SCHEDULE 2

GERMANY

COUNTRY ANALYSIS

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1. General

1.1 Pledge – General Characteristics

- The pledge does not result in a transfer of full legal title.

- The pledge normally does not require a written agreement, a registration or public filing.

- The types of investment securities which can be pledged are the following:

  Securities held physically apart from the assets of the depositary or third parties:

  Bearer and Order Papers: as regards the creation, validity and perfection of a pledge of bearer securities governed by S1293 of the German Civil code and 1204, the pledgor and pledgee must agree on the pledge and the assets must be delivered to the pledgee (except if they are in the pledgee's possession already). If securities are located in another bank, the pledgor has to assign its claims for return and supply against the depositary (Ss870, 1205.2 of the Civil Code) and the depositary needs to be notified of the pledge (S1280 Civil Code). Order Papers (S1292Civ) must in addition be endorsed.

  Registered Papers: the pledge follows the applicable rules of assignment of the respective right; an agreement is also necessary and the debtor has to be notified of the pledge.

  Einzelschuldbuchforderungen: these are pledged like Registered Papers; it is not necessary to effect a registration in the debt register, however an entry is advisable to avoid acquisition by a third party in good faith.

  Securities held in collective safe custody:

  Bearer, Order and Registered Papers can be pledged according Ss1204 et seq., 1258,747,1008 of the Civil Code (delivery and agreement). This pledge attaches to the co-ownership share. Wertrechte can also be pledged subject to Ss1204 et seql; 1258,747,1008 of the Civil Code (agreement, delivery and S11 of the Reichsschuldbuchgesetz which states that the pledge has to be entered in the debt register ("Schuldbuch")).

1.2 Transfer of Title – General Characteristics

- Collateral arrangements in the form of an outright, i.e. non-fiduciary, transfer of ownership have been unfamiliar to German law and practice. The concept is fairly novel, brought into Germany by the ISDA Transfer Annex. Transfer of possession may be effected by transfer of physical control or may be substituted by a custody relationship in respect of the collateral between the transferee and transferor as custodian who retains direct possession.

1.3 Considerations relevant to collateral arrangements

Pledge

- The pledge is per se a possessory security interest, coming into existence only if the pledgee obtains possession of the asset to be pledged and being strictly accessory to the obligation which it is to secure; if such obligation does not validly arise, the pledge cannot be created, and if the obligation ceases to exist the pledge will cease too. A substitution of such obligation for another obligation will result in the nullity of the pledge. If the obligation becomes subject to a permanent defence, the asset must be returned to the pledgor. It is not necessary that the obligation is for a fixed amount or for a fixed maximum amount.

- A pledge may secure future and conditional obligations. The assets must at all times be identifiable; subject to this a pledge can be created over a fluctuating pool of assets.

- Creation of the pledge requires an agreement between the pledgor and the pledgee to establish the pledge over the collateral for the benefit of the pledgee and the transfer of possession of the collateral.

- 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. Further, under S1229 Civil Code 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.

- There is no stamp or similar tax or duty.

- There is no right to dispose or use the securities. A pledge creates an in rem right to realise the collateral at maturity upon the default of the debtor in order to discharge the secured obligation. The Civil Code requires the pledgee to keep the collateral at all times in safe custody, not providing for any right of the pledgee to use or dispose of the collateral prior to maturity of the secured obligation; even at maturity the pledgee cannot use or dispose of them at its discretion, but must liquidate the collateral by way of sale only in order to cover its open position and transfer any remaining balance to the pledgor; appropriation or disposing of securities by the pledgee only under "irregular pledge", which can only be created for the benefit of a German Credit institution which has been authorised under the German Banking Act, to conduct securities custody business. The appropriation rights may also violate S1229 Civil Code (see above).

- There is no right to set-off: as noted above any agreement that the pledgor's ownership of the collateral shall be vested in the pledgee in the event of the pledgor's default at maturity, prior to the maturity of the secured obligation, will not be recognised in German Law, so any agreement on the right to offset or retain, will be declared null and void.

- The non-existence, invalidity or nullity of the secured obligation will affect the validity of the pledge.

- Where the pledge itself has not come into existence or ceased to exist, because of discharge, avoidance or otherwise, it cannot be reinstated.

- Rules relating to a bona fide purchase cannot be expanded or supplemented by contractual provision. Also the rules of enforcement of the Civil Code will govern the sale of collateral, and according to them, the bona fide purchaser will acquire good title only if the collateral is sold by a licensed broker or licensed auctioneer, so any other sale violating the liquidation rules will be without effect.

