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## “Law of 1 August 2001 on the circulation of securities”<sup>1</sup>

(Mém. A 2001, No 106)

### as amended by:

- 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.

(Mém. A 2005, No 128)
  
- the Law of 6 April 2013 on dematerialised securities 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 10 August 1915 on commercial companies, as amended;
  - the Law of 3 September 1996 concerning the involuntary dispossession of bearer securities, as amended;
  - the Law of 1 August 2001 on the circulation of securities and other fungible instruments, as amended;
  - the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
  - the Law of 17 December 2010 relating to undertakings for collective investment;
  - the Law of 13 February 2007 relating to specialised investment funds, as amended;
  - the Law of 22 March 2004 on securitisation, as amended.

(Mém. A 2013, No 71)
  
- the Law of 1 March 2019 amending the Law of 1 August 2001 on the circulation of securities, as amended.

(Mém. A 2019, No 111)

### “Section I - Scope

**Article 1.** (1) This law shall apply to securities in the broadest sense of the term that are deposited or held on a securities account with an account keeper and that are or have been declared fungible, be they materialised or dematerialised, in bearer, order or registered form, Luxemburgish or foreign, and regardless of the form in which they have been issued according to the law that applies to them.

(2) The law shall apply exclusively to securities booked on a securities account and which are transferred by book transfer.

(3) Securities deposited or held on a securities account with an account keeper that do not bear an individual identification number or any other identification element are considered to be fungible.

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<sup>1</sup> Law of 6 April 2013

## Section 2 - Definitions

**Article 2.** For the purposes of this law, the following definitions shall apply:

- (1) “acquirer” means: (i) an account holder to whose securities account securities are credited, or (ii) a person, other than the account holder, to whom an interest is granted in the securities;
- (2) “securities account” means an account maintained by an account keeper to which securities may be credited and debited. The securities issuance account held by a settlement organisation or a central account keeper does not constitute a securities account;
- (3) “defective entry” means a credit of securities or the creation of an interest in securities which becomes effective against third parties, that is invalid or liable to be reversed, including a credit or conditional interest that becomes invalid or liable to be reversed, by reason of the operation or non-fulfilment of the condition;
- (4) “investor” means the account holder who does not act as account keeper for another person;
- (5) securities are “of the same description” as other securities if they are issued by the same issuer and if:
  - (i) they are of the same class of capital securities; or
  - (ii) in the case of securities other than capital securities, they are of the same currency and denomination and are treated as forming part of the same issue;
- (6) “winding-up proceedings” means collective proceedings involving the realisation of the assets and distribution of the proceeds of this realisation among the creditors, shareholders, partners or members, as appropriate, and implying an 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;
- (7) “account keeper” means any person authorised pursuant to the Luxembourg law to maintain securities accounts including public national or international bodies established in Luxembourg and active in the financial sector;
- (8) “foreign account keeper” means any person, other than the persons referred to in point 7 of this Article, whose account keeping activity is submitted to a foreign law;
- (9) “relevant account keeper” means, in relation to a securities account, the account keeper or, where appropriate, the foreign account keeper maintaining a securities account for the account holder;
- (10) “account holder” means a person in whose name an account keeper maintains a securities account, whether that person is acting for its own account or for others.

## Section 3 - Account holders

**Article 3.** (1) The account holder benefits - up to the amount of securities held on its securities account - from an intangible interest in all the securities of the same description held on an account by the relevant account keeper, from the rights attached to the securities and from the rights provided for in this law. Unless otherwise provided by law, the account holder may only exercise its rights against the relevant account keeper.

(2) The securities credited to an account may be dismembered in the same way as ownership rights.

**Article 4.** (1) Securities are acquired by an account holder through the credit of securities to that account holder’s securities account.

(2) In the case of winding-up proceedings of its account keeper, the securities account holder acquires the interest in the securities as soon as the securities are credited to the securities account of its account keeper with the latter’s account keeper or registered on the register in the name of or on behalf of its account keeper and before the credit to its own securities account.

**Article 5.** (1) An account holder may request, at any time and at its own expense, the relevant account keeper to return the securities credited to its securities account and of which it can freely dispose.

(2) As far as bearer securities are concerned, the account keeper delivers physically or orders, where applicable, the physical delivery of the securities of the same description as those credited to the securities account of the account holder.

As far as registered securities are concerned, the account keeper registers or orders the registration, where applicable, of the account holder in the securities register held by or on behalf of the issuer.

If the securities are dematerialised, if they are defined as non deliverable in individual physical form or if this is not in line with the market practices of the country in which the securities account keeper holding all the securities of the same description is located, the account keeper may fulfil its obligation to return the securities by transferring the securities via book entry on a securities account indicated by the account holder.

(3) The manual donation of securities may be done through a book entry transfer.

