

Georgian Law on Financial Collateral Arrangements, Netting and Derivatives

Chapter 1 – General Provisions

Article 1 – The Scope of Application

1. This law regulates conclusion of derivatives, and use of netting and financial collateral arrangements. The aim of this Law is to develop Derivatives Market in Georgia, also creation of necessary regulatory legal framework for conclusion derivatives, netting and collateral arrangements. This law shall not apply to Securitisation.

Article 2 - Definitions

1. Cash Flows – flow of funds based on the terms of an agreement between parties;
2. Collateral Provider - a person ensuring the performance of relevant financial obligations by means of financial collateral under a financial collateral arrangement;
3. Collateral Taker - a person in whose favour the financial collateral is provided under a financial collateral arrangement;
4. Close-Out Netting – means the occurrence of any or all of the following:
 - (i) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under a netting agreement;
 - (ii) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under (i);
 - (iii) the conversion of any values calculated or estimated under (ii) into a single currency; and (iv) the determination of the net balance of the values calculated under (ii), as converted under (iii), whether by operation of set-off or otherwise;
5. Credit claim – pecuniary claim arising out of an agreement whereby a credit institution or Loan Issuing Subject grants credit in the form of a loan;
6. Default – failure to fulfill the obligation partially or fully by a party, commencement of limited activity regime or any other grounds stipulated as such by the parties in the agreement;

7. Derivative – an agreement as defined under paragraph 1 of Article 3 of this Law;
8. Enforcement Measures - measures taken under the legislation of Georgia to make a person meet the obligations stipulated by the legislation of Georgia and/or an agreement, including coercive enforcement measures (including but not limited to interim protective and emergency court orders, enforcement of court decision) and the means for securing a claim as provided for by the Civil and Tax Codes of Georgia (including but not limited to measures securing payment of overdue tax liabilities, collateral and mortgage);
9. Equivalent Security– means the securities as agreed between the parties.
10. Financial Collateral Arrangement – means a title transfer financial collateral arrangement or a security financial collateral arrangement whether or not these are covered by a master agreement, a separate agreement or general terms and conditions;
11. Financial Instrument means:
- (a) negotiable securities evidencing ownership interest in a local or foreign company, or their equivalent;
 - (b) a negotiable debt securities and instruments/liability;
 - (c) the right issued by collective investment undertaking;
 - (d) derivatives;
 - (e) money market instruments;
 - (f) precious metals deposited on the account;
 - (g) claims and rights in relation to the above instruments or the rights related to those instruments.
12. Qualified Financial Contract - means any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, (or relevant parts thereof) which are subject to Netting Agreement, pursuant to which payment or delivery obligations are due to be performed at a certain time or within a certain period of time and whether or not subject to any condition or contingency. Qualified Financial Contract includes :
- 1) Derivatives;
 - 2) Securities contracts, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement, including any

such contract or agreement relating to mortgage loans, interests in mortgage loans or mortgage-related securities ;

3) Commodities contracts including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement, except for spot commodity agreements;

4) Financial Collateral Arrangement;

5) Agreement to clear or settle securities transactions or act as a depository of securities;

6) Any contract determined as such by National Bank of Georgia in accordance with the provisions of law;

13. Financial Sector Representative – As defined under Organic Law of Georgia on National bank of Georgia;¹

14. Forward – a derivative which is executed off an organized market, under which one party is obliged to sell the underlying asset to the other party at a specific moment in the future, and the other party is obligated to purchase the underlying asset at the price and on other terms, determined by the parties at the time of execution of the agreement;

15. Futures – a derivative which is executed on an organized market, under which one party is obliged to sell the underlying asset to the other party at a specific moment in the future, and the other party is obligated to purchase the underlying asset at the price and on other terms, determined by the parties at the time of execution of the agreement;

16. Limited Activity Regime (the Regime) - a set of measures taken under Georgian or foreign legislation with a view to declaring a legal person insolvent, bankrupt, or liquidated, or for the purposes of imposition of temporary administration over a person Resolution or rehabilitation of legal person, that results or may result in the termination or suspension of, or imposition of restrictions on the transfer of funds or the transfer of titles to or claims to financial instruments and/or the payment transactions. For the

