

COLLATERAL LAW

PLEDGE

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PLEDGE

1. Perfection formalities

Belgium	<p>The Belgian law requires for the establishment of a commercial pledge:</p> <ol style="list-style-type: none">1. An agreement between the parties: The agreement may be oral but, for reasons of evidence, it will preferably be in written form (for instance, under the form of Terms and Conditions approved by the counterparty). The agreement may cover one or more transactions, provided that they are sufficiently defined or determinable (for instance, any outstanding or future claims of the pledgee vis-à-vis the pledgor).2. A transfer of possession of the pledged assets is required for both the establishment and the perfection of a pledge. <p>Establishment of any specific account or registration of the pledge Dematerialised securities (governed by the laws of 2 January and 22 July 1991) and bearer securities held on accounts under the regime of fungibility (governed by the Royal Decree n° 62) are legally pledged by a mere transfer on a specific account. According to Belgian law, this account may be held with the creditor itself or a third party (including the operator of the relevant SSS) acting as depository. In the latter case, the securities pledged may be posted on a sub-account of the pledgor's account where they remain unavailable until their release upon authorization from the pledgee.</p>
Denmark	<p>A valid security interest is created by oral or written agreement. In practice, a pledge is created in a deed, which is valid without any formalities. To obtain protection against legal proceedings and assignees in contract, a pledge on registered securities must be notified to the account-keeping institution. As regards physical bearer securities, dispossession is required to obtain such protection (transfer of the power of disposal).</p> <p>Floating charges over claim or securities do not exist in Denmark. However it is possible to create a valid pledge over all securities registered or to be registered in a specific account with an account-keeping institution provided the pledgor has no right to take securities out of the account without permission from the pledgee.</p> <p>No stamp duties or other governmental fees are payable. (since 1 January 2000).</p>
Germany	<p>* Formalities Pledge normally does not require a written agreement, a registration or public filing. For reason of proof, a document in writing is preferable.</p> <p>The pledge is perfected by the transfer of possession. (If the property is held by a third party (such as a custodian bank), that party must be notified). The rules on such transfer are stricter than in the case of transfer of title: the pledgor may not retain direct possession even based on an explicit agreement with the pledgee to hold the securities on his behalf.</p> <p>* Governing law: Article 17a of the Deposit Act: "Dispositions relating to securities or holdings in collective securities deposits which have been entered with legal effect into a register or booked to an account shall be subject to the law of the country supervising the register, in which the entry with legal effect is made directly in favour of the beneficiary or in which the headquarters or branch of the custodian managing the account is located which undertakes the credit with legal effect to the beneficiary." For all other securities, the <i>lex rei sitae</i> applies.</p> <p>* Security interest in relation to future collateral: valid Security interest over a fluctuating pool of assets: valid</p>

	<p>*There are no stamp duty or any equivalent documentary tax on pledges</p> <p>* Ongoing administration No specific documents or formal legal requirements required for the ongoing administration of the Collateral.</p>
Greece	<p>Formalities</p> <p>* Under the general rules of the Greek Civil Code, constitution of a pledge on any movable requires a written agreement between pledgor and pledgee and delivery of possession of the pledged movable to the creditor/pledgee or, subject to consent of both pledger and pledgee, to a third party.</p> <p>* The pledge agreement must be concluded either by notarial deed or by a private agreement in writing having date certain, i.e. visaed by the Greek administration (e.g. tax authorities).</p> <p>* In order to be valid, the pledge agreement must define precisely the claim secured and the subject matter of the pledge. In connection with pledging of securities the latter means that the securities must be current (as opposed to future) and precisely identified. The claim secured may be future or conditional, provided it is ascertained or ascertainable. The privilege flowing from the pledge shall take effect as from its constitution even if it is constituted to secure a future or conditional claim. By virtue of the principle of speciality, a group of movable cannot as a whole be the subject matter of a pledge; only the individual components of the group may be subject matter of the pledge.</p> <p>* Under Greek law, a depository of securities does not have permission to dispose thereof unless he has express written consent from the depositor(s) (article 830 Greek Civil Code).</p> <p>* To comply with the general principle of the ancillary nature of the pledge, the pledgee must be the creditor of the secured claim. Pursuant to article 211 of the Greek Civil Code, a representative must have acted in the name of the principal, i.e. must have disclosed to the third party both the existence and the identity of the principal or these should be deductible from the circumstances, in order for the principal to be bound by the juridical acts of his representative. In case there is some doubt as to whether a person was acting in the name of another person, it is deemed to have acted on its own behalf.</p> <p>* Establishment of any specific account or registration of the pledge Under article 6.9 of Law 2198/1994 setting up the Greek SSS, the pledging of securities in the System is completed by an entry of the equivalent amount on a special pledge account held by the system or with the participant.</p> <p>* Other notifications or formalities Notices for establishment of a pledge are subject to the usual duty of GRD. 1000 per notice. By express provision of the Law (article 11 of Law 2198/1994) the pledging of securities in the System is exempt from stamp duty.</p> <p>* Ongoing administration The System's rules of operation allow for the replacement of pledged securities by other securities during the course of the pledge. In such case, the pledger must send on a standard form a notice of modification of the initial pledge and the pledgee must simultaneously send to the System his written consent to the change.</p>
Spain	<p>1.- GENERAL BACKGROUND.</p> <p>Basic regulation of pledge in Spain is contained in articles 1.863 to 1.874 of the Spanish Civil Code.</p> <p>In accordance to article 1.863, to constitute a pledge, it is necessary to deliver the possession of the good to the pledgor or a third party commonly agreed by the pledgor and the pledgee. Consequently, article 1.864 states that, in general, the object of a contract of pledge has to be a good that can be possessed.</p>

Securities in Spain may be represented in general by either book entry or the traditional categories of registered or bearer securities. Securities must be represented by book entry accounts in order to be listed in the stock exchanges.

Securities represented by book entries can not be physically delivered to the pledgor. In order to solve this question, article 10 of the Spanish Securities Markets Law (Law 24/1988) states that in the case securities represented by book entries, the registration of the pledge shall replace the delivery (traditio) of the possession of the security.

Therefore, in principle, in order to constitute a pledge in Spain, a written contract is needed, as well as the delivery of the possession (traditio) of the good or, in case of securities represented by book entries, the registration of the pledge.

Pledge in relation to future collateral is not valid. Same for pledge created over a fluctuating pool of assets.

2.- FORMALITIES.

In accordance to article 1.865, the pledge will only be valid against third parties from the date of the intervention of the contract by a public notary (notario) or a special public stock broker (Corredor de Comercio).

As a consequence, in principle, the intervention is compulsory to render the pledge enforceable vis-a-vis third parties.

Notwithstanding the above mentioned rule, the Sixth Additional Provision of the Law amending the Spanish Securities Market Law (Law 37/1998), expressly states that:

“1. When pledges are provided as collateral securities over negotiable securities in a Secondary Market and represented by book entry, for the purpose of securing general obligations arising from any Secondary Market and its liquidity and clearing systems, or arising from any transaction arranged in these Markets, such pledges can be constituted by policy intervened by a special public stock broker or by public document.

2. Likewise, these pledges can also be constituted, without the effects of the documents referred to in the previous paragraph, but with the applicability of the wording of the article 10 of the Securities Market Law, by:

- Private document, should the institution in charge of the account register practices the corresponding registration when it gets evidence of consent from the holder in that register and the institution in favour of which the pledge has been provided;
- Unilateral declaration by the person or entity appearing as entitled in the account register, in which case the acceptance by the beneficiary will be considered as to have been granted from the moment in which the institution in charge of the account register receives a notice of the said unilateral declaration, provided that this acceptance had been foreseen in the Market regulations or in settlement and clearing systems, or it had been previously and expressly stipulated by the parties involved.

The institution in charge of the account register will inform the beneficiary of the pledge not only of the registration of the pledge, but also of any incidences and circumstances surrounding the pledge which may take place.

The pledge will only be valid against third parties from the date of its registration on the account register.

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6. The legal regime established by the above number shall be also applicable to the pledges constituted for the purpose of securing general obligations arising from obligations against Banco de España when it executes Monetary Policy Operations."

	<p>[The third additional provision of Law 46/1998, states that these privileges are applicable also to the ECB and the rest of the NCBs of the EU].</p> <p>On this basis, it can be concluded that the constitution of pledges for the purposes above referred, in a document that has not been intervened by a notary or of a special public stock broker are enforceable vis-a-vis third parties. This conclusion has been reinforced by art. 14.5 of recently approved Law 41/1999 that also foresees the possibility of executing a pledge without the intervention of the above mentioned notary or special public stock broker. Nevertheless, it has to be underlined that these provisions are very recent and they have not been tested in Courts.</p> <p>* Governing Law: The Spanish law shall apply for securities deposited or registered in Spanish SSS.</p> <p>* Establishment of any specific account or registration of the pledge. In case of securities represented by book entries, there is no need to transfer the pledged collateral to a specific account. The registration of the pledge on the same account is enough.</p> <p>* Other notifications or formalities: For securities in book entry-form and registered in a Secondary Market: none. For other kind of securities: Constitution of the pledge would require a public deed.</p> <p>There is no stamp duty or equivalent documentary tax.</p> <p>* Ongoing administration: For Public Debt instruments in book entry-form registered in the CADE, the latter administers the pledge. For securities in book entry-form registered in the SCLV, the latter administers the pledge. For securities other than those, it will normally depend on the credit institution acting as depository of the securities.</p>
<p>France</p>	<p>Introduction</p> <p><u>1. General regime of pledge</u> Articles 2071 to 2082 of the French Civil Code provide for a general regime of pledge giving a security interest over the pledged assets to the pledgee. In case of default of the pledgor in paying the secured obligation, the pledgee may obtain title from a court in order to realise his secured assets.</p> <p>When the security interest is granted by a commercial person, the pledgee may benefit from the favourable regime of Article 93 of the French Commercial Code (no court formalities).</p> <p><u>2. Securities account pledge</u> Article 29 of Act 83-1 of 3 January 1983 (the “3 January 1983 Act”) as amended by article 102 of Act 96-597 of 2 July 1996 on modernisation of financial activities (“1996 Financial Act”) has set up a new kind of pledge over a financial instruments account (“nantissement de compte d’instruments financiers”). Financial instruments generally mean any kind of securities issued by the State, a legal entity, a mutual fund or a securitization fund. Perfection of such a pledge is made by means of the filing of a declaration specifying identities of the pledgor and the pledgee and the amount of the secured obligation. The pledgee may enforce his rights without a court decision.</p> <p><u>3. Cash pledge</u> Cash pledge constitutes a security interest mechanism which has been recognised by the case-law and which grants the pledgee with ownership of the pledged cash. Perfection is made by the transfer of the amount of the cash collateral to the pledgee’s bank account. If pledgor defaults, the pledgee may enforce his pledge by offsetting sums owed to him with the pledged cash.</p>

In French law, a pledge may also be created over the credit balance of a bank account. This cash account pledge does not relate to the cash itself, but to the contractual claim of the pledgor against the bank with which the account is held, and therefore has to comply with the requirements of the French law relating to the pledges of claims (Article 2078 of the Civil Code).

In practice, this mechanism is hardly used and it is more advisable to use the cash pledge, which offers greater degree of protection : unlikely to the cash account pledge, the cash pledge allows the pledgee to become the fiduciary owner of the pledged funds.

Formalities

1. General regime of pledge

- For civil pledges, the subject of the pledge has to be given in possession of the secured creditor in order to create a valid pledge (Article 2076 of the Civil Code). When the subject of the pledge is a tangible asset, the perfection of the security interest is realised by a notarisaton or a registration and stamping of the security.

- For commercial pledges (i. e. when the pledgor is a merchant or an individual pledgor acting for trade business purpose), the perfection of a security interest for tangible or intangible assets pledged require no notarisaton process, registration or stamping (Article 91 of the Commercial Code).

2. Securities account pledge

Under Article 29 of 3 January 1983 Law, the creation of the securities account pledge is perfected by means of filing of a document called “déclaration”, the form of which is set out in the implementing decree n° 97-509 of 21 May 1997. The decree provides that the declaration should include the following elements :

the title “Déclaration de gage de compte d’instruments financiers”;

a reference to Article 29;

the name and address of the pledgor and of the pledgee;

the amount of the secured liability or details allowing the identification of such liability;

details identifying the special pledge account, where it exists;

the nature and number of financial instruments initially held in the pledged account.

Parties should also determine the extent of the debtor’s rights over securities and cash held in the account during the pledge.

No registration or notarisaton of such declaration is legally required. The declaration is signed by the holder of securities (generally the debtor) and notified to the account keeper of the pledged securities. The pledged account is a special securities account opened in the name of the pledgor, who retains title to the instruments held in the account (however, the Article 29 expressly applies to the circumstances where the pledged securities are not held in an account, but are identified as being pledged by data processing means).

Finally, the pledgee receives a pledge certificate (“attestation de constitution de gage”).

Legally, the securities account pledge is perfected as of the date of execution of the declaration. Thus, in order to avoid that date being challenged, the declaration may be registered with the local tax authority, since the stamp affixed by that authority is dated and provides certainty.

3. Cash pledge

No particular formalities are required in order to perfect a cash pledge : it is created and perfected as soon as the pledgor has transferred the amount of the cash collateral to the credit of a bank account opened in the name of the pledgee. In practice, the pledgor and the pledgee generally enter into an agreement (“convention de gage-espèces”), setting forth :

the amount of the secured liability or relevant details allowing its identification (possibly by reference to a master agreement);

details allowing the identification of the relevant account in which the pledged funds are held;

details about the rights of the pledgee to set off the collateral against the secured obligations.