- It is not entirely certain when and under what circumstances a substitution may upon insolvency be treated as a new pledge, which can be a problem under the avoidance rules of the Insolvency Code. However this risk exists where the substitution improves the pledgee's position, in particular where the new collateral is worth more than the substituted collateral.

Transfer of Title

- Like the creation of the pledge the transfer of legal title requires an agreement between the transferor and the transferee and the delivery of the assets. If the transferee is already in possession of the assets, the agreement on the transfer is sufficient (S929, sentence 2 of the Civil Code). If the transferor wishes to keep the assets in his possession, transferor and transferee can establish a legal relationship so that the transferee will get constructive possession. If a third party is in possession of the assets, the delivery can be replaced by the assignment of the claims against the third party.

- In principle, the rights in rem established under the Civil Code are exclusive and any additional rights in rem cannot be created by agreement. One of these rights in rem is ownership. However there is no limitation upon using the existing in rem rights available under the Civil Code to create a collateral arrangement.

- No filing or perfection requirements are necessary or advisable. There no other procedures that must be allowed or consents or other governmental or regulatory approvals that must be obtained to establish, enforce or continue such ownership interest.

- Recharacterisation risk is regarded as remote. The impact on the validity of the security interest with respect to margin securities should be limited since the full transfer typically also satisfies the form requirements of a pledge. There is the question as to whether, even without recharacterisation stricto sensu, certain mandatory provisions for the protection of the pledgor apply. However, this should be a serious problem only in case of unfair treatment of the transferor of margin (e.g. forfeiture of the right to request the return of the margin securities without proper compensation).

2. Private International Law and Domestic Law Aspects of Collateral

Validity of the Contract

German private international law:

- An important principle in German Law is the distinction between contractual agreement ("Verpflichtungsgeschaft") and any transaction which concerns the legal ownership itself such as a transfer of legal title or the encumbrance on the legal title ("Verfügungsgeschaft"). While the former has solely legal effect between the contractual parties the latter has an absolute effect against everyone.

- Regarding the "Verplichtungsgeschaft", the legal situation is as follows: S27 of the German Introductory law to the Civil Code states that the counterparties of a contract may choose the law which shall govern their agreement. However, the choice of law does not release the counterparties from complying with mandatory provisions of another jurisdiction . Also the choice may be limited in cases which deal with consumer credit or labour law.

- Establishment of foreign collateral will be governed by the "lex rei sitae"; so creation of collateral is subject to the requirements of the jurisdiction where the respective item is located. Notwithstanding this, German law acknowledges foreign collateral as long as it is not contrary to German public policy.

German domestic law:

- The creation (Bestellung) of the pledge requires an agreement between the pledgor and the pledgee to establish a pledge over the collateral for the benefit of the pledgee and the transfer of possession of the collateral (SS1205, 1206). In general, possession requires direct or indirect physical control and the intention to possess ("animus possidendi") by on the transferee. Subject to certain refinements, effective transfer of possession in the creation of pledge in Bunds and other Qualifying G-10 Government Securities takes place by debiting the account of the pledgor with Clearing AG or an intermediary depositary and crediting the account of the pledgee with Clearing AG or an intermediary depositary, where the pledgor loses indirect possession and the pledgee acquires indirect possession.

- The German Law on General Business Conditions (S.3), states that unusual provisions in a contract are void; so provisions requiring the provision of collateral in an unusual way are invalid.

- Section 4, Sub-section 1, sentence 4 No 1 g of the Law regarding consumer credits, may be relevant. This stipulates that a consumer credit agreement must specify any collateral to be provided.

- A collateral agreement may be void according to S138 of the German Civil Code if the transaction is contrary to moral principles. ("Gute Sitten"). This section may be applicable in the following cases:

  - usury;

- granting of collateral by taking advantage of somebody's distressed condition;

- granting collateral which affects the economic freedom of the debtor since it has a "tying" effect; and

- endangering of the interest of creditors. This may cover "over collateralisation" if the value of the securities significantly exceeds the outstanding obligations to be secured. The permissible limit will depend on the type of collateral and the individual circumstances; however a margin of 20-50% is acceptable based on existing risks of realisation.

- It is necessary to comply with the mandatory provisions of S 43 et seq. of German Introductory Act to the German Civil Code ("Einfuhrungsgesetz" zum BGB").

- The articles of association or the partnership agreement may provide additional requirements to perfect a valid pledge, such as the consent of the company or the other shareholders.