**Article 6.** The account holder may request the account keeper to provide a certificate relating to the securities held on its securities account at any time. This certificate is not a security.

**Article 7.** (1) The relevant account keeper shall execute the instructions of the account holder in accordance with the agreement concluded between them or of the third parties that have an interest in the securities.

(2) Without prejudice to the provisions of Title V of the law on payment services, an instruction may be revoked by the originator during the opening hours of the account keeper until the moment decided jointly by the account keeper and the account holder or set out in the rules established by a securities settlement system, a settlement organisation or a central account keeper.

**Article 8.** (1) The investor may exercise or have the company rights attached to the securities and the interests linked to the holding of the securities exercised through the production of a certificate drawn up by the relevant account keeper which certifies the number of securities maintained on its securities account.

(2) For the participation in their general meetings, Luxembourg companies may not require the production of bearer securities, the registration of registered securities on the securities register nor a specific transfer of the dematerialised securities if such securities are held on a securities account. In this case, the provision of a certificate established by the relevant account keeper which confirms the number of securities held on the securities account and, where applicable, their non-transferability until a specific date represents sufficient evidence of the interest in the securities. The company may, in its rules relating to meetings, set out that the investor will have to provide, upon request, documents evidencing the registration of the securities in the securities holding chain.

(3) If an account keeper, where applicable a foreign account keeper, or a third party which has been appointed by such account keeper, is registered on the issuer's registered securities register, this account keeper or appointed third party may exercise, based on the instructions received, the voting rights attached to the securities for which it is registered on the register.

(4) Where a third party, other than the investor, intends to participate in a vote, the issuer may, if provided for by the articles of association, issuing conditions or meeting convening conditions, require the identification of the investor(s) which have given voting instructions. Where the issuer's request is not complied with, the officers of the meeting may exclude the person concerned from the exercise of the voting rights.

The issuer shall not be obliged to verify the existence or the content of the instructions given to a third party that expresses a vote.

**Article 9.** In the case of winding-up proceedings or restructuring procedures of an account holder, the creditors of the latter may claim their rights on the outstanding balance of the securities maintained on the securities account in the name and on behalf of their debtor, after deducting or adding the securities which, by virtue of contingent liabilities, liabilities whose amount is uncertain or term liabilities, are maintained, where applicable, on a separate part of this account on the day on which one of the above procedures is launched and for which the inclusion in the outstanding balance is delayed until the liabilities are realised, the amount is fixed or the term has been reached.

Contingent liabilities or liabilities whose amount is uncertain, or term liabilities referred to in the preceding subparagraph are limited to the liabilities resulting from a legal relation between the account holder concerned and the relevant account keeper.

**Article 10.** (1) In the case of winding-up proceedings in relation to the account keeper, the claim on the number of securities which the account keeper owes shall be filed with the liquidator collectively on the aggregate amount of the securities of the same description held by or for the account keeper, registered in its name or in the name of a third party designated in whatever form, or maintained in the name of the relevant account keeper with another account keeper.

(2) If said securities are not sufficient to ensure the full restitution of the securities maintained on the account, they will be allocated between the account holders in proportion to their rights. In this case, and except for the assumptions referred to in Article 18, if the account keeper holds in its own assets a number of securities of the same description, these securities shall be added to the aggregate amount of securities of the same description to be allocated to the account holders and the account keeper will keep only the number of securities remaining after the total number of securities of the same description held by it on behalf of its account holders or on a fiduciary basis on behalf of third parties has been returned to the holders.

If the account holder authorised the account keeper to dispose of its securities, and provided such disposal has occurred within the limits set out in that authorisation and the securities have not yet been returned to the account holder at the commencement of the winding-up proceedings and are not returned in a second step, the account holder will only be granted the securities that are left after all securities of the same description due to the other account holders have been returned. However, where, in the context of the disposal of securities, the account keeper has obtained collateral from third parties in order to guarantee the restitution of such securities, the realisation proceeds of such collateral will be allocated on a prorata basis to the account holder as if the account holder were the direct beneficiary of such collateral.

(3) The account holder to whom the total amount of securities held on its securities account on the day of the commencement of the winding-up proceedings could not be returned shall file a claim as unsecured creditor for an amount which is equivalent to the value of the securities which have not been returned on the date of the commencement of the winding-up proceedings.

(4) The provisions of this article shall also apply to account holders maintaining a securities account with a person in Luxembourg who does not have the required authorisation to act as an account keeper.

#### **Section 4 - Integrity of the system**

**Article 11.** (1) No attachment of securities of an account holder shall be made on, or so as to affect:

- (a) a securities account of any person other than that account holder;
- (b) the issuer of any securities credited to a securities account of that account holder; or
- (c) a person other than the account holder or the relevant account keeper.

(2) Any attachment made in violation of paragraph 1 is void.