As for the securities account pledge, in order to avoid any dispute over the date of the cash pledge (particularly in the event of bankruptcy of the pledgor), the cash pledge agreement may be registered with the tax authorities (for that purpose, the agreement must be drafted in French).

Other Formalities

* Stamp duty: There is no legal stamp duty on securities account pledge, which can be validly created and perfected without payment of any tax. The declaration of a securities account pledge or of a cash pledge may be registered with the tax authorities, and therefore subject to stamp duty, but only at the initiative of the parties, in order to acquire certainty regarding its date.

(note that the perfection of a civil pledge requires stamping)

* It is possible for the pledgee to ask the pledged account keeper to give him a financial instrument account pledge certificate listing the financial instruments and sums in all currencies in the pledged account on the date of such certificate.

* Ongoing administration: The revenues and other products of the pledged account are transferred on the cash account (opened in association of the securities account) of the pledgor and entered in the funding of the pledge.

Miscellaneous

* Future collateral: French law recognises the validity of security interest when the secured claim exists at least in its principle. If not, the security interest is invalid. The provisions of certain financial contracts creating the collateral may nevertheless take into account the evolution of market value of the transactions.

* Security interest over a fluctuating pool of assets possible: Regarding the general regime of pledge, the creation of a security interest over a fluctuating pool of assets is impossible. For securities account pledge, the creation of a security interest over a fluctuating pool of financial instruments is recognised by Article 29 of the 3 January 1983 Act as amended by Article 102 of the 1996 Financial Law.

* Since 3 November 1984, all securities issued on French territory and subject to French Law, whatever the form, registered or bearer, may no longer be materially represented by printed means. The securities must be registered in an account: all securities issued in France and governed by French Law, whether bearer or registered, whether issued by public or private companies or governmental entities must be represented by book-entries in securities accounts.

* The financial instruments pledged could as well be identified directly on the account where they are registered, by a computer earmarking process, and considered as forming the pledged account, without the opening of a separate account.

* The pledge creditor and the holder of the account shall agree on the terms on which the latter may dispose of the financial instruments and sums in all currencies in the pledged account. The pledge creditor has in any event a possessory lien on the financial instruments and sums in all currencies in the pledged account.

* It should also be noted that a pledge created during the “suspect period” would be declared invalid.

<p>Ireland</p>	<p>A "signed declaration" between the pledger and the pledgee plus a "certified deed of transfer" by the pledger are required.</p> <p>The pledge would, under Irish law, usually comprise a legal mortgage (or "charge") of the securities. It would generally be executed by the Counterparty under seal and by the NCB (or its attorney) under hand. The requirement for execution under seal arises out of the fact that it is usual for such a security document to include a power of attorney in favour of the NCB, by way of security, to (inter alia) execute documents under seal. Where a power of attorney purports to enable the attorney to execute under seal that power of attorney must itself, as a matter of Irish law, be executed under seal.</p> <p>A single pledge may be used in respect of more than one transaction</p> <p>Other notifications or formalities: Irish stamp duty is payable on the Pledge at a maximum of IR£500. There are no other applicable notifications or formalities.</p>
<p>Italy</p>	<p>1. General</p> <p>* Two ways of taking security: a regular pledge with no transfer of title involved and irregular pledge with the transfer.</p> <p>The rules that govern Italian pledge are provided by the Italian Civil Code, Book VI.</p> <p>As an "in rem" contract, the pledge is perfected by the delivery to the creditor or to a third party designated by the contractual parties.</p> <p>In order to establish the validity of the security interest, the agreement of the parties as to the delivery of the asset is not sufficient: the debtor's dispossession of the asset in favour of the creditor and the acquisition of such asset by the creditor or the agreed third party is also required.</p> <p>The irregular pledge brings the possibility according to Art.1851 of the Italian Civil Code of an unrestricted right to freely dispose of the collateral, subject only to custodian's obligation to redeliver equivalent collateral in accordance to the terms of the Pledged Agreement. The pledge will constitute a continuing security for the secured obligation, notwithstanding any intermediate payment or settlement of that obligation.</p> <p>* Generally, until the securities have been delivered to the pledgee (by account registration if appropriate), no perfection of pledge takes place and therefore no real guarantee exists on the securities of the pledgor, who has a simple obligation to deliver according to the pignus conventum (agreement to pledge).</p> <p>* For bearer securities, the perfection of the pledge takes place by delivery of the security.</p> <p>* For registered securities (titoli nominativi), if not shares, the perfection takes place by delivery of the security drawn with the wording "in pledge" on it. If it is a share (not dematerialised) a registration on the books of the issuing corporation is also needed if the pledge is to be enforceable against it.</p> <p>* For dematerialised securities, the perfection takes place as soon as (i) it is registered in the specific account held by the bank and (ii) it is filed with the register of pledges held by the bank. The custodian will keep the register of liens in which it records all the liens created with respect to financial instruments held in custody by it according with Art. 87 of the Financial Intermediation Act and the Arts. 2215, 2216 and 2219 of the Civil Code. This is the most flexible way to pledge in Italy. So the only way to perfect security interest is to have the lien recorded in the register of lien held by the custodian.</p> <p>2. Formalities</p> <p>* A priority claim shall be valid and effective for the creditor against third parties only if the pledge agreement has been evidenced by a written document, with date certain, containing sufficient description of the secured credit and the pledged asset.</p> <p>As regards dematerialised financial instruments, a valid and effective pledge arises only through registration in a specific account held by the intermediary: this formality legally replaces the dispossession required for paper certificates.</p>

	<p>* In case of pooled pledge, individual assets are not linked to specific credit operations. According to case law, in case of securities pledged to secure outstanding and future operations, a connection between the credit operations and the collateral is required. Otherwise the operation is still valid, but the creditor has no privilege over others claims. The mere reference to the final balance of a current account entered into by the parties is not considered as adequate link. However this type of pledge is broadly admitted, provided that the relevant clauses in the agreement concerning the credit limb of the operation clearly define the operations which are guaranteed by the pledge (Private banks usually refer to their typical credit operations in the relevant documentation submitted to their counterparties).</p> <p>* The substitution of the securities implies the constitution of a new pledge (except in the case of floating pledge)</p> <p>* Other notifications or formalities: registration tax.</p> <ul style="list-style-type: none"> - if the pledge is granted directly by the debtor, no registration tax is due; - if the pledge is granted to secure a medium or long term loan subject to "imposa sostitutiva" at the rate of 0.25%, no registration tax is due; - in other cases (pledge granted to secure a medium or long term loan not subject to "imposa sostitutiva", or granted to secure a short term loan), a registration tax of 0.50% is due. If the pledge is established by an exchange of letters (i.e. no formal contract signed), the tax is due at the realisation of the pledge. <p>* Ongoing administration: No other requirements</p>
Luxembourg	<p>The Luxembourg Law of June 1, 1929 on Pledges over securities (completed by the Grand-Ducal Regulation of February 17, 1971 and the law of December 21, 1994) provides for the validity of a pledge over registered or bearer securities without the necessity of any formal registration or notification to the debtor or to the issuer of the securities.</p> <p>The same Law also permits the substitution of collateral and that the collateral be held by a third party (such as CEDEL Bank). "Earmarking" of the securities in the books of the depository is sufficient to create a valid pledge. Furthermore, and on a book entry basis, a pledge is effective by agreement and simple letter from the creditor to the debtor.</p>
The Netherlands	<p>1. General The collateral has to be brought under the control of the pledgee, but collateral may also be obtained by a mere authentic or registered deed which must include a declaration of entitlement of the pledger. Order paper needs to carry the appropriate endorsements.</p> <p>Pledge on movable properties, on a right to bearer or order is established by placing the property or the order or bearer paper at the disposal of the pledgee (or of a third party). In case of a right of pledge to order, endorsement is also required. In case of pledge on shares in collective depository or giro depository, account transfers are required. Such right of pledge may also be established by way of a legally valid or registered contract, without the property or bearer paper being put at the disposal of the creditor.</p> <p>2. Formalities</p> <p>* A pledge on securities being rights to bearer is established by bringing the right to bearer under the control of the pledgee or of a third person (agreed upon by the parties), or by notarial deed. If securities are not rights to bearer or order and qualify as rights which can be exercised against one or more specifically determined persons, a pledge on those securities is established by a deed intended for that purpose (and notice given to those persons), or by an authentic or registered deed without notification to those persons.</p>

	<p>* The pledgor has to complete and sign a certain form ('deponeringsformulier') containing a list of assets to be pledged. In this form no mandatory specific wording or hand-written mentions are to be included. No other documents are necessary.</p> <p>* It is possible to establish a pledge on future collateral, and therefore on a fluctuating pool of assets. However, the pledge will only be perfected when the power of disposal of the pledgee over the assets becomes effective.</p> <p>* No specific account has to be opened.</p> <p>* No incidence of stamp duty or any equivalent documentary tax on pledges.</p> <p>* Ongoing administration: No necessity for any specific documents.</p>
Austria	<p>The pledge is defined by the Austrian General Civil Code as an in rem right of a creditor to take possession of a property as a result of the inability of the debtor to pay outstanding debts. Any individually identifiable tradable property or claim (including securities) can be pledged. Under the Austrian General Civil Code, the pledge is established by two acts: a pledge agreement between the parties (title), and a an act of perfection (modus / transfer: "Publizität", which is achieved by the transfer of the assets to the secured party, or by informing the third party debtor, or by marking the pledge in the pledger's books).</p> <p>For reasons of proof, a written document is preferable.</p> <p>According to the Deposit Law, the depository of securities has a limited right to pledged these securities: he is only entitled to do it if he receives written permission by the depositor. The form of a global pledge declaration is planed (single agreement covering all transactions). Securities may only be pledged to credit institutions and only up to an amount equal to the sum of a credit or loan granted by the depository to the depositor (further restrictions exist with regard to sub-depositories).</p> <p>No additional formalities are needed (no registration in particular).</p> <p>Ongoing administration: No formal legal requirements or any specific documents are required. The pledgee is obliged to deposit and keep the pledged assets with reasonable care. The pledgee is legally authorised to ask for another pledged collateral when the given ones turn out to be insufficient or their value decreases.</p>
Portugal	<p>1. General</p> <p>Liens, pledges and other security interests and charges on registered securities (in case of dematerialised securities) or on securities represented by certificates which are deposited with duly authorised financial operators (either nominative or bearer), are created by means of registration of the creation of the relevant security interest on the bank accounts where the relevant securities are held.</p> <p>Creation of liens, pledges and other security interests and charges on certificates not deposited under the above system, depend on the nature of the underlying securities, being that in general:</p> <p>a) liens on nominative shares must be registered in the relevant company's ledger book; b) liens on bearer securities depend on physical delivery of the certificates to the respective beneficiary (or to a commonly appointed third party).</p> <p>In general, the creation of security interests over securities follows formal requirements similar to those that apply to the transfer of same securities. Written contract is executed and the securities are delivered to the pledgee. In case of dematerialised securities instead of delivery, there is a notification to the Central Book-Entry</p>

	<p>Office.</p> <p>2. Formalities</p> <p>* Only a written agreement under private signature between the parties. No specific wording nor hand-written mentions are needed. It is possible to have a single agreement covering a group (a kind) of transactions. Governing law: lex rei sitae.</p> <p>* Establishment of any specific account or registration of the pledge: The pledgor based on a contract proceeds to the registration in a specific account.</p> <p>* Other notifications or formalities: There is a contract stamp duty.</p> <p>* Ongoing administration: None.</p>
Finland	<p>A commercial pledge is created and perfected by way of written or oral (2 witnesses) agreement. Physical delivery of the securities is required. In case of dematerialised securities, the pledge must be registered in the book entry system. It is required that there is an underlying debt obligation, which will be secured by the pledge. Without such obligation, the pledge contract shall be considered void. The obligation need not be between the pledgor and the pledgee, nor does it have to be for a fixed amount.</p> <p>Other requirements depend on the type of collateral. As a rule, the pledged assets must be in possession of the pledgee or of a third party, when notice of pledged property is required.</p> <p>According to the Act on Book-entry Accounts Section 6, a dividend, interest or other similar yield shall be paid to the account holder (which means pledgor), and any redemption or other payments to be deemed as capital of the book-entries pledged to the pledge holder (pledgee) unless otherwise has been agreed between parties.</p> <p>According to the Finnish legislation, the ownership of pledged securities is not transferred to the pledgee. The securities in book-entry form must be kept on the book-entry account in the name of the owner. The pledge of book-entry securities may be registered in a book-entry account and such registration shall pertain to the book-entry account as a whole. The actual object of the pledge is the book-entry account, which means that all securities in book-entry form registered on that pledged account shall be pledged as well. Where such pledge registration is to apply only to some of the book-entries registered, a separate account shall be opened for them.</p> <p>Future collateral: a security interest can be created in relation to a future collateral, which should be defined. The perfection is done by the delivery of the pledged assets. Collateral over a fluctuating pool of assets: possible, provided the pledgor is in possession of the pool, which usually comprises of assets held in custody and that the pledgor authorises any substitution of assets in the pool.</p> <p>No stamp duties or other governmental fees are payable.</p>
Sweden	<p>Formalities</p> <p>* There is no legal requirement on written documentation for the establishment of pledge. * Pledge of dematerialised securities has to be registered at the Securities Register Centre in accordance with the Share Accounts Act.</p>

