

**IMPLEMENTING THE FINANCIAL COLLATERAL ARRANGEMENTS  
DIRECTIVE 2002/47/EC – A TRANSPOSITION NOTE**

**Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements**

Articles	Objectives	Implementation	Responsibility
1(2)	Sets out categories of persons who may be party to a financial collateral arrangement.	Regulation 2 of the Financial Collateral Arrangements Regulations 2003 (the “FCA Regulations”), within the definitions of “title transfer financial collateral arrangement”, “security financial collateral arrangement” and “non-natural person”.	The Treasury
1(3)	Allows Member States to opt-out of including financial collateral arrangements where one party is a person mentioned in article 1(2)(e).	The UK has not exercised this opt-out.	The Treasury
1(4)	(a) Financial collateral must consist of cash or financial instruments. (b) Allows Member States to exclude from their implementation arrangements where the financial collateral consists of the collateral-provider’s own shares or shares in affiliated undertakings.	(a) Definition of “financial collateral” in regulation 2 of the FCA Regulations. (b) The UK has not exercised this opt-out.	The Treasury
1(5)	The directive applies to arrangements only when financial collateral has been “provided” as defined in article 2(2).	Definitions of “security financial collateral arrangement” and “title transfer financial collateral arrangement” in regulation 2 of the FCA Regulations.	The Treasury
2	Definitions	Regulation 2 of the FCA Regulations.	The Treasury
3(1)	Member States must not require that the creation, validity, perfection, enforceability or admissibility of financial collateral arrangements be	Regulations 3, 4, 5 and 6 of the FCA Regulations prevent legislation and common law rules which would impose requirements for	The Treasury

	dependent upon any formal act.	formalities, from applying to financial collateral arrangements.	
4(1) and (2)	Member States must ensure that collateral-takers are able to realise financial collateral provided under a security financial collateral arrangement by sale or appropriation (if the collateral consists of financial instruments) and by setting off its value against or applying its value in discharge of the relevant financial obligations. Appropriation is only possible if the arrangement provides for it and provides for valuation of the financial collateral.	These methods of realisation of financial collateral provided under a security financial collateral arrangement are available and recognised under UK law, no further action is necessary.	The Treasury
4(4)	Member States must ensure that parties to a security financial collateral arrangement are able to realise the financial collateral without any requirement for prior notice, for the terms of realisation to be approved by any public authority or for the realisation to be carried out in a prescribed manner.	Regulation 16 of the FCA Regulations removes the only such requirement. That is the requirement to apply to a court to appropriate the financial collateral where the charge taken is a mortgage.	The Treasury
4(5)	Member States must ensure that financial collateral arrangements are able to take effect in accordance with their terms notwithstanding that a party to the arrangement is subject to winding-up proceedings or reorganisation measures.	Regulations 7, 8, 9, 10, 13 and 14 of the FCA Regulations.	The Treasury
4(6)	Member States may require the realisation and valuation of the financial collateral and the calculation of the relevant financial obligations to be conducted in a commercially reasonable manner.	Regulation 17 of the FCA Regulations.	The Treasury
5(1)	Member States must ensure	Regulation 15 of the	The Treasury

	that where a security financial collateral arrangement provides for a right of use, that the right can be exercised.	FCA Regulations.	
5(2)	Certain obligations are imposed on a party to a financial collateral arrangement who exercises a right of use. These are to replace the original financial collateral with equivalent financial collateral or, if the arrangement permits, to set off the financial collateral against the relevant financial obligations.	Regulation 15 of the FCA Regulations.	The Treasury
5(3)	The equivalent financial collateral is to be subject to the same terms of the arrangement as the original financial collateral.	Regulation 15 of the FCA Regulations	The Treasury
5(4)	Member States shall ensure that exercising a right of use under a financial collateral arrangement, does not render the rights of the collateral-taker unenforceable.	This is the current position in UK law, no further action is necessary.	The Treasury
5(5)	The obligation to replace the original financial collateral provided under the arrangement may be the subject of a close-out netting provision.	Regulation 15 of the FCA Regulations.	The Treasury
6(1)	Member States must ensure that a title transfer financial collateral arrangement can take effect in accordance with its terms i.e. without risk of being re-characterised as a security financial collateral arrangement.	The definition of “title transfer financial collateral arrangement” in the directive provides that the arrangement must transfer full ownership of the financial collateral from the collateral-provider to the collateral-taker. Where the arrangement fulfils this criteria, UK law will allow it to take effect in accordance with its terms. The courts have rejected re-	The Treasury

		characterising such agreements as security financial collateral arrangements. UK law, therefore, already fulfils the requirements of this provision of the directive.	
6(2)	If an enforcement event occurs while any obligation of the collateral-taker to transfer equivalent collateral remains outstanding, the obligation may be the subject of a close-out netting provision.	This is the current position in UK law, no further action is necessary.	The Treasury
7(1)	Member States shall ensure that a close-out netting provision can take effect in accordance with its terms notwithstanding the commencement of winding-up proceedings or reorganisation measures in relation to the collateral-provider or collateral-taker, or any purported assignment or attachment in respect of such rights.	Regulation 11 of the FCA Regulations.	The Treasury
(2)	Member States shall ensure that close-out netting provisions can operate without any of the requirements set out in Article 4(4).	No such requirements are imposed on the operation of close-out netting provisions by UK law so no further action is necessary.	The Treasury
8(1)	Member States shall ensure that the provision of financial collateral under financial collateral arrangements may not be declared invalid or void on the sole basis that the arrangement or obligations under it came into existence on the day of the commencement of winding-up proceedings or reorganisation measures, or in a prescribed period prior to the commencement of such proceedings or measures.	Regulations 9 and 10 of the FCA Regulations.	The Treasury

8(2)	<p>Member States shall ensure that financial collateral arrangements are enforceable and binding on third parties, if the arrangement, or obligations under it came into existence on the day of but after the moment of commencement of winding-up proceedings or reorganisation measures, provided that the collateral-taker can show that he was not aware nor should have been aware of such proceedings or measures. Such arrangements shall likewise be binding where the financial collateral is provided on the day but after the commencement of such proceedings or measures.</p>	Regulation 12 of the FCA Regulations.	The Treasury
8(3)	<p>Where a financial collateral arrangement contains (a) an obligation to increase the amount of financial collateral provided where its value decreases or the value of the obligations which it secures increase; or (b) provisions for a right of substitution of the financial collateral; then the obligation or right shall not be treated as invalid or void on the sole basis that financial collateral was provided on the day of the commencement of winding-up proceedings or reorganisation measures or that the relevant financial obligations were incurred prior to the date of the provision of the financial collateral.</p>	Regulations 9 and 10 of the FCA Regulations	The Treasury
9 (1)	<p>Where a conflict of laws issue arises in relation to book entry securities collateral, the law to be</p>	Regulation 18 of the FCA Regulations.	The Treasury

	applied is the domestic law of the country where the relevant account is maintained.		
9(2)	The matters to be decided by the domestic law where the relevant account is maintained, relate to the legal nature of the collateral, the requirements for perfecting a financial collateral arrangement, priority of title to book entry securities collateral and realisation of such collateral.	Regulation 18 of the FCA Regulations.	The Treasury