THE REGULATION OF CLOSE-OUT NETTING IN THE NEW MEMBER STATES of THE EUROPEAN UNION

A REPORT BY THE

EUROPEAN FINANCIAL MARKET LAWYERS GROUP

EFMLG

October 2005

NOTICE

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Introduction

The attached annex contains an overview of close-out netting legislation in the ten new Member States of the European Union (EU), namely Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Upon accession, the financial markets of these countries were integrated into the single European financial market so that an overview of the relevant netting legislation in these countries will be useful for anyone intending to do business there.

The report contains (i) an introductory section highlighting the most important aspects, as well as possible imperfections, of the respective netting legislation of new Member States; and (ii) country-specific sections which set out the specific netting provisions both in original language versions and in unofficial translations into English.

The scope of the review

The review does not include all types of netting agreements (set-off, novation netting, payment netting, multilateral netting, etc.) in these countries. Instead, it focuses solely on enforceability of bilateral close-out netting agreements that allow a party to:

- terminate agreements and to close-out all obligations, including those not yet due, if a certain defined event occurs; and
- net the termination values into a single net amount.

As a consequence, the focus is on the compatibility of such agreements with bankruptcy legislation. If there are no specific provisions on close-out netting, or if their scope is limited, then the general rules on set-off and bankruptcy are also examined. Please note that the English translations of the legal texts are unofficial.

The importance of close-out netting

The topic is an important one, as the satisfactory regulation of close-out netting is one of the preconditions for effective financial markets. Close-out netting offers several advantages for financial market participants: it reduces credit risk (according to some estimates, netting almost halves a bank's overall exposure) and thereby enables institutions to take on greater credit exposures. In conjunction with this, the amount of regulatory capital legally required for credit institutions to cover their credit exposures can be reduced. Close-out netting can also contribute to the reduction of settlement risk, liquidity risk, and as a consequence, systemic risk.

Benchmarks for effective close-out netting legislation

It is important to have clear and efficient rules on close-out netting. In the light of the uncertainty arising from the existing divergent national insolvency regimes, which in many cases were adopted before modern securities and derivatives markets existed, and in the absence of court decisions in this area, market participants would greatly benefit from clear statutory recognition and regulation of close-out netting. Such regulations should clearly state that close-out netting is enforceable and supersedes conflicting provisions of insolvency laws where necessary. The main considerations concerning the applicability and scope of close-out netting legislation are the following:

- **Specificity and contractual freedom.** Legislation should specifically address close-out netting and clearly indicate what will happen under such agreements in a bankruptcy situation, paying special attention to insolvency legislation. In this respect, contractual freedom and respect for the contracting parties' intentions are crucial, especially where they reflect standard practice for the derivatives market. Netting legislation should ensure the enforceability of close-out netting, in accordance with the parties' agreement, following any contractually agreed termination or default event under a netting agreement, both pre- and post-insolvency. If insolvency law prohibits set-off, then netting legislation should provide that close-out netting is not a prohibited form of set-off.

- **Precedence over bankruptcy rules.** The legislation should make close-out netting enforceable upon bankruptcy, giving close-out netting legislation precedence over general bankruptcy rules (such as rules on cherry-picking, other powers of liquidators and suspect periods). Regarding cherry-picking, where a country's insolvency law provides that the liquidator may accept or repudiate contracts, netting legislation should limit such acceptance or repudiation to the net amount due under the netting agreement. In addition, where a country's insolvency law provides for a suspect period, netting legislation should provide that payments under eligible transactions are not to be treated as preferences where such payments are not intended to hinder, delay or defraud other creditors. Finally, 'insolvency proceedings' should be broadly defined to include both proceedings that exist now or could arise in the future.

- **Enforceability other than in bankruptcy situations.** Legislation on close-out netting should be enforceable upon default, even when bankruptcy is not involved. It should state, if necessary, that it supersedes gaming or similar laws that could invalidate netting agreements on the grounds that they are gaming or otherwise unlawful contracts.

- **Flexibility and inclusion of all relevant transactions.** If 'eligible transactions' are defined, the definition should be broad and flexible enough to include a wide range of rapidly changing financial

products. It should certainly include all commonly used financial markets transactions (including derivatives transactions) and title-transfer collateral arrangements to ensure that, where a netting agreement includes such arrangements, obligations to return collateral of equivalent value are netted against obligations under derivatives transactions. With the development of new financial products, the possibility of giving a public body/regulatory authority the power to designate additional transactions could also be considered.

- **Covering more complex situations – a single contract.** Legislation should also enable cross-product, multi-branch and multi-currency netting. In this context, it is particularly important that netting legislation should specify that a netting agreement and all eligible transactions under a netting agreement constitute a single contract. Netting legislation should also provide that the inclusion of non-eligible transactions under the netting agreement would not invalidate close-out netting for eligible transactions under a netting agreement. In addition, where collateral arrangements cover some transactions which are eligible and some which are not, the collateral arrangements should remain protected with respect to the eligible transactions.

- **Trades terminate - agreements survive**. Netting legislation should not require the termination of an agreement regulating the parties' relationship. Only trades or transactions forming a part of a single contract should terminate, but the contract itself should survive so that the netting provisions in it remain enforceable.

- **Wide range of potential beneficiaries.** Legislation should not be overly restrictive with regard to the potential beneficiaries of close-out netting, as an increasing circle of market participants, including some outside the financial sector, may need to rely on such agreements. Hence, netting legislation should not exclude companies, insurance companies, special purpose vehicles, wealthy individuals or others that could potentially benefit from the close-out netting of over-the-counter derivatives transactions entered into on a bilateral basis.