	<p>In case of securities circulating in paper form, the delivery of physical certificates is required.</p> <ul style="list-style-type: none"> * Governing law: lex rei sitae. * Establishment of any specific account or registration of the pledge As a general rule, a valid pledge, effective against third parties, is established at the moment when pledged assets are actually delivered to the pledgee. However, there are almost no Swedish securities existing in physical form. The securities are instead registered in a book entry system at VPC (The Swedish Central Securities Depository and Clearing Organisation). Provided that the securities are registered at an owner account, a valid pledge is established at the moment the pledgee's lien on pledged securities is registered on a pledge account. If instead the securities are registered on a nominee account the pledge is established when the nominee is notified of pledge agreement between the pledgor and pledgee. This registration (or notification) is required to obtain a valid right in rem in pledged collateral. * No specific documents are to be issued or signed by the pledgee after the establishment of the pledge account or registration of the pledge. * Other notifications or formalities: none. * Ongoing administration There is a general rule according to which the pledgee is liable for negligence, i.e. he is obliged to take proper care of the assets pledged when it is in his possession, and he must exercise care when handling the assets after the debtor's default. Apart from these provisions there are no legal requirements regarding the administration.
<p>United Kingdom</p>	<p>1. General The methods used to create and perfect security interests in collateral are various and depend largely on the nature and intended use of collateral</p> <p>There are few perfection requirements:</p> <ul style="list-style-type: none"> - Any physical bearer security should be taken into actual or constructive possession; - Where securities are held through intermediaries, they should be notified of the security interest; - In the case of pledges, the CA 1985 imposes registration requirements and the failure to comply with them will avoid a registrable security interest (strictly this does not represent a perfection requirement, as avoidance for want of registration operates against the liquidator or administrator of the counterparty, and not just third parties). <p>2. Formalities</p> <p>* It is not necessary for the security document to be executed before a notary (i.e. to be a notarially certified deed), although it is usual for the document to be executed as a deed under seal (this does not however, involve any public or formal process, such as payment of stamp taxes, but does involve the need for a written reference to the document being executed as a deed and the affixing to the document of the company's corporate seal or the signature of two of its directors/one director and the secretary). The execution of the document as a deed is not mandatory, but will enable the pledgee to rely on certain powers to sell the collateral, which are implied by statute in favour of a pledgee under a security document executed as a deed; however, such powers can also be included through the express wording used in an ordinary contract - not executed as a deed - between the pledgor and pledgee. Indeed, any evidence (written or otherwise, such as the delivery of the securities to be held as collateral into the possession or control of the pledgee) will be regarded by the English courts as acceptable for the creation of a security interest, if it is sufficient to show that the pledgor had the intention to create security interest over the securities concerned.</p> <p>Thus, the English courts will recognise the creation of a security interest under the provisions of a security document governed by a "foreign" law (i.e. it is not necessary that a security document intended to create a security interest over securities located in the UK or governed by English law, must itself be governed by English law), provided that it is effective in accordance with its own "foreign" governing law and if it evidences an intention to create what English law would recognise as a security interest over the securities concerned.</p>

Although the security document does not need to be governed by English law, and specific wording for the creation of the relevant security interest does not need to be used, it might still be sensible to include some references to English law provisions concerning the creation of security. In particular, the words “with full title guarantee” if used after a recital referring to the counterparty’s ownership or entitlement to pledge the securities, will under English law imply certain statutory covenants or warranties in relation to the title or ownership of the securities by the counterparty and would require the counterparty to remedy any imperfections in that title or ownership. Furthermore, in an English law security document it is usual to exclude the operation of certain statutory restrictions on the exercise by the pledgee of its right to sell the collateral (e.g. which would otherwise require minimum notice periods to be observed before such a power of sale could be exercised); thus, in a foreign law security document, it would be advisable to include wording, such as “to the greatest extent permitted by applicable law, any restrictions on the right to sell the [collateral] shall be excluded”.

* Establishment of any specific account or registration of the Pledge

- There is no need to establish any separate account registrations or segregation procedures in respect of the creation of a security interest over securities located in the UK or governed by English law. However, where the pledgor is left in de facto possession or control of the collateral - such as where the securities remain in an account in the name and/or within the control of the pledgor - then, an English court may consider that the security interest is only a “floating charge”.
- There are various issues concerning the registration of a security interest. In particular, certain form of security interest (“charges”) are registrable if they take effect as charges over “book debts” or as “floating charges”; unfortunately the precise meaning of these terms is a matter for judicial interpretation and much uncertainty. It is usually regarded (given the adverse consequences of non-registration) as prudent to register if there is a security interest over a portfolio of securities subject to substitutions and additions/reductions, or over cash accounts or monetary entitlements of the pledgor (such as a right to receive dividends or interest payments).
- The need to consider the English law registration requirements will be relevant whenever there is the creation of a security interest by a counterparty incorporated in the UK irrespective of the location of the assets held as security (i.e. whether in the UK or elsewhere) or by a non-UK counterparty if the assets are located in the UK and where the counterparty is either registered as a foreign or overseas company in the UK or has an established place of business in the UK.
- The registration process involves the filing of the original of the security document creating the security (or a certified copy in the case of a UK-incorporated company, where the assets are located outside of the UK), together with a printed form completed so as to show details of the name of the pledgor, a brief description of the security document (e.g. whether it is called a pledge or charge) and the date of its execution, the assets subject to the security, the obligations that are the subject of the security, and the name and address of the person(s) entitled to the benefit of the security.
- The form needs to be signed and delivered either by the pledgor itself or by the person entitled to the security, or by their authorised representative. The form and original/copy of the security document must be filed within 21 days of the creation of the relevant security interest (or, in the case of a UK-incorporated company creating security over assets located abroad, within 21 days of the time that in due course of post, if the document had been despatched with due diligence, the document could have been received back in the UK). Failure to adhere to these time-limits will mean that the document is void for non-registration against any liquidator or administrator or other creditor of the company; it is possible however, to apply to the English courts for an order allowing “late-registration”, although in practice, the security document would normally be re-executed (which may suffer from the disadvantage that insolvency-related preference periods would start again from the date of re-execution).
- There is no fee of any kind to be paid upon filing or registration. Subsequently, the Registrar returns the original/copy of the document, together with a certificate of registration, which is also entered on the Register of Charges and therefore available for inspection by members of the public.
- It is to be noted that a separate regime (though based on somewhat similar rules) applies to companies incorporated in Scotland and in Northern Ireland (and in respect of any assets located in those jurisdictions).

* Other notifications or formalities: none.

* On-going administration: No on-going administration formalities or other procedures.

2. Enforcement

<p>Belgium</p>	<p>* General Pledge may be realised notwithstanding the bankruptcy of the pledgor. When the collateral is created by way of a pledge, the Belgian law sets out very simple requirements and again depending on the type of regime involved:</p> <p>* Formalities - Prior notice to the Counterparty: prior to the realisation of the pledged assets, the creditor must send a written notice to the counterparty (article 7 of the Law of 2 January 1991 and article 5, § 2 of the Royal Decree NR 62).</p> <p>- Minimum period of time to be respected before any further action: the main objective of the legal provisions is to allow the creditor to sell the securities very rapidly. The debtor should of course get the time necessary to execute its obligations after receipt of the prior notice. Once this minimal reaction period has passed, the creditor is obliged by law to sell the securities as fast as possible.</p> <p>- Authorisation from the Commercial Court: the dematerialised public debt securities may be realised by the creditor without any prior judicial authorisation. The same is true for the dematerialised private sector securities and the bearer securities registered on fungible accounts, provided, in that case, that the value of such securities is readily ascertainable in a Belgian or foreign regulated market. For securities not traded on a regulated exchange, regularly functioning, recognised and open to the public (Art.5,2 of the Royal Decree n.62), the competent commercial court, must authorise the public auction or private sale of the securities by a person appointed by the court.</p> <p>* Sale of the collateral The securities may be sold on the market without any other formality than those mentioned above. Of course, the ordinary rules and procedures applicable to all secondary market transactions must be followed.</p>
<p>Denmark</p>	<p>* Preliminary formalities</p> <p>- Prior notice: yes</p> <p>- Minimum period of time to be respected before any further action: one week (not applicable if the pledgor's address is unknown or if the immediate sale is necessary to avoid or limit a loss).</p> <p>- Authorisation from the Commercial Court:</p> <p>* Sale of the collateral: For dematerialised and listed securities the pledgee can require their sale through a bank or an authorised broker. Physical non-listed securities are sold by public auction</p> <p>* Bankruptcy proceedings</p>

	In principle, insolvency procedures have no effect on the realisation of the collateral.
Germany	<p>* General</p> <p>The enforcement of the pledge may only be made if the claim which it secures has become due and payable. Any realisation prior to the due date of the secured obligation is expressed to be illegal and will be without legal effect; it is not permitted to agree prior to the time at which the secured obligation has become due and payable that ownership in the collateral shall be vested in the pledgee and any such agreement will be null and void. The Civil Code provides for realisation rules, some of which may be waived or changed by agreement between the parties, but others are mandatory, and are considered fundamental for the pledgor's protection, not being subject to the disposition of the parties.</p> <p>The realisation of a pledge is governed by S1228 et seq. of the Civil Code and as an exception in S 803 et seq of the Civil Process Act. The realisation must be by way of sale only. Generally investment securities will be enforced by public auction and collection of claims; enforcement by private sale may be agreed upon after an enforcement event has occurred.</p> <p>* Realisation of the collateral - If no bankruptcy proceedings</p> <p><u>Formalities</u> Prior notice of the Counterparty: yes Minimum period of time to be respected before any further action: one month Authorisation from the Court: not needed</p> <p><u>Sale of the collateral</u> - If the securities has a stock exchange or market price, in such case the asset may be liquidated by sale through a licensed broker or licensed auctioneer - For other securities, the sale is made by public auction: its time and place (where the pledge is stored) and also the assets subject to the auction must be publicly announced. The owner and third parties, which hold rights in the pledge have to be notified separately. Should the pledge be sold the pledgee has to inform the owner.</p> <p>Any violation of these rules will result in the nullity of the enforcement (S1243 (1) Civil Code), except that a bona fide purchaser in enforcement procedures will acquire ownership of the collateral if certain requirements are met (S1244 Civil Code) and may subject the pledgee to a claim for compensation by way of damages.</p> <p>- In case of bankruptcy proceeding The pledgee may realise the pledge himself (unless the administrator has possession of the assets, which does not apply in the case of pledged investment securities).</p>
Greece	<p>Realisation of the pledge in case of default of the counterparty, if no bankruptcy proceedings</p> <p>* Preliminary formalities</p> <p>- Prior notice to the Counterparty:</p> <p>- Minimum period of time to be respected before any further action: 24 hours from following maturity of obligation</p> <p>- Authorisation from the Commercial Court: According to the general provisions of Greek property law (Article 1237 GCC) as well as according to the relevant provisions of the Greek Code of Civil Procedure, the realisation of collateral subject to a pledge cannot be carried out without a court order</p>

	<p>*Sale of the collateral:</p> <p>The forced sale procedure which the Bank of Greece applies must to the extent possible take into account the interests of the debtor. Special auction sale procedure. If the pledged items are listed on the Stock Exchange the sale takes place on the exchange. Moreover agreements entered into by the parties prior to maturity of the secured claim and providing that in the event of default ownership of the pledged thing shall or must be transferred to the secured creditor are void, as well as any agreement releasing the secured creditor from the mandatory auction sale procedure.</p> <p>Realisation of the pledge in case of default of bankruptcy proceedings against the counterparty</p> <p>Bankruptcy of a counterparty / pledger does not affect realisation of the pledge since pursuant to article 11.2 of Law 2548/1997</p>
<p>Spain</p>	<p>1.- GENERAL BACKGROUND.</p> <p>As said in the Section related to perfection formalities, the basic regulation of pledge in Spain is contained in articles 1.863 to 1.874 of the Spanish Civil Code.</p> <p>The execution of pledges is regulated in article 1.872, according to which, a public auction before Public Notary is required.</p> <p>However, Articles 320 to 324 of the Spanish Commercial Code foresee a much more simplified procedure in the case of pledges on securities quoted in organized markets, that guaranties obligations vis-à-vis credit institutions.</p> <p>In this case, the creditor benefiting of a pledge, unless otherwise agreed and with no need to call upon the debtor, will be authorized to ask for the sale of the pledged securities. In order to do so, the creditor will have to hand to the Secondary Market's managing bodies ("organismo rector del Mercado Secundario") the following documents:</p> <ul style="list-style-type: none"> - Original pledge contract (in public deed or "póliza" form) and subsequent modifications to it. - Certificates of registration ("certificado de inmovilización" for Public Debt in book-entry form in the CADE, or "certificado de legitimación" or "de inscripción de prenda" for securities generally in book entry form), or the securities pledged, or the relevant "certificates of deposit" (only for physical securities). - A certification issued by the creditor benefiting of the pledge and intervened by the same public notary (notario) or the special public stock broker (Corredor de Comercio) which intervened the original pledge public deed (see Section related to perfection formalities). This Certification must include the amount of money liquid, due and enforceable by the creditor of the pledge against the debtor. - A certification issued by the public notary or the special public stock broker that intervened the original pledge contract. <p>Once the managing body of the market has completed all the appropriate verifications, it will adopt the necessary measures to sell the securities on the same day or (if not possible) the following day in which it receives the secured creditor's communication, through a member of the particular Secondary Market. Then, it will credit the value of the securities sold as instructed by the realizing entity.</p> <p>Once the securities are sold and the relevant amount due is paid out, the proceedings in excess shall be returned to the pledgor.</p> <p>2.- INSOLVENCY</p> <p>In the case of insolvency of the debtor, the procedures to follow for the execution of the pledge are the same that the ones referred above, since creditors benefiting of a pledge on assets have a right of separation from the insolvency's estate ("privileged creditors").</p>

The pledge creditor's rights are unchangeable unless the relevant agreements fall within the period of retroactivity, judicially declared.

