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COMPENDIUM OF LEGISLATION

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Summary

FINANCIAL GUARANTEE CONTRACTS

Law of 5 August 2005 on financial guarantee contracts relating to: – transposition of directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 concerning financial guarantee contracts; – modification of the Commercial Code; – modification of the law of 1 August 2001 concerning the circulation of securities and other instruments fungible; – amendment of the law of 5 April 1993 relating to the financial sector; – modification of the Grand-Ducal Regulation of 18 December 1981 concerning fungible deposits of precious metals and modifying Article 1 of the Grand-Ducal Regulation of 17 February 1971 concerning the circulation of transferable securities; – repeal of the law of 21 December 1994 on repo transactions; – abrogation of the law of August 1 , 2001 relating to the transfer of ownership by way of guarantee.

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

Our Council of State heard;

With the consent of the Chamber of Deputies;

Considering the decision of the Chamber of Deputies of July 12, 2005 and that of the Council of State of July 15, 2005 bearing that there is no need for a second vote;

Have ordered and order:

PART I: General Provisions

Art. 1st. For the purposes of this law, the following

terms mean: 1) “assets”: financial instruments and claims;

2) "close-out netting clause" means a contractual arrangement or, in the absence of such an arrangement, any legislative or regulatory provision, under which the occurrence of a fact agreed as giving rise either to the performance of security provided under a financial security agreement, or the set-off of the assets of the parties, whether by novation or set-off or otherwise, and which has the following effects: (i) the time remaining before the maturity of the obligations of the parties is removed, so that said

obligations are either immediately due and expressed as a simple obligation to pay an amount representing their estimated value, or extinguished and replaced by an obligation to pay the aforementioned amount, or

(ii) a statement is drawn up of the sums which the parties owe each other under these obligations and an amount equal to the balance net must be paid by the party with the highest debt;

3) “relevant account”: in the case of collateral in the form of book-entry transferable financial instruments under a financial collateral agreement, the register or account – which may be maintained by the collateral taker – where the entries are made whereby the financial instruments are delivered as collateral to the collateral taker;

4) "financial guarantee contract" means a contract of pledge, transfer of ownership by way of guarantee, pension or security trust governed by this Act;

5) “right of use”: the right of the pledgee to dispose of the pledged assets as if he owned them, in accordance with the terms of the pledge agreement;

6) "event triggering the execution of the guarantee" means a default or any other event agreed between the parties, the occurrence of which, under the financial guarantee contract or the contract containing the covered financial obligation or by operation of law , entitles the collateral taker to realize or appropriate the financial collateral or triggers close-out netting; 7) 'equivalent guarantee': (i) in the case of claims for sums of

money, payment of the

same amount and in the same currency; (ii) in the case of financial instruments, financial instruments having the same

issuer or debtor, forming part of the same issue or the same class, having the same nominal value, denominated in the same currency and having the same designation or, where the financial security agreement provides for the transfer of other assets, these other assets;

8) "financial instruments" means the broadest sense of the term, and in particular:

a) all transferable securities and other securities, including in particular shares and other securities equivalent to shares, shares in companies and undertakings for collective investment, bonds and other debt securities, certificates of deposit, savings certificates and commercial paper;

b) securities conferring the right to acquire shares, bonds or other securities by way of subscription, purchase or exchange;

c) financial futures and cash-settled securities (excluding payment instruments), including money market instruments;

d) any other securities representing property rights, claims or securities; e) all instruments relating to

financial underlyings, indices, commodities, commodities
valuables, commodities, metals or commodities, other property or risks;

f) the claims relating to the various elements listed under a) to e) or the rights on or relating to these various elements,

whether these financial instruments are materialized or dematerialized, transferable by book entry or tradition, bearer or registered, endorsable or non-endorsable and regardless of the law applicable to them;

9) 'reorganization measures': measures involving the intervention of an administrative or judicial authority, which are intended to preserve or restore the financial situation and which affect the pre-existing rights of third parties, including in particular measures which entail a suspension of payments, suspension of enforcement measures or reduction of claims;

(10) 'covered financial obligations' means obligations which are secured by a financial guarantee contract and which give rise to the right to cash settlement or the delivery of financial instruments or of goods underlying such financial instruments. They may consist totally or partially of:

(i) in present obligations, whether subject to a term or condition, as well as in future obligations, without the need to specify them;