Perfection:

German private international law:

- According to S43 I of the German Introductory Law to the German Civil Code, the pledge of assets is subject to the "lex rei sitae" (the law of the country where the assets physically are located); however should the matter show closer connections to another jurisdiction then the law of that jurisdiction will apply (S46 of the German Introductory Law to the Civil Code).

- Any pledge of bearer securities and order papers is governed by the "lex rei sitae" (S43 of the GIL to the CC), although a different jurisdiction may be applicable according to the already mentioned S46 of the GIL to the CC). For Registered Papers, they will be subject to the law which governs the respective claim (Sub-section 2 of the Art. 33 of the GIL to the CC). For Wertrechte, they will follow the rules of the Bearer Securities pledge. For Einzelschuldbuchforderungen, governed by the law which governs the respective claim.

- In short, perfection will be generally governed by the "lex situs", although reference to the law of incorporation or branch should be considered.

German domestic law:

- A pledge normally does not require a written agreement, a registration or public filing. However, if the securities are held with Deutsche Borse Clearing AG, it is necessary to comply with S 43 of the General Business Conditions of that Institution.

- As to the pledge of "Anteilsverpfandung" (interests in a GmbH &Co KG provided as security), it is advisable, but not necessary, to give notice to the company to perfect the security; for shares in an AG notice is not required to perfect the security and is not usually given.

Priorities:

German private international law:

- Priorities are subject to the "lex rei sitae". In Germany there is the principle of priority in time (S804 Subsection III of the German Civil Code): any security established before subsequent collateral rank first (except when the priority of rank can be obtained in good faith, see below).

German domestic law:

- The ranking of pledges with respect to the same assets is determined by order of creation (even when the pledge has been created for a future or conditional obligation) in accordance with the so-called principle of priority. So the pledge which was created first ranks before the pledges established afterwards. However according to S 1208 of the Civil Code, a priority of ranking can be obtained in good faith (if the pledgee due to a simple lack of knowledge does not know the existence of an older pledge).

- Under certain circumstances, German law recognises the concept of a bona fide acquisition by a third party of pledged assets, being governed by S 1207 of the Civil Code; this provision refers to Ss 932 et seq. of the Civil Code (Ss 932 to 935 of the Civil Code deals with the acquisition of title in good faith), thus both the bona fide acquisition and the acquisition of title in good faith are governed by the same rules so any acquisition will require an agreement between the authorised transferor and the transferee, a delivery or permitted alternative to delivery of the respective assets and good faith of the assignee.

  Regarding Bearer Papers a bona fide acquisition of stolen or lost papers is also possible (S 935 II of the Civil Code). If a businessman sells a third party's property in conducting its business, even a lack of the power of disposal may be cured (Ss 366, 367 of the Commercial Act).

Enforcement:

German private international law:

- Under German Law the enforcement of collateral is subject to the respective German provisions, applying also to securities established abroad; however should such a security be contrary to German public order an enforcement in Germany is not permitted.

German domestic law:

- 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 Civil Code provides comprehensive rules regarding the manner of realisation; many of these rules may be waived or changed by parties' agreement, however other rules are mandatory and fundamental for the pledgor's protection, not being subject to the disposition of the parties. 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.

- Realisation of pledges over Bearer, Order Papers and Wertrechten: these are realised by selling the respective pledge upon maturity of the claims secured by the pledge (S1288 of the CC) at public auction or by private sale through a recognised broker or auctioneer provided that the seized property has a current market price (S1295 for Order Paper). At any rate the pledgee is not entitled to sell the items without the involvement of an officially authorised broker of an authorised public auctioneer. If the pledgee has an enforceable judgement against the pledgor, the realisation can be carried out in accordance with S803 of the Civil Process Act.

- Registered Papers and Einzelschuldbuchforderungen: upon maturity of secured claims the pledgee is entitled to exercise the creditor's right of terminations (S1283 of the CC); furthermore, the pledgee demand payment or in lieu of payment-assignment of the respective claim (S1282 of the Civil Code).

- If the sale is by public auction, its time and place and also the assets subject to the auction must be publicly announced. An exception will be 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. 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.

- Whether the pledge is enforced by public auction or by private sale the pledgee is obliged to give warning of the realisation according to S1234 I of the Civil Code. The auction or sale is at the earliest permitted 1 month after the warning was given (S1234, Sub-section II of the Civil Code). In case of a public auction, this will take place where the pledged assets are held (S1236 of the Civil Code). Place and time of the auction has to be made public according to S 1237 sentence 1 of the CC). 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 according to S1241 of the CC. Further provisions with regard auction can be found in S 1238 et seq of the Civil Code.