3.- LAW 41/1999

Without prejudice of the rules above referred, Article 14 of Law 41/1999, of 12 November 1999, on payment and securities settlement systems (implementing Directive 98/26/EC of 19 May 1998 on settlement finality) stipulates the following:

"Repercussions on the guarantees

- 1. When insolvency proceedings are commenced against a participant of a system, its administration body or paying agent and, when applicable, the remaining participant of said system, will enjoy an absolute separation of assets right [i.e. a "in rem" right to claim over the securities] with regard to guarantees constituted in their favour by said participant or by a third party.*
 - 2. This right to administer their own assets will also assist the Bank of Spain with regard to guarantees constituted in its favour by any entity which is its counterpart or its guarantor in monetary policy transactions, or associated with settlement of the systems.*
 - 3. The separation of assets rights referred to in the preceding paragraph will also benefit the following with regard to guarantees constituted in their favour in Spain in the context of similar operations which they carry out: the European Central Bank, any other central bank of a member State of the European Union, and the administrators or paying agents of systems which already exist within the European Union and which are notified according to the provisions of the preceding article 6 and article 10 of Directive 98/26/CE.*
 - 4. In particular, neither the constitution, the acceptance of guarantees referred to in the preceding paragraphs nor the balance of accounts or registers in which they are recorded, may be impugned in event of retroactive measures associated with insolvency proceedings. Neither will guarantees be subject to claims under the terms of article 324 of the Commercial Code on pledged securities.*
 - 5. Cash and securities representing guarantees may be used for the settlement of guaranteed obligations, inclusive of cases when insolvency proceedings have been initiated, the systems' and central banks' administrators or paying agents having the facility, in the case of securities, of implementing the disposal procedure provided for under article 322 of the Commercial Code.*
- All that will be required for the disposal of securities will be the delivery to the leading body for the relevant secondary market of the public or private guarantee document, together with the certificate issued by the central bank or by the system's administration body or paying agent, confirming the amounts due, net and payable which are involved, accompanied by the securities themselves, or a certificate proving their entry in the appropriate register. The date on which the guarantee is constituted and which is shown in the books or register of the central bank system, together with the balance, shall constitute proof to the body itself and to third parties.*
- 6. Without prejudice to the preceding statements, any surplus arising from the settlement of the relevant obligations charged against the aforementioned guarantees will be included in the total assets of the member subject to the insolvency proceedings".*

In any case, it has to be also underlined that this provision is very recent and has not been tested in Courts.

Civil pledge: under Art. 2078 of the French Civil Code, the pledgee may, in the case of a default of the pledgor in the payment of the secured obligation, apply to a court in order to either :

- Obtain title to the pledged assets as partial or full payment for the secure obligation, after appraisal of the assets has been made by an expert;
- Or request that the pledged assets be sold in a public auction.

Commercial pledge: if the security interest is granted by an entity incorporated as a Commercial Company or person carrying a commercial activity, including a Bank, the secured party will benefit, in enforcing its rights, from the favourable regime of the Commercial Code. Under Art. 93 of the French Commercial Code, the Secured Party may after, eight days following a formal notification addressed to the pledgor and the custodian, directly procure the sale by public auction of the pledged securities without being required to first obtain a court decision to approve such sale. The pledgee may also demand a court authorisation to obtain ownership of the pledged assets ("attribution judiciaire").

Contractual clause contrary to those provisions (both civil and commercial) are prohibited and therefore ineffective

2. Securities account pledge (Articles 2 and 3 of the Decree of 21 May 1997)

- The realisation needs the sending of a notice to the debtor, being void where it does not indicate that in the absence of payment the pledge can be enforced by the creditor within eight days or at the expiration of any other deadline previously agreed with the pledgor; and the pledgor may inform the account holder of the order in which the sums of money or securities are to be fully assigned or sold, as the creditor so chooses.
 - The realisation of the pledge shall occur within the limits of the secured obligation and where appropriate, regarding the order indicated by the pledgor:
 - For all sums of money figuring in the pledged account, realisation is made by direct transfer of (full) ownership title to the pledgee;
 - When the pledge securities are traded in a regulated market, the pledgee may enforce its rights without a court decision, when its claim against the pledgor is certain in its principle, determined in its amount and due and payable. The pledgee must notify to the pledgor an order to pay (registered mail). After a notice agreed contractually (or 8 days if not), the pledgee is allowed to sell the securities in a regulated market, or appropriate an adequate amount of such securities to cover the secured liability with the last available closing price for securities on the relevant regulated market.
 - For shares in collective investment undertakings, which the pledgor or, failing it, the pledgee has designated, realisation is made by presentation for buy-back or by allotment of the quantity determined by the pledgee (quantity is to be determined on the basis of the last valuation available for the said shares).
 - Where the pledgee is not the account holder and when it considers the conditions of realisation of the pledge to be fulfilled, it must in writing, request the account holder to proceed with the realisation under the conditions set out above. The account holder shall execute the instructions received, all charges to be met by the pledgee.
- The pledgor shall bear the cost of all charges resulting from the realisation of the pledge. Such charges shall be deducted from the amount resulting from this realisation.

3. Cash pledge

The pledgee is entitled to set off the sums owed to him by the pledgor with the cash held in the account at that time.

Realisation of the pledge in case of bankruptcy proceedings against the counterparty

* In case of judicial administration ("redressement judiciaire"), the pledgor must file his claim to the administrator and may not take any initiative in order to realise the pledge until the end of the "observation period". If the administrator demands a release of pledge with a retention right, the pledgee may oppose his retention right and obtain judicial authorisation for payment of his claim prior to any other creditor.

After the observation period, if the continuation of activity is decided (reorganisation plan), the pledgee may not realise the pledge and is held by the terms of the plan. If the administrator decides a sale of the pledgor's assets, the pledgee (if the sale comprises the pledged assets) must oppose its retention right in order to be paid prior to any other creditor, even privileged. A pledgee without retention right is paid after the judicial and tax fees, and the employees. If the sale does not comprise the pledged assets, the pledgee has

	<p>the same rights as in the case of liquidation (see blow).</p> <p>* In case of liquidation, the pledgee may realise the pledge after a 3 months period after the court decision declaring the liquidation:</p> <ul style="list-style-type: none"> - If the administrator has sold the pledged assets during this period, the pledgee with a retention right may oppose his right to be paid prior to any creditor. A pledgee without retention right is paid after the judicial and tax fees, and the employees. - If the pledged assets were not sold during the 3 months period, the pledgee, with or without retention right, may, as soon as his claim his filed within the liquidation proceedings, demand a court authorisation to obtain ownership of the pledged assets. He will have priority over all creditors, even privileged. In case of cash pledge or of mutual claims between the pledgor and him, he may also make a set off (when the claims are due and payable).
<p>Ireland</p>	<p>Realisation of the pledge in case of default of the counterparty if no bankruptcy proceedings.</p> <p>* Preliminary Formalities</p> <ul style="list-style-type: none"> - Prior notice to the Counterparty Depends upon the terms of the Pledge. The Pledge may be drafted so that no prior notice is required to be given to the Counterparty if the Pledge is to be realised upon default of the Counterparty. - Minimum period of time to be respected before any further action: not required (Except in some cases: Section 20 of the Conveyancing and Law of Property Act, 1881 - Authorisation from the Commercial Court: not required <p>* Sale of the collateral There is no necessity to have a court appointed official or any public auction procedure in order to sell the collateral.</p> <p>Realisation of the pledge in case of bankruptcy proceedings against the counterparty</p> <p>* General A security document such as the Pledge will generally provide that the receiver will be the agent of the pledging company, as contrasted with being the agent of a secured creditor. Accordingly the company will be responsible for the receiver's acts and defaults and for his remuneration. The receiver's primary duty is, however, towards the secured creditor (Pledgee) which has appointed him to protect its interest. It follows, therefore, that the receiver's relationship with the secured creditor is a fiduciary one, i.e., one of trust, and that he must show good faith towards the secured creditor in the conduct of the receivership.</p> <p>* Liquidation Since a company ceases to carry on business upon the commencement of its winding-up, any authority given by the company to any person (including a receiver) to act on its behalf in the ordinary course of its business ceases upon the passing of a resolution to wind-up the company, or appointment of a liquidator by the court, as the case may be.</p> <p>The termination of a receiver's agency does not affect the receiver's powers to hold and dispose of the company's property comprised in the security document and to which the receiver was appointed (in this case the Pledge). Accordingly, a receiver may, notwithstanding the appointment of a liquidator, continue to collect the company's assets and apply the same in satisfaction of the company's indebtedness to the secured creditor. In fact, the commencement of a winding up does not preclude the appointment of a receiver. The receiver will require leave of court to take possession of secured assets which are already in the possession of the liquidator. He will, however, be entitled to that leave as of right, subject to Section 322B of the Companies Act, 1963.</p>

	<p>Section 322B of the Companies Act, 1963 provides that, upon an application of a liquidator of company that is being wound-up in insolvency circumstances and in respect of which a receiver has been appointed, the court may: (a) order that the receiver shall cease to act as such from the date specified by the court and prohibit the appointment of any other receivers; or (b) order that the receiver shall, from the date specified by the court, act as such only in respect of certain assets specified by the court.</p> <p>Where a receiver is removed under Section 322B, the liquidator must realise any secured assets in place of the receiver; the security itself is not affected, the only change is the person realising the secured assets.</p> <p>The liquidator's primary duties are to take control of the company, collect its assets, pay its debts, adjust the rights of the contributors (any parties that may be liable to contribute to any deficiencies of assets) among themselves and distribute any surplus among the members in accordance with their rights. The powers of a liquidator in a court liquidation or a creditors' voluntary winding-up are prescribed by statute. If its receiver has been removed under Section 322B, the Pledgee will need to prove in the liquidation for the amount due to it and in respect of which it is a secured creditor.</p> <p>* Examinership If an examiner is appointed to the Pledge enforcement of the security constituted by the Pledge will be suspended and the assets the subject of that security may in certain circumstances, be disposed of by the examiner.</p> <p>Once any examination of the Pledgor has been completed, any debts due by or liabilities of the Pledgor to any other party could be impaired or reduced under any compromise or scheme of arrangement proposed by the examiner if such scheme is confirmed by the court. The Pledgee, as a creditor of the Pledgor would, however, have a right to vote against any such impairment or reduction, and to appear and make representations at the court confirmation hearing.</p>
<p>Italy</p>	<p>* General In the case of failure or liquidation of the debtor, the pledgee may ask to be admitted with preference to the list of creditors and, following such admission, may be authorised by the liquidator to sell the collateral (if the liquidator does not authorise a trustee to take possession of the collateral after payment to the pledgee or to carry out the sale). A pledge established two years before the bankruptcy declaration may be successfully challenged in court if the pledgee fails to prove that he was not aware of the insolvency.</p> <p>* Distinction between the regular and the irregular pledge.</p> <p>- For the <i>regular pledge</i>: Before proceeding with the sale, the creditor shall, <i>through a process-server</i>, serve a demand of payment of the debt and charges on the debtor, warning him that if he fails to comply with the request, the item will be sold; the notice shall also be served on the third person pledgor, if any. If no objection is raised within five days from such notice, or the objection is overruled, the creditor can initiate a public auction procedure or, if it has a market price, he can cause it to be sold at the current price through a person authorised to make such sale, such as a bank. If the debtor does not have his residence or elected domicile in the place in which the creditor has his residence, the time limit for objection is extended. Acting upon the objection of the pledgor, the judge can limit the sale to one of several items pledged whose value is sufficient for payment of the debt. The parties can agree on other procedures for the sale of the item given in pledge. The <i>creditor can also petition the judge that the property be awarded to him in payment</i>, up to the amount of the debt, according to an appraisal to be made by experts, or according to the current price, if the items have a market price.</p> <p>- For the <i>irregular pledge</i>: For irregular pledge the procedure is much quicker and a simple notification to the debtor is considered sufficient.</p> <p>* Realisation of the pledge in case of bankruptcy proceedings against the counterparty</p>

	<p>In the case of Italian bankruptcy proceedings, the pledgee has first to be included with preference in the list of creditors by the liquidators and, following such admission, he must seek for authorisation to sell collateral from the authority which supervises the procedure.</p> <p>In ordinary bankruptcy proceedings the authority in question is the Court. However, banks (and other financial institutions) are subject to a special administrative liquidation, under which such supervisory powers are conferred to the Bank of Italy. As a consequence, the authorisation to sell the collateral has to be sought from the Bank of Italy.</p> <p>Even in this case, a formal judgement by the Court is required where there is any objection to the recognition of the claim of the pledgee by another person who asks to be included in the list of creditors (irrespective of the fact that his claim has or has not been admitted).</p>
Luxembourg	
The Netherlands	<p>1) Realisation of the pledge in case of default of the counterparty</p> <p>* Preliminary formalities</p> <p>- Prior notice: the pledgee is legally obliged to give at least three days notice of the intended sale to (i) the credit institution receiving the credit, (ii) or, when relevant, to the grantor of the pledge, (iii) the seizers of the securities, if any, and (iv) the holders of restricted rights on the securities, if any.</p> <p>- Authorisation from the commercial Court: not required However, the parties may stipulate that no sale will take place until after the judge, upon the demand of the pledgee, has determined that the debtor is in default</p> <p>- Minimum period of time to be respected before any further action: three days if the applicability of Article 3:249 of the Dutch civil code is not excluded; none if the applicability of that article is excluded.</p> <p>* Sale of the collateral</p> <p>The securities can be sold on the securities exchange. The sale must be effected through an authorised intermediary and in accordance with the rules which apply to normal sales on such securities exchange.</p> <p>No court appointed officials are involved in the sale and no public auction procedure is necessary.</p> <p>The sale takes place in public according to local customs and upon usual conditions (Dutch Civil Code, section 3: 250). The president of the district court may determine that the pledged property will remain with the pledgee as buyer for an amount to be determined by him. The pledgee who has become entitled to proceed to a sale may agree with the pledgor to a manner of sale that deviates from section 3: 250.</p> <p>Where the pledged property is encumbered with a dismembered right or is under seizure, the co-operation of the holder of the dismembered right or of the seizer is required (Section3: 251).</p> <p>2) In case of bankruptcy proceedings against the counterparty</p> <p>No additional formalities in case of such bankruptcy proceedings: the holder of a right of pledge can exercise its rights as if there were no such bankruptcy.</p> <p>However, a bankruptcy influences the position of the pledgee: at the request of the insolvent party or at the request of the trustee in the bankruptcy, the court can determine that any powers of third parties to take recourse against assets belonging to the Bankrupt's estate cannot be exercised during a period up to 2 months, to be determined by the court, except with the authorisation of the court.</p>
Austria	<p>1. Realisation of the pledge in case of default of the counterparty if no bankruptcy proceedings</p> <p>* Preliminary formalities</p>

