Law of 5 August 2005
on financial collateral arrangements

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Contact person

Jean-Michel Schmit
Partner
Luxembourg
Tel. +352 26 4 26 101
jean-michel.schmit@hoganlovells.com
Law of 5 August 2005 on financial collateral arrangements

(Mem. A no. 128 of 16 August 2005, p. 2212)

Amended by:

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The coordinated French version of the law has been made available by Legitech (www.legitech.lu).

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Parties shall only rely on the official French version of the law published in the Luxembourg Official Gazette (Memorial A).
PART I: General Provisions

Art. 1.

For the purposes of this Law, the terms below shall be defined as follows:

1) "assets" 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 by which, on the occurrence of an agreed event either enforcing the realisation of the collateral provided under the financial collateral arrangement or the set-off of the parties' assets, whether through the operation of netting or set-off or otherwise:
   i) the obligations of the parties are accelerated so as to be immediately due and expressed as a sole 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 to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party;

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 transfer of title as collateral, a repurchase agreement or a trust-security agreement governed by this Law;

5) "right of use" means the right of the pledgee to use the pledged assets as though he/she were the owner, in accordance with the terms of the pledge agreement;

6) "enforcement event" means an event of default or any similar event as agreed between the parties on the occurrence of which, under the terms of the financial collateral arrangement or the agreement containing the relevant financial obligation 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" means:
   i) in relation to cash, a payment of the same amount and in the same currency;
   ii) in relation to financial instruments, 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" shall have the broadest definition of the term, and in particular:
   a) all transferable securities and other instruments, including in particular shares and other securities equivalent to shares, shares in companies and units in collective investment undertakings, bonds and other forms of debt instruments, certificates of deposit, fixed-deposit receipts and bills of exchange;
   b) securities granting the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange;

1 Directive 2009/44/EC suggests the term "credit claims", whereas the law uses the terms "claims" and "monetary claims".

2 Terminology used by Directive 2002/47/EC

3 Directive 2002/47/EC does not use the term security

4 Terminology used by Directive 2002/47/EC
c) futures and securities giving rise to a cash settlement (with the exception of instruments of payment), including money market instruments;
d) all other instruments representing title, claims or transferable securities;
e) all instruments relating to financial underlyings, indices, commodities, precious metals, goods, metals or merchandise, and to other goods or risks;
f) claims relating to various items listed above from a) to e) or rights in or in respect of any of the foregoing,

whether these financial instruments are in physical form or dematerialised, transferable by book entry or delivery, registered or bearer, negotiable or non-negotiable, and irrespective of the governing law;

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;

10) "relevant financial obligations" means the obligations which are secured by a financial collateral arrangement and which give a right to cash settlement or delivery of financial instruments or to underlying assets of such financial instruments. Relevant financial obligations may consist of or include:
   i) present or future, actual or contingent or prospective obligations, without it being necessary to specify 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;

11) "winding-up proceedings" means collective proceedings involving realisation of the assets and distribution of the proceeds among the creditors, shareholders, partners or members as appropriate, which involve any intervention by administrative or judicial authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;

12) "financial professionals" means
   a) a public authority, including:
      i) public sector bodies responsible for managing public debt or operating in this area;
      ii) public sector bodies authorised to hold accounts for their clients;
   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 European Investment Bank, as well as the other national and international public bodies operating in the financial sector;
   c) a financial institution, including:
      i) a credit institution;
      ii) an investment firm;
      iii) an insurance or reinsurance company;
      iv) an undertaking for collective investment;
v) a management company for one or more undertakings for collective investment;

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

e) an industrial or commercial institution with professional access to the financial market;

f) a pension fund;

g) a securitisation undertaking or an entity or an undertaking participating in a securitisation transaction;

h) any other professional in the financial sector not listed in points a) to g).

Art. 2.