¹ Organic Law Article 2:

a) financial sector representative - a commercial bank, non-bank depository institution, brokerage company, independent securities registrar, asset management company, central depository, specialised depository, stock exchange, microfinance organisation, founder of a non-state pension scheme, insurance brokerage company, publicly accountable enterprise, qualified credit institution, money transfer provider, foreign currency exchange office;

purposes of this Law, the 'Regime' in Georgia shall imply 1) commencement of liquidation proceedings under the Law of Georgia on Entrepreneurs; 2) taking a decision by the court on acceptance of motion with respect to initiation of insolvency proceedings as provided for by the Law of Georgia on Insolvency Proceedings; 3) the imposition of a Resolution regime and/or the commencement of liquidation proceedings under the Law of Georgia on Activities of Commercial Banks or the Law of Georgia on Insurance; 4) also any other regime, proceedings and actions having the similar or analogous purpose and nature.

17. Commencement of Limited Activity Regime – means the moment when regime under Georgian or foreign legislation enters into force, as the case may be.

18. Multibranch Netting Agreement - means a netting agreement between two parties under which at least one party enters into qualified financial contracts through – in addition to its home office – one or more of its branches or agencies located in countries other than its home country;

19. Net Credit Position (Net Claim) – As defined under Law of Georgia on Payment Systems and Payment Services;

20. Net Debit Position (Net Obligation) – As defined under Law of Georgia on Payment Systems and Payment Services;

21. Net position - As defined under Law of Georgia on Payment Systems and Payment Services;

22. Netting - As defined under Law of Georgia on Payment Systems and Payment Services;

23. Netting Agreement- means (i) any agreement between two parties that provides for netting and/or close-out netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into under the agreement by the parties to the agreement (a "master netting agreement"), (ii) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a "master-master netting agreement") and (iii) any financial collateral arrangement related to or forming part of one or more of the foregoing;

24. Option – a derivative executed both on and off an organised market, under which one party is obliged upon demand of the other party in the future to sell the underlying asset to such other party (call option) or buy the underlying asset from such other party

(put option) at the price and on other terms agreed by the parties at the time of execution of the agreement. An option may also provide for the obligation of one party to pay the other party a certain amount of funds for the acquired right to use the option (option premium);

25. Organized Market –Segment of the market, where trading is conducted based on the pre-defined rules;

26. Party subject to regime- A person against whom limited activity regime has commenced.

27. Repurchase Agreement – Arrangement, which provides for the sale of a security with the condition of buying back the same or equivalent security for the pre-determined price at a later date;

28. Reverse Repurchase Agreement - Arrangement, which provides for the purchase of a security with the condition of selling back the same or equivalent security for the pre-determined price at a later date;

29. Security Financial Collateral Arrangement - an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, and where the full ownership of the financial collateral remains with the collateral provider when the security interest is established;

30. Securities Lending - Is an Agreement between the parties where one party (lender) transfers title in securities to the other party (borrower) for fee or price, with the borrower providing collateral for the duration of the Agreement and having an obligation to return the same or equivalent securities to the lender.

32. Spot – Arrangement for buying or selling a commodity, financial instrument or currency for settlement (payment and delivery) on the spot date which is no later than 3 business days after the date of an arrangement;

33. Financial Collateral (Collateral) – means financial instruments, credit claims and cash funds credited or to be credited in the future to an account;

34. Swap – a derivative executed both on and off an organised market, under which one or each party is obliged to make single or periodic payments to the other party, the amounts of which are determined on the basis of different underlying indicators or different types or values of one underlying indicator on the terms determined by the parties at the time of execution of the agreement. Performance of obligations under a swap may be accompanied by the delivery or exchange of underlying assets to which

the underlying indicators, based on which the amount of payments is determined, relate;

35. Title transfer financial collateral arrangement - an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations;

36. Underlying Asset of derivative - Financial Instruments, Commodities, , National and Foreign Currency, Monetary (Pecunary) Claims and other asset (service) which is defined as an underlying asset by the regulations of National Bank of Georgia within its authority;

37. Underlying Indicator of derivative - price of the underlying asset, interest rates, indices, currency exchange rates, indicators of statistical data established by an independent third party, physical, biological, chemical environmental indicators and any other indicators which are recognized as underlying indicators by the regulations of National Bank of Georgia within its authority;