	<ul style="list-style-type: none"> - Prior notice to the Counterparty: no - Minimum period of time to be respected before any further action: depending: if yes = one week - Authorisation from the Commercial Court: see below <p>* Sale of the Collateral Securities which have a market or exchange value, and bank savings certificates are sold without court approval. In all other cases, the enforcement of securities may only take place through the court.</p> <p>2. Realisation of the pledge in case of bankruptcy proceedings against the counterparty The collateral is sold on the market on an outright basis without the authorisation or intervention of any court If the collateral provider is subject to an insolvency, there is a 90 days freeze on the sale of the collateral if an immediate sale would otherwise put at risk a possible restructuring of the insolvent's business.</p>
Portugal	<p>1. General To a limited extent and when that is expressly authorised by the relevant contractual instrument and provided the pledge is enforced by a special procedure entitling the court to determine the value for which the pledged assets are transferred to the pledge beneficiary, a somewhat similar effect may be obtained, but always requiring a court intervention.</p> <p>2. Realisation of the pledge in case of default of the counterparty, if no bankruptcy proceedings</p> <p>* Preliminary formalities - Prior notice to the Counterparty: needed without specific wording, nor with specific form. There are no time limits outside prescription rules.</p> <p>- Minimum period of time to be respected before any further action: not required</p> <p>* Sale of the collateral Pledges entitle their beneficiaries to obtain payment of their credits through the proceeds of the forced sale or execution of the pledged assets, such forced sale to be conducted by the court where the proceedings have been initiated (by means of a public auction or by a direct sale organised by the court).</p> <p>Realisation of the pledge in case of default of the counterparty in case of bankruptcy proceedings</p> <p>In case of bankruptcy, the pledgee needs to ask the Bankruptcy Court the realization of the pledge. The Court will give permission to sell the collateral and to pay the amount guaranteed by securities. The employees are graduated in first ranking (before pledge) in relation to their salary credits.</p>
Finland	<p>* Preliminary formalities</p> <p>- Prior notice: yes</p>

	<p>- Minimum period of time to be respected before any further action: one month. As this is not mandatory, the pledgor and pledgee may agree in their pledge agreement that these rule shall not be followed. If there is no agreement, then the procedure of the Comercial Code have to be used.</p> <p>- Authorisation from the Commercial Court: not needed</p> <p>* Sale of the collateral</p> <p>The pledged assets may be realised according to the General Pledge Agreement: If the Pledgor defaults, in any respect, on the performance of an obligation secured by the pledged assets, the Pledgee shall be entitled, without consulting the Pledgor, without applying for a court judgement or decision, without observing any legal formalities and without giving notice of the sale of the pledged assets, to convert the pledged assets into cash in an appropriate manner safeguarding the interests of the both parties. If the parties have not included the abovementioned clause, the Commercial Code will be applied. In chapter 10 section 2 the realisation process is defined by saying that after the debt have fallen due the pledgee have to notify the pledgor and if the debt has not been paid during one month after the notification, the pledgee may sell the pledged assets.</p> <p>* Bankruptcy proceedings</p> <p>In the case of bankruptcy, the pledgee may sell the pledged assets with a prior notification to the bankruptcy estate. The pledgee shall render an account of the sale to the bankruptcy estate and return any surplus assets. The bankruptcy estate may offer to purchase the pledged assets or to sell them on behalf of the pledgee. The pledgee may hold the pledged assets as long as necessary to protect his claim. The bankruptcy estate can't force the pledgee to realise the collateral</p>
<p>Sweden</p>	<p>Realisation of the pledge in case of default of the counterparty, if no bankruptcy proceedings</p> <p>* Preliminary formalities</p> <p>- Prior notice to the Counterparty: "well in advance" ?</p> <p>- Minimum period of time to be respected before any further action: A notification shall in any case be made in such a time that instructions from the counterparty on priority between the pledged securities can be received and dealt with in due order prescribed in the Agreement.</p> <p>- Authorisation from the Commercial Court: not needed</p> <p>* Sale of collateral</p> <p>In principle sale of collateral can be carried out in the following manners: in auction procedures, on a Stock Exchange or other markets, on auction under a writ of execution or by private sale. However, auction procedures and auctions under a writ of execution and sale over Stock Exchange are in practice excluded regarding securities approved eligible as collateral by the <u>Riksbank</u>. The sale is normally carried out as a private sale on a telephone market.</p> <p>In case of bankruptcy proceedings against the counterparty</p> <p>* Formalities The creditor (the pledgee) has the right to sell the collateral himself. If he prefers not to carry out the sale himself, the sale is undertaken by the official receiver.</p>

	<ul style="list-style-type: none"> - Prior notice to the Counterparty: <u>Sale by the creditor</u>: No prior notification to the debtor is needed. The receiver must be informed as to the creditor's intention to take care of the sale. The creditor has to notify the receiver of the planned sale a week in advance (thus giving the receiver the opportunity to buy back the collateral). <u>Sale by the receiver</u>: No prior notification to the debtor is needed. - Minimum period of time to be respected before any further action <u>Sale by the creditor</u>: A sale may not be executed at an earlier point in time than four weeks after the meeting for administrative oaths, unless the receiver gives his permission. <u>Sale by the receiver</u>: There are no rules on minimum periods. - Authorisation from the Commercial Court: not needed. <p>* Sale of collateral</p> <p><u>Sale by the debtor</u>: Securities quoted on a regulated market should be sold through a securities institution. Not quoted securities shall be sold on an auction. <u>Sale by the receiver</u>: As a general rule, the receiver is obliged to undertake the sale in the most profitable manner for the bankruptcy estate. The creditor must give his consent if the sale is carried out by other means than auction or through a securities institution (as regard quoted securities). Although the requirement of consent from the creditor formally is a main rule, in this context the requirement can be regarded an exemption provision.</p>
<p>United Kingdom</p>	<p>1. General Challenges are possible under: (1) S. 238 of the Insolvency Act 1986 in case of an undervalued transaction within the two years before winding-up commences and (2) S. 239 Insolvency Act 1986 in case of an unlawful preference of a creditor half a year before winding-up commences. This legal risk is deemed insignificant as is the risk of recharacterisation. Post petition payments would be invalid unless validated by a court.</p> <p>Special consideration with the drafting of the collateral agreement: inappropriate draft will make the collateral taker to rely on limited statutory rights of enforcement arising under the Law of Property Act 1925. In case of securities collateral given by domestic corporate by way of security interest, the enforcement will be frozen if the collateral giver goes into administration (S 11(3)(c) of the Insolvency Act 1986).</p> <p>2. Realisation of the pledge in case of default of the counterparty</p> <p>If no bankruptcy proceedings</p> <p>* Preliminary formalities</p> <ul style="list-style-type: none"> - Prior Notice to the Counterparty : provided that the security document has been prepared so as to exclude the statutory restrictions on the exercise by the pledgee of its power of sale then any provisions in the security document dealing with the delivery of notices to the counterparty (eg minimum or maximum periods of time, or exercise of the power of sale on failure to repay by the counterparty, and dealing with say, methods for the delivery of notices) will be enforceable in accordance with their terms. - Minimum Periods of time to be respected before any further action: there is no need for minimum/maximum notice periods before further enforcement action can be taken or for any particular method to be specified for the service of notices (eg registered mail, court appointed process server etc).

- Authorisation from the Commercial Court: there is no need for any order of the court to be obtained by the pledgee in order to enforce its power to sell the securities held as collateral. However, if the pledgee wished (but this would be highly unusual for the enforcement of a security interest) to retain ownership of the securities absolutely (and not merely pending completion of the sale of the securities), then this would be treated as “foreclosure” for which the order of an English court would be required.

* Sale of the collateral

There are no specific legal procedures or formalities (such as any requirement for the involvement of a court-appointed official or the need to sell through public auction) associated with the sale of the securities held as collateral under English law.

In case of bankruptcy proceedings against the counterparty

The procedures set out above are also applicable to the sale of collateral, irrespective of whether insolvency proceedings are being implemented against the counterparty. [However, the ability of the pledgee to realise its security interest cannot proceed without the consent of the counterparty’s administrator if the counterparty has gone into administration in the UK, as distinct from liquidation].

3. Substitution / Top up delivery / Use of collateral

<p>Belgium</p>	<p>1. Substitution of Collateral The secured party must take care that the substitution of collateral does not disturb the continuity of the pledge (avoiding invalidation under the bankruptcy rules relating to new sect constituted during the pre-bankruptcy suspect period (Art. 17 of the Bankruptcy Law)). The continuity will be subject to the Cour de Cassation general principles that the new collateral does not have a value in excess of the previous collateral; and that the substitution be simultaneous. Meeting both conditions even if the substitution was effected in the suspect period, the pledge will be upheld and preserve its priority. Difficulty in applying the conditions in factual circumstances and general legal uncertainty with this aspect. No possibility to confirm that the substitution of straight bonds with convertible bonds, secured bonds for junk bonds or bonds for shares will be recognised.</p> <p>2. Top up delivery</p> <p>3. Use of Collateral No re-use of the collateral: the pledgee is not allowed to dispose of the securities.</p>
<p>Denmark</p>	<p>1. Substitution of Collateral The pledgor has no possibilities of substitution without the consent from the pledgee. If a substitution creates additional security I respect of previous indebtedness or if the changed securities are not protected against legal process without undue delay, the invalidation rules in the Danish Bankruptcy Act may be applied in bankruptcy and in compulsory composition arrangements as well as in debt rescheduling arrangements.</p> <p>2. Top up delivery</p> <p>3. Use of Collateral</p>
<p>Germany</p>	<p>1. Substitution of Collateral Substitution is effected like the original pledge: the pledged securities must be identifiable, but the pledge of securities in an account constitutes no particular problem, also if the account represents a co-ownership interest in a pool of securities held with a CSD.</p> <p>Upon insolvency, it is not fully certain when and under what circumstances a substitution might be treated like a new pledge. Under § 131 (1) of the insolvency code, the giving of collateral after or during the last month prior to the insolvency petition may be avoided by the administrator if the creditor was not entitled to that security in such manner, at such time or at all, and if that collateralisation occurred (1) after or during the last month prior to the insolvency petition or (2) during the second or third month prior to that petition and certain additional prerequisites were then met (debtor's general inability to pay or knowledge by the secured party about adverse effects on other creditors). This risk only exists where the substitution improved the pledgee's position, in particular where the new collateral is worth more than the old one.</p> <p>According the German implementation of the Settlement Finality Directive, any avoidance is excluded if the substitution occurred through a settlement system (cf. § 96(2) and § 147 (1) Insolvency Act as revised).</p> <p>2. Top up delivery</p>

	3. Use of Collateral
Greece	
Spain	1. Substitution of Collateral Assets in the pledge cannot be substituted, otherwise continuity of the security interest would be affected.
France	1. Substitution of Collateral Article 29 of the Act of 3 January 1983 reads: "Financial instruments in the pledged account, those substituted therefore or added thereto in any way as well as any income therefrom and proceeds thereof in all currencies shall be subject to the pledge". The pledgor may request the account keeper to issue a certificate specifying the financial instruments and sums registered in all currencies in the pledged account. 2. Top up delivery 3. Use of Collateral
Italy	1. Substitution of Collateral It implies new registrations and the worry about the collateral's value fluctuation; so a notice of substitution is normally required, stating the particular collateral which will be substituted and the new one which at least must have the same market value at the time of service of that notice. The Supreme Court requires the following for a valid and effective substitution: <ul style="list-style-type: none"> - The floating lien agreement shall provide that eventual, future substitutions of the pledge assets shall be constricted within the value of the original pledge. - The formalities for constitution of floating lien and priority, as provided by law, must be complied with, during the life of the floating lien, thus: (1) the assets offered in substitution shall always be delivered direct to the creditor or to the designated third party, in order to fulfil the dispossession; and (2) each delivery of the asset must be accompanied, at any substitution, by a written document, containing "date certain" having sufficient description of the secured credit and the substituting asset in replacement of the originally pledged asset. The CONSOB Regulation No 17768/98 specifies, in its article 46, that "as regards to financial instruments registered in the account in substitution or addition to other financial instruments registered in the same account, with equal value, the date of constitution of the encumbrance shall be the same as the original date of the substituted or added financial instruments".
Ireland	
Luxembourg	
	1. Substitution of Collateral