(ii) obligations to the collateral taker owed to a person other than the collateral provider,
Or

(iii) in occasional obligations of a given class or type; 11) 'liquidation

procedure' means a collective procedure comprising the realization of assets and the distribution of the proceeds of this realization between creditors, shareholders, partners or members as the case may be, and involving the intervention of an administrative authority or judicial, including when this procedure is closed by a composition or other similar measure, whether or not it is based on insolvency and regardless of its voluntary or compulsory nature;

12) "financial professionals" means

a) a public authority, including:

(i) public sector bodies responsible for the management of public debt or involved in this field; (ii) public sector bodies authorized 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 and other national or international bodies 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) a collective investment

scheme; (v) a management company of

one or more undertakings for collective investment;

(d) a central counterparty, settlement agency or clearing house, including institutions operating in the futures and options markets and in the financial derivatives markets and a person acting as trustee or as a representative on behalf of one or more persons, including any holder of bonds or any holder of other forms of debt securities or any establishment defined in points a) to h);

e) a commercial or industrial establishment with professional access to the financial market; (f) a pension

fund; (g) a securitization

undertaking or an entity or body participating in a securitization transaction; h) another professional of the

financial sector not included in points a) to g).

Art. 2. (1) Contracts of financial guarantee and contracts of compensation concluded either by a trader or by a non-trader are deemed to be acts of commerce.

They prove themselves vis-à-vis third parties as vis-à-vis the contracting parties by means of a writing or any other legally equivalent means under article 109 of the Commercial Code.

(2) The provision of financial security must be attestable in writing. The writing, which may be in electronic form or any other durable medium, evidencing the establishment as collateral must allow the identification of the assets subject to this establishment. For financial instruments transferable by book entry and claims for sums of money constituted as collateral, it suffices, for this purpose, to prove that they have been credited to a particular account or constitute a credit on this account. .

(3) Any reference to "created" financial security or the "creation" of financial security in this Act means its delivery, transfer, holding, recording or other processing which has the effect that the security taker the guarantee or the person acting on its behalf acquires possession or control of this financial guarantee. The right to substitute or withdraw the excess of the assets provided as collateral in favor of the collateral provider does not affect the collateral constituted for the benefit of the collateral taker referred to in this law.

(4) A financial guarantee may be provided in favor of a person acting on behalf of the beneficiaries of the financial guarantee, a fiduciary or a trustee to guarantee the claims of third party beneficiaries, present or future, provided that such third-party beneficiaries are determined or determinable. The persons acting on behalf of the beneficiaries of the financial guarantee, the fiduciary or the trustee, benefit from the same rights as those accruing to the direct beneficiaries of the financial guarantees covered by this law, without prejudice to their obligations vis-à-vis the third-party beneficiaries of the guarantee. financial.

PART II: The pledge

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

Art. 4. The parties to a pledge agreement may agree that in order to secure the covered financial obligations of a debtor, all assets belonging or coming to belong to the pledgor are or will be pledged, without the need for them to be pledged. specify.

Art. 5. (1) The lien subsists on the pledged assets only so long as these assets have been put and have remained or are deemed to have remained in the possession of the pledgee or of a third party agreed between the parties.

(2) If the pledge is made over financial instruments, the dispossession of the pledgor and the enforceability of the pledge to third parties can take place as follows:

a) The dispossession of financial instruments transferable by book entry is validly carried out by the registration of these financial instruments, without specifying a number, in an account opened with a depositary in the name of the grantor of the pledge, the pledgee or 'a person to be agreed acting either as a pledgee or as a 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 or by the notification of the incorporation from the pledge to the depositary.

b) The dispossession of bearer financial instruments, the transfer of which takes place by tradition alone, may be established by delivery as a pledge in the hands of the pledgee or a third party agreed between the parties.

c) The dispossession of registered financial instruments, the transmission of which takes place by transfer to the registers of the issuer, may be established by registration of the pledge alongside the registration of the financial instruments in these registers.

d) Possession of promissory financial instruments can be established by a regular endorsement indicating that the financial instruments have been pledged.

(3) If the pledge is constituted on debts or on financial instruments other than those listed in paragraph (2), the dispossession takes place with regard to all third parties when, for the debts, the constitution of the pledge has been notified to the debtor of the pledged claims or accepted by the latter and, for financial instruments, when the constitution of the pledge has been notified to or accepted by the issuer of the pledged financial instruments or, if the financial instruments are held by a third-party holder pledge, by notice to or acceptance thereof.