- According to S1245 of the Civil Code pledgor and pledgee can agree on another form of realisation as long as they comply with the mandatory provisions of S 1228 et seq. of the Civil Code.

- Enforcement measures during bankruptcy proceedings will be invalid according to S89 of the Insolvency Act.

Insolvency:

German private international law:

- Insolvency proceedings may be instituted in Germany in respect of the assets of any entity that has its principal office or registered office in Germany. Under the principle of "universality**"** prevailing in German insolvency law, the insolvency proceedings extend to all domestic assets and, subject to recognition by the applicable insolvency laws of the jurisdiction in which the assets are located, also to the foreign assets of such entity, including assets created, acquired and hold through any foreign branch of the German entity.

- According to S102 of the Introductory Law to the Insolvency Act, bankruptcy proceedings instituted abroad extend also to assets located in Germany provided that the court which has instituted the proceedings is competent and the results of such proceedings would not be contrary to German public order. The power of the liquidator is determined by foreign law. In order to protect German collateral-takers intervention in German collateral by the foreign liquidator is only allowed if German law provides the same limitations.

  S102 (3) states that German insolvency proceedings may also be instituted over assets located in Germany of a foreign debtor. However some commentators have considered this scope very limited in the light of the jurisdiction requirements of the S 3 of the Insolvency Code, which establishes first the general rule that the place of jurisdiction of the insolvency court is the debtor's place of general jurisdiction. In the absence of statutory provisions, the general rule applies in a cross-border context pursuant to German principles of conflicts of law; so the insolvency proceedings of S102 (3) will apply unless the debtor's principal place of business or registered office is located in Germany. In short, failing a specific statutory provision and in the absence of Court precedents or a prevailing opinion in respect of the place of jurisdiction of German courts in such case, it is uncertain whether the German Courts would have jurisdiction to institute an insolvency proceeding over the assets of an entity the principal place of business or registered office of which is located outside of Germany.

German domestic law:

- If the insolvent grants a pledge after the date of institution of the insolvency such pledge will be void according to S81of the Insolvency Act.

- Once insolvency proceedings have been instituted, any pledgee is entitled to preferential satisfaction. According to Ss 50, 166 of the Insolvency Act the

pledgee, and not the liquidator, can realise the respective pledge in accordance with the provisions outlined above as long as the respective assets are not in the liquidator's possession.

According to Ss 129 et seq of Insolvency Act, the liquidator may challenge the validity of such transactions which take place after the date of institution of the insolvency and will affect the rights of the bankrupt's creditors. Some transactions could be regarded as prejudicing the other creditors, for instance where there was acceptance of collateral although the situation of the debtor was known to the collateral taker, or the collateral taker was not entitled or not at that time entitled to demand such collateral; wilful defeat of other creditors' gratuitous services; provision of collateral and credits which are considered as equity and finally other transactions which were entered into with the intention of prejudicing other debtors or creditors or if the transaction was done with a relative of the insolvent.

The right of avoidance is subject to the date the collateral was granted and is subject to the collateral taker's knowledge concerning the collateral giver.

- If a custodian goes bankrupt two different situations might arise:

- where the pledged securities are physically located with the insolvent bank. In case of separate safe custody the custodian is obliged to separate the securities from its own assets and those of third parties and to mark them as the customer's property (S2 of the Deposit Act), ensuring that creditors of the custodian cannot execute against the securities of the customer. If a third party attempts to execute against the securities of the customer, the latter is entitled to institute third party proceedings against unjustified enforcement measures according to S771 of the Civil Process Code or to demand right of separation from the bankrupt estate in case of bankruptcy proceedings (S50 of the Insolvency Act and S32 of the Custody Act).

- where the pledged securities are held in safe custody with a bank but the securities themselves are located with a central depository such as Deutsche Borse Clearing AG. In this case it is an irrebuttable presumption that all securities given in custody by a custodian are third party property (S4 of the Custody Act). Therefore, the central depository cannot acquire title to the securities by way of bona fide acquisition and neither the central depository nor its creditors can execute against the securities The above mentioned S4 , in its subsection 1, sentence 2 of the Custody Act states that the custodian is only entitled to enforce a pledge or a right of retention if the underlying claims are caused by the respective securities and not by securities of third parties. Should however somebody try to execute against the securities the owner is entitled to institute third party proceedings or to demand that the assets be separated from the insolvent's estate.