- **No formal requirements regarding types of agreements.** Close-out netting should not be confined to pre-approved types of netting agreements. Close-out netting should be equally permissible in the context of single, master and multiple master agreements.

- **Protection of collateral arrangements.** It is a precondition that netting legislation should not undermine the enforceability of collateral arrangements. Collateral arrangements in support of netting agreements should be exempt from any conflicting legal requirements of Member States that the collateral taker must obtain consent from, or provide notice to, other parties or liquidators prior to the

realisation of collateral. In addition, collateral and title-transfer arrangements should be included in any definition of protected transactions so as to be exempt from the usual insolvency rule protections, such as stays or avoidance by liquidators.

- **Simplicity.** Unnecessary complexity and overly bureaucratic requirements should be avoided. This is essential in order to provide a user-friendly and flexible legal framework for an important and fast-changing market area.

Key initial findings

This report draws attention to recent developments in netting legislation in the new Member States of the EU. It is only possible to provide a snapshot of the situation, as in most of the countries examined netting legislation is very recent. Therefore, the main emphasis in the report is on the legislative provisions that are cited and unofficially translated. However, there have been significant legislative changes in most of countries examined, particularly by the passage of specific netting legislation (Hungary, Malta and Poland) and/or through the implementation in all new Member States of the netting provisions contained in Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements[1] (the 'Financial Collateral Directive') and Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions[2] (the 'Banks Winding-up Directive').

Legislative changes have been triggered both by the requirements of EU membership and by the general overhaul of bankruptcy systems.Market associations have commissioned netting opinions in the Czech Republic, Hungary, Malta and Poland.

In addition to three countries (Hungary, Malta and Poland) that have advanced legislation on close-out netting, most other countries have introduced new provisions that have completed the regulatory framework in this field, mainly trough implementation of the Financial Collateral Directive and relevant provisions of the Banks Winding-up Directive. Two of the three countries that opted for comprehensive rules (Hungary and Poland) decided to confine them to the financial sector, while Malta opted for a very liberal, all-encompassing approach to the subject. There are certain shortcomings in Estonian law which does not seem to have implemented the netting provisions contained in the Financial Collateral Directive.

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1 OJ L 168, 27.6.2002, p. 43.

2 OJ L 125, 5.5.2001, p. 15.

There has been full harmonisation with the *acquis communautaire* in Cyprus, the Czech Republic, Hungary, Slovenia and Malta. Poland has a comprehensive close-out netting law, but there remain some doubts about the correct implementation of Financial Collateral Directive. However, Cyprus has to adapt its provisions to take account of the requirement to give express recognition to the conflict of laws rule in Article 25 of the Banks Winding-up Directive, for netting agreements to which cooperative societies are parties.

Although securities and derivatives markets and their regulatory regimes have quite short histories in the countries examined, some comments can already be made on the legal problems which market participants face in practice. Although some basic regulatory provisions exist in all new Member States following the implementation of Community legislation in this area, the effectiveness of such provisions need to be tested by market participants. It is too soon to expect appropriate court practice to have developed in this area.

Cypriot law is currently fully harmonised with the *acquis communautaire* on close-out netting agreements, with the exception of the express recognition of the conflict of laws rule in Article 25 of the Banks Winding-up Directive for netting agreements to which cooperative societies are parties.

Article 33H(2) of the Banking Business Act implements the provisions of Article 25 of the Banks Winding-up Directive in Cypriot Law, providing, with regard to close-out netting agreements to which a credit institution is a party, that these shall be governed by the proper law of the contract. It is nevertheless noted that no equivalent provision has been introduced into the law on cooperative societies, notwithstanding a recent amendment (Law 170(I)/2004) intended to incorporate the provisions of the Banks Winding-up Directive in Cypriot law. In this respect, cooperative societies remain subject to the general provisions of Cypriot company law on winding-up and liquidation.

Czech law recognises 'close-out netting' as defined in Article 197 of Act 256/2004 Coll. on Trading on the capital market (as last amended by Act 377/2005 on Financial conglomerates). In spite of a Czech counterparty's bankruptcy, the effect of 'close-out netting' provisions is assured by Article 14 (1)(g) and (i), (4) and (7) of Act 328/1991 on Bankruptcy and composition of claims, as amended for this purpose by Act 377/2005 Coll. on Financial conglomerates. Article 25 (netting agreements) of the Banks Winding-up Directive, is implemented by Article 11c of Act 97/1963 on International private and procedural law, as amended by Act 377/2005 on Financial conglomerates. Article 11c establishes that close-out netting arrangements shall be governed solely by the law of the contract which governs such agreements. As regards the provisions of the Financial Collateral Directive, these provisions have also been transposed into Czech law by Act 377/2005 on Financial conglomerates, which introduced provisions on financial collateral arrangements into the Commercial Code No 513/1991 Coll., as amended (new Articles 323a to

i). These amendments to individual Czech legal acts were adopted by Parliament at the end of September 2005 and have entered into force.