(1) Financial collateral arrangements and netting agreements entered into by a trader or a non-trader shall be considered commercial transactions. They shall be evidenced with respect to third parties and to contracting parties by means of a written instrument or in a legally equivalent manner pursuant to Article 109 of the Commercial Code.

(2) The provision of financial collateral must be evidenced in writing. The written instrument, which may be in electronic form or on any other durable medium, evidencing the provision of collateral must allow for the identification of the assets subject to this arrangement. For book entry securities and cash provided as collateral, it is sufficient to prove that the latter have been credited to a specific account or constitute a credit on such account. *(Law of 20 May 2011)*

"Notwithstanding Articles 4 and 13, the registration on a list of claims provided to the collateral taker in writing, or by any other legal equivalent, is sufficient to identify the claims and to prove the provision of the financial collateral for these claims with regard to the debtor and to third parties."

(3) References in this Law to financial collateral being "provided" or 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. *(Law of 20 May 2011)*

"Any right of substitution or to withdraw excess assets provided as collateral in favour of the collateral provider, the right to receive interest on such assets by the collateral provider until further notice as well as the right reserved for the collateral provider to grant instructions with respect to the assets provided as collateral, shall not prejudice the financial collateral having been provided to the collateral taker as mentioned in this Law."

(4) Financial collateral may be provided in favour of a person acting on behalf of the beneficiaries of the financial collateral, or in favour of a trust or a trustee to cover the claims of current or future third-party beneficiaries, provided that these third-party beneficiaries are identified or can be identified. Persons acting on behalf of beneficiaries of the financial collateral, the trust or the trustee, benefit from the same rights as those enjoyed by the direct beneficiaries of the financial collateral arrangements covered by this Law, without prejudice to their obligations with regard to third-party beneficiaries of the same financial collateral.

*(Law of 20 May 2011)*
(5) The debtor of a claim subject to financial collateral may waive, in writing or in a legally equivalent manner, its set-off rights as well as all other exceptions with regard to the creditor of the claim provided as collateral and with regard to the persons in favour of whom this creditor has granted an assignment, a pledge or any other use of the claim provided as collateral. Such waiver is valid between parties and binding on third parties.

(6) The parties to a financial collateral arrangement may conclude that the collateral provider may waive, in the event of the enforcement of this collateral, all rights which he could invoke against the debtor of the relevant financial obligations. Such waiver is valid between parties and binding on third parties."
PART II: Pledges

Art. 3.
This law applies to pledge arrangements relating to assets.

Art. 4.
The parties to a pledge arrangement may agree that in order to secure the relevant financial obligations of a debtor, all the assets that belong to or come into the possession of the pledgor shall be subject to the pledge, without it being necessary to specify them.

Art. 5.

(1) The lien remains on the pledged assets only inasmuch as these assets have been placed and have remained or are deemed to have remained in the possession of the pledgee or of a third party mutually determined by the parties.

(2) If the pledge concerns financial instruments, the dispossession of the pledgor and the enforceability of the pledge against third parties may occur as follows:

(Law of 20 May 2011)

a) The dispossession of book entry securities is validly effected:

i) by the conclusion of the pledge agreement if the depositary of these financial instruments is the pledgee;

ii) by an agreement between the pledgor, pledgee and the depositary or by an agreement between the pledgor and the pledgee, notified to the depositary, according to which the depositary shall act in accordance with the instructions of the pledgee concerning these financial instruments without any other agreement of the pledgor;

iii) by the book entry registration of these financial instruments in an account of the pledgee;

iv) by the book entry registration of these financial instruments, without specification of any number, in an account maintained by the depositary in the name of the pledgor or of a person to be determined who shall act as third-party holder, the financial instruments being designated in the books of the depositary individually or collectively by reference to the relevant account in which they are registered as pledged.