38. Equivalent Collateral-

(i) in relation to cash, means a payment of the same amount and in the same currency;

(ii) in relation to financial instruments, means financial instruments of the same issuer or debtor, forming part of the same issue or class and of the same nominal amount, currency and description or, where a financial collateral arrangement provides for the transfer of other assets following the occurrence of any event relating to or affecting any financial instruments provided as financial collateral, those other assets;

39. Enforcement Event - An event of default or any similar event as agreed between the parties on the occurrence of which, under the terms of a financial collateral arrangement or by operation of law, the collateral taker is entitled to realise or appropriate financial collateral or a close-out netting provision comes into effect;

40. Cash - Money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;

41. Relevant Financial Obligations - The obligations which are secured by a financial collateral arrangement and which give a right to cash settlement and/or delivery of financial instruments.

Relevant financial obligations may consist of or include:

- (i) present or future, actual or contingent or prospective obligations (including such obligations arising under a master agreement or similar arrangement);
 - (ii) obligations owed to the collateral taker by a person other than the collateral provider; or
 - (iii) obligations of a specified class or kind arising from time to time;
43. Book Entry Securities Collateral - Financial collateral provided under a financial collateral arrangement which consists of financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an licensed financial institution/securities register;
44. Relevant Account- In relation to book entry securities collateral which is subject to a financial collateral arrangement, the register or account — which may be maintained by the collateral taker — in which the entries are made by which that book entry securities collateral is provided to the collateral taker;
45. Right of use - The right of the collateral taker to use and dispose of financial collateral provided under a security financial collateral arrangement as the owner of it in accordance with the terms of the security financial collateral arrangement;
46. Money-market instruments - Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;
47. Commodity – Generic movable good, which is supplied by virtue of sale in whole sale form in accordance with the provisions of the contract and has characteristics of the commodity.
48. Spot Date – Spot Settlement date, which is no later than three banking days from the conclusion of the agreement.
49. Financial Institute – Financial Institute as provided under Securities Market Law of Georgia.
50. Central Counterparty - a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

Chapter 2 – Netting and Derivatives

Article 3. Derivatives

1. Derivative is a Transaction the value and cash flows of which is dependant on underlying asset or underlying indicator according to the terms of such transaction and which can be settled by physical delivery or in cash, including through netting and:

a) Which obliges the party to buy, sell, accept or [receive right(s) related other other derivativs].

or

b) Which obliges the party to a transaction to buy, sell or transfer to the other party underlying asset in some future time and obliges the other party to accept and pay for such underlying asset.

or

c) Which obliges a party to the transaction to pay other party, single or periodic payments in a future time, including in case of demand for such payment by the other party;

2. Unless parties agree otherwise, the party to derivative who shall make physical delivery, may not possess the underlying asset at the time of execution of the transaction.

3. An agreement which satisfies at least one of the requirements set out in this paragraph shall not be deemed a derivative if:

3.1) such agreement is a purchase and sale agreement (including a supply agreement) which does not specify that it is a derivative, is not classified as a derivative under the regulations of a regulatory body and satisfies all of the following criteria:

a) under the terms of such agreement the discharge of the obligations is only permitted by means of the delivery (acceptance) of the underlying asset and such agreement does not provide for the possibility to discharge the obligation by making payments by one party to the other party depending on the price of the underlying asset as at the moment of discharge;

b) such agreement does not provide for the possibility to terminate obligations under such agreement by means of execution of another agreement on the equivalent terms as to the quantity of the underlying asset and the delivery term (provided that the price under such agreement may differ from the price under the initial agreement) under which the party which acted as seller under the initial agreement, acts as buyer and the party which acted as buyer under the initial agreement, acts as seller;

3.2) such agreement is a payment instrument, a facility agreement, Repurchase agreement, spot agreement, loan agreement, bank deposit agreement, bank account agreement, suretyship agreement, guarantee agreement, factoring agreement, insurance agreement, collateral promise agreement, Bank Guarantee, Factoring or any other agreement with similar content;

3.3) the undertaking of a party to pay an amount that varies depending on the value of an underlying indicator arises as a result of the breach by such party of its obligation under such agreement (penalty, compensation of damages etc.), and, but for this undertaking, such agreement does not satisfy the criteria envisaged in the definition of Derivative.