The *Riigikogu* **(Estonian** Parliament) passed a law implementing the Financial Collateral Directive (Act to Amend the Law on Property Act, Estonian Central Register of Securities Act, Credit Institutions Act, Insurance Activities Act, Bankruptcy Act, Law on Obligations Act, Private International Law Act and Securities Market Act) on 22 April 2004. The law entered into force on 1 May 2004. However, the netting provisions of the Financial Collateral Directive were not implemented by this law. Although netting provisions might theoretically be introduced in contracts, it is questionable whether such clauses would be enforceable in the context of insolvency, with the exception of netting in payment systems. Article 25 of the Banks Winding-up Directive was implemented by the Credit Institutions Act and Commercial Code Amendment Act which was adopted by the Estonian Parliament on 25 November 2004 and came into force on 1 January 2005. The implementing Act does not specify the wording of the Banks Winding-up Directive. According to Section 115[1], paragraph 5, clause 2 of the Act, netting is interpreted according to the law which governs the contract.

Hungary adopted insolvency close-out netting legislation with the adoption of Act CXX of 2001 on Capital Markets (the 'CMA') which was amended in June 2004 following the implementation of the Financial Collateral Directive. In 2001 the CMA also amended Act XLIX of 1991 on Bankruptcy, Liquidation and Voluntary Winding-up Proceedings (the 'Bankruptcy Act'). The amended provisions of the Bankruptcy Act provide for the enforceability of contractual close-out netting for the types of transactions mentioned above and prevent the insolvency administrator from 'cherry-picking'.

Under Article 12(2) of the Bankruptcy Act, once debtors have filed for bankruptcy and subject to certain conditions, they may apply for a moratorium on their payment obligations. During this moratorium there are no legal consequences of non-payment. It could be argued that this prevents creditors from terminating transactions early or applying close-out netting provisions. In practice, however, it is understood that such a moratorium is unlikely to cause any problems, as creditors have considerable time to exercise early termination rights and close-out netting between the filing for bankruptcy and the declaration of a moratorium.

In **Latvia**, the Financial Collateral Directive, the Banks Winding-up Directive and Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings[3] were implemented by the Law on Financial Collateral, which was adopted by the

[3] OJ L 110, 20.4.2001, p. 28.

Parliament on 21 April 2005. It entered into force on 25 May 2005, simultaneously with the amendments to the Law on the Insolvency of Undertakings and Companies (adopted on 17 March 2005) and amendments to the Law on Commercial Pledges (21 April 2005), which are necessary in order to ensure the application of the Law on Financial Collateral. The law implementing the Financial Collateral Directive transposes the provisions of the Directive quite closely. With regard to the conflict of law issue addressed by Article 25 of the Banks Winding-up Directive, the draft law amending the Law on Credit Institutions has already passed its second reading in the Parliament. Article 57 of the draft law amending Article 158 of the Law on the Credit Institutions provides that transactions subject to netting arrangements are governed exclusively by the laws relating to the netting arrangement underlying such transaction. The same draft law also provides that application of reorganisation measures or winding-up proceedings to a credit institution, or to one of its branches, does not affect the set-off of claims and obligations, or the carrying out of other activities having a similar legal effect, and does not provide for any suspect periods.

In **Lithuania,** there is no specific law dealing with close-out netting. The set-off of reciprocal obligations, which is arguably a narrower concept in Lithuanian law than close-out netting, is governed by general rules in the Civil Code (Articles 6.130 – 6.140). If bankruptcy/restructuring proceedings are commenced with respect to an insolvent debtor, the Enterprise Bankruptcy Law (No 31-1010 of 2001), the Law on the Restructuring of Enterprises (No 31-1012 of 2001) and the Law on Banks (No IX-2085 of 2004) do not generally allow set-off, unless the set-off relates to payment or securities settlement systems or financial collateral arrangements, as regulated by the Law on Settlement Finality in Payment and Securities Settlement Systems (Law IX-1597 of 2003) and the Law on Financial Collateral Arrangements (Law IX-2127 of 2004). Lithuania has followed a rather literal implementation of Financial Collateral Directive.

In **Malta** the Set-off and Netting on Insolvency Act – Act IV of 2003 (the 'Netting Act') provides a flexible regime in support of netting. Its scope is very wide, covering basically any contracts, not only agreements with respect to derivatives. The only limitation to the application of the provision is that netting can be rendered unenforceable on the grounds of fraud or for a similar reason. As different types of claims – also non-financial – can be netted under the legislation, the Netting Act also explicitly provides for the enforceability of contractual clauses that set out the mechanism for converting non-financial obligations into monetary obligations.

The **Polish** regulation of close-out netting seems to be comprehensive, but it does have some imperfections. The law is not sufficiently clear on derivatives transactions concluded without a master agreement. Other than in relation to master agreements, close-out netting is not explicitly provided for in such agreements.

In the context of bankruptcy proceedings, there may be doubts about the scope and correctness of the implementation of the Financial Collateral Directive as regards recognition of the close-out netting of financial collateral. In the context of separately regulated rehabilitation proceedings, the enforceability of close-out netting is only explicitly guaranteed in relation to financial collateral.

Act 7/2005 Z. z. on Bankruptcy and Reorganisation, adopted on 9 December 2004 , implements close-out netting into the **Slovak** legal order. The new law is applicable as of 1 January 2006. It provides for the implementation of the Financial Collateral Directive in relation to close-out netting. Close-out netting is recognised in Article 180. Paragraphs 1 and 2 contain definitions of 'netting agreement' and 'close-out netting'. Nevertheless, the interpretation of the definition of close-out netting in Article 180 might be difficult, since it refers to profits and losses from individual transactions and not to the value of claims/obligations arising from these transactions. Furthermore, the recognition of close-out netting in the case of individual public or private attachments, according to Article 7(1)(b) of the Financial Collateral Directive, is not guaranteed by the draft law.