Dispossession as per points ii), iii) and iv) shall be considered a waiver by the depositary of the rank of his pledge in respect of the same financial instruments, in the absence of an agreement to the contrary or simple notification to the depositary in accordance with point ii).

b) The dispossession of bearer financial instruments whose transfer takes place by handover alone may be established by a handover to the pledgee or to a third party mutually determined by the parties. (Law of 28 July 2014) The dispossession of bearer financial instruments deposited with a depositary pursuant to Article 42 of the amended Law of 10 August 1915 on commercial companies may be established by recording the pledge in the margin of the entry for the financial instruments in the register of the depositary.

c) The dispossession of registered financial instruments whose transfer takes place by a transfer in the registers of the issuer may be established by recording the pledge in the margin of the entry for the financial instruments in these registers.

d) The dispossession of financial instruments payable “to the order of” may be established by a legal endorsement indicating that the financial instruments were pledged.
(3) **(Law of 20 May 2011)** "If the pledge concerns financial instruments other than those specified in paragraph (2), dispossession takes place with regard to all third parties when the creation of the pledge is notified to or acknowledged by the issuer of the pledged financial instruments or, if the financial instruments are held by a third-party custodian, by the notification or acknowledgement of the latter."

The notification and acknowledgement of the pledge are effected either by notarial deed or by private deed. In this latter case, if a third party challenges the date of the notification or acknowledgement of the pledge, such date may be evidenced by any means.

The pledge may be enforced against the debtor, even prior to notification or acknowledgement, if it is proven that he was informed of it.

**(Law of 20 May 2011)**

(4) If the pledge concerns claims, dispossession is carried out with regard to the debtor and third parties by the mere conclusion of the pledge agreement. Nevertheless, the debtor of a pledged claim is validly discharged with respect to the pledgor as long as he has no knowledge of the creation of the pledge. The pledge of a claim implies a right for the pledgee to exercise the rights of the pledgor relative to the pledged claim."

(5) The pledgee has in all cases a lien on the assets pledged in his favour.

(6) The rank of pledges is determined in relation to the date on which they were rendered enforceable against third parties.

**Art. 6.**

(1) If an asset pledged in favour of a prior pledgee is pledged by the pledgor in favour of another pledgee, the provision of collateral to such other pledgee is effected as follows:

a) for book entry securities pledged in accordance with Article 5 (2) a) in favour of the prior pledgee:

**(Law of 20 May 2011)**

(i) if the relevant account was opened in the name of the pledgor, by the consent of any higher ranking pledgee;

(ii) if the relevant account was opened in the name of a higher-ranking pledgee, by the consent of the latter and by the consent of any other higher ranking pledgee;

(iii) if the relevant account was opened in the name of a third party, by the consent of this third party to act as the agreed third party and of the higher-ranking pledgee;

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

**(Law of 20 May 2011)**

(i) if the financial instruments were transferred to a prior pledgee, by the consent of the latter to act as the agreed third party and by the consent of all higher ranking pledgees;

(ii) if the financial instruments were transferred to an agreed third party, by the consent of higher ranking pledgees;

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5 Renumbered by the Law of 20 May 2011
6 Renumbered by the Law of 20 May 2011
c) for registered financial instruments pledged in accordance with Article 5 (2) c) in favour of a prior pledgee, according to the conditions set forth in that Article;

d) for financial instruments payable "to the order of", by a legal endorsement indicating that the financial instruments were pledged in favour of a lower-ranking pledgee;

(Law of 20 May 2011)

e) for financial instruments, other than those referred to in Article 6 (1) a) to d), pledged in accordance with Article 5 (3) in favour of higher-ranking pledgees, by the consent of or the notification to the addressee of the notice required under Article 5 (3) and by the consent of higher ranking pledgees.

f) for claims pledged in accordance with Article 5 (4) in favour of higher-ranking pledgees, by the consent of these pledgees. Nevertheless, the debtor of a pledged claim may be validly discharged with respect to the pledgor or any other pledgee as long as he has no knowledge of the creation of the pledge.

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

(3) Assets pledged in favour of a first pledgee may not be pledged by the pledgor in favour of another pledgee, if the first pledgee has a right of use in respect of these assets.