The notification and acceptance of the pledge are made either by notarial deed, or by a private deed. In the latter case, if a third party contests the date of notification or acceptance of the pledge, proof of this date may be provided by any means.

Even before notification or acceptance, the debtor may be opposed to the pledge, if it is proven that he was aware of it.

(4) The pledgee has in all cases a right of retention on the assets pledged in his favor.

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

Art. 6. (1) If an asset pledged in favor of a first pledge creditor is pledged by the pledgor of the pledge in favor of another pledge creditor, the possession of this last pledge creditor shall take place as follows: :

a) for book-entry financial instruments pledged in accordance with Article 5(2)(a) in favor of a first pledgee:

(i) if the relevant account is opened in the name of the pledgor, by notification to the depositary or by designation of the financial instruments as being pledged in favor of the lower ranking pledgee and acceptance of the higher ranking pledgees ;

(ii) if the relevant account is opened in the name of a senior pledgee, by the acceptance of this last and any other senior pledgee;

(iii) if the relevant account is opened in the name of a third person, by the acceptance of this third person to act as an agreed third party and senior secured creditors;

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

(i) if the financial instruments have been delivered to a pledgee, by the latter's agreement to act as agreed third party and any other senior pledgee;

(ii) if the financial instruments have been delivered to an agreed third party, by the acceptance of the ranking pledge creditors superior;

c) for registered financial instruments, pledged in accordance with Article 5 (2)c) in favor of a first pledgee, according to the terms indicated in this article;

d) for financial instruments to order by a regular endorsement indicating that the financial instruments have been pledged in favor of the junior pledgee;

e) for claims and financial instruments, other than those referred to in Article 6 (1) a) to d), pledged in accordance with Article 5 (3) in favor of senior secured creditors, by acceptance or notification of the recipient of the notification required by Article 5(3) and by the acceptance of senior pledgees.

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

(3) The pledgor may not constitute assets pledged in favor of a first pledge creditor in favor of another pledge creditor, if the first pledge creditor has a right of use on these assets.

(4) In the event of the occurrence of an event entailing the execution of the guarantee in favor of the first ranking pledgee, the latter may execute his pledge in accordance with Article 11. If the proceeds of realization exceed his secured claim, the balance will remain pledged in favor of the other secured creditors and will be remitted to the agreed third party or if this agreed third party is the first rank secured creditor, the balance will be remitted to the other secured creditors according to the terms of their agreement, unless the secured creditor first tier agrees to continue to act as an agreed third party.
Failing an agreement between these secured creditors within the time limit set by the first-ranked secured creditor, the latter will place the balance in the hands of a credit institution established in Luxembourg which will keep it as receiver for the lower-ranked creditors.

(5) In the event of the occurrence of a fact entailing the execution of the guarantee in favor of a pledgee, other than the first-ranking pledgee, this pledgee shall attempt to find with the higher-ranking pledgee creditors a agreement on the mode of realization of the pledged assets, on the order of settlement and on the distribution of the proceeds of realization.

In the absence of an agreement between these pledge creditors, the most diligent pledge creditor may seize the president of the district court, ruling in summary proceedings, the other pledge creditors called into question, with a view to determining the mode of realization of the pledged assets. , the order of settlement and the distribution of the proceeds of realization between these secured creditors.

The share of the proceeds of realization going to the secured creditors who did not cause the realization will remain pledged in their favour.

The appeal and opposition against the interim order are governed by article 939 of the New Code of Procedure civil. The appeal decision is not subject to cassation.

(6) A pledge creditor who receives proceeds from the realization of a pledge in legitimate ignorance of the existence of a higher-ranking secured creditor, may keep this proceeds of realization up to the amount of his secured claim.

The pledge creditor who, after the realization of his pledge, has returned the part of the proceeds of realization or of the pledged assets which exceed his guaranteed claim to the pledgor, without having received notification of the existence of other pledge creditors, does not engage its responsibility.

Art. 7. The pledgor is presumed to own the pledged financial instruments. The validity of the pledge is not affected by the absence of ownership rights of the pledgor over the pledged financial instruments, unless the pledgee has been notified, in advance and in writing, of the absence of ownership rights. of the pledgor, all without prejudice to the liability of the latter. If the pledgor has informed the beneficiary of the pledge that he is not the owner of the financial instruments pledged, the validity of the pledge is subject to the confirmation of the pledgor that he has obtained the agreement of the owner financial instruments to the pledge.