4. A party to a derivative may be a public authority, the National Bank of Georgia, a foreign central bank, International financial Institutions, Financial Sector Representatives, Local or foreign Financial Institutions, Investment Funds, a central counterparty, settlement agent or clearing house.

5. A Party to a derivative may also be a any person including unincorporated firms and partnerships, provided that the other party is an institution or entity mentioned in paragraph 4 of this Article. In this case persons mentioned in paragraph 4 of this article shall disclose and explain all the risks and possible consequences which are related to entering derivatives contract. The rules for trading derivatives with such a person and for such disclosure may be established by National Bank of Georgia.

6. Derivative can be concluded either in writing (including in electronic form), or verbally. Verbally concluded transactions shall be evidenced by written document or audio recording, which will indicate the terms of the trade. Requirements of Georgian legislation will apply to the audiorecording referred in this paragraph

7. Derivative transactions concluded under foreign governing law, shall be valid and their enforceability shall be determined in accordance with the applicable law selected by the parties and the provisions of this law or any other requirements of Georgian law shall not affect its validity and/or enforceability.

8. Qualified financial contract, shall not be and shall be deemed never to have been void or unenforceable by reason of Georgian Law relating to games, gaming, gambling, wagering or lotteries.

Article 4. Enforceability of Netting Agreements

1. The provisions of a netting agreement will be enforceable in accordance with their terms, including against a party subject to regime, and, where applicable, against a guarantor or other person providing security for a party and will not be stayed, avoided or otherwise limited by (i) any action of the administrative or regulatory/supervisory bodies, a liquidator, an insolvency/rehabilitation administrator a trustee and a temporary administrator, or any other person performing similar functions, (ii) any other provision of law relating to regime party may be subject to, or (iii) any other

provision of law that may be applicable to party subject to regime, subject to the conditions contained in the applicable netting agreement.

2. After commencement of regime in relation to a party, the only obligation, if any, of either party to make payment or delivery under a netting agreement shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.

3. After commencement of regime in relation to a party, the only right, if any, of either party to receive payment or delivery under a netting agreement shall be equal to its net entitlement with respect to the other party as determined in accordance with the terms of the applicable netting agreement.

4. Any powers of the administrative or regulatory/supervisory bodies, a liquidator, an insolvency/rehabilitation administrator a trustee and a temporary administrator, or any other person performing similar functions to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation and/or acceleration of all payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under or in connection with a netting agreement, and will apply, if at all, only to the net amount due in respect of all of such qualified financial contracts in accordance with the terms of such netting agreement;

5. The provisions of a netting agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values or replacement values calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements under one or more qualified financial contracts entered into thereunder will not be affected by any applicable laws limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between a party subject to regime and another party.

6. The administrative or regulatory/supervisory bodies, a liquidator, an insolvency/rehabilitation administrator a trustee and a temporary administrator, or any other person performing similar functions, of a party subject to regime may not avoid: (i) any transfer, substitution or exchange of cash, financial collateral or any other interests under or in connection with a netting agreement from party subject to regime to the other party; or (ii) any payment or delivery obligation incurred by the party subject to regime and owing to the other party under or in connection with a netting agreement on the grounds of it constituting a preference/transfer during a suspect period by the party subject to regime to the other party, unless there is clear and

convincing evidence that such other party (i) made such transfer or (ii) incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the party subject to regime was indebted or became indebted, on or after the date (i) such transfer was made or (ii) such obligation was incurred.

7. Except for the cases as provided under article 37² paragraph 2 and Article 37¹¹ paragraph 7 of Georgian Law on Activities of Commercial Banks No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative or regulatory/supervisory bodies, a liquidator, an insolvency/rehabilitation administrator a trustee and a temporary administrator, or any other person performing similar functions, shall limit or delay application of otherwise enforceable netting agreements in accordance with paragraphs 1, 2, and 3 of this article of this law.

8. Unless otherwise agreed by the parties, the realization, appropriation and/or liquidation of Financial collateral under a Financial collateral arrangement shall take effect or occur without any requirement that prior notice shall be given to, or consent be received from, any party, person or entity, provided that this paragraph is without prejudice to any applicable provision of law or contract requiring that the realization, appropriation and/or liquidation of Financial collateral is conducted in a commercially reasonable manner.