(4) If an enforcement event occurs in favour of the first-priority pledgee, the latter may enforce his pledge in accordance with Article 11. If the realisation proceeds exceed his guaranteed claim, the balance shall remain pledged in favour of the other pledgees and shall be given to the agreed upon third party or if this agreed upon third party is the first-priority pledgee, the balance shall be given to the other pledgees according to the terms of their agreement, unless the first-priority pledgee agrees to continue to act as the agreed third party. If these pledgees fail to agree within the time limit granted by the first-priority pledgee, the latter shall give the balance to a credit institution established in Luxembourg, which shall hold it in escrow for the lower-ranking pledgees.

(5) If an enforcement event occurs in favour of a pledgee other than the first-rank pledgee, this pledgee shall endeavour to reach with the higher-ranking pledgees an agreement on the conditions governing the realisation of the pledged assets, the order of settlement and the distribution of the realisation proceeds.

In the absence of agreement between these pledgees, any pledgee may make an interim application to the local court (tribunal d'arrondissement), the other pledgees joining the action, with a view to determining the conditions governing the realisation of the pledged assets, the order of settlement and the distribution of the realisation proceeds between these pledgees.

The share of the realisation proceeds of those pledgees that did not cause the realisation shall remain pledged in their favour.

Appeals against and objections to the interim order are governed by Article 939 of the New Code of Civil Procedure. The decision of the appellate court shall be final.

(6) A pledgee who receives the realisation proceeds of a pledge in legitimate ignorance of the existence of a higher-ranking pledgee may keep these realisation proceeds in the amount of his guaranteed claim.

A pledgee shall not be held responsible if, after the realisation of his pledge, he returned to the pledgor that part of the realisation proceeds or of the pledged assets which exceeds his guaranteed claim, without receiving notification of the existence of other pledgees.
Art. 7.

The pledgor is presumed to be the owner of the financial instruments pledged. The validity of the pledge shall not be affected if the pledgor does not have title to the pledged financial instruments, unless the pledgee was informed in advance and in writing of the pledgor's lack of title, without prejudice to the pledgor's responsibility. If the pledgor informed the pledgee that he was not the owner of the financial instruments pledged, the validity of the pledge is subject to the pledgor's confirmation that he obtained the consent of the owner of the financial instruments subject to the pledge.

The provisions of the preceding paragraph also apply to the other financial collateral arrangements and offsetting agreements to which this Law refers.

Art. 8.

Unless otherwise agreed, the first-ranking pledgee receives capital payments when due and any revenues and proceeds of the assets pledged, and either offsets them against his claim or keeps them as assets pledged in his favour.

Art. 9.

(Law of 20 May 2011)

The exercise of the rights attached to the pledged financial instruments is governed by the parties' agreement.

Unless otherwise agreed, these rights are retained by the pledgor, unless a right of use was granted to the pledgee, in which case these rights are retained by the latter.

Art. 10.

(1) The parties may agree that the pledgee shall have a right of use in respect of the financial instruments and monetary claims pledged in his favour. Except with the consent of all higher ranking pledgrees, 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, the latter has (i) the obligation to transfer, at the latest on the date agreed for the performance of the relevant financial obligations, equivalent collateral to replace the financial instruments and the monetary claims initially pledged or (ii), if the parties have so agreed, the right to realise the financial instruments and monetary claims pledged by way by setting off their value against, or applying their value in discharge of, the relevant financial obligations. If an enforcement event occurs while the obligation as per (i) remains outstanding, the obligation may be the subject of a close-out netting provision.

(3) The financial instruments and monetary claims pledged are deemed to remain in the possession of the pledgee notwithstanding the exercise by the latter of his right of use. The equivalent collateral transferred in accordance with paragraph (2) is subject to the same pledge contract as that to which the financial instruments and monetary claims originally pledged were subject, and shall be treated as having been provided under the pledge contract at the same time as the original financial collateral arrangement.

