This coordinated text was drawn up by the CSSF for information purposes only. In case of discrepancies between the French and the English text, the French text shall prevail.

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**

(Mémorial 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.

  (Mémorial 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.

  (Mémorial 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)

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;
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 event 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;

(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 or delivery, bearer or registered, endorseable or not and regardless of their 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 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;

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 composition 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 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;

(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."[1]

(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."[2]

(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.

[1] Law of 20 May 2011
[2] 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").

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 VI or VII 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 IV or V of Directive 2014/59/EU, 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."[3]"

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.

[3] Law of 27 February 2018

(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:

"(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)."[4]

(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."[5]

(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."[6]

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[4] Law of 20 May 2011
[5] Law of 28 July 2014
[6] Law of 20 May 2011

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

("6"[8]) 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

[7] Law of 20 May 2011
[8] Law of 20 May 2011

the addressee of the notice required pursuant to Article 5(3) and by the consent of the prior pledgees."[9]

(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.

(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 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

[9] Law of 20 May 2011

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."[10]

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.

(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 collateral or have the collateral appropriated by a third party at a price determined, before or after their appropriation, by the agreed upon valuation method";[11] or

(b) assign or cause the pledged collateral to be assigned by private sale in a commercially reasonable manner, by sale over a stock exchange or by public auction; or

(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

[10] Law of 20 May 2011
[11] Law of 20 May 2011

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

(e) if they are financial instruments, appropriate these financial instruments at the market price, if such instruments are listed on an official Luxembourg or foreign stock market or traded on a recognised regulated market which operates regularly and is open to the public, or at the price of the latest published net asset value, if they are units or shares of an undertaking for collective investment which determines and publishes on a regular basis a net asset value.

(2) If the parties have agreed on a public auction, unless provided otherwise, the auction shall be effected at and by the *Bourse de Luxembourg* at a date and time published by the *Bourse*.

(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, 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.

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 private limited company (*société à responsabilité limitée*) 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 to the transferee 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 transferee's relevant financial obligations to the credit institution or investment firm and the transferee's assets subjected to the title transfer for security purposes by the credit institution or investment firm.

(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 transferee's 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 transferee's relevant financial obligation to the credit institution or investment firm is low or negligible;
b) whether the amount of the transferee's assets subject to title transfer for security purposes far exceeds the transferee's relevant financial obligation, or is even unlimited if the transferee has any obligation at all to the credit institution or investment firm; and
c) whether all transferees' assets are made subject to title transfer for security purposes, without consideration of what relevant financial obligation each transferee 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 transferee's 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."[12]

(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 his claim against the transferor or the third party debtor in accordance with 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 of the parties, either for a specific repurchase transaction, or globally for all or part of the transactions between the contracting parties.

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.

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PART V: Netting and insolvency proceedings

Article 18. Netting of claims or positions in financial instruments effected in the case of 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 reorganisation measure or a winding-up proceeding and without regard to the moment when these provisions, including those providing for netting, have been agreed upon or enforced,"[13]

(b) notwithstanding any attachment whether civil, criminal or judicial, or penal confiscation 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)"[14], and shall not constitute an obstacle to the

[13] Law of 20 May 2011
[14] Law of 20 May 2011

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 reorganisation measure or winding-up proceeding, 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, but after the moment of the commencement of, winding-up proceedings or reorganisation measures, 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.

(3) The provisions of paragraphs 1 and 2 apply also to payments made by a person on the day a reorganisation measure or winding-up proceedings is 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 herebelow arising in relation to "financial collateral"[15] 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"[16] on financial instruments transferable by book entry;

(b) the requirements for the provision of "financial collateral"[17] on financial instruments transferable by book entry "under a financial collateral arrangement"[18], and more generally, the completion of the steps necessary to render such an arrangement and provision effective against third parties;

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

(c) whether a person's title to or interest in "financial collateral"[19] 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." [20]

PART VII: Amending and repealing provisions

Article 25. (1)(a) Articles 112, 114(3), 118 and 119(1) of the Commercial Code are repealed.

(b) Article 113 of the Commercial Code is amended as follows: "The contracting parties may agree that in order to collateralize the present or future obligations of the debtor, all assets presently or in the future owned by the pledge provider and of which the pledgee or any third party to be determined is or will be holder or debtor, are or will be subject to the pledge without need to specifically designate them."

(c) Paragraph 4 of Article 114 is renumbered as paragraph 3 of the same Article. The first subparagraph of that paragraph is amended as follows: "The transfer of possession is also effected as against all third parties when the pledge has been notified to the debtor or to the third-party custodian of the pledge, if any, or when the pledge has been acknowledged by the debtor or third-party custodian."

(2) The Law of 21 December 1994 concerning repurchase agreements is repealed.

(3) The Law of 1 August 2001 on transfer of ownership for security purposes is repealed. All references to the Law of 1 August 2001 on transfer of ownership for security purposes shall from now on 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 is repealed.

(b) Article 17 of the same law is amended as follows:

"The depositories 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 depository. This lien

[19] Law of 20 May 2011
[20] Law of 20 May 2011

guarantees the claims of such depositories vis-à-vis a participant to the securities settlement system arising from the clearing or settlement of transactions on securities or other financial instruments 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 depositories 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 depositories on the participant arising from the clearing or settlement of transactions on securities or other financial instruments 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 a depositary 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."

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

(6) Article 6 of 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 is completed by the addition of a second subparagraph which reads as follows: "The enforcement of such a pledge is done in accordance with the provisions of Article 11 of the Law of 5 August 2005 on financial collateral arrangements."

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."