(3) In this article, "attachment of securities of an account holder" means any judicial, administrative or other act or process to freeze, seize, restrict or impound securities of that account holder in order to enforce or satisfy a judgment, award or other judicial, arbitral, administrative or other decision or in order to ensure that availability of such securities to enforce or satisfy any future judgment, award or decision.

**Article 12.** (1) Unless an acquirer actually knows, at the time it acquires the securities, that another person has an interest in securities and that the credit to the securities account of the acquirer or the creation of an interest in securities that is effective against third parties granted to the acquirer violates the rights of that other person in relation to its interest:

- (a) the right or interest of the acquirer is not subject to the interest of that other person;
- (b) the acquirer is not liable to that other person; and
- (c) the credit or interest granted is not rendered invalid, ineffective against third parties or liable to be reversed on the ground that the credit or interest granted violates the rights of that other person.

(2) Unless an acquirer actually knows, at the time he acquires the securities or interest in the securities, of an earlier defective entry:

- (a) the credit or interest granted to the acquirer is not rendered invalid, ineffective against third parties or liable to be reversed as a result of that defective entry; and
- (b) the acquirer is not liable to anyone who would benefit from the invalidity or reversal of that defective entry.

(3) Paragraphs 1 and 2 shall not apply to an acquisition of securities, other than the grant of a security interest or collateral, made by way of gift or otherwise gratuitously.

(4) Paragraphs 1 and 2 apply without prejudice to Article 7 of the law of 5 August 2005 on financial collateral arrangements.

(5) Without prejudice to other liabilities and rights of third parties, if the acquirer is not protected in its acquisition, the acquirer shall return an equal number of securities and of the same description.

Where the acquirer that must return the securities is subject to winding-up proceedings, the entitled person may claim an equal number of securities and of the same description, where such securities are available in the liquidation mass.

#### **Section 5 - Account keeper**

**Article 13.** Subject to the derogations resulting from the law or the type of securities held with an account keeper, the provisions of the Civil Code relating to the deposit apply in the relation between the account keeper and the account holder.

**Article 14.** The account keeper shall ensure to hold, in its books, with another account keeper or with a foreign account keeper, securities that are, in number and description, equal to the number and description of the securities credited on the securities accounts it maintains for its account holders.

Where a negative holding cannot be covered, the account keeper shall either increase the number of securities it holds or reduce the number of securities held on the securities accounts of its account holders, within the period and at the cost laid down in the agreement between the account keeper and the account holder or in accordance with the rules of the securities settlement systems, settlement organisation or central account keepers.

**Article 15.** Without prejudice to the provisions of Title V of the law on payment services, where securities are settled against a cash amount, failure to deliver the securities or cash on the date and under the terms and conditions applicable in the relevant market or fixed by an agreement between the parties or the rules of a

securities settlement system releases ipso jure the parties from their delivery or payment obligations, without prejudice to the liability of the defaulting party.

The securities settlement system rules have priority over the agreements between parties.

**Article 16.** Where the relevant account keeper proceeds to the delivery of securities or the payment of the price in place of the defaulting account holder, such account keeper acquires ownership of the securities or cash received in exchange as collateral. This transfer of ownership as collateral is governed by the provisions of the law of 5 August 2005 on financial collateral arrangements.

**Article 17.** The account keeper may deposit with other account keepers or foreign account keepers, through book transfer or otherwise, the securities credited or transferred to the securities accounts it maintains, or it may be registered directly or indirectly on the securities register of the relevant securities. The account keeper must hold these securities separately from its own securities with these other account keepers or depositaries. The application of this law, the situation of the securities that are still held with the relevant account keeper, the validity or effectiveness of the collateral set up in accordance with the law of 5 August 2005 on financial collateral arrangements shall not be affected by this deposit.

**Article 18.** In the event of loss or total destruction of a set of securities of the same description due to force majeure, the account keeper must place the necessary stop and enact the reconstitution of the securities lost or destroyed.

If the loss or destruction due to force majeure was only partial and if the reconstitution of the lost or destroyed securities could not be obtained, all the securities of the same description shall be split between the affected account holders on a pro rata basis of their rights.

If the loss or destruction results from facts involving the liability of the account keeper and if the reconstitution of the lost or destroyed securities could not be obtained, the affected account holders' claims on the remaining securities shall be performed in accordance with the preceding paragraph. As for the part of the rights that is not recovered, the affected account holders are unsecured creditors of the account keeper."<sup>2</sup>

*(Law of 1 March 2019)*

**Article 18a.** (1) The account keeper may maintain securities accounts and credit securities on securities accounts within or through secured electronic registration mechanisms, including distributed electronic ledgers or databases. Successive transfers registered within such a secured electronic registration mechanism shall be considered as book transfers between securities accounts. Maintaining securities accounts within such a secured electronic registration mechanism or crediting securities on securities accounts through such a secured electronic registration mechanism does not affect the relevant securities' fungibility.