(4) If the pledge concerns book entry securities and if the pledgee exercises his right of use in respect of these financial instruments pledged in his favour by way of pledge, transfer of title as security or repurchase agreement, the dispossession in favour of the new pledgee or the transfer of title in favour of the assignee may be realised by designation in the account of the original pledgor in the books in the depositary.

Art. 11.

(1) Unless otherwise agreed, if an enforcement event occurs the pledgee may, without prior notice,
a) appropriate or cause a third party to appropriate these assets at the price fixed, before or after their appropriation, according to the valuation method mutually determined by the parties; or

b) assign or cause the assignment of the pledged assets by private sale in a commercially reasonable manner, by a sale on the stock exchange or by public auction; or

c) obtain a court decision ruling that the pledged assets shall remain in his possession up to the amount of the debt, on the basis of an expert's estimate; or

d) perform a setoff transaction in accordance with Part V below; or

e) in the case of financial instruments, appropriate these financial instruments at the market price, if they are admitted to official listing on a stock exchange located in Luxembourg or elsewhere or are traded on a recognised, functionally operational, regulated market that is open to the public or at the price of the last net asset value published, in the case of units or shares of a collective investment undertaking that regularly calculates and publishes a net asset value.

(2) If the parties have agreed to a public auction, and unless otherwise agreed, the latter shall be carried out on and by the Luxembourg Stock Exchange on the date and at the time published by the latter.

(3) If the pledge concerns financial instruments held by an agreed third party custodian, this third party custodian shall transfer these financial instruments to the pledgee upon notice of the occurrence of an enforcement event and without having to request the consent of the pledgor or to inform him in advance. If the pledge concerns a monetary claim due by a third party, the pledgee may, under the same conditions, demand the due payment of his claim from this third party, all without prejudice to Article 1295 of the Civil Code.

(4) The right granted by the pledgee to the pledgor to dispose of the pledged assets does not affect the dispossession of those pledged assets not at the pledgor’s disposal.

Art. 12.

Notwithstanding the provisions of Article 189 of the Law of 10 August 1915 on commercial companies, the approval of the general meeting of the shareholders is not necessary in the event of a total or partial realisation of a pledge relating to all the shares of a limited liability company and granted, at the time of creation, to one or more persons within the framework of the same operation.

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

If, within the framework of the realisation, the shares are assigned to an unidentified approved person and the pledge is not realised by public auction announced previously in writing to the company, the shareholders, with the exclusion of the assignor and the assignee of the pledged shares, shall be entitled, in the month following the notification of the transfer to the company, either to repurchase the pledged shares at the realisation price, or to have the company repurchase these shares at the realisation price.
PART III: Transfer of title by way of security

Art. 13.

This Law applies to transfers of title by way of security, including by way of trust. If the transfer of title is carried out by way of trust, the trustee must be a finance professional.

The transactions referred to in the preceding paragraph are those which consist of the transfer of title to assets that belong to or come into the possession of the transferor, without it being necessary to specify them, to the transferee in order to guarantee the relevant financial obligations of the transferor or of a third party vis-à-vis the transferee and which comprise an undertaking of the transferee to subsequently transfer the assets transferred or other equivalent assets according to the parties' agreement, except in the event of a total or partial failure to perform the relevant financial obligations.

They also consist of the transfer of title to assets intended to secure, during the contract, the agreed balance between the obligations of the parties, either for a specific operation, or globally for all or part of the operations between the contracting parties.

Art. 14.

(1) The restrictions on the exercise of title mutually determined by the assignor and the assignee do not affect the nature of the title conferred on the transferee.

(2) A transfer of title by way of security for book entry securities 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 third party acting for the benefit of the transferee or their designation, in an account that was opened in the name of the transferee, as being the property of the transferee.

A transfer of title by way of security for financial instruments that were not registered in an account or for claims takes effect between the parties and becomes enforceable against third parties as from the agreement of the parties. Nevertheless, the debtor of an assigned claim is validly discharged with respect to the transferor as long as he has no knowledge of the transfer of his debt to the transferee. *(Law of 20 May 2011)* “The transfer of title as security for a claim entitles the transferee to exercise the rights of the transferor in respect of the assigned claim.”