The Netherlands	In case the pledged securities are replaced by other securities, the pledgor will not by law have a right of pledge on the new securities. However it is possible to establish a right of pledge on future assets.
Austria	<p>1. Substitution of Collateral Valid if the parties previously agreed so.</p> <p>2. Top up delivery</p> <p>3. Use of Collateral</p>
Portugal	
Finland	<p>1. Substitution of Collateral The substitution of collateral does not affect the continuity of security interest, provided that in case of the subsequent bankruptcy of the pledgor, the value of assets, which have replaced the securities originally subject of the pledge shall not be substantially higher than that of the original securities.</p> <p>2. Top up delivery</p> <p>3. Use of Collateral The pledgee is not allowed to dispose of the securities it holds. However, the pledgee can rehypothecate the pledged assets with the same terms and conditions as in the original pledge.</p>
Sweden	<p>1. Substitution of Collateral To ensure the establishment of a valid pledge in case of pooling arrangements, it has among legal experts been considered advisable that the parties agree that substitution of underlying assets is not allowed unless the pledgor is permitted by the pledgee to make such substitution. The pledgee should at least have the right to refuse a substitution.</p>
United Kingdom	<p>1. Substitution of Collateral Under English law, it is possible for a single security document to create security over securities that change from time to time (e.g. a “portfolio” of securities, subject to substitutions and additions/reductions), and in respect of any one or more transactions entered into between the parties from time to time, and in respect of all or any obligations (whether present or future, actual or contingent) of the pledgee from time to time.</p> <p>(However, where the pledge covers a portfolio of securities, there may be a question whether the security interest concerned- even if it is not governed by English law and covers assets located outside of the UK - is a “floating charge”, and therefore suffers from the disadvantages of such a charge).</p> <p>It is usually regarded (given the adverse consequences of non-registration) as prudent to register if there is a security interest over a portfolio of securities subject to substitutions and additions/reductions, or over cash accounts or monetary entitlements of the pledgor (such as a right to receive dividends or interest payments).</p>

TRANSFER OF TITLE

1. Availability of transfer of title arrangements for collateral purposes

Belgium	<p>The law of 2 January 1991 (modified by the Law of 15 July 1998) recognises the validity of certain financial transactions based on transfer of title between financial intermediaries: such as repo, reverse repo, and securities lending (including top-up deliveries of collateral).</p> <p>No specific perfection requirements</p> <p>Recharacterisation risk: not for financial transaction.</p> <p>Substitution: expressly authorised by the above-mentioned law.</p> <p>Insolvency context/ suspect period: for financial transactions, substitution during the suspect period will not be invalidated</p> <p>Close-out netting is valid for credit institutions and all other financial institutions covered by article 157 of the Banking Law as extended by a Royal Decree of 1998.</p>
Denmark	<p>There is no law provision recognising neither forbidding the transfer of title for security purposes. This technique is therefore possible.</p> <p>To obtain protection against legal proceedings and assignees in contract a transfer of title on registered securities must be notified to the account keeping institution (which then notifies it to the Danish Securities Centre).</p> <p>For bearer securities, the power of disposal on the securities must be transferred.</p> <p>Substitution: possible if agreed on by the transferor</p> <p>Insolvency context/ suspect period: substitution possible</p> <p>Recharacterisation risk: no</p> <p>Set-off is permitted</p>
Germany	<p>Paragraph 51.1 of the insolvency code can be seen as a ground for collateralisation by mean of title transfer, but in practice, this technique is hardly used in Germany.</p> <p>There are no perfection requirements</p> <p>Substitution;</p> <p>Upon insolvency, (same as above for pledge) under § 131 (1) of the insolvency code, the giving of collateral after or during the last month prior to the insolvency petition may be avoided by the administrator if the creditor was not entitled to that security in such manner, at such time or at all, and if that collateralisation occurred (1) after or during the last</p>

	<p>month prior to the insolvency petition or (2) during the second or third month prior to that petition and certain additional prerequisites were then met (debtor's general inability to pay or knowledge by the secured party about adverse effects on other creditors). As regards the legal situation after the implementation of the Settlement Finality Directive see above.</p> <p>Recharacterisation: limited risk since the full transfer also satisfies the requirements of a pledge. There is an uncertainty as to whether, even without recharacterisation stricto sensu, certain mandatory provisions for the protection of the pledgor apply. This should be a matter of concern only in case of unfair treatment of the transferor of margin (forfeiture of the right to request the return of the margin securities without proper compensation).</p> <p>Set-off: yes</p>
Greece	
Spain	<p>No specific provision in the law.</p> <p>It is possible however to use transfer of title for collateral purposes under the principle of freedom of contract.</p> <p>As a consequence, there are no formal requirements.</p> <p>No recharacterisation risk, provided that the transfer of title is well documented.</p> <p>In case of insolvency: the transferee is obliged to give the securities back to the transferor so that they are included in the total amount of assets. Set-off not permitted.</p> <p>Substitution of securities (made as a new transfer) within the suspect period will be invalidated.</p>
France	<p>1. Dailly bordereau (Law of 2 January 1981 amended by the Banking Act of 24 January 1984)</p> <p>The assignment of claim with regard to Dailly Act enters into effect upon the simple delivery of a formal document to the bank (the “bordereau”) which must include the following statements :</p> <p>The title “acte de cession de créances professionnelles”,</p> <p>The reference to the Dailly Act,</p> <p>The name of the bank (i.e. the assignee);</p> <p>The name of the debtor, place of payment, amount of the claim, maturity date of the claim.</p> <p>A shorter “bordereau” may be used when claims are assigned via electronic process which identifies them, such as floppy disk or a magnetic tape. In this case, the “bordereau” does not describe the claims in detail but only mentions the number of claims and the total amount.</p> <p>The “bordereau” is signed by the assignor and dated by the bank (i.e. the assignee).</p> <p>Enforceability of the assignment against the debtor: the bank (assignee) can inform the debtor of the assignment and thus prohibit him from making payment to the assignor. At the notification, the debtor must repay its debt only by making payment to the bank. Thus, the debtor does not make any set off.</p> <p>Enforceability of the assignment against third parties: the assignment becomes binding on the date stipulated on the bordereau. When the same claim is assigned to several assignees, the right of preference is determined by the chronological order of constitution of the assignments.</p> <p>2. Clearing houses of regulated markets</p> <p>Art 49 of the 1996 Act: all ownership rights relative to deposits by principals with investments service providers, members of clearing house, or by such members with a clearing house as margin or collateral for positions taken on a regulated market for financial instruments, give rise to a transfer of title when made to the service provider, the member of the</p>

	<p>relevant clearing house, as the case may be, as payment of any debit balance in the event of an automatic closing of positions and of any other sum due to the service provider, the member or the clearing house. Insolvency laws have no effect on these provisions</p> <p>3. Transfer of title by way of security for collateral to transactions in financial instruments Art 52 of the 1996 Act: parties to a national or international master agreement organising relations between two parties (of which one at least is an investment service provider) may provide, with regard to transactions in financial instruments, for transfers conferring full ownership rights, made as security so binding on third parties without formality , of assets, securities, instruments or sums of money in order to cover changes in the value of such transactions. Insolvency laws have no effect on these provisions</p> <p>4. Transfer of title by way of security regarding payment and securities settlement systems Art 93-2 of the 1984 Banking law act: when they organise dealings between more than two parties, the regulations, master agreements or standardised agreements governing any interbank settlement system or financial instrument and delivery system may require direct or indirect participants to transfer assets, securities, bills, claims, or sums of money in order to meet the payment system obligations stemming from a participation in such system. The above mentioned transfers shall confer full property rights as security and shall be effective via-à-vis third parties without formalities. Insolvency laws have no effect on these provisions</p> <p>Apart from the conditions described above, the transfer of title is effective without formalities.</p> <p>Set-off of collateral constituted by transfer of title is expressly allowed (art 52 of the 1996 Act)</p> <p>Recharacterisation: Any transfer of title which does not comply with the conditions applicable would be recharacterised as an invalid sale or an invalid pledge. Courts are obliged to characterise in accordance with French law, and they are not bound by the characterisation given by the parties.</p> <p>Substitution: this would not affect the effectiveness of the transfer of title. In an insolvency context, such substitution in the suspect period would not create additional risks and would be valid notwithstanding any provision of the insolvency act. A substitution of greater value than the replaced assets (overcollateralisation) does not create any problem, in principle. However, an excessive collateralisation may be analysed by courts as resulting in credit support not reflecting the change in value of the outstanding transactions. The excessive transferred collateral would not benefit from the regime of Article 52. Nevertheless, there is no case law on this point; it is therefore impossible to define the meaning of excessive collateralisation.</p>
Ireland	
Italy	<p>The Italian law recognises the validity of the transfer of title for security purposes in case of irregular pledge taken over money, goods, or securities which have not been identified or for which the secured party has been given a power of disposal.(Art 1851 of the Civil Code). In this case, the secured party becomes the owner of those assets. No perfection requirements. No risk of recharacterisation in case of substitution of securities.</p>
Luxembourg	
The Netherlands	

Austria	<p>General</p> <ul style="list-style-type: none"> * No statutory provision with regard to the establishment of a transfer of title. It is based on the case law only. * The transfer is perfected by delivery of the assets to the transferee. * Right to exercise the rights of ownership: only if the transferor agrees. If the parties have agreed on the sale of the assets by the transferor, this might only be exercised at a market or quoted price (any other agreement between the parties on this would be void). * The transferee has to redeliver part of the assets if their value have raised over the transferee's claim * The transferee may pledge the asset without the consent of the transferor. <p>Further restrictions may be imposed by agreement between the parties.</p> <p>Perfection requirements: no</p> <p>Substitution: subject to the agreement of the transferor</p> <p>Insolvency context/ suspect period: substitution in the six months before the start of the insolvency proceedings might give rise to invalidation under certain conditions</p> <p>Recharacterisation risk: no</p>
Portugal	
Finland	There is no law provision recognising neither forbidding the transfer of title for security purposes. It is not used in practice.
Sweden	
United Kingdom	

2. Availability of repo arrangements

Belgium	<p><u>Formalities</u> Establishment of any document by the Counterparty and/or the NCB Under the Belgian law, a repo agreement may be oral but, for reasons of evidence, it will preferably be in written form. The property of dematerialised securities (governed by the laws of 2 January and 22 July 1991) and bearer securities held on accounts under the regime of fungibility (governed by the Royal Decree NR 62) is transferred by book-entry.</p> <p>Two interdependent sales transactions where the spot purchaser is obliged to return securities at the end of the transaction</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none">• By law: no• By court: no• Ability for buyer to deal with securities as owner: Yes• Immediate realisation of collateral upon default: Yes <p><u>Anticipatory realisation of collateral</u>: Yes</p> <p><u>Margining increases likelihood of re-characterisation</u>: No</p> <p><u>Marking to market increases likelihood of re-characterisation</u>: No . The law of January 2, 1991, as amended in 1998, expressly authorises margin arrangements in repo transactions. <u>Master agreement/market agreement creates single contract</u>: Yes - all repos under a single master or market agreement would be treated as part of a single business and would therefore be treated as creating a single contract</p> <p><u>Impact of zero hour rule on close-out procedures</u>: No - for credit institutions and other financial institutions covered by article 157 of the Banking Law. Yes for other types of entities - except for connected debts, which can be set-off upon the opening of insolvency proceedings</p> <p><u>Impact of moratorium provisions on close-out procedures</u>: No for credit institutions and other financial institutions Yes for other types of entities except for connected debts which can be set-off upon the opening of “concordat judiciaire” (which is a proceeding close to moratorium)</p> <p><u>Close-out netting</u>:</p> <ul style="list-style-type: none">• Validity for credit institutions and other financial institutions.• Impact of types of entities/subject matter: Yes - it will be valid in relation to such institutions. In other situations there will be less certainty, except for automatic close-out upon default relating to connected debts• Impact of mutuality requirements: No impact• Impact of connectedness requirements: No impact for such institutions. For other types of entities connectedness requirements will have an impact - although in principle obligations arising from a repo master are likely to be treated as connected• Impact of similarity requirements: No <p><u>Territorial or universal approach to insolvency</u>: Universal basis (with unity principle)</p>
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<p>Denmark</p>	<p><u>Classification of repos:</u> Under Danish law, a repo is classed as being two interdependent transactions (one contractual agreement) - one transaction for the spot sale of securities, followed by a second transaction for the forward repurchase of securities</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: In legislation in force since 01 January 1996, it is provided that the sell-by-back-transactions are regarded as two separate transactions from a legal point of view • By court: No court decisions on this • Margining increases likelihood of re-characterisation: No court decisions on this • Marking to market increases likelihood of re-characterisation: No court decisions on this <p><u>Ability for buyer to deal with securities as owner:</u> Yes - as owner, the buyer will have full rights to deal with the assets</p> <p><u>Immediate realisation of collateral upon default:</u> Yes</p> <p><u>Anticipatory realisation of collateral:</u></p> <p><u>Close out netting</u></p> <ul style="list-style-type: none"> • Validity: Yes. Close-out netting is enforceable if it is agreed in advance between the parties and any of the following subsequently occur (i) one of the parties is made bankrupt, (ii) if suspension of payments is notified, or (iii) a composition with creditors is initiated • Impact of types of entities/subject matter: No - bilateral, multiproduct netting within the framework of financial instruments can be agreed between all types of legal entities • Impact of mutuality requirements: An agreement for bilateral close-out netting can include all reciprocal claims which have originated in connection with currency and securities trading covered by the New Legislation - this will include contractual obligations relating to shares, bonds, listed money market instruments, Forward Rate Agreements, interest rate and currency swaps, share and share index swaps, commodity instruments and put and call options. No other conditions will apply. • Impact of connectedness requirements: See above • Impact of similarity requirements: See above <p><u>Master agreement/market agreement creates single contract:</u> See above</p> <p><u>Impact of zero hour rule on close-out procedures:</u> No</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> no applicable moratorium provision</p> <p><u>Territorial or universal approach to insolvency:</u> Universal</p>
<p>Germany</p>	<p><u>Classification of repos:</u> Repo defined as spot sale combined with forward purchase - sec.340b(1) Commercial Code</p> <p><u>Danger of re-characterisation:</u></p> <ul style="list-style-type: none"> • By provision of law: No – repo transaction defined in law • By court: • Margining increases likelihood of re-characterisation: No • Marking to market increases likelihood of re-characterisation: No <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p>