- The institution of bankruptcy proceedings results from the order of a competent court, which must specify the date and hour of the respective decision and all the assets which are part of the debtor 's property at the time

the proceedings were instituted or which become afterwards part of the property from the bankruptcy estate. All separate measures of execution outside the bankruptcy proceedings and levied after the institution are void according to S89 of the Insolvency Act. Any collateral granted after the institution date is invalid and not enforceable.

- According to S 218 of the Insolvency Act the liquidator and the debtor may avert bankruptcy proceedings and a liquidation by initiating special proceedings (S217 of IA) ("Insolvenzplanverfahren"). In the course of these proceedings even preferential creditors might be forced to waive part of their rights, subject to a necessary majority among the creditors.

3. Miscellaneous

3.1 Cross-border transactions in multi-tiered holding systems

Cross-border safe custody of securities and settlement of securities transactions have been the subject of detailed study in Germany over a long period. The starting point is perhaps the 1896 special law on safe custody and procurement of ownership of securities, revised in 1937 and commonly called the "Depotgesetz" (Law on Securities Deposits). Further revisions took place in 1972, 1985, 1994 by the Second Law on Improvements of the Financial Market. The most important amendment was enacted on July 1985, amended in 1994, stating that a central securities depository in Germany can establish links with foreign central securities depositories by opening a mutual account relationship that allows a cross-border clearing transactions in securities by book entry. The following requirements which must be fulfilled for such cross-border account relationship demonstrate the importance of the customers' protection, namely the foreign custodian in its country has to be central depository bank, subject to state supervision or equal supervision with respect to investors; protection; the depositor is granted a legal status provided for by the law; the right of the central depository bank to require the physical delivery of the securities is not subject to any prohibition of the country of domicile of the custodian.

Therefore if the foreign central securities depository goes bankrupt, the customer must be entitled, directly or indirectly through its custodian, to recover its securities; in other words, the customer must be protected against the third party creditors of the depository.

As regards indirect holding systems and depositors' rights, Germany is one of various jurisdictions which have created new legal categories by statute to prevail over the rule that depositaries lose their property rights in the individual securities deposited with the intermediaries and commingled in fungible pools.

In Germany, securities are usually held in safe custody with Deutsche Borse Clearing AG, the German Central depositary. Fungible securities physically located in Germany are eligible for collective safe custody, under which the depositary is allowed to hold in a pool all securities of the same class and belonging to different owners. By depositing the securities in collective safe custody the former owner loses its sole property rights in the individual securities and becomes co-owner of the pool on a pro-rata basis. All co-owners form a community of owners holding undivided shares in the assets. No co-owner is entitled to request the return of the original individual securities deposited but only to request the return of securities of the same type and amount. Securities may also be held in separate safe custody, so the customer's securities will be held physically segregated from the holdings of the depositary and of third parties. Should the securities be physically located abroad, the depositary is not obliged to provide its customers with the ownership of the respective entry in the securities account.

When applying the "lex rei sitae" rule to the new category of property rights that Germany classifies as collective property interest (fractional or co-property rights traceable to actual pools of individual fungible securities), the creditor taking a book-entry pledge of a fractional property is treated as having acquired constructive possession or record ownership of a fractional portion of the actual pool, although the creditor does not have actual possession or actual record ownership of any of the pool.

Applying the German approach to modern indirect holdings systems requires one to locate the securities to make sure that all applicable laws are complied with each time a transfer or pledge is effected. Further, where the single pool of fungibles is located in more than one jurisdiction, the "lex rei sitae" will not give a unique answer as to which jurisdiction's law governs the enforceability of a pledge of a traceable property right in an unallocated portion of the actual pool of securities. The normal consequences will be that pledging procedures in each jurisdiction will have to be followed despite the added costs and if the relevant jurisdictions have conflicting pledging procedures it will be impossible to obtain reasonable certainty that the pledge will be enforceable.

3.2 IMPLEMENTATION OF THE FINALITY DIRECTIVE IN GERMANY

Art. 9 (2) has been implemented through the insertion of a new Section 17a in the Securities Deposit Act. This adopts the broadest interpretation of the Art. 9 (2).

A new Insolvency Law (Insolvenzrecht) was brought into force on January 1st, 1999. This complies with most of the provisions of the Directive, e.g. Art. 7 providing that insolvency proceedings shall not have retroactive affects on the rights and obligations of a participant arising in connection with its participation in a system. This also applies to Art. 3 providing that transfer orders and netting shall be binding on third parties, even in the event of insolvency proceedings against a participant.