(3) In the event of a total or partial failure to perform the relevant financial obligations, the transferee is released from his subsequent transfer obligation in the amount of his claim against the transferor or the secured third party according to the extinction or setting off conditions agreed between the parties, and, unless otherwise agreed, without prior notice.

(4) If a transfer of title by way of security is concluded by way of trust with an transferee that is a finance professional, the provisions of Articles 5 to 9 of the Law of 27 July 2003 on trusts and fiduciary contracts apply, in addition to the provisions of this Law. The parties may contractually exclude the application of Article 7 (6) of the Law of 27 July 2003 on trusts and fiduciary contracts.
PART IV: Repurchase agreements

Art. 15.

This Law applies to property repurchase agreements and to transfers of property carried out in order to ensure, during the contract, the balance between the obligations of the parties, either for a specific repurchase agreement, or globally for all or part of the operations between the contracting parties.

Art. 16.

(1) A repurchase agreement exists within the meaning of this Law when an transferor transfers property to assignee transferee in consideration of the payment of a price and when the obligation or option to subsequently retransfer this property or an equivalent property to the transferor is provided for at a price agreed in advance.

(2) Repurchase agreements may relate to all kinds of tangible or intangible property.

(3) Repurchase agreements concerning book entry securities take effect between the parties and become enforceable against third parties at the latest at the time of the recording of the financial instruments in an account that was opened in the name of the transferee or of an agreed third party acting for the benefit of the transferee, or their designation, in an account that was opened in the name of the transferor, as being the property of the transferee.

(4) At the maturity of the repurchase agreement, the transferor is required to take back the property that was the subject of the repurchase agreement or an equivalent property. The assignee, depending on the conditions agreed between the parties, has either the obligation or the right to reassign the property that was the subject of the repurchase agreement or an equivalent property.

(5) If the transferee has an obligation to reassign the property, then the transaction is a repurchase agreement based on a firm purchase and resale agreement.

(6) If the transferee has the option to reassign the property, then the transaction is a repurchase agreement based on a firm purchase and optional resale agreement.

Art. 17.

The assignment and reassignment of property within the framework of repurchase agreements constitute actual transfers of ownership. If the parties so agree, the same rule shall apply to property substituted for the initial property or transferred as cover margin during the contract. The reassignment does not retroactively affect the transferee’s title to the transferred property during the term of the repurchase agreement.
PART V: Offsetting and collective proceedings

Art. 18.

The offsetting of assets, performed in the event of reorganisation measures, winding-up proceedings or any other administration situation, are valid and enforceable against third parties, auditors, receivers and liquidators or other similar bodies, whatever their maturity, their purpose or the currencies in which they are denominated, provided that they result from transactions which are the subject of bilateral or multilateral netting provisions or agreements between two or more parties. Such offsetting operations are also valid and enforceable when they are carried out through the actions of public organisations or professionals of the financial sector responsible for the clearing and settlement of payments or transactions involving financial instruments. Unless otherwise agreed, offsetting takes place without prior notice.

Art. 19.

Related-asset clauses as well as resolution, termination, and indivisibility clauses, clauses relating to cover margin requirements, substitution and close-out netting provisions, clauses relating to valuation and offsetting procedures and all other clauses stipulated to permit the offsetting referred to in the preceding article are also valid and enforceable against third parties, auditors, receivers and liquidators or other similar bodies, and produce their effects:

(Law of 20 May 2011)

a) notwithstanding the commencement or continuation of a reorganisation measure or winding-up proceedings and independently of the moment when these clauses, including offsetting clauses, were agreed or implemented,

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

Art. 20.