Since the adoption of the Act on Financial Collateral of 22 April 2004 (Official Gazette No 47 of 2004, p. 6277) the **Slovene** regulatory framework provides for specific close-out netting legislation. The Act on Financial Collateral regulates the status of close-out netting provisions according to the Financial Collateral Directive. It foresees the possibility of close-out netting provisions and recognises such provisions even in the event of compulsory settlement, bankruptcy or liquidation, as well as in the event of assignment, attachment or other dispositions in respect of such rights.

The Banks Winding-up Directive has been transposed into Slovenian law by the Act amending the Banking Act (Official Gazette No 42 of 2004) (the 'Winding-up Act'). The Winding-up Act imposes automatic set-off for all claims which are the subject of the winding-up procedure and their creditors from the date of the commencement of the winding-up proceedings. Claims which expire with the set-off must be reported to the winding-up trustee. If not, the set-off will still be valid, but the creditor will be responsible for any damage caused by the failure to notify . Set-off in bankruptcy proceedings is not applicable to claims which a creditor has had six months before the start of the winding-up proceedings if the creditor was aware of or should have been aware of the debtor's insolvency or of the fact that bankruptcy proceedings were proposed. Set-off is also not applicable to claims which a creditor acquires after the commencement of bankruptcy proceedings. With respect to the suspect period, there is a general rule in the Winding-up Act that detrimental acts can be challenged if they have been committed one year before the beginning of the bankruptcy proceedings. The responsibility of the creditor, which is a necessary condition for challenging a detrimental act, is established by reference to the period when the detrimental act was committed.

Article 25 of the Banks Winding-up Directive has not been specifically implemented in Slovenian law. However, it is generally considered that the principle expressed by the provision could be inferred from existing principles. The Slovenian Private International Law (Article 19 of the Law) provides that contracts are governed by the law chosen by the parties, unless determined otherwise under this Law or an international treaty. Therefore, the Slovenian Government considered that no specific implementation of Article 25 was needed.

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ANNEX I

REPUBLIC OF CYPRUS		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1) Definitions** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.	**Ν. 43(Ι)/2004, (Ο περί των Συμφωνιών Παροχής Χρηματοοικονομικής Εξασφάλισης Νόμος του 2004)** **Άρθρο 2.-(1) Ερμηνεία** «ρήτρα συμψηφισμού» σημαίνει τον όρο της συμφωνίας παροχής χρηματοοικονομικής εξασφάλισης ή της συμφωνίας, της οποίας αποτελεί μέρος η συμφωνία παροχής εξασφάλισης, ή, εάν δεν υπάρχει τέτοιος όρος, οποιαδήποτε διάταξη νόμου, βάσει της οποίας, με την επέλευση ενός γεγονότος που συνεπάγεται αναγκαστική εκτέλεση, είτε μέσω συμψηφισμού ή αντιστάθμισης, είτε με άλλο τρόπο – (α) οι υποχρεώσεις των συμβαλλομένων επιταχύνονται, ώστε να καθίστανται αμέσως απαιτητές και να εκφράζονται ως υποχρέωση καταβολής ποσού που αντιπροσωπεύει την, κατ' εκτίμηση, τρέχουσα αξία τους ή λήγουν και αντικαθίστανται από υποχρέωση καταβολής ενός τέτοιου ποσού· ή	**Law 43(I)/of 2004** **(the Financial Collateral Arrangements Act of 2004)** **Section 2 .-(1) Interpretation** "close-out netting provision" shall mean the provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (a) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; or (b) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.

	(β) υπολογίζονται οι οφειλές του κάθε συμβαλλομένου προς τον άλλο σε σχέση με τις υποχρεώσεις αυτές και ο συμβαλλόμενος, ο οποίος οφείλει το μεγαλύτερο ποσό καταβάλλει καθαρό ποσό, ίσο προς τη διαφορά των οφειλών·	
Article 7 **Recognition of close-out netting provisions** 1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.	**Άρθρο 9** **Αναγνώριση της ρήτρας συμψηφισμού** (1) Η ρήτρα συμψηφισμού δύναται να παράγει αποτελέσματα σύμφωνα με τους όρους που περιέχει, παρά – (α) Την έναρξη ή συνέχιση διαδικασιών εκκαθάρισης ή μέτρων εξυγίανσης σε σχέση με τον ασφαλαιοπάροχο ή τον ασφαλειοδόχο ή και τους δύο· ή (β) οποιαδήποτε έννομη εκχώρηση, δικαστική ή άλλη κατάσχεση ή άλλου είδους διάθεση των δικαιωμάτων ή σε σχέση με τα δικαιώματα αυτά. (2) Η εφαρμογή της ρήτρας συμψηφισμού δύναται να μην υπόκειται σε οποιαδήποτε από τις απαιτήσεις του εδαφίου (3) του άρθρου 6, εκτός εάν έχει συμφωνηθεί διαφορετικά από τους συμβαλλομένους: Νοείται ότι, το παρόν άρθρο δε θίγει την οποιαδήποτε απαίτηση βάσει της ισχύουσας νομοθεσίας για τη διενέργεια της ρευστοποίησης ή	**Section 9** **Recognition of close-out netting provisions** 1. A close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral; or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. The operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Section 6(3) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties. It is understood that this Section is without prejudice to any requirement under the law in force on the realisation or valuation of financial collateral and the calculation of the relevant financial obligations in a commercially reasonable manner.

