

L.N. 208 of 2023

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

**Financial Collateral Arrangements (Amendment)
Regulations 2023**

IN EXERCISE of the powers conferred by article 7 of the Set-Off and Netting on Insolvency Act, the Minister responsible for financial regulation has made the following regulations:

1. (1) The title of these regulations is the Financial Collateral Arrangements (Amendment) Regulations, 2023, and these regulations shall be read and construed as one with the Financial Collateral Arrangements Regulations, hereinafter referred to as "the principal regulations".

Title and scope.

S.L. 459.01.

(2) The scope of these regulations is to transpose Article 89 of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.

2. Sub-regulation (4) of regulation 1 of the principal regulations shall be substituted by the following:

Amends regulation 1 of the principal regulations.

"(4) The provisions of these regulations shall be without prejudice to:

S.L. 378.12.

(a) Directive 2008/48/EC of the European Parliament and the Council of 23 April 2008 on credit agreements for consumers, as amended from time to time, and the Consumer Credit Regulations; and

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(b) the BRRD, the CCP RRR, the relevant provisions of the Malta Financial Services Authority Act and Financial Markets Act transposing the CCP RRR, and the Recovery and Resolution Regulations."

S.L. 330.09.

3. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) immediately before the definition "'book entry

securities collateral" ", there shall be added the following new definition:

" "binding legal instrument" means any directly applicable measures, including, but not limited to, any implementing technical standards, regulatory technical standards or similar measures, issued under European Union legislation;"

(b) immediately after the definition " "book entry securities collateral" " there shall be added the following new definition:

" "BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

(c) immediately after the definition " "cash" ", there shall be added the following new definition:

" "CCP RRR" means Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;" and

(d) immediately after the definition ""European Union"", there shall be added the following new definition:

" "Financial Collateral Arrangements Directive" means Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, as amended from time to time;"

4. Immediately after sub-regulation (2) of regulation 3 of the principal regulations, there shall be added the following new sub-regulation:

Amends
regulation 3 of
the principal
regulations.

"(3) The provisions of Article 7(1) of Financial Collateral Arrangements Directive and of regulations 6, 7, 8, 9 and 10(1) shall not apply to:

S.L. 330.09.

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(a) any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of regulations 59 to 72 of the Recovery and Resolution Regulations or by virtue of the provisions under Title V, Chapter III, Section 3 or under Chapter IV of the CCP RRR or in terms of the relevant provisions of the Malta Financial Services Authority Act implementing the said provisions of the CCP RRR; or

(b) any restriction which:

(i) is imposed in terms of any applicable national law that facilitates the orderly resolution of:

(aa) an insurance company, insurance undertaking and assurance undertaking in terms of regulation 4(1)(g);

(bb) a central counterparty, settlement agent or clearing house, including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems; or

(cc) 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 institution as defined in regulation 4(1)(a) to (l); and

(ii) is subject to safeguards at least equivalent to those set out in regulations 73 to 80 of the Recovery and Resolution Regulations or in Title V, Chapter V of the CCP RRR."