(1) Financial collateral arrangements as well as enforcement events, offsetting contracts and valuation and enforcement measures mutually determined by the parties in accordance with this Law are valid and enforceable against third parties, auditors, receivers, liquidators and other similar bodies notwithstanding the existence of a reorganisation measure, winding-up proceedings or the occurrence of any other administration situation, whether national or foreign.

(2) Termination, valuation, enforcement and offsetting carried out pursuant to a protective or enforcement measure, including a measure provided for in Article 19 b), are considered to have occurred before such a procedure.

(3) Unless otherwise agreed, the commencement of winding-up proceedings, a reorganisation measure or any other administration situation, whether national or foreign, relative to one of the parties to a repurchase agreement, occurring subsequent to the transfer of the assets from the transferor to the transferee shall not exempt the parties from proceeding with the repurchase in accordance with the agreed conditions. However, the reorganisation measure, winding-up proceedings or any other administration situation shall in any event release both parties from their respective obligations if and to the extent that the repurchase can no longer be carried out under the agreed conditions or otherwise in accordance with the offsetting rules agreed upon between the parties.

(4) With the exception of the provisions of the Law of 8 December 2000 on overindebtedness, the provisions of Book III, Title XVII of the Civil Code, Book 1 Title VIII and Book III of the Commercial Code as well as the national or foreign provisions governing reorganisation measures, winding-up proceedings, other administration situations and the attachments or other measures referred to in point b) of Article 19...
are not applicable (Law of 20 May 2011) “to the financial collateral arrangements, offsetting contracts and waivers referred to in Articles 2 (5) and 2 (6),” and shall not prevent the performance of these contracts and the parties’ performance of their obligations, especially in relation to subsequent transfer or retrocession.

The same rules apply in the event of death or incapacity of the collateral provider, the debtor of the relevant financial obligations or of a party to an offsetting contract.

Art. 21.

(1) Where offsetting contracts and financial collateral arrangements have come into existence, or collateral has been provided by virtue of a financial collateral arrangement entered into on the day of commencement of winding-up proceedings or the effective date of a reorganisation measure, but prior to the pronouncement of the decision commencing such proceedings or the effective date of such a measure, such contracts and arrangements shall be valid and enforceable against third parties, auditors, liquidators, receivers or other similar bodies.

(2) Where a financial collateral arrangement or a relevant financial obligation has come into existence, or financial collateral has been provided on the day of, but after the moment of the commencement of, winding-up proceedings or reorganisation measures, it shall be legally enforceable and binding on third parties, auditors, receivers, liquidators and similar bodies if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such proceedings or measures.

(3) The provisions of paragraphs (1) and (2) also apply to payments made by a person on the day of the commencement of winding-up proceedings or the effective date of a reorganisation measure relating to that person.

(4) Applications with a view to the taking of reorganisation measures and court orders opening winding-up proceedings must specify the date and time of their entry into effect.

Art. 22.

An objection filed in accordance with the law concerning the loss of securities between the date of dispatch of the formal notice mutually agreed by the parties and the date of realisation of the financial collateral shall be null and void and shall not inhibit the effective realisation of financial collateral; the time between these two dates may not, however, exceed one month.
PART VI: Provisions of Private International Law

Art. 23.

(1) Any issue concerning one of the items listed in paragraph (2) below related to "book entry securities collateral" shall be governed by the law of the country where the relevant account is located. Reference to the law of the country refers to the internal law of such country, notwithstanding any other rule specifying that the issue in question must be dealt with by the law of another country.

(2) The items referred to in paragraph (1) are as follows:

a) the legal nature and the actual effects of the book entry securities collateral;

b) the requirements related to the provision of book entry securities collateral "under a financial collateral arrangement" and, more generally, the performance of the necessary formalities to render such an arrangement and such provision binding on third parties;

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

d) the obligations of the relevant account holder towards a person other than the relevant account holder who claims any competing interests on the book entry securities held with such account holder against the relevant account holder or any other person;

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

f) the extension of the financial collateral covering book entry securities to rights on dividends, revenue, or other distributions, or reimbursements, sale proceeds or any other income.

