



THE LAW ON FINANCIAL COLLATERALS

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The Serbian Parliament adopted the Law on Financial Collaterals on 8 June 2018, which will become effective as of 1 January 2019.

To implement the solutions from the Law on Financial Collaterals, the Serbian Parliament also adopted amendments to the Bankruptcy Law, which will enter into force on 1 January 2019.

The Law on Financial Collaterals introduces entirely new institutes and procedures in the Serbian legal system as opposed to solutions contained in the Law on Obligations, Law on Enforcement and Security, Law on Registered Pledge, etc.

The authorities wanted systematically to regulate provision and enforcement of financial collaterals, as well as to enhance mainly the repo and financial derivatives market, with or without foreign elements.

The Law on Financial Collaterals is in line with the Directive 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements.

The newly adopted law will be applicable to qualified investors only (see further clarification below).

Some of the novelties introduced by the Law on Financial Collaterals are as follows:

- The agreements on financial collaterals by which a pledge is created or ownership over the collateral is transferred for the purpose of securing receivables of investors at the financial market. Accordingly, the law creates two modalities for the provision of the financial collateral. It is either :

(i) establishment of the pledge, or

(ii) transfer of the ownership over cash, financial instruments and credit claim;

- The qualified investors are, inter alia, the Republic of Serbia, the European Union, EU member states, third countries, the European Central Bank, the International Monetary Fund, the European Investment Bank, the National Bank of Serbia, banks, insurance companies, broker-dealer firms, company for management of investment fund, investment fund, other financial institutions, and legal persons representing these entities. The National Bank of Serbia, as the proposer of the law to the Parliament, suggested that general legal and natural persons could not be a party to the agreement on financial collateral pursuant to the Law on Financial Collaterals due to underdeveloped domestic financial market and weaker position of those persons;

- The financial collaterals are deemed :

(i) cash,

(ii) financial instruments, and

(iii) credit claims;

- The extra-judicial enforcement. The Law on Financial Collaterals introduces the extra-judicial enforcement without prior written notice to the provider of collateral, without consent or decision of the court, public authority or any other person, without public auction, and without any deadline to pass between the event of default and actual activation of the collateral, unless the parties agreed differently in line with the Law on Financial Collaterals. The parties are free to define the event of default. Further, the parties are free to choose modality of enforcement of the pledged collaterals. The pledged cash would be set-off against the financial obligation, whereas the financial instrument and credit claim could be sold or taken into ownership of the receiver;
- The application of close-out netting principle to the financial collaterals agreement. The parties may agree that upon event of default, automatically or upon request of a party the close-out netting is applied –
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 - (i) mutual obligations under one or more agreements on financial collaterals are deemed due or terminated and replaced with new monetary obligations, and/or
 - (ii) mutual obligations under one or more agreements on financial collaterals are netted, such that the party which owes the higher amount should pay the difference;
- Opening a bankruptcy, liquidation or reorganization shall not affect the provided financial collaterals if they were provided before opening of these proceedings. If the financial collaterals were provided, acquired, or altered on the date of opening of any of these proceedings, they will remain valid if the receiver shows that it was not aware and should have not been aware of opening of these proceedings.

The Law on Financial Collaterals and related amendments to the Bankruptcy Law are expected to bring more usage of the financial collaterals at the financial market, to reduce the market risk and increase the market liquidity. Still, it is yet to be seen how the market would react and whether the legislator would further support development of the domestic financial market by appropriate legislative measures.

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