9. For the purposes of this article, a netting agreement shall be deemed to be a netting agreement notwithstanding the fact that such netting agreement may contain provisions relating to agreements, contracts or transactions that are not qualified financial contracts, provided, however, that, for the purposes of this article, such netting agreement shall be deemed to be a netting agreement only with respect to those transactions that fall under the definition of qualified financial contract.

10. For the purposes of this article, a financial collateral arrangement shall be deemed to be a financial collateral arrangement notwithstanding the fact that such financial collateral arrangement may contain provisions relating to agreements, contracts or transactions that are not a netting agreement or qualified financial contract entered into, provided, however, that, for the purposes of this article, such financial collateral arrangement shall be deemed to be a financial collateral arrangement only with respect to those agreements, contracts or transactions that fall within the definition of "netting agreement" or "qualified financial contract" entered into thereunder this Law.

11. For the purposes of this article, a netting agreement and all qualified financial contracts entered into thereunder shall constitute a single agreement.

12. For the purposes of this article, the term "netting agreement" shall include the term "multibranch netting agreement" (as defined under this law).

11. Party to Netting Agreement shall be public authority, the National Bank of Georgia, a foreign central bank, International financial Institutions, Financial Institutions, (Including Foreign Financial Institution), Financial Sector Representatives, Investment Funds, a central counterparty, settlement agent or clearing house.

12. Party to Netting Agreement shall also be a person other than a natural person, including unincorporated firms and partnerships, provided that the other party is an institution mentioned in paragraph 1 of this Article.

Article 5. Settlement Finality under derivatives and financial collateral transactions.

1. Orders made to the person transferring funds or financial instruments related to derivatives transactions, as well as to financial collateral shall be irrevocable.

2. Irrevocability of such orders as well as settlement finality of such transactions shall be governed by the Payment Systems and Payment Services Law of Georgia.

3. No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of Commencement of Limited Activity Regime shall lead to the unwinding of a netting.

Article 6. Reporting

1. National Bank of Georgia may require parties to a derivative to provide information relating to such transaction in accordance with the rules established by the National Bank of Georgia.

2. The National Bank of Georgia may require to submit information mentioned in paragraph 1 of this article from the persons who are not representatives of financial sector.

3. The list of information to be submitted under paragraph 1 of this article shall be established by National Bank of Georgia.

Chapter 3 – Financial Collateral

Article 7. Parties, Subject Matter and Scope of Financial Collateral Arrangements.

1. Collateral Provider and Collateral Taker shall be a public authority, the National Bank of Georgia, a foreign central bank, International financial Institutions, Financial Institutions, (Including Foreign Financial Institution), Financial Sector Representatives, Investment Funds, a central counterparty, settlement agent or clearing house.
2. Collateral Provider and Collateral Taker shall also be a person other than a natural person, including unincorporated firms and partnerships, provided that the other party is an institution mentioned in paragraph 1 of this Article.
3. The provisions of this Chapter shall also apply to claims to loan assets of a collateral provider pledged in favour of the National Bank of Georgia and registered in compliance with the legislation of Georgia.
4. Financial collateral may be used to secure obligations of any type, including present, future, prospective or contingent obligations that a collateral provider or a third party debtor owes or may owe to a collateral taker.
5. A financial collateral pledged under the legislation of Georgia shall not be used as a financial collateral under security financial collateral, except for the case when financial collateral is provided in accordance with paragraph 1 of Article 10 of this law.
6. Enforcement measures provided for in the legislation of Georgia for securing the performance of obligations shall not be used in relation to financial collateral arrangement.
7. Financial collateral arrangements concluded under foreign governing law, shall be valid and its enforceability shall be determined in accordance with the applicable law selected by the parties and the provisions of this law or any other requirements of Georgian law shall not affect its validity and/or enforceability.
8. Mere adoption of the Resolution Regime in accordance with Georgian Legislation shall not be the sole ground for the enforcement of financial collateral, providing that commercial bank diligently performs its obligations, which is envisaged in the financial collateral arrangement or in some other agreement part of which is the collateral agreement.
9. National Bank of Georgia for the purposes of Resolution Regime has powers to impose certain limitations on termination rights in accordance with the Law on Commercial Banks of Georgia.