	της αποτίμησης της χρηματοοικονομικής εξασφάλισης και του υπολογισμού των σχετικών χρηματοοικονομικών υποχρεώσεων με εμπορικά εύλογο τρόπο.	
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 25** **Netting agreements** Netting agreements shall be governed solely by the law of the contract which governs such agreements.	**Ν. 66(Ι)/1997 έως 2004 (Ο περί Τραπεζικών Εργασιών Νόμος του 1997 έως 2004)** **Άρθρο 33Η(2)** **Επιπτώσεις σε σχέση με συγκεκριμένες συμβάσεις** (2) Τηρουμένων των διατάξεων του εδαφίου (1), οι συμφωνίες συμψηφισμού και μετατροπής χρέους, οι συμφωνίες επαναγοράς, καθώς επίσης οι συναλλαγές που διενεργούνται στο πλαίσιο του Χρηματιστηρίου Αξιών Κύπρου, διέπονται αποκλειστικά από τους νόμους που εφαρμόζονται στη σύμβαση που διέπει τις εν λόγω συμφωνίες ή τις εν λόγω συναλλαγές.	**Law 66(I)/1997** **(the Banking Business Act of 1997 to 2004)** **Section 33H (2)** **Consequences in respect of specific contracts** (2) Without prejudice to the provisions of 33H(1), netting agreements, repurchase agreements, as well as transactions carried out in the context of the Cyprus Stock Exchange, shall be governed solely by the law of the contract which governs such agreements or transactions.

Article 23 Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	**Άρθρο 33Κ(1) Συμψηφισμός** Τηρουμένων των διατάξεων του περί Εταιρειών Νόμου και του εδαφίου (7) του άρθρου 33 και της παραγράφου (ιβ) του άρθρου 33^{A}, η εφαρμογή των μέτρων εξυγίανσης ή η έναρξη της διαδικασίας εκκαθάρισης δεν επηρεάζουν το δικαίωμα πιστωτή να ζητήσει το συμψηφισμό της απαίτησής του με την απαίτηση της τράπεζας, εφόσον ο συμψηφισμός αυτός επιτρέπεται από τη σύμβαση που έχει συναφθεί μεταξύ του πιστωτή και της τράπεζας.	**Section 33 K (1) Set-off** Without prejudice to the provisions of the Companies Act and to Section 33(7) and Section 33A, paragraph (ιβ), the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the bank, where such a set-off is permitted by the contract entered into by the creditor and the bank.

CZECH REPUBLIC		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1) Definitions** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party **Article 7** **Recognition of close-out netting provisions**	**Zákon č. 256/2004, Sb., o podnikání na kapitálovém trhu, ve znění pozdějších předpisů (naposledy pozměněný zákonem č. 377/2005 Sb., o finančních konglomerátech)** § 197 Závěrečným vyrovnáním se rozumí smluvní ujednání podle českého nebo zahraničního práva, a) které lze doložit písemně nebo jiným záznamem umožňujícím uchování informací, b) které se vztahuje na vzájemné pohledávky smluvních stran, včetně příslušenství těchto pohledávek, z obchodů, jejichž předmětem jsou výlučně peněžní prostředky, investiční nástroje, práva s investičními nástroji spojená nebo komodity, včetně podmíněných pohledávek a pohledávek, které mají nebo by měly teprve vzniknout (dále jen „vzájemné pohledávky stran“), a c) podle kterého v případě, že nastane dohodnutá skutečnost, dojde k zániku a nahrazení, nebo k započtení dosud nesplatných, popřípadě i splatných vzájemných pohledávek stran tak, že výsledkem bude jediná pohledávka ve výši rozdílu mezi souhrnnou výší odhadovaných současných hodnot vzájemných pohledávek stran; způsob odhadu současných hodnot vzájemných pohledávek stran, okamžik, ke kterému musí být	**Act 256/2004 Coll. on Trading on the capital market, as amended (as last amended by Act 377/2005 Coll. on financial conglomerates)** Article 197 ‘Close-out netting’ means a contractual provision pursuant to Czech or foreign law: a) which can be evidenced in writing or by any other means which allows for the storage of information, b) which relates to the mutual claims of the contracting parties, including accessions to such claims, resulting from transactions exclusively involving financial funds, investment instruments, rights connected to investment instruments or commodities, and including contingent and prospective claims (hereinafter ‘the parties’ mutual claims’), and c) according to which, upon the occurrence of an agreed event, the parties’ mutual claims, whether due or not yet due, will be terminated and be replaced or set-off, resulting in a single claim equal to the difference between the aggregated amounts of the calculated current values of the parties’ mutual claims; the method for calculating the current values of the parties’ mutual claims,