	<p><u>Immediate realisation of collateral upon default:</u> Yes - due to full ownership being transferred to purchaser under spot sale. Forward transactions are terminated on insolvency of either party -Art 105 of the Act introducing the Insolvency Code. May also terminate even where there is no insolvency, if the other party defaults and prior notice of termination is given setting a period of grace</p> <p><u>Close-out netting:</u></p> <ul style="list-style-type: none"> • Validity: Yes - Art. 105 of the Act introducing the Insolvency Code removes any doubts over close-out of forward obligations, netting is possible under general insolvency law, allowing set-off to occur despite an insolvency • Impact of types of entities/subject matter: No restrictions - “ratione personae” or “ratione materiae” • Impact of mutuality requirements: No requirement of mutuality • Impact of connectedness requirements: No requirement of connectedness • Impact of similarity requirements: No requirement of similarity <p><u>Master agreement/market agreement creates single contract:</u> Yes - validity of single contract clauses is expressly recognised under Art 105 of the Act introducing the Insolvency Code</p> <p><u>Impact of zero hour rule on close-out procedures:</u> No</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> Contractual close-out is likely to be enforceable even if the banking supervisory authority imposes a moratorium in the case of the insolvency of a credit institution, although the moratorium is not expressly mentioned as a situation where the statutory close out under Art 105 of the of the Act introducing the Insolvency Code would become applicable</p> <p><u>Territorial or universal approach to insolvency:</u> Universality - but branches of foreign banks can be liquidated through separate branch insolvency proceedings - therefore mitigated universality is applied in practice.</p>
Greece	<p><u>Classification of repos</u> Under Greek law, repos are classed as two interdependent transactions - a spot sale and a forward re-sale. The return of securities at the end of the transaction being obligatory, not optional.</p> <p><u>Danger of re-characterisation:</u></p> <ul style="list-style-type: none"> • By provision of law: There is a slight danger of recharacterisation due to the fact that a repo places some restrictions on the rights of the transferee in relation to the securities transferred. This may contravene the “numerus clausus” principle under the Greek Civil Code. However, particularly in view of the Article 74, L1969/91, which expressly permits repo agreements under Greek law, this possibility is considered highly theoretical • By court: See above • Margining increases likelihood of re-characterisation: No • Marking to market increases likelihood of re-characterisation: This is possible. However, the danger can be overcome by ensuring that the relevant terms are drafted appropriately <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p> <p><u>Immediate realisation of collateral upon default:</u> Yes - If the transferor of securities fails in its obligation to return cash to the transferee, the transferee would be in a position immediately to realise the securities</p> <p><u>Anticipatory realisation of collateral:</u> Subject to the terms of the repo agreement, the transferee could realise the collateral on the basis of a reasonable expectation that the transferor would default in its obligation to return cash</p>

	<p><u>Close-out netting:</u></p> <ul style="list-style-type: none"> • Validity: Yes - subject to the restrictions indicated below, parties may agree contractual close-out provisions. However, there are no statutory provisions which specifically provide for close-out • Impact of types of entities/subject matter: Yes - only banks and companies which are members of the Athens Stock Exchange may enter into close-out arrangements relating to repos • Impact of mutuality requirements: Yes - the relevant claims must be mutual debts. However, corresponding obligations under a repo would be classed as mutual • Impact of connectedness requirements: Yes - the relevant debts must be connected. However, corresponding obligations under a repo arrangement would be classed as connected • Impact of similarity requirements: Yes - the relevant claims must be similar. However, corresponding obligations under a repo arrangement would be classed as similar inter se <p><u>Master agreement/market agreement creates single contract:</u> Yes - the contracts in rem which effect the transfer of title of the securities can be distinguished from a repo master agreement, which would be classed and enforced as a single contractual arrangement</p> <p><u>Impact of zero hour rule on close-out procedures:</u> No</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> No</p> <p><u>Territorial or universal approach to insolvency:</u> Universal</p>
Spain	<p><u>Classification of repos:</u> Structured as two interdependent transactions - a spot sale and forward purchase - which will be treated as creating a single contractual arrangement</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: No - provided that the repo is clearly documented, including the transfer of title to the securities • By court: No - provided that the repo is clearly documented, including the transfer of title to the securities • Margining increases likelihood of re-characterisation: No • Marking to market increases likelihood of re-characterisation: No <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p> <p><u>Immediate realisation of collateral upon default:</u> Yes</p> <p><u>Anticipatory realisation of collateral:</u> No</p> <p><u>Close-out netting</u></p> <ul style="list-style-type: none"> • Validity: Yes. Close-out netting is enforceable between the parties to the arrangement, but it could be uncertain vis a vis third parties • Impact of types of entities/subject matter: Neither the types of entities nor the subject matter will have an impact upon the validity of close-out netting • Impact of mutuality requirements: Mutuality requirements may be relevant to determine whether close-out is enforceable vis a vis third parties. However, it is not clear that a Spanish court would necessarily consider that obligations are sufficiently mutual simply due to the fact that they stem from the same repo arrangement • Impact of connectedness requirements: Connectedness requirements may be relevant to determine whether close-out is enforceable vis a vis third parties. It is not clear that a Spanish court would necessarily consider that obligations are sufficiently connected simply due to the fact that they stem from the same repo arrangement • Impact of similarity requirements: Similarity requirements may be relevant to determine whether close-out is enforceable vis a vis third parties. It is not clear that a Spanish court would necessarily consider that obligations are sufficiently similar simply due to the fact that they stem from the same repo arrangement

	<p><u>Master agreement/market agreement creates single contract</u>: Under current Spanish law, it is difficult to ascertain what would be the consequences of the parties to a repo master agreement agreeing that it would constitute a single contract</p> <p><u>Impact of zero hour rule on close-out procedures</u>: Close-out could be prevented from occurring through the impact of retroactive provisions</p> <p><u>Impact of moratorium provisions on close-out procedures</u>: Moratorium provisions are not contemplated by Spanish law</p> <p><u>Territorial or universal approach to insolvency</u>: Territorial, although a Spanish court would claim competence in insolvency proceedings affecting a branch of a Spanish entity located outside Spain</p>
<p>France</p>	<p>Signing of a market agreement (convention de place). Physical papers: delivery. Dematerialised securities: delivery in the form of crediting the papers to the account on the very day of the transaction (to avoid the risk of a challenge).</p> <p><u>Classification of repos</u>: Article 12-J-A of Act 93-1444 of 31 December 1993 defines a repo as being a cash sale which is inseparably linked to a future obligation to repurchase. A transaction where there is no obligation to repurchase would not, under French law, be classed as a repo</p> <p><u>Danger of re-characterisation</u> <u>By provision of law</u>: No - Art 12 of the Act precludes such a risk <u>By court</u>: No <u>Margining increases likelihood of re-characterisation</u>: No <u>Marking to market increases likelihood of re-characterisation</u>: Yes</p> <p><u>Ability for buyer to deal with securities as owner</u>: Yes</p> <p><u>Immediate realisation of collateral upon default</u>: Yes</p> <p><u>Anticipatory realisation of collateral</u>: Yes - so long as the contract specifies the circumstances in which such realisation will occur and those circumstances subsequently occur</p> <p><u>Close-out netting</u>:</p> <ul style="list-style-type: none"> • Validity: Yes • Impact of types of entities/subject matter: Yes - but only the requirement that close-out must be provided for in a master agreement, which agreement must be approved by the Governor of the Banque de France acting as Chairman of the Banking Commission • Impact of mutuality requirements: No • Impact of connectedness requirements: No - although netting would, in principle, be subject to a connectedness requirement where the relevant agreement is not approved by the Governor of the Banque de France - (Article 33 of the Bankruptcy Law) • Impact of similarity requirements: No <p><u>Master agreement/market agreement creates single contract</u>: Yes</p> <p><u>Impact of zero hour rule on close-out procedures</u>: Zero hour rule will not impact upon close-out netting if this is provided for in a master agreement approved by the Governor of the Banque de France acting as Chairman of the Banking Commission</p> <p><u>Impact of moratorium provisions on close-out procedures</u>: No</p>

	<p><u>Territorial or universal approach to insolvency:</u> Territorial</p>
<p>Ireland</p>	<p><u>Classification of repos:</u> A repo is not specifically defined under Irish law.</p> <p><u>Danger of re-characterisation:</u></p> <ul style="list-style-type: none"> • By provision of law: No • By court: In an insolvency, an Irish liquidator may seek to recharacterise a repo as a collateralised loan if this would benefit the interests of the creditors of the insolvent entity as a whole. This risk would be increased if (a) the repo was not documented in terms that explicitly gave it the character of an unconditional sale, with full transfer of title and (b) if either of the features referred to in questions 4 and 5 were present • Margining increases likelihood of re-characterisation: Yes • Marking to market increases likelihood of re-characterisation: Yes <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p> <p><u>Immediate realisation of collateral upon default:</u> Yes</p> <p><u>Anticipatory realisation of collateral:</u> No - unless this was expressly contemplated in the detailed terms of the repo agreement</p> <p><u>Close-out netting:</u></p> <ul style="list-style-type: none"> • Validity: Yes - previous uncertainties have been resolved through the Netting of Financial Contracts Act 1995 • Impact of types of entities/subject matter: Close-out netting will be valid in relation to Irish corporate entities and where the subject matter of the arrangements is one of a broad range of “financial contracts” to which the Act applies. The list of financial contracts includes repos • Impact of mutuality requirements: Yes - but corresponding obligations under repo agreements would generally be classed as being mutual inter se • Impact of connectedness requirements: No - the only required connections between claims to be netted are that they are bilateral, are classed as “financial contracts” (see above) and that they are within a master netting agreement • Impact of similarity requirements: No <p><u>Master agreement/market agreement creates single contract:</u> Yes - each repo under a master agreement would be enforceable in accordance with its terms but, in the event of insolvency, all transactions under the master agreement would be aggregated to determine the net balance upon close-out</p> <p><u>Impact of zero hour rule on close-out procedures:</u> No</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> No - in case of close-out of “financial contracts” which fall within the terms of the Act</p> <p><u>Territorial or universal approach to insolvency:</u> Universal</p>
<p>Italy</p>	<p><u>Classification of repos:</u> There is no specific definition of a repo in Italian law. However an arrangement consisting of two interdependent transactions - a spot sale and forward purchase of securities - creating a single contractual arrangement is classed as a repo in Italian banking practice</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: No

	<ul style="list-style-type: none"> • By court: Very low. A court is likely to respect the will of the parties to effect an outright transfer of the securities. Also, it is worth noting that Italian law expressly recognises that a contango contract, which is structured very similarly to a repo, does operate by way of outright transfer of securities • Margining increases likelihood of re-characterisation: No. However, a contract which provides for margining and the power for the non-defaulting party to walk away from the arrangement with the securities (including any margin) might be void as it would infringe the prohibition on foreclosure agreements (pactum commissorium) • Marking to market increases likelihood of re-characterisation: No <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p> <p><u>Immediate realisation of collateral upon default:</u> Yes - (in case of insolvency realisation is subject to the provisions of insolvency law)</p> <p><u>Anticipatory realisation of collateral:</u> Yes - So long as the contract specifies the circumstances in which such realisation will occur and those circumstances subsequently occur. (Cash payments made by the defaulting counterparty during the “suspect period” prior to insolvency could not be challenged.)</p> <p><u>Close-out netting:</u></p> <ul style="list-style-type: none"> • Validity: Yes - However, under Italian insolvency law there is an automatic close-out mechanism which operates on an obligatory basis upon insolvency. Applicability of this legal mechanism to repos is likely but there remains some uncertainty on this point. If applicable, this mechanism would supersede contractual close-out provisions • Impact of types of entities/subject matter: No • Impact of mutuality requirements: No • Impact of connectedness requirements: No • Impact of similarity requirements: No <p><u>Master agreement/market agreement creates single contract:</u> Each repo would be classed as a separate contract. However the netting mechanism which is provided by Italian insolvency law is likely to operate to net out obligations deriving from all outstanding contracts under such an agreement (although some legal commentators suggest that the liquidator would be able to elect, with regard to each contract, whether to repudiate or to perform; if he repudiates, though, the purchaser would be able to retain the securities)</p> <p><u>Impact of zero hour rule on close-out procedures:</u> Yes - Italian law provides for a zero-hour rule. However, contracts which are entered into prior to the insolvency date but which are still outstanding on that date would probably be able to be closed out. Repo transactions which are concluded on the day that the insolvency petition is granted, though, will be void.</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> No - However, where special banking administration occurs, in special circumstances the special administrator may suspend payment of the bank’s liabilities for a period of up to one month. This measure is subject to authorisation from the Banca d’Italia.</p> <p><u>Territorial or universal approach to insolvency:</u> Territorial</p>
Luxembourg	<p><u>Classification of repos:</u> The law of December 21st, 1994 on sale and repurchase agreements entered into by credit institutions (the “Law”), defines repos as a single contractual arrangement. This would cover the situation where the purchaser is obliged to return the securities at the end of the transaction as well as the situation where the purchaser merely has an option to return the securities.</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: No - indeed, the aim of the Law is to prevent such recharacterisation • By court: Not applicable as the Law is specific • Margining increases likelihood of re-characterisation: Not applicable