Article 8 - Validity of financial collateral arrangements

1. The provisions of this Law apply to security financial collateral arrangement provided the financial collateral agreement is concluded in writing (Material or electronic form or any other durable medium) and a collateral taker or a person acting on the collateral taker's behalf is able to hold or control the collateral, in accordance with the provisions of paragraph 2 of this article.

2. A collateral taker or a person acting on the collateral taker's behalf holds and/or controls the collateral if:

- a) the financial collateral is a bearer financial instrument – by taking it into physical possession;
- b) the financial collateral is a book entry financial instrument - by crediting it to the collateral taker's account or to the account opened on behalf of collateral taker or any other person at the licensed financial institution/securities register acting as agent of collateral taker and by recording a security interest in the financial instrument [by the collateral taker or] by the licensed financial institution/securities register responsible for keeping such records;
- c) the financial collateral is cash credited to an account - by crediting it to the collateral taker's account or to the account opened on behalf of collateral taker or any other person at the bank acting as agent of collateral taker;
- d) the financial collateral is credit claim - inclusion in a list of claims submitted in writing, or in a legally equivalent manner to the collateral taker.

3. National Bank of Georgia may issue additional instruction on the procedures provided under this paragraph.

4. The provisions of this Law apply to title transfer financial collateral arrangement provided such agreement is concluded in writing (Material or electronic form or any other durable medium) and collateral provider transfers the title to the collateral to the collateral taker or a person acting on the collateral taker's behalf. Title transfer financial collateral is created upon outright transfer of title in the collateral.

5. If the obligations secured by the financial collateral arrangement are fulfilled, the collateral taker shall transfer the collateral to the collateral provider or apply it otherwise in accordance with the financial collateral agreement.

6. For a financial collateral agreement to be valid, enforceable or admissible in evidence it need not be registered with any registration authority nor requires performance of

any formal act, including but not limited to notarization, translation into Georgian language etc.

7. A collateral provider cannot create another security interest over the collateral provided under the Financial Collateral Arrangement, except for the cases envisaged under this chapter.

8. The rights of the collateral taker over financial collateral shall unconditionally prevail over the rights of any other secured creditors in accordance with the provisions of this Law.

Article 9. Enforcement of Financial Collateral

1. On the occurrence of an enforcement event, the collateral taker shall be able to realise in the following manners, any financial collateral provided under, and subject to the terms agreed in, a security financial collateral arrangement:

- (a) financial instruments by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligations;
- (b) cash by setting off the amount against or applying it in discharge of the relevant financial obligations;
- (c) credit claims, by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligations.

2. Appropriation is possible only if:

- (a) this has been agreed by the parties in the security financial collateral arrangement; and
- (b) the parties have agreed in the security financial collateral arrangement on the valuation of the financial instruments and the credit claims.

3. The manners of realising the financial collateral referred to in paragraph 1 shall, subject to the terms agreed in the security financial collateral arrangement, be without any requirement to the effect that:

- (a) prior notice of the intention to realise must have been given;
- (b) the terms of the realisation be approved by any courts, administrative and regulatory/supervisory body, a liquidator, an insolvency/rehabilitation administrator a trustee, Bankruptcy Manager or and a temporary administrator, or any other person performing similar functions, public officer or other person;

(c) the realisation be conducted by public auction or in any other prescribed manner;
or

(d) any additional time period must have elapsed.

4. Financial collateral arrangement can take effect in accordance with its terms notwithstanding the commencement or continuation of Limited Activity Regime in respect of the collateral provider or collateral taker.

5. The realisation or valuation of financial collateral and the calculation of the relevant financial obligations must be conducted in a commercially reasonable manner.

6. After discharging full amount of the secured obligation the remaining collateral or surplus proceeds received from realization of financial collateral, if any, shall be returned to the collateral provider.

7. If funds received by realization of the financial collateral do not fully cover the full amount of the secured obligation, collateral taker shall have rights, in respect to the remaining part of the obligation, as unsecured creditors enjoy under Georgian legislation.

Article 10. Right of use of financial collateral under security financial collateral arrangements, delivery, withdrawal and substitution of collateral

1. If and to the extent that the terms of a security financial collateral arrangement so provide, the collateral taker is entitled to exercise a right of use in relation to financial collateral provided under the security financial collateral arrangement.