1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.	odhad proveden, a způsob a termín vypořádání, musí být dojednány ve smluvním ujednání o závěrečném vyrovnání a nesmí být v rozporu se zvyklostmi na příslušných finančních trzích.“.	the date in respect of which the calculation shall be carried out, and the manner and timing of the settlement shall be agreed in the close-out netting provision and shall not contravene relevant financial market conventions.
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 23** Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law	**Zákon č. 328/1991 Sb., o konkursu a vyrovnání, ve znění pozdějších předpisů (naposledy pozměněný zákonem č. 377/2005 Sb., o finančních konglomerátech)** § 14 Účinky prohlášení konkursu (1) Prohlášení konkursu má tyto účinky: … g) nesplatné pohledávky úpadce a jeho závazky, které mají být uspokojeny z podstaty, považují se v konkursu za splatné; toto ustanovení nemá vliv	**Act 328/1991 Coll., on Bankruptcy and composition, as amended (as last amended by Act 377/2005 Coll. on financial conglomerates)** Article 14 Effects of a declaration of bankruptcy (1) A declaration of bankruptcy shall have the following effects: … g) under bankruptcy proceedings, an insolvent debtor’s claims which are not yet due and his

applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	na splatnost jakékoli pohledávky nebo závazku, které mají být zahrnuty do závěrečného vyrovnání podle zvláštního právního předpisu upravujícího podnikání na kapitálovém trhu 1i). … (i) započtení na majetek patřící do podstaty není přípustné; to se nevztahuje na závěrečné vyrovnání podle zvláštního právního předpisu upravujícího podnikání na kapitálovém trhu*. … (4) Jestliže smlouva o vzájemném plnění nebyla ještě v době prohlášení konkursu splněna ani úpadcem, ani druhým účastníkem smlouvy, anebo byla splněna jen částečně, každá smluvní strana může od smlouvy odstoupit; … Odstoupení od smlouvy, jejíž součástí je ujednání o závěrečném vyrovnání podle zvláštního právního předpisu upravujícího podnikání na kapitálovém trhu*, nemá vliv na provedení závěrečného vyrovnání podle tohoto ujednání. … (7) Prohlášení konkursu nemá vliv na závěrečné vyrovnání podle zvláštního právního předpisu upravujícího podnikání na kapitálovém trhu*.	obligations which are to be satisfied from the bankruptcy estate shall be considered as due; this provision is without prejudice to the maturity of any claim or obligation which is to be included in close-out netting under specific regulations governing trading on the capital market. … (i) set-off shall not be possible against the assets of the bankruptcy estate; this does not apply to close-out netting under the specific regulations governing trading on the capital market*. … (4) If, at the time of a declaration of bankruptcy, neither the bankrupt nor the other party to an agreement have performed their obligations under the agreement, or if such agreement has been only partially performed, either party to the agreement may withdraw from it; … Withdrawal from an agreement which is subject to a close-out netting provision under the specific regulations governing trading on the capital market* shall be without prejudice to carrying out close-out netting pursuant to such provision. … (7) A declaration of bankruptcy shall be without prejudice to close-out netting under the specific regulations governing trading on the capital market*.

		(*Reference to Act 256/2004 Coll, on Trading on the capital market).
Article 25 **Netting agreements** Netting agreements shall be governed solely by the law of the contract which governs such agreements.	**Zákon č. 97/1963 Sb., o mezinárodním právu soukromém a procesním, ve znění pozdějších předpisů (naposledy pozměněný zákonem č. 377/2005 Sb., o finančních konglomerátech)** § 11c Úpadek finanční instituce … 7) Ujednání o závěrečném vyrovnání se řídí výhradně právem rozhodným pro smlouvu, jíž se řídí tato ujednání.	**Act 97/1963 Coll. on International private and procedural law, as amended (as last amended by Act 377/2005 Coll. on financial conglomerates)** Article 11c Insolvency of a financial institution …7) Close-out netting agreements shall be governed solely by the law of the contract which governs such agreements.

ESTONIA		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2(1) and Article 7**	Are not implemented by Law of Property Act implementing financial collateral provisions	
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 23** Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	**Võlaõigusseaduse** paragrahv 197: (1) Kui kaks isikut (tasaarvestuse pooled) on kohustatud maksma teineteisele rahasumma või täitma muu samaliigilise kohustuse, võib kumbki pool (tasaarvestav pool) oma nõude teise poole nõudega tasaarvestada, kui tasaarvestaval poolel on õigus oma kohustus täita ja teiselt poolelt nõuda tema kohustuse täitmist. (2) Tasaarvestuse tulemusena lõpevad tasaarvestuse poolte nõuded kattuvas ulatuses ajast, mil neid võis tasaarvestada, kui pooled ei lepi kokku teisiti. Kui ühe või mõlema nõude eest on juba makstud intressi, ei ulatu tasaarvestus tagasi rohkem kui viimase ajavahemiku lõpuni, mille eest intressi maksti. (3) Eri vääringutes väljendatud rahalisi nõudeid võib tasaarvestada vahetuskursiga, mis arvestatakse tasaarvestamise päeva seisuga tasaarvestava poole tegevuskohas, selle puudumisel aga elu- või asukohas. Tasaarvestamine ei ole lubatud, kui vahetuskursid ei ole turul vabalt kujunenud.	**Law of Obligations Act** **§ 197 Definition of set-off** (1) If two persons (parties to a set-off) are required to pay each other a sum of money or perform some other similar obligation, either party (the party requesting set-off) may set off his claim against the claim of the other party, if the party requesting set-off has the right to perform his obligation and to require performance from the other party. (2) As a result of a set-off, the claims of the parties to the set-off shall be extinguished as from the date when they could be set off and to the extent that they overlap, unless the parties agree otherwise. If interest has already been paid on either or both of the claims, the set-off shall have retroactive effect only for the last period for which interest has been paid. (3) Monetary claims expressed in different currencies may be set off at an exchange rate calculated as at the date of the set-off at the place of business of the party requesting set-off or, in the absence of a place of business, at the location of

