

Taking the Luxembourg financial collateral arrangement framework to the next level

The Luxembourg law on financial collateral arrangements dated 5 August 2005, as amended, (the “Law”) has provided, since its inception, market participants with a strong and well-tested framework. In the context of the implementation of Regulation (EU) 2021/23 of 16 December 2020 on a framework for the recovery and resolution of central counterparties, the Luxembourg legislator has taken the opportunity to further update the Law (the “Update”). The Update has been voted by the Luxembourg Houses of Parliament on 15 July 2022 and will soon enter into force.



Some of the key features of the Update are as follows:

- Any trigger event agreed between the relevant parties will be recognised to allow enforcement.
- Enforcement of the financial collateral agreement even in the event that no secured obligations are due and payable.
- Update and clarification of enforcement options, in particular with respect to pledges granted over units or shares of collective investment undertakings, life insurance contracts or capitalisation contracts.
- Express recognition of the possibility for electronic money institutions and payment institutions to act as fiduciary in the context of transfer of title for security purposes.
- Further clarification that the insolvency remoteness of set-off arrangements and security interests is to be understood as being towards national and foreign law insolvency procedures.

This Update will be welcomed by market players as the legislator has not only used this Update to clarify various items but has also introduced certain new features, adding to the robustness of the Luxembourg financial collateral arrangements framework.

Should you want to further explore the opportunities brought by the Update, get in touch with the Banking, Finance and Capital Markets team at Luther Luxembourg.

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