The provisions of the preceding paragraph are also applicable to other financial guarantee contracts and to netting agreements referred to in this law.

Art. 8. Unless otherwise agreed, the first-ranking secured creditor receives the capital and, if applicable, the fruits and proceeds of the pledged assets on the due dates, and either charges them against his claim or retains them as pledged assets. in his favour.

Art. 9. The allocation of the exercise of the voting rights attached to pledged financial instruments is governed by the agreement of the parties.

In the absence of agreement to the contrary, the right to vote remains vested in the pledgor, unless a right of use has been conferred on the pledgee in which case the right to vote is acquired by the latter.

Art. 10. (1) The parties may agree that the pledgee has a right of use on the financial instruments and on the claims for sums of money pledged in his favour. No right of use may be granted to a pledge creditor other than the first ranking pledge creditor without the agreement of all the higher ranking pledge creditors.

(2) If a right of use is conferred on the pledgee, the latter has (i) the obligation to transfer, at the latest on the date scheduled for the performance of the financial obligations covered, an equivalent guarantee to replace the instruments instruments and money claims originally pledged or (ii), if the parties have so agreed, the right to realize the financial instruments and money claims pledged by way of set-off or landfill covered financial obligations. If an event giving rise to the execution of the guarantee occurs while the obligation under (i) is still unperformed, the said obligation may be subject to close-out netting.

(3) The financial instruments and claims for sums of money 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 agreement as that to which the financial instruments and the claims for sums of money originally pledged were subject and is considered to have been delivered at the time of the constitution of the security. initial security under the pledge agreement.

(4) If the pledge is constituted on financial instruments transferable by book entry and if the pledgee exercises his right of use on these financial instruments pledged in his favor by way of pledge, transfer of ownership as guarantee or repurchase agreement, dispossession in favor of the new pledgee or transfer of ownership in favor of the assignee may be effected by the designation in the grantor's account of the original pledge in the books of the depositary.

Art. 11. (1) In the event of the occurrence of an event leading to the execution of the guarantee, the pledgee may, unless otherwise agreed, without prior notice, either:

a) appropriate the assets at the price determined according to the method of valuation agreed between the parties; or

b) assign or cause to be assigned the pledged assets by private sale under normal commercial conditions, by a sale on the stock exchange or by public sale; either

c) cause a court order that the assets pledged remain in payment to him up to the due amount, according to a estimate made by expert; or (d) set

off in accordance with Part V below; or e) in the case of financial instruments, appropriate

these financial instruments at the current price, if they are admitted to official listing on a stock exchange located in Luxembourg or abroad or traded on a regulated market in regular operation, recognized and open to the public or at the price of the last published net asset value, in the case of units or shares of an undertaking for collective investment which regularly calculates and publishes a net asset value .

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

(3) If the pledge consists of financial instruments held with an agreed third party, this third party shall deliver these financial instruments to the pledgee upon simple declaration of the occurrence of a fact leading to the execution of the guarantee and without having to seek the pledgor's agreement or inform him in advance. If the pledge consists of a claim for a sum of money owed by a third party, the pledgee may, under the same conditions, demand payment from this third party in his hands to the extent of his claim, all without prejudice to the 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 pledged assets which the pledgor does not have.

Art. 12. Notwithstanding the provisions of article 189 of the law of August 10, 1915 on commercial companies, the approval of the general meeting of partners is not required in the event of the total or partial realization of a pledge relating to all the shares of a limited liability company and granted, at the time of incorporation, to one person or to several persons within the framework of the same transaction.

In other cases, the approval may be given under the conditions of article 189 of the law of August 10, 1915 on commercial companies at any time before the completion in favor of either one or more persons or groups of persons identified , or unidentified persons. Such approval is irrevocable.

In the event that, within the framework of the realization, the shares are transferred to an unidentified approved person and that the realization of the pledge is not made by public sale announced beforehand in writing to the company, the partners, excluding of the assignor and the assignee of the pledged shares, may, within the month following the notification of the assignment to the company, either redeem the pledged shares themselves at the realization price, or have these shares redeemed by the company at the price of achievement.

PART III: Transfer of title as security

Art. 13. This law applies to operations of transfer of ownership by way of guarantee of assets, including by way of trust. If the transfer of ownership is effected by trust, the trustee must be a financial professional.