		the residence or seat of the party. Set-off is not permitted if the exchange rates have not been freely developed in the market.
Article 25 Netting agreements Netting agreements shall be governed solely by the law of the contract which governs such agreements.	*NB. This provision is implemented only in relation to rehabilitaion mesures* **Krediidiasutuste seadus:** **§ 1151. Tervendamismeetmete suhtes kohaldatav õigus** (1) Tervendamismeetmed käesoleva seaduse tähenduses on teise lepinguriigi haldusasutuse või kohtu vastava menetluse (tervendamismenetlus) käigus läbiviidavad toimingud, mille eesmärk on säilitada või taastada vastava lepinguriigi krediidiasutuse ja tema filiaali või selles lepinguriigis asutatud kolmanda riigi krediidiasutuse filiaali maksevõime ning mis võivad mõjutada kolmandate isikute varasemaid õigusi või millega võib kaasneda maksete ja täitemenetluse peatamine või nõuete vähendamine. […] (5) Vastavale lepingule või tehingule kohalduvat lepinguriigi õigust kohaldatakse tervendamismeetmete rakendamise tagajärgede suhtes: […] 2) tasaarveldust (netting) reguleerivale kokkuleppele;	**Credit Institutions Act** **§ 1151** (entry into force 1.1.2005) **Law applicable to rehabilitation measures** (1) For the purposes of this Act, 'rehabilitation measures' are acts performed by an administrative authority of another contracting state [EEA Member State] or during the relevant proceedings of the court (rehabilitation proceedings), which are intended to preserve or restore the solvency of a credit institution, or of its branch, of the contracting state in question, or a branch of a credit institution of a third state established in that contracting state and which could affect third parties' pre-existing rights or which may involve the risk of a suspension of payments, suspension of enforcement measures or reduction of claims. […] (5) Concerning the consequences of implementing rehabilitation measures, the law of a contracting state governing a contract or transaction shall apply to: […] 2) agreements regulating netting;

	[…] (9) Tervendamismeetmete rakendamine ei mõjuta võlausaldaja õigust oma nõuet krediidiasutuse nõudega tasaarvestada, kui tasaarvestus on lubatud krediidiasutuse nõudele kohaldatava õiguse kohaselt.	[…] (9) The implementation of rehabilitation measures shall not affect the right of the creditor to set off its claim against the claim of a credit institution, provided the set-off is allowed pursuant to the law applicable to the claim of the credit institution
	Rahandusministri 16. märtsi 2004. a määrus nr 33 "Investeerimisühingu usaldatavusnormatiivid, nende arvutamise ning aruandluse kord" § 32. Lepingulised nettimised (1) Bilansiväliste tehingute puhul on potentsiaalse tuleviku krediidiriski arvutamisel lubatud kasutada lepingulisi nettimisi. Sellistel juhtudel võib tuletisväärtpaberite käsitlemisel iga üksiku lepingu nimiväärtuse asemel arvesse võtta omavahel seotud lepingutest tulenevate nõuete ja kohustuste vahe. (2) Riski vähendavateks lepingulisteks nettimisteks on investeerimisühingu ja teise poole vahel sõlmitud kahepoolsed võlakohustuste uuendamise lepingud (bilateral contracts for novation) ja muud sarnased kahepoolsed lepingulise nettimise kokkulepped. (3) Lepinguline nettimine võlakohustuse uuendamisega (netting by novation) on lepingu kahe poole omavaheliste teatud valuutas ja teatud kuupäeval üle kantavate kohustuste automaatne	**Prudential ratios for investment firms, instructions for assessment thereof and procedure for reporting** **Regulation No 33 of the Minister of Finance of 16 March 2004, entered into force 1 June 2004.** § 32. Contractual netting (1) In the case of off-balance-sheet transactions, contractual netting may be used for the calculation of potential future credit exposure. In such cases, instead of the nominal value of every single contract, the difference between the claims and obligations arising from interconnected contracts may be taken into account in dealing with derivative instruments. (2) Bilateral contracts for novation between an investment firm and its counterparty and other similar bilateral netting agreements are deemed to be risk-reducing contractual netting. (3) 'Netting by novation' means that mutual claims and obligations of two parties to a contract which are in a given currency and transferable on a given date are automatically amalgamated with other claims and obligations in the same currency

	ühendamine (amalgament) teiste samas valuutas ja sama väärtuspäeva kohustustega. Sellise kohustuste automaatse ühendamisega tekib uus õiguslikult siduv leping (edaspidi uuendusleping), mis lõpetab kõik eelnevad lepingud ning lõpptulemusena kantakse üle kõikidest lepingutest tulenevate nõuete ja kohustuste vahe. Lepingulist nettimist võlakohustuse uuendamisega kasutatakse peamiselt välisvaluuta ja intressimäära lepingute puhul ning tavaliselt ühte tüüpi vara nettimiseks. (4) Lisaks käesoleva paragrahvi lõikes 3 sätestatule võib investeerimisühing nettida vastastikuseid kohustusi ka muude õiguslikult siduvate kahepoolsete lepingulise nettimise kokkulepete alusel (nt ühekordsed kokkulepped).	and with the same maturity date. By such amalgamation, a new legally binding contract (contract for novation) is created which extinguishes all former contracts, and any difference between the claims and obligations arising from all contracts is transferred. Netting by novation is mainly used in foreign-exchange and interest-rate contracts and normally for the netting of assets of the same type. (4) In addition to the provisions of subsection (3) of this section, an investment firm may carry out the netting of mutual obligations pursuant to other legally binding bilateral contractual netting agreements (e.g. one-off agreements).

