

The Law on Financial Collateral



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Macedonia's Law on Financial Collateral which came into force on January 1st of this year, regulates the use of financial collateral agreements for securing receivables. It was passed to be align Macedonia's law with EU regulations. More specifically, the basis for this law was the EU Directive on Electronic Commerce (2002/47/EC) dated 6 June 2002.

It limits such usage to the following entities:

- *State authorities;*
- *the National Bank of the Republic of Macedonia, the European Central Bank, the Bank for International Settlements, the International Monetary Fund, the European Investment Bank, the central banks of EU member states, international development banks;*

- *domestic banks;*
- *leasing companies;*
- *brokerage houses;*
- *insurance companies;*
- *investment and pension fund companies;*
- *clearinghouses and securities depositaries;*
- *the national Health insurance fund, Pension insurance fund and the Deposit Security Fund.*

Further, these entities must meet the Law on Trade Companies definition of a "large enterprise" when executing such agreements which must be in writing and notarized.

The Law considers two types of financial collateral agreements: those with ownership transfer and those with pledge rights. The former are agreements that include repurchase (or repossession) clauses, where ownership of the financial collateral (e.g., a financial instrument or cash) is transferred entirely from one party – the "collateral provider" – to the other – the "collateral taker" – for the duration of the collateral's validity. These agreements must be reported to the Central Securities Depository. In contrast, for financial collateral agreements with pledge rights, ownership of the financial collateral remains in the collateral provider's possession throughout its validity, while the collateral taker registers a pledge right to it in the country's Pledge Registry. In the event of default or other non-fulfilment of the agreement, the collateral taker takes real ownership of the collateral or close out netting occurs.

Finally, financial collateral agreements involving cash must be registered in the collateral provider's financial institution, though the associated procedures in domestic banks have yet to be developed.