(2) The application of this law, the situation of the securities that are still held with the relevant account keeper, the validity or effectiveness of the collateral set up in accordance with the Law of 5 August 2005 on financial collateral arrangements, as amended, shall not be affected by the maintaining of securities accounts within such a secured electronic registration mechanism or by the credit of securities on securities accounts through such a secured electronic registration mechanism."

### **"Section 6. - Specific rules applicable to account keepers principally operating a securities settlement system"<sup>3</sup>**

**Article "19"<sup>4</sup>.** "Account keepers"<sup>5</sup> principally operating a securities settlement system must keep the securities (...) <sup>6</sup> held by them in relation to the system they operate separately from the other securities (...) <sup>7</sup> deposited with them.

The securities (...) held by an account keeper principally operating a securities settlement system and which are related to that system are called hereafter "securities (...) in the system".

**Article "20"<sup>8</sup>.** No attachment or any other implementing or protective measure shall be made against the securities accounts and other financial instruments in the system, except for implementing measures of pledges

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<sup>2</sup> Law of 6 April 2013

<sup>3</sup> Law of 6 April 2013

<sup>4</sup> Law of 6 April 2013

<sup>5</sup> Law of 6 April 2013: Articles 19 to 23: the references to "depository" in singular or plural are replaced by a reference to "account keeper" in singular or plural

<sup>6</sup> Law of 6 April 2013: all references to "and other financial instruments" are deleted

<sup>7</sup> Law of 6 April 2013: all references to "or financial instruments" are deleted

<sup>8</sup> Law of 6 April 2013

or other similar securities or collateral granted by an “account holder”<sup>9</sup> to the account keeper principally operating a securities settlement system or to a third party. Nor are such measures accepted on securities (...) deposited by such an account keeper with another account keeper.

**Article “21”**<sup>10</sup>. The payment of dividends, interests, matured capital or other matured moneys from securities (...) in the system to an account keeper principally operating a securities settlement system with this account keeper shall release the issuer. The moneys so paid are unattachable by the creditors of the account keeper principally operating a securities settlement system.

The account keeper principally operating a securities settlement system distributes these moneys to its account holders according to the amount of securities (...) registered in their name.

This distribution releases the account keeper principally operating a securities settlement system.

**Article “22”**<sup>11</sup>. “The account keepers principally operating a securities settlement system are granted a lien over all securities, claims, moneys and other rights booked to accounts held with them as own assets of a participant in relation to the system they operate, where such assets are not affected by collateral duly notified to or accepted by the account keeper. This lien guarantees the claims of such account keepers vis-à-vis a participant to the securities settlement system arising from the securities’ clearing or settlement (...) or from the netting of such transactions carried out by the participant on its own account as well as on behalf of its clients, including claims arising from loans or advances.

These account keepers are also granted a lien over all securities, claims, moneys and other rights they hold as client assets of a participant to the system they operate. This lien guarantees exclusively the claims of such account keepers on the participant arising from the clearing or settlement of securities transactions (...) or from the netting of such transactions carried out by the participant on behalf of its clients, including claims arising from loans or advances.

This lien prevails over any general and special lien, excluding those listed in Article 2101 of the Civil Code. Their enforcement is subject to the provisions applicable to pledges on financial instruments and on claims.

The above liens do not apply to assets held by the European Central Bank or by a central bank party to the European System of Central Banks with an account keeper principally operating a securities settlement system.

For the purposes of this article, “collateral” is defined as any realisable asset, including money, provided in the context of a pledge, repurchase agreement, fiduciary transfer or a similar agreement or in another way, with the aim of guaranteeing the rights and obligations which may arise in the context of a securities settlement system, or provided to central banks members of the European System of Central Banks or to the European Central Bank over such realisable asset.”<sup>12</sup>

**Article “23”**<sup>13</sup>. The account keepers principally operating a securities settlement system shall be authorised to register securities (...) irrevocably on the accounts of their participants based on the irrevocable and unconditional commitment of a central bank, of another operator of a securities payment or settlement system authorised and supervised by the competent authorities of a Member State of the OECD or of a credit institution authorised and supervised by the competent authorities of a Member State of the OECD and authorised as sub-account keeper by the aforementioned account keepers, to register these securities (...) in their system on an account maintained in the name of this account keeper or in the name of an intermediary or to deliver such securities otherwise to this account keeper.

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<sup>9</sup> Law of 6 April 2013: Articles 19 to 23: the references to “depositor” in singular or plural are replaced by a reference to “account holder” in singular or plural

<sup>10</sup> Law of 6 April 2013

<sup>11</sup> Law of 6 April 2013

<sup>12</sup> Law of 5 August 2005

<sup>13</sup> Law of 6 April 2013