

Parliament of Romania

Law No. 222/2004
approving Government Ordinance No. 9/2004
on certain financial collateral arrangements

In force as of 10 June 2004

Published in the Official Journal of Romania, Part I No. 508 of 7 June 2004.

There are no amendments as at 23 June 2015.

The Parliament of Romania hereby adopts this law.

Sole Article. – Government Ordinance No. 9 of 22 January 2004 on certain financial collateral arrangements, adopted on the basis of Art. 1 Point II.8 of Law No. 559/2003 on the authorisation of the Government to issue ordinances and published in the Official Journal of Romania, Part I, No. 78 of 30 January 2004, is hereby approved with the following amendments and supplementations:

1. Under Article 2, Letter a) of Paragraph (1) shall read as follows:

“a) multilateral development bank shall mean the International and regional development bank, such as: the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Council of Europe Development Bank, the Nordic Investment Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the European Investment Fund and the Inter-American Investment Corporation;”

2. Under Article 3, Points 1, 3, 4 and 6 of Letter c) shall read as follows:

“1. credit institution, as defined in Law No. 58/1998, as subsequently amended and supplemented;

.....

3. financial institution, as defined in Law No. 58/1998, as subsequently amended and supplemented;

4. insurance, insurance-reinsurance or reinsurance undertaking, as defined in Law No. 32/2000 on insurance undertakings and supervision of insurance, as subsequently amended and supplemented;

.....

6. investment management company, as defined in Government Emergency Ordinance No. 26/2002, approved as amended and supplemented by Law No. 513/2002;”

3. Article 4 shall read as follows:

“Art. 4. - (1) The financial collateral shall be provided by the delivery, transfer, holding, registration or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker’s behalf. Any right of substitution or to withdraw excess financial collateral in favour of the collateral provider shall not prejudice the financial collateral having been provided to the collateral taker.

(2) The evidencing must allow for the identification of the financial collateral. For this purpose, it is sufficient to prove that the book entry securities collateral has been credited to, or forms a credit in,

the relevant account and that the cash collateral has been credited to, or forms a credit in, a designated account.

(3) The financial collateral shall be deemed under the control of the collateral taker, when:

a) the security interest in movable property over the securities was entered in the issuer's register, in accordance with law;

b) the security interest in movable property over the government securities was entered in the government securities' register, in accordance with law;

c) the security interest in movable property over the depositary receipts issued by the National Bank of Romania was entered in the issuer's register, in accordance with law;

d) the amounts and credit balances were blocked in an account opened at a credit institution or by it."

4. Under Article 5, Paragraph (2) shall read as follows:

"(2) The provisions on the formalities of establishment and publicity of security interest in movable property, in terms of order of preference and conditions for enforcement of the security interest in movable property, as provided in Title XV "On the pawn" of the Civil Code, Civil Procedure Code and Title VI "Legal Regime of security interest in movable property" of Law No. 99/1999 on certain measures for speeding-up economic reform, as subsequently amended and supplemented, shall not apply to financial collateral agreements and financial collaterals provided by this ordinance."

5. Under Article 5, Paragraph (3) is hereby repealed.

6. Under Article 6, Paragraphs (4) and (7) shall read as follows:

"(4) The enforcement or valuation of financial collaterals and the calculation of the secured financial obligations shall be carried out in a reasonable commercial manner, as agreed between the parties.

.....

(7) The provisions of Art. 48 of Government Emergency Ordinance No. 28/2002, approved as amended and supplemented by Law No. 525/2002, as subsequently amended, shall not apply to the moment when title over the financial instruments forming the object of the financial collateral is transferred."

7. Under Article 6, after Paragraph (7), a new paragraph, Paragraph (8) is hereby inserted and shall read as follows:

"(8) The provisions of Letter b) of Para (1) shall be applied in compliance with the regulations issued by the National Securities Commission (CNVM), in applying Arts. 162 and 166 of Government Emergency Ordinance No. 28/2002, approved as amended and supplemented by Law No. 525/2002, as subsequently amended."

8. Article 7 shall read as follows:

"Art. 7. - (1) If a security financial collateral arrangement so provides, the collateral taker is entitled to exercise a right of use in relation to financial collateral provided under the security financial collateral arrangement, in compliance with the provisions of this ordinance.

(2) Where a collateral taker exercises the right of use referred to in Para (1), he thereby incurs an obligation to transfer equivalent collateral to replace the original financial collateral at the latest on the due date for the performance of the relevant financial obligations covered by the security financial collateral arrangement.

(3) On the due date for the performance of the relevant financial obligations data, if and to the extent that the terms of a security financial collateral arrangement so provide, the collateral taker must:

- a) either return the collateral, if the main obligation is fulfilled;
- b) set off the value of the equivalent collateral against the value of the financial obligations;
- c) or apply it in discharge of the relevant financial obligations.

(4) The equivalent collateral transferred in discharge of an obligation as described in Paragraph (2), shall be subject to the same security financial collateral agreement to which the original financial collateral was subject and shall be treated as having been provided under the security financial collateral arrangement at the same time as the original financial collateral was first provided.

(5) The use of financial collateral by the collateral taker according to this Article does not render invalid or unenforceable the rights of the collateral taker under the security financial collateral arrangement in relation to the financial collateral transferred by the collateral taker in discharge of an obligation as described in Paragraph (2).

(6) By way of derogation from the provisions of Art. 51 of Government Emergency Ordinance No. 28/2002, approved as amended and supplemented by Law No. 525/2002, as subsequently amended, the financial instruments subject to a financial collateral provided for in this ordinance shall not be stopped from trading on regulated markets, if the arrangement provides for a security interest in movable property.”

9. Under Article 12, Letter b) of Paragraph (1) shall read as follows:

“b) right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value.”

10. Under Article 12, the introductory party of Paragraph (2) shall read as follows:

“(2) If the financial collateral arrangement contains clauses within the meaning of Para (1), the provision of financial collateral, additional financial collateral or replacement of financial collateral under such an obligation or right shall not be treated as invalid or reversed or declared void on the sole basis that:”

This law was adopted by the Senate in the session of 29 March 2004, in compliance with the provisions of Art. 76 (2) of the Constitution of Romania, republished.

on behalf of the PRESIDENT OF THE SENATE,
DORU IOAN TĂRĂCILĂ

This law was adopted by the Chamber of Deputies in the session of 4 May 2004, in compliance with the provisions of Art. 76 (2) of the Constitution of Romania, republished.

PRESIDENT OF THE CHAMBER OF DEPUTIES
VALER DORNEANU

Bucharest, 27 May 2004.

No. 222.

