

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation Procedure

Proposals for Legal Notices / Ministerial Regulations and for new laws and amendments to existing laws

Note for Consultation

Draft Financial Collateral Arrangements (Amendment) Regulations, 2011

Reference is made to the subject in caption and to the **draft** Financial Collateral Arrangements (Amendment) Regulations, 2011 issued under the Set-off and Netting on Insolvency Act, as attached herewith.

The Financial Collateral Arrangements (Amendment) Regulations, 2011 transpose Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims. Since the latter EU Directive is a minimum harmonisation directive, the MFSA has considered going beyond the provisions of the said Directive, for the purpose of widening its scope and benefits, and to keep in line with market developments.

The current Financial Collateral Arrangements Regulations, which transposed the above-said Directive 2002/47/EC, had in 2002 created a legal framework for the cross-border use of financial collateral, and thus abolished most of the formal requirements that had been traditionally imposed on collateral arrangements. The new proposed regulations go a step further and transpose Directive 2009/44/EC by including credit claims as an eligible type of collateral. The use of credit claims will increase the pool of available

collateral, and will also benefit consumers and debtors, since this new form of collateral may lead to greater competition and better availability of credit.

It is also being proposed that non-EEA collateral takers and non-EEA collateral providers are included within the scope of the proposed regulations. Moreover, we are also trying to address legal doubts as to whether collateral can secure future obligations.

This communication is intended to bring this development to the attention of stakeholders for the purpose of consultation with relevant and interested parties.

Interested parties are kindly requested to submit any comments which they may have in relation to this draft legislation, to **Dr Isabelle Agius – Regulatory Development Unit, by email on iagius@mfsa.com.mt, by not later than the 15th January, 2011.**

Explanatory Note

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

**Communications Unit
28th December 2010**