The operations referred to in the preceding paragraph are those which consist in the transfer of the ownership of assets belonging or coming to belong to the assignor, without it being necessary to specify them, to the assignee in order to guarantee the financial obligations covered by the assignor or a third party towards the assignee and which include an undertaking by the assignee to retransfer the transferred assets or other equivalent assets according to the agreement of the parties, except in the event of total or partial non-performance of the financial obligations covered.

They also consist in the transfer of ownership of assets intended to ensure, during the course of the contract, the agreed balance between the services of the parties, either for a specific transaction, or globally for all or part of the transactions between the contracting parties.

Art. 14. (1) The restrictions on the exercise of the right of ownership agreed between the assignor and the assignee do not affect the nature of the right of ownership granted to the assignee.

(2) The transfer of ownership by way of security of financial instruments registered in an account takes effect at the latest between the parties and becomes opposable to third parties upon registration in an account opened in the name of the transferee or of an agreed third party acting for the benefit of the assignee or their designation, in an account opened in the name of the assignor, as being the property of the assignee.

The transfer of ownership as security for financial instruments not registered in an account or receivables takes effect between the parties and becomes enforceable against third parties upon agreement by the parties. Nevertheless, the debtor of an assigned claim is validly released from the hands of the assignor as long as he is not aware of the transfer of his debt to the assignee.

(3) In the event of total or partial non-performance of the financial obligations covered, the assignee is released from his obligation to retransfer up to the amount of his claim on the assignor or the guaranteed third party according to the methods of extinction or compensation agreed between the parties. , and, unless otherwise agreed, without prior notice.

(4) When a transfer of ownership by way of security is concluded by trust with a professional transferee of finance, the provisions of articles 5 to 9 of the law of July 27, 2003 relating to trusts and fiduciary contracts are applicable, in addition to the provisions of this law. The parties may by agreement exclude the application of article 7(6) of the law of July 27, 2003 relating to trusts and fiduciary contracts.

PART IV: Repo

Art. 15. This Act applies to property repurchase transactions as well as to transfers of property carried out in order to ensure, during the course of the contract, the balance between the obligations of the parties, either for a repurchase transaction fixed pension, or globally for all or part of the transactions between the contracting parties.

Art. 16. (1) A repurchase transaction within the meaning of this Act is where an assignor assigns to an assignee against payment of a price an asset and where the obligation or the option of subsequent surrender of that asset or equivalent property to the assignor is provided at a price agreed in advance.

(2) The repurchase transaction may relate to all kinds of tangible or intangible assets.

(3) The repurchase agreement of financial instruments registered in an account takes effect at the latest between the parties and becomes opposable to third parties upon registration in an account opened in the name of the assignee or of an agreed third party acting for the benefit of the assignee. , or their designation, in an account opened in the name of the assignor, as being the property of the assignee.

(4) At the end of the repurchase agreement, the assignor has the obligation to take back the repo property or an equivalent property. The transferee has, according to the conditions agreed between the parties, either the obligation or the right to retrocede the asset placed in repurchase agreement or an equivalent asset.

(5) If the transferee has an obligation to return the property, it is a repurchase transaction based on a buy-and-sell agreement.

(6) If the transferee has the right to reassign the property, it is a repurchase transaction on the basis of a take-or-pay and resell option agreement.

Art. 17. The assignment and reassignment of property under a repurchase transaction constitute effective transfers of ownership. If the parties so agree, the same rule applies to goods substituted for the initial goods or transferred as a margin of cover during the contract. Retrocession does not retroactively affect the assignee's right of ownership of the asset transferred during the repurchase period.

PART V: Settlement and insolvency proceedings

Art. 18. Set-offs between assets, carried out in the event of reorganization measures, liquidation proceedings or any other competition situation, are valid and enforceable against third parties, auditors, trustees and liquidators or other similar bodies, regardless of either the due dates, their purposes or the currencies in which they are denominated, provided that they result from transactions which are the subject of agreements or clauses

bilateral or multilateral clearing agreements between two or more parties. These offsets are also valid and enforceable when they are carried out through the intervention of public bodies or professionals of the financial sector responsible for the clearing and settlement of payments or transactions in financial instruments. Compensation is made, unless otherwise agreed, without prior notice.