2. Where a collateral taker exercises a right of use, 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.

Alternatively, the collateral taker shall, on the due date for the performance of the relevant financial obligations, either transfer equivalent collateral, or, if and to the extent that the terms of a security financial collateral arrangement so provide, set off the value of the equivalent collateral against or apply it in discharge of the relevant financial obligations.

3. The equivalent collateral transferred in discharge of an obligation as described in paragraph 2, first subparagraph, 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.
4. 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, first subparagraph.
5. If an enforcement event occurs while an obligation as described in paragraph 2 first subparagraph remains outstanding, the obligation may be the subject of a close-out netting provision.
6. The right of use the financial collateral shall not apply to credit claims.
7. Financial collateral agreement may contain an obligation to provide additional financial collateral or to reduce financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the secured obligations.
8. Financial collateral agreements may contain a right to withdraw financial collateral upon providing, by way of substitution, an equivalent financial collateral.
9. The right of the collateral provider to substitute, to deliver or to withdraw financial collateral shall be without prejudice to the right of collateral taker to have the financial collateral in its possession or/and under its control pursuant to Article 8, if it is provided by financial collateral arrangement
10. After fulfillment of secured obligation or in cases provided by financial collateral agreement, collateral taker shall return to collateral provider, where it concerns credit claims, pledged credit claims, in case of funds, equal value and in the same currency, where it concerns financial instrument – equivalent financial instrument.
11. Deliveries of additional collateral, substitution or withdrawal pursuant to this Article do not constitute the creation of a new financial collateral agreement.

Article 11. Certain insolvency provisions disapplied

1. A financial collateral arrangement, as well as the provision of financial collateral under such arrangement, may not be declared invalid or void or be reversed on the sole basis that the financial collateral arrangement has come into existence, or the financial collateral has been provided:

(a) on the day of the commencement of Limited Activity Regime, but prior to the order or decree making that commencement; or

(b) in a prescribed period prior to, and defined by reference to, the commencement of the Limited Activity Regime or by reference to the making of any order or decree or the taking of any other action or occurrence of any other event in the course of such Limited Activity Regime.

2. Where a financial collateral arrangement or a relevant financial obligation has come into existence, or financial collateral has been provided on the day of, but after the moment of the commencement of, Limited Activity Regime, it shall be legally enforceable and binding on third parties if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such Limited Activity Regime.

3. Where a financial collateral arrangement contains:

(a) an obligation to provide financial collateral or additional financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the relevant financial obligations, or

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

The provision of financial collateral, additional financial collateral or substitute or replacement financial collateral under such an obligation or right shall not be treated as invalid or reversed or declared void on the sole basis that:

(i) such provision was made on the day of the commencement of Limited Activity Regime, but prior to the order or decree making that commencement or in a prescribed period prior to, and defined by reference to, the commencement of Limited Activity Regime or by reference to the making of any order or decree or the taking of any other action or occurrence of any other event in the course of such proceedings or measures; and/or

(ii) the relevant financial obligations were incurred prior to the date of the provision of the financial collateral, additional financial collateral or substitute or replacement financial collateral.

Article 12. Conflict of laws

1. Any question with respect to any of the matters specified in paragraph 2 arising in relation to book entry securities collateral shall be governed by the law of the country in which the relevant account is maintained. The reference to the law of a country is a reference to its domestic law, disregarding any rule under which, in deciding the relevant question, reference should be made to the law of another country.

2. The matters referred to in paragraph 1 are:

- (a) the legal nature and proprietary effects of book entry securities collateral;
- (b) the requirements for perfecting a financial collateral arrangement relating to book entry securities collateral and the provision of book entry securities collateral under such an arrangement, and more generally the completion of the steps necessary to render such an arrangement and provision effective against third parties;
- (c) whether a person's title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred;
- (d) the steps required for the realisation of book entry securities collateral following the occurrence of an Limited Activity Regime.

Article 13. Transitory Provisions

Where collateral taker is Commercial Bank and collateral provider is either Loan Issuing Subject or Microfinance Organization, the registration requirements for credit claims registration in public registry envisaged under Article 8 paragraph 2 subparagraph “d” shall not be applicable until January 1st 2021.

Article 14. Enactment of the Law

This law shall be enacted after 15 days from the publication.