

L.N. of 2013

**SET-OFF AND NETTING ON INSOLVENCY ACT
(CAP. 459)**

Financial Collateral Arrangements (Amendment) Regulations, 2013

IN exercise of the powers conferred by article 7 of the Set-Off and Netting on Insolvency Act, the Minister of Finance has made the following regulations:

Citation.

L.N. 177 of
2004.

1. The title of these regulations is the Financial Collateral Arrangements (Amendment) Regulations, 2013 and they shall be read and construed as one with the Financial Collateral Arrangements Regulations, 2004, hereinafter referred to as “the principal regulations”.

Amends
regulation 2 of
the principal
regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) In sub-regulation (1) thereof:-

(i) the definition “credit claims” shall be substituted as follows:

“ “credit claims” means:

(a) pecuniary claims arising out of an agreement whereby a bank or credit institution within the meaning of regulation 4(1) grants credit in the form of a loan; or

(b) pecuniary claims due to a non-natural person, provided that the debtor of the claims granted as collateral is also a non-natural person;”;

(ii) the definition “instrument” shall be substituted as

follows:

“ “instrument” means:

- (a) shares in companies and other securities or participation interests or rights equivalent to shares in companies, partnerships and other entities;
- (b) bonds and other securities giving rise to or acknowledging indebtedness;
- (c) any other securities which give the right to acquire any such shares, bonds, or other securities or participation interests or rights by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment schemes and money market instruments;
- (d) to the extent not already mentioned above, any instrument as defined in article 2 of the Investment Services Act; and
- (e) claims relating to, or rights in, or in respect of, any of the securities, participation interests or rights and instruments in terms of paragraphs (a), (b), (c) or (d) hereof;”;

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(iii) immediately after the definition “the Minister”, there shall be inserted the following new definitions:

“ “non-natural person” means any legal person, unincorporated firm or body of persons or partnership not being an individual;

“OECD country” means any country that is a member of the Organisation for Economic Co-operation and Development established in 1961;”;

(iv) the definition “recognised jurisdiction” shall be substituted as follows:

“ “recognised jurisdiction” means:

- (a) an EU Member State or an EEA State;
- (b) any country that is a member of the Organisation for Economic Co-operation and Development (OECD);
- (c) a country that is a signatory of the IOSCO Multilateral Memorandum of Understanding; or
- (d) any other jurisdiction with whom the Authority established in terms of the Malta Financial Services Authority Act has a Memorandum of Understanding covering securities;” and

Cap. 330.

(b) in sub-regulation (2) thereof:-

- (i) in the first proviso thereof, for the words “Provided that”, there shall be substituted the words “Provided further that”; and
- (ii) immediately after the words “acting on the collateral taker’s behalf.”, there shall be added the following new proviso:

“ Provided that a collateral taker shall also be deemed to have control over financial collateral when this is held by a third party, non-natural person, who acts on the instructions of the collateral taker or of a person acting on his behalf, whether throughout the duration of the financial collateral arrangement or upon the occurrence of an event of default under the financial collateral arrangement.”.

Amends
regulation 3A of
the principal
regulations.

L.N. 241 of
2006.

3. In sub-regulation (3) of regulation 3A of the principal regulations, for the words “the Companies Act or any other law is incompatible with”, there shall be substituted the words “the Companies Act, the Companies Act (Investment Companies with Variable Share Capital) Regulations or any other law is in conflict with”.

Amends
regulation 3B of
the principal
regulations.

L.N. 241 of
2006.

4. In regulation 3B of the principal regulations, for the words “The obligations arising out of article 122(10) of the Companies Act do not apply to”, there shall be substituted the words “The obligations arising out of article 122(10) and (11) of the Companies Act as well as any obligation to offer shares on a pre-emptive basis to other shareholders in terms of the Companies Act (Investment Companies with Variable Share Capital) Regulations do not apply to”.

Amends
regulation 4 of
the principal
regulations.

