54] Law of 20 May 2011
[55] Law of 20 May 2011
[56] Law of 20 May 2011

PART VII: Amending and repealing provisions[57]

PART VIII: Final Provisions

Article 26. Instruments evidencing a financial collateral arrangement are not subject to registration formalities. They are registered at the fixed rate if they are submitted to the registration formality.

Article 27. This law applies to financial collateral arrangements entered into before it comes into force.

Article 28. Reference to this law may be made under a shortened name by referring to the following title: "Law of 5 August 2005 on financial collateral arrangements."

[57] These provisions are not included in this coordinated version.