Art. 19. Asset relatedness clauses as well as resolution, termination, indivisibility, requirement for margins of coverage, substitution clauses, close-out netting clauses, valuation and netting terms and all other clauses stipulated to allow the compensation referred to in the preceding article are also valid and enforceable against third parties, commissioners, curators and liquidators or other similar bodies, and take effect:

a) notwithstanding the initiation or continuation of a reorganization measure of a liquidation procedure regardless of when these clauses, including compensation, were agreed or executed,

(b) notwithstanding any civil, criminal or judicial seizure or criminal confiscation as well as any assignment or other alleged alienation of the rights concerned or relating to the said rights.

Art. 20. (1) Contracts of financial guarantee of assets as well as the facts leading to the execution of the guarantee, the contracts of compensation and the methods of evaluation and execution agreed between the parties in accordance with this law are valid. and opposable to third parties, commissioners, trustees, liquidators and other similar bodies notwithstanding the existence of a reorganization measure, a liquidation procedure or the occurrence of any other competition situation, national or foreign.

(2) Termination, assessment, performance and set-off effected by reason of an execution or protective measure, including a measure provided for in Article 19 b), shall be deemed to have taken place before such a procedure.

(3) Unless otherwise agreed, the initiation of liquidation proceedings, reorganization measures or any other competition situation, domestic or foreign, in relation to one or other of the parties to a repurchase transaction , which occurred after the transfer of the property from the transferor to the transferee, does not exempt the parties from carrying out the retrocession under the agreed conditions. However, the reorganization measure, the liquidation procedure or any other competitive situation releases, in any event, the two parties from their respective obligations, if and insofar as the retrocession can no longer be carried out under the conditions agreed or otherwise according to the rules of compensation provided between the parties.

(4) With the exception of the provisions of the law of December 8, 2000 on over-indebtedness, 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 national provisions or foreign authorities governing reorganization measures, liquidation procedures, other competition situations and seizures or other measures referred to in point b) of Article 19 are not applicable to financial guarantee contracts and compensation contracts and do not impede the execution of these contracts and the execution by the parties of their obligations, in particular of retransfer or retrocession.

The same rules apply in the event of the death or incapacity of the provider of the financial guarantee, of the debtor of the financial obligations covered or of a party to a compensation contract.

Art. 21. (1) Netting contracts and financial guarantee contracts concluded as well as the provision of collateral under a financial guarantee contract made on the day of the opening of liquidation proceedings or the taking effect of a reorganization measure, but before the delivery of the decision to initiate such proceedings or taking effect of such a measure, are valid and enforceable against third parties, auditors, liquidators, trustees or other similar bodies.

(2) Where a netting agreement or financial guarantee agreement has been entered into or a covered financial obligation has come into effect or where assets have been pledged as collateral on the date of commencement of liquidation proceedings or of the taking effect of reorganization measures, but after the opening of this liquidation procedure or the taking effect of these reorganization measures, this contract produces its legal effects and is opposable to third parties, auditors, trustees, liquidators and similar bodies if the collateral taker proves that he was unaware that this procedure had been opened or that these measures had been taken or that he could not reasonably have known.

(3) The provisions of subsections (1) and (2) also apply to payments made by a person on the day the opening of liquidation proceedings or the taking effect of a reorganization measure concerning it.

(4) Requests for reorganization measures and judicial decisions initiating proceedings of liquidation must state the day and time of their taking effect.

Art. 22. Is null and does not prevent the realization of a financial guarantee an opposition practiced under the terms of the legislation concerning the loss of the titles between the date of the sending of the formal notice agreed between parties and the date of realization of the financial guarantee, without however the interval between these two dates being able to exceed one month.

PART VI: Private International Law Provisions

Art. 23. (1) Any question regarding any of the matters listed in paragraph (2) below which arises in respect of collateral in the form of book-entry transferable financial instruments shall be settled according to the law of the country where the relevant account is located. Reference to the law of the country means the domestic law of that country, notwithstanding any rule stipulating that the question in question must be decided according to the law of another country.