5. Regulation 4 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof:-

(i) paragraphs (a) to (i) thereof shall be renumbered (b) to (j) respectively;

(ii) paragraphs (j) and (k) thereof shall be renumbered (l) and (n) respectively;

(iii) immediately after the words “For the purposes of these regulations, both the collateral taker and the collateral provider shall be:”, there shall be inserted the following new paragraph:

“(a) a corporation or other legal person, in either case established by law;”;

(iv) in paragraph (j) thereof, as renumbered, for the words “any other collective investment scheme and management company of such scheme which are licensed”, there shall be substituted the words “any other collective investment scheme or management company of such scheme which is licensed”;

Cap. 484.

- (v) immediately after paragraph (j) thereof, as renumbered, there shall be inserted the following new paragraph:

“(k) a securitisation vehicle as defined in article 2 of the Securitisation Act;

- (vi) paragraph (l) thereof, as renumbered, shall be substituted as follows:

“(l) a central counterparty, settlement agent or clearing house;”;

- (vii) immediately after paragraph (l) thereof, as renumbered, there shall be inserted the following new paragraph:

“(m) a non-natural 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 on behalf of any entity as defined in paragraphs (a) to (l) hereof; or”; and

- (viii) in paragraph (n) thereof, as renumbered, for the words “a person other than a natural person, including unincorporated firms and partnerships,” there shall be substituted the words “a non-natural person other than the entities mentioned in paragraph (a),” and for the words “paragraphs (a) to (j).”, there shall be substituted the words “paragraphs (a) to (m).”.

- (b) in sub-regulation (2) thereof, immediately after the words “subregulation (1)(b) to (i)”, there shall be added the words “hereof”.

Amends
regulation 5 of
the principal
regulations.

6. Regulation 5 of the principal regulations shall be amended as follows:

- (a) In sub-regulation (4) thereof:-

- (i) for the words “Notice for the purposes of this regulation shall be made by:”, there shall be substituted the words “When credit claims are provided as financial collateral, for the purposes of this regulation the debtor will be deemed to be notified of the financial collateral arrangement upon any one of the following events taking place at the option of the collateral taker or the collateral provider:”;

- (ii) in paragraph (a) thereof, for the words “in writing; and”, there shall be

substituted the words “in writing; or”;

(iii) paragraph (c) thereof shall be renumbered (iii), and for the word “circulation:”, there shall be substituted the word “circulation.”; and

(iv) the proviso thereof, shall be numbered sub-regulation (5).

(b) sub-regulations (5) and (6) thereof shall be renumbered (6) and (7) respectively; and

(c) in the new sub-regulation (5):-

(i) for the words “Provided that such notification shall be effective for all the purposes”, there shall be substituted the words “Such notification shall be effective for all purposes”;

(ii) in sub-paragraph (i) thereof, for the words “such date of service;”, there shall be substituted the words “such date of service; or”;

(iii) in sub-paragraph (ii) thereof, for the words “last known address;”, there shall be substituted the words “last known address; or”; and

(iv) in sub-paragraph (iii) thereof, for the words “notice in the newspaper, and”, there shall be substituted the words “notice in the newspaper; or”.

Amends
regulation 6 of
the principal
regulations.

7. Regulation 6 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof:-

(i) in paragraph (b) thereof, for the words “financial obligations; or”, there shall be substituted the words “financial obligations;”;

(ii) paragraph (c) thereof shall be renumbered paragraph (d); and

(iii) immediately after paragraph (b) thereof there shall be inserted the following new paragraph:

“(c) in relation to instruments consisting of securities of a SICAV, the financial collateral may also be realised in the manner and in accordance with the value as contemplated in

regulation 14(6)(iii) of the Companies Act (Investment Companies with Variable Share Capital) Regulations; or”;

(b) in sub-regulation (2) thereof, for the words “agreed on the valuation”, there shall be substituted the words “agreed, in writing, on the manner of or mechanism for the valuation”; and

(c) in sub-regulation (5) thereof, for the words “the Companies Act or any other law.”, there shall be substituted the words “the Companies Act, the Companies Act (Investment Companies with Variable Share Capital) Regulations, or any other law.”.

L.N. 241 of 2006.

Amends regulation 9 of the principal regulations.

L.N. 241 of 2006.

8. In sub-regulation (1) of regulation 9 of the principal regulations, immediately after the words “Companies Act shall not apply.”, there shall be added the words “ To the extent that they conflict with these regulations, the provisions of regulation 14 (6) and (7) of the Companies Act (Investment Companies with Variable Share Capital) Regulations shall not apply.”.