REPUBLIC OF HUNGARY		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
	NB. Relevant provisions of directives are not implemented literally but are implemented in substance in the provisions below	
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1)** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger	**2001. évi CXX. törvény a tőkepiacról** **5. §** 87. pozíciólezáró nettósítás: a felek megállapodása alapján a szerzõdés nemteljesítésekor vagy a felek által meghatározott egyéb felmondási esemény bekövetkeztekor az azonnali deviza- és értékpapírügyletbõl, származtatott ügyletbõl, repó- vagy fordított repóügyletbõl, értékpapír-kölcsönzésre irányuló megállapodásból, óvadéki, illetve biztosítéki célt szolgáló egyéb szerzõdésbõl, vagy más hasonló pénzügyi ügyletbõl eredõ tartozásoknak és követeléseknek az adott pénzügyi termék piacán elfogadott elszámolásaként egyetlen nettó tartozássá vagy követeléssé történõ átalakítása, amelynek eredményeként a tartozás vagy a követelés kizárólag az ekként megállapított nettó összegre korlátozódik;	**Act CXX of 2001 on Capital Markets** **Article 5** [definition] 87. Close-out netting: in the event of the non-performance of an agreement or any other event terminating the agreement, as agreed by the parties, any debts and claims arising out of spot currency and securities transactions, derivatives transactions, repo or reverse repo transactions, securities lending and/or borrowing agreements, or other arrangements aimed at providing security or collateral, or any other similar financial transactions shall be converted into a single net debt or claim by a clearing method recognised in the market of the given financial instrument, as a result of which the debt or the claim shall be limited exclusively to the net amount calculated by the clearing method.

amount is due to the other party. **Article 7** Recognition of close-out netting provisions 1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.		
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 23** Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect	**1991. évi XLIX. törvény a csődeljárásról, a felszámolási eljárásról és a végelszámolásról** **36. §** (2) A felszámolás kezdõ idõpontját megelõzõen létrejött, pozíciólezáró nettósításra irányuló megállapodás esetén a hitelezõnek a nettó követelést kell a felszámolónak bejelentenie, illetve a felszámoló a nettó követelést érvényesíti. A pozíciólezáró nettósításon alapuló nettó	**Act XLIX of 1991 on Bankruptcy, Liquidation and Voluntary Winding-up Proceedings** **Article 36** [a single net claim arising out of close-out netting should be submitted to the liquidator] (2) In connection with a close-out netting agreement concluded prior to the starting date of the liquidation, the creditor shall notify the liquidator of the amount of the net claim, and the

the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	követelés kiszámítása során irányadó értéknap a felek megállapodásában meghatározott, de minden esetben a hitelezõi igények bejelentésére - a 28. § (2) bekezdés f) pontja vagy a külön jogszabály alapján - nyitva álló határidõ lejártát megelõzõ idõpont. **40. §** (1) A tudomásszerzéstől számított 90 napon, de legfeljebb a felszámolást elrendelő végzés közzétételének időpontjától számított 180 napon belül a hitelező, avagy az adós nevében a felszámoló a bíróság [6. § (1) bekezdés] előtt keresettel megtámadhatja az adósnak [….] c) a felszámolási eljárás lefolytatására irányuló kérelem bíróságra történő beérkezése napját megelőző kilencven napon belül és azt követően kötött szerződését vagy más jognyilatkozatát, ha annak tárgya egy hitelező előnyben részesítése, különösen egy fennálló szerződésnek a hitelező javára történő módosítása vagy biztosítékkal nem rendelkező hitelező számára biztosíték nyújtása. (2) A felszámoló az adós nevében az (1) bekezdés szerinti határidőn belül visszakövetelheti az adós által a felszámolási eljárás lefolytatására irányuló kérelem bíróságra történő beérkezése napját megelőző hatvan napon belül és azt követően nyújtott szolgáltatást, ha annak eredménye egy hitelező előnyben részesítése és a szolgáltatás nem minősül a rendes gazdálkodás körébe tartozó szolgáltatásnak. Hitelező előnyben részesítésének minősül különösen valamely tartozás esedékesség előtti kiegyenlítése. [….] (4) Nem gyakorolható az (1) bekezdés *c)* pontja	liquidator shall enforce the net claim. When calculating the amount of the net claim under a close-out netting provision, the principal transaction date shall be the date specified by the parties to the agreement, and shall in any event be prior to the expiry of the deadline for the filing of creditors' claims provided for in point f) of paragraph (2) of Article 28 or in any other specific legislation. **Article 40** (1) The creditor, and the liquidator acting on behalf of the debtor, may file for legal action before the court [paragraph (1) of Article 6] within 90 days from the date of obtaining knowledge (of any contracts or commitments specified under point c) or within 180 days from the date of publication of the liquidation notice in order to contest: [….] c) any contracts entered into or any other commitments made by the debtor within ninety days prior to the date when the court received the request for the liquidation proceeding, if such contracts or commitments are intended to give preference to a creditor, in particular where an existing contract is amended to the benefit of a creditor, or where collateral is provided to a creditor with a previously unsecured claim. (2) The liquidator acting on behalf of the debtor shall, within the time limit referred to in paragraph (1), be entitled to reclaim any service