(2) The elements referred to in paragraph (1) are the

following: a) the legal nature and the actual effects of the guarantee in the form of financial instruments transferable by book entry;

b) the requirements relating to the constitution of a guarantee in the form of financial instruments transferable by book entry under such a contract and, more generally, the fulfillment of the formalities necessary to make such a contract and such constitution enforceable against third parties;

(c) whether the right of ownership or another right of a person to such collateral in the form of book-entry financial instruments is extinguished or overridden by a right of ownership or another competing right or is subordinate or if a bona fide acquisition has taken place;

(d) the obligations of the relevant account holder to a person other than the relevant account holder who claims competing rights in financial instruments registered with that holder against the relevant account holder or another person ;

e) the conditions for realizing the financial guarantee in the form of financial instruments transferable by book entry following the occurrence of an execution event;

f) the extent of the financial guarantee contract relating to financial instruments registered in the account to the rights to dividends, income, or other distributions, or to reimbursements, sale proceeds or any other proceeds.

Art. 24. The national provisions referred to in Article 20 (4) are inapplicable, in the event that the pledgor, the assignor in a transfer of title by way of security or the defaulting party in a repurchase transaction or to a netting arrangement is established or resides in Luxembourg.

PART VII: Amending and Repealing Provisions

Art. 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 guarantee the present and future commitments of the debtor, all the property belonging or coming to belong to the lessor of pledge and of which the creditor or a third parties to be agreed are or will be holders or debtors, are or will be subject to pledge, without it being necessary to specify them."

c) Paragraph (4) of Article 114 is renumbered and becomes paragraph (3) of the same article. The first paragraph of this paragraph is amended as follows: "Dispossession also occurs with respect to any third party when the constitution of the pledge has been notified to the debtor or to the third party holder of the pledge, if there is one, or by acceptance of the debtor or of the third-party holder."

(2) The law of 21 December 1994 relating to repurchase transactions is repealed.

(3) The law of August 1 , 2001 relating to the transfer of ownership by way of guarantee is repealed. All references to the law of 1 August 2001 relating to the transfer of property by way of guarantee will henceforth be read as references to this law on financial guarantee contracts.

(4) a) Article 9 of the law of 1 August 2001 concerning the circulation of securities and other fungible instruments is repealed.

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

"Custodians who principally operate a securities settlement system enjoy a lien on all the securities, claims, currencies and other rights that they hold in account as a participant's own assets in connection with the system. they operate, unencumbered by guarantees duly notified to or accepted by the depositary. This privilege guarantees the claims of these depositaries on a participant in the securities settlement system, arising from the settlement or liquidation of transactions in securities and other financial instruments or the related netting carried out by the participant both for its own account and for the account of its customers, including receivables arising from loans or advances.

The same custodians also benefit from a lien on all the securities, claims, currencies and other rights that they hold on account as assets of the clients of a participant in connection with the system that they operate. This privilege exclusively guarantees the claims of the depositary on the participant arising from the settlement or liquidation of transactions in securities and other financial instruments or the related netting carried out by the participant on behalf of clients, including claims arising loans or advances.

These privileges are not overridden by any general or special privilege, except those listed in article 2101 of the Civil Code. They are carried out in accordance with the provisions applicable to pledges on financial instruments and claims.

The foregoing privileges do not apply to assets held in an account with a depositary which principally operates a system for the settlement of securities transactions by the European Central Bank or by a national central bank forming an integral part of the European System of central banks.

For the purposes of this article, "collateral" means any realizable asset, including money, provided under a pledge, repurchase agreement, fiduciary transfer or agreement analogous, or otherwise, for the purpose of securing the rights and obligations which may arise under a securities settlement system or provided to central banks which are members of the European System of Central Banks or to the European Central Bank on such a realizable asset".

(5) Article 61-23 of the law of April 5, 1993 relating to the financial sector is repealed.

(6) Article 6 of the Grand-Ducal Regulation of 18 December 1981 concerning fungible deposits of precious metals and amending Article 1 of the Grand -Ducal Regulation of 17 February 1971 concerning the circulation of transferable securities is supplemented by a second paragraph which reads as follows: "The execution of such a pledge is carried out in accordance with the provisions of article 11 of the law of 5 August 2005 on financial guarantee contracts."

PART VIII: Final Provisions

Art. 26. Deeds evidencing a financial guarantee contract are not subject to the formalities of the record. They are registered at fixed duty if they are presented with the formality of registration.

Art. 27. This Act applies to financial guarantee contracts entered into before its entry into force.

Art. 28. Reference to this Law may be made in an abbreviated form using the following heading: "Law of 5 August 2005 on financial guarantee contracts".

Mandate and direct that this be inserted in the Memorial to be executed and observed by all those whom the thing concerns.

The Minister of Treasury and Budget,
Luke Frieden

Cabasson, August 5, 2005.
Henry

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