	<ul style="list-style-type: none"> • Marking to market increases likelihood of re-characterisation: Not applicable <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p> <p><u>Immediate realisation of collateral upon default:</u> The Law provides that, even if one of the parties to the transaction defaults following the initial transfer, the transfer of the securities back to the transferor must take place in accordance with the terms of the agreement. Should the default render this impossible i.e. due to the insolvency of the transferor preventing the payment of the re-purchase price, the counterparts are absolved of their respective obligations, thus allowing the transferee to realise the securities. However, this realisation can only occur upon maturity of the transaction</p> <p><u>Anticipatory realisation of collateral:</u> The Law would not allow for anticipatory realisation of collateral. However, the Law provides for immediate realisation of the securities if the transferor fails to pay the repurchase price in full, such a mechanism is therefore unnecessary</p> <p><u>Close-out netting:</u></p> <ul style="list-style-type: none"> • Validity: Close-out provisions are, in principle, enforceable under Luxembourg law. (new legislation on netting?) • Impact of types of entities/subject matter: No • Impact of mutuality requirements: No • Impact of connectedness requirements: No • Impact of similarity requirements: No <p><u>Master agreement/market agreement creates single contract:</u> Pending legislation will ensure that master/market agreements would be recognised as creating a single agreement; such recognition is not certain at present</p> <p><u>Impact of zero hour rule on close-out procedures:</u> (new legislation abolishing this rule?)</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> Yes</p> <p><u>Territorial or universal approach to insolvency:</u> Universal</p>
The Netherlands	<p><u>Classification of repos:</u> There is no specific legislation on repos in the Netherlands. A repo may be structured as two interdependent transactions, a spot sale and a forward repurchase.</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: Yes - Section 84(3) of Book 3 of the Dutch Civil Code provides that where the intent of an arrangement to transfer property is to provide security or where the property is not brought into the patrimony of the acquirer there will not be a valid transfer of title. There has been no case brought in relation to this provision, which came into force on 1 January 1992. However, there is a risk that it would be applied to a repo. The risk is likely to be higher where the securities are located in the Netherlands than when they are located elsewhere. • By court: Yes - see above • Margining increases likelihood of re-characterisation: This will depend upon the court's interpretation of section 84(3). The court is likely to take all relevant aspects of a particular case into consideration • Marking to market increases likelihood of re-characterisation: idem <p><u>Ability for buyer to deal with securities as owner:</u> Yes - assuming that recharacterisation is not implicit or does not, in the circumstances, occur</p> <p><u>Immediate realisation of collateral upon default:</u> Yes, but this will depend upon the specific terms and conditions of the repo arrangements</p>

	<p><u>Anticipatory realisation of collateral</u>: Yes, but this will depend upon the specific terms and conditions of the repo arrangement</p> <p><u>Close-out netting</u>:</p> <ul style="list-style-type: none"> • Validity: Yes • Impact of types of entities/subject matter: No • Impact of mutuality requirements: No • Impact of connectedness requirements: No • Impact of similarity requirements: No <p><u>Master agreement/market agreement creates single contract</u>: Yes - will be interpreted as creating a single contract if it is made clear in the terms of the agreement that this is the intention of the parties</p> <p><u>Impact of zero hour rule on close-out procedures</u>: No</p> <p><u>Impact of moratorium provisions on close-out procedures</u>: No - according to section 234 of the Dutch Insolvency Act in conjunction with section 74(3) of the Act on the supervision of credit institutions</p> <p><u>Territorial or universal approach to insolvency</u>: Universal for bankruptcies declared in the Netherlands, territorial for bankruptcies declared in other countries (although in some recent court cases the Supreme Court authorised a trustee of a foreign bankruptcy to exercise in the Netherlands a competence resulting from the foreign bankruptcy law).</p>
<p>Austria</p>	<p>The Austrian Banking Act defines this kind of transaction as follows: Sale and repurchase transactions are transactions whereby a credit institution or the customer of a credit institution (transferor) transfers the assets belonging to him to another credit institution or to one of its customers (transferee) against payment of a specific amount and whereby it is at the same time agreed that the assets will, at a later stage and against repayment of the amount received or of another amount previously agreed upon, be transferred back to the transferor. For reasons of proof a written document between the contracting parties is preferable. No specific wording needs to be stated.</p> <p><u>Classification of repos</u>: Repos can either be genuine or non-genuine sale and repurchase agreements depending upon whether the transferee is obliged or merely entitled to return the assets at maturity (Art50 Austrian Banking Act).</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: No - this danger is avoided by creating repos as non-genuine sale and repurchase agreements under the terms of Art 50 of the Austrian Baking Act and by referring to that provision in the agreement • By court: No • Margining increases likelihood of re-characterisation: No • Marking to market increases likelihood of re-characterisation: No <p><u>Ability for buyer to deal with securities as owner</u>: Yes</p> <p><u>Immediate realisation of collateral upon default</u>: Yes</p> <p><u>Anticipatory realisation of collateral</u>: Yes</p> <p><u>Close-out netting</u></p> <ul style="list-style-type: none"> • Validity of close-out netting: Yes

	<ul style="list-style-type: none"> • Impact of types of entities/subject matter: No • Impact of mutuality requirements: No • Impact of connectedness requirements: No • Impact of similarity requirements: No <p><u>Master agreement/market agreement creates single contract:</u> No - each repo will be regarded as a separate contract</p> <p><u>Impact of zero hour rule on close-out procedures:</u> Yes - Art 85 of the Austrian Banking Act - receivership takes effect at the beginning of the day on which the decree of receivership is posted on the notice board of the court. Art 86 precludes any claims being satisfied during receivership and therefore also precludes close-out being effected during that period</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> Yes</p> <p><u>Territorial or universal approach to insolvency:</u> Territorial</p>
Portugal	<p><u>Classification of repos:</u> A repo would be understood, under Portuguese law, to involve an interdependent spot sale and forward purchase</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: No • By court: No - (However, no court decisions are available on this point) • Margining increases likelihood of re-characterisation: No - (However, no court decisions are available on this point) • Marking to market increases likelihood of re-characterisation: No - (However, no court decisions are available on this point) <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p> <p><u>Immediate realisation of collateral upon default:</u> Yes</p> <p><u>Anticipatory realisation of collateral:</u> Yes</p> <p><u>Close-out netting:</u></p> <ul style="list-style-type: none"> • Validity : Yes • Impact of types of entities/subject matter: No • Impact of mutuality requirements: No - in the case of close-out netting which has been agreed within the terms of a contract. (However, it should be noted that contractually agreed netting is not the same as set-off which operates automatically on the basis of the law - in the latter case the set-off can be invoked unilaterally, but a mutuality requirement will then apply) • Impact of connectedness requirements: No • Impact of similarity requirements: No - in the case of close-out netting which has been agreed within the terms of a contract. (However, it should be noted that contractually agreed close-out netting is not the same as set-off which operates automatically on the basis of the law - in this latter case the set-off can be invoked unilaterally, but a similarity requirement will then apply) <p><u>Master agreement/market agreement creates single contract:</u> No</p> <p><u>Impact of zero hour rule on close-out procedures:</u> No</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> Yes - no set-off after the declaration of bankruptcy is granted by the court</p>

	<p><u>Territorial or universal approach to insolvency:</u> Universal</p>
<p>Finland</p>	<p><u>Formalities</u> None. In particular, there is no legal requirement for a written document of repos.</p> <p><u>Classification of repos:</u> No specific definition under Finnish law.</p> <p><u>Danger of re-characterisation:</u></p> <ul style="list-style-type: none"> • By provision of law: No - there is no definition of repo under Finnish law and there are no specific provisions governing repos • By court: Yes - because there is no specific definition of repos re-characterisation cannot be excluded, particularly in the context of an insolvency • Margining increases likelihood of re-characterisation: No • Marking to market increases likelihood of re-characterisation: <p><u>Ability for buyer to deal with securities as owner:</u> Yes</p> <p><u>Immediate realisation of collateral upon default:</u> Yes - the ownership of the securities has been transferred to the buyer</p> <p><u>Anticipatory realisation of collateral:</u> No</p> <p><u>Close-out netting:</u> Validity: Close-out is, in principle, valid against third parties but there are no specific provisions relating to close-out netting under Finnish law Impact of types of entities/subject matter: No Impact of mutuality requirements: Yes Impact of connectedness requirements: No Impact of similarity requirements: All off-setting claims must be similar, it is therefore not possible for a counterpart to set-off a claim for cash against a claim for securities.</p> <p><u>Master agreement/market agreement creates single contract:</u> Yes, in principle. However, there is no court decision on this issue to date</p> <p><u>Impact of zero hour rule on close-out procedures:</u> No</p> <p><u>Impact of moratorium provisions on close-out procedures:</u> No</p> <p><u>Territorial or universal approach to insolvency:</u> Territorial</p>
<p>Sweden</p>	<p><u>Classification of repos:</u> Repos are not defined in Swedish law and there is no case law defining them. Sales of securities are registered at the Securities Register Centre and, under Share Account Act registered owner has the absolute right to dispose of securities. The registration system will not record the fact that a transfer is part of a repo transaction. This leads to the possible conclusion that a repo will be classed as creating two separate contracts under Swedish law</p> <p><u>Danger of re-characterisation</u></p> <ul style="list-style-type: none"> • By provision of law: No • By court: Yes in theory - however the fact that the transfer of securities will be enforced under the Share Account Act would suggest that re-characterisation is unlikely • Margining increases likelihood of re-characterisation: Yes - the price of the securities sold would not reflect their market value but rather would include an element to cover the risk of their value reducing relative to the value of the credit during the life of the repo - this would, therefore, lead to a greater risk of recharacterisation • Marking to market increases likelihood of re-characterisation: Yes - amount of collateral provided would vary during the life of the repo relative to the fluctuating value of

the relevant assets - this might, again, increase the possibility of recharacterisation

Ability for buyer to deal with securities as owner: Yes - the buyer will be registered as the owner and, according to the Share Accounts Act, has the right to dispose of the securities

Immediate realisation of collateral upon default: Yes

Anticipatory realisation of collateral: No - there is a risk that such anticipatory realisation would be subject to challenge if it occurred during the 3-month 'suspect' or 'grace' period prior to insolvency of the seller. Therefore anticipatory realisation should be avoided. However, the original buyer of the securities is not obliged to redeliver securities unless he is paid and it should be noted that relevant transactions are effected on a DVP basis through the Securities Register Centre

Close-out netting:

- Validity: Yes - Chapter 5 of the Financial Instruments Trading Act (1991:980)
- Impact of types of entities/subject matter: No - no restriction on entities and the Act covers a wide range of financial instruments and arrangements
- Impact of mutuality requirements: No - the only relevant conditions are that the obligations fall within the above mentioned Act and that they are governed by the same agreement
- Impact of connectedness requirements: No - see mutuality requirements above. The claims under a close-out arrangement are only required, under the terms of the Act, to relate to "financial instruments, similar rights or obligations or in currencies". There is no other obligation of connectedness. Claims relating to repos will inevitably fulfil this requirement
- Impact of similarity requirements: No - see above

Master agreement/market agreement creates single contract: There is currently no master agreement in the Swedish market. However, if a master agreement were written under Swedish law, containing a close-out provision fulfilling the requirements for netting in the Act, then such a master agreement would create a single contractual agreement in the sense that claims within that agreement could be set-off and closed-out

Impact of zero hour rule on close-out procedures: No

Impact of moratorium provisions on close-out procedures: No - although if there are doubts over rights to close-out, it would be advisable to consult the bankruptcy trustee on this matter

Territorial or universal approach to insolvency: Universality relating to entities which are domiciled in Sweden. For an entity which is domiciled outside Sweden, but which has assets situated in Sweden, bankruptcy proceedings can be initiated in relation to those assets

United Kingdom

Classification of repos: Under English law a repo will be treated as a single contractual arrangement which will oblige the purchaser to return equivalent securities at maturity in return for the agreed repurchase price

Danger of re-characterisation

- By provision of law: No - there are no specific provisions of law which would mean that a repo, structured in accordance with the description above, would be in serious danger of recharacterisation
- By court: With appropriate drafting, the danger of a repo being recharacterised as a collateralised loan by an English court is remote
- Margining increases likelihood of re-characterisation: No - provided the agreement is otherwise properly drafted
- Marking to market increases likelihood of re-characterisation: No - provided the agreement is otherwise properly drafted

Ability for buyer to deal with securities as owner: Yes

Immediate realisation of collateral upon default: Yes - subject to the provisions of English insolvency law

Anticipatory realisation of collateral: As a general principle of English contract law, the parties would be free to agree to anticipatory breach. However, the incorporation of such a provision in a standard agreement may result in negative market reaction and may, in certain circumstances, be subject to challenge as a preference

Close-out netting:

- Validity: Yes
- Impact of types of entities/subject matter: Yes - different types of entities incorporated in the UK are subject to separate regimes on insolvency (e.g. insurance companies, mutual organisations - such as building societies - and partnerships). In relation to the subject matter of the repo, it must be possible to ascribe a value to each terminated executory transaction or obligation
- Impact of mutuality requirements: Yes - depends on the facts - however, netting under a repo master is likely to satisfy mutuality requirement if each party is personally liable for its obligations and the beneficial owner of its rights
- Impact of connectedness requirements: No - English law does not refer to a requirement of connectedness
- Impact of similarity requirements: No

Master agreement/market agreement creates single contract: Yes - Although it is common for inclusion of an express statement in a master stating that the agreement and all confirmations of individual transactions will constitute a single contract

Impact of zero hour rule on close-out procedures: No - However, under English law, liquidation is deemed to commence at the time the petition is presented or at the time of the passing of a resolution to wind up rather than at the time the winding up order is made. All disposals after commencement of liquidation are void. This would include repo transactions entered into after the commencement of proceedings, unless the court orders otherwise

Impact of moratorium provisions on close-out procedures: No - administration proceedings, which include a moratorium provision, do not impact upon the ability to close-out. The position under other insolvency proceedings may differ

Territorial or universal approach to insolvency: Universal