Art. 24.

(Law of 20 May 2011)

The national provisions referred to in Article 20 (4) shall not be applicable, in the event that the financial collateral provider or the provider of any similar collateral to which a foreign law applies, or the defaulting party in a repurchase agreement transaction or a set-off arrangement to which a foreign law applies, is established or resident in Luxembourg.
PART VII: Amending and Repealed Provisions

Art. 25.

(1) a) Articles 112, 114(3), 118 and 119(1) of the Commercial Code have been repealed.
   b) Article 113 of the Commercial Code has been amended as follows: "The contracting parties may conclude that to cover the current and future commitments of the debtor, all assets belonging or which may come to belong to the pledgor and for which the creditor or a third party to be determined are or shall be the holders or debtors, are or shall be subject to the pledge, without it being necessary to specify them."
   c) Paragraph (4) of Article 114 has been renumbered and becomes paragraph (3) of the same article. The first subparagraph of this paragraph is as follows: "Dispossession is also carried out with regard to all third parties when the provision of the pledge has been made known to the debtor or to the third-party pledge holder, where applicable, or upon acceptance by the debtor or the third-party pledge holder."

(2) The Law of 21 December 1994 on repurchase agreement operations has been repealed.

(3) The Law of 1 August 2001 on the transfer of title as collateral has been repealed. All references to the Law of 1 August 2001 on the transfer of title as collateral, shall read as references to this Law on financial collateral arrangements.

(4) a) Article 9 of the Law of 1 August 2001 on the circulation of securities and other fungible instruments has been repealed.
   b) Article 17 of the same Law has been amended as follows:

Depositaries whose main activity is to operate a securities transactions settlement system shall enjoy a privilege on all securities, claims, currencies and other interests which they hold in their accounts as equity for a participant in connection with the system that they operate, not subject to collateral duly notified to or accepted by the depositary. This privilege guarantees the claims of these depositaries over a participant in the securities transactions settlement system, arising upon the settlement or liquidation of transactions on securities and other financial instruments or the related set-off carried out by the participant on his own behalf or on behalf of its clients, including claims arising on loans and advances.

The same depositaries shall also enjoy a privilege on all securities, claims, currencies and other interests which they hold in their account as assets for clients of a participant in connection with the system they operate. This privilege exclusively guarantees the claims of the depositary over the participant arising upon the settlement or liquidation of transactions on securities and other financial instruments or the related set-off carried out by the participant on behalf of clients, including claims arising on loans and advances.

These privileges shall not be replaced by any other general or special privileges with the exception of those mentioned in Article 2101 of the Civil Code. These privileges shall be realised in accordance with the provisions applicable to pledges on financial instruments and on claims.

The above privileges do not apply to assets held in the account of a depositary whose main activity is to operate a settlement system for securities transactions by the European Central Bank or by a national central bank which is an integral part of the European System of Central Banks.

Under this Article, "collateral" shall mean any realisable asset, including money, provided as part of a pledge, a repurchase agreement, a fiduciary transfer or an
analogous agreement, or any other manner, with the aim of covering the rights and obligations likely to arise within the framework of a securities transactions settlement system or provided to the members of European System of Central Banks or the European Central Bank on such a realisable asset.

(5) Article 61-23 of the Law of 5 April 1993 on the financial sector has been repealed.

(6) Article 6 of 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 transferable securities, is completed by a second subparagraph which reads as follows: “The performance of such a pledge is carried out in accordance with the provisions of Article 11 of the Law of 5 August 2005 on financial collateral arrangements.”
PART VIII: Final Provisions

Instruments establishing a financial collateral arrangement shall not be subject to registration formalities. Where registration is required, they shall be subject to a fixed registration fee.

Art. 27.
This Law applies to financial collateral arrangements entered into before its entry into force.

Art. 28.
Reference to this Law may be abbreviated as follows: "Law of 5 August 2005 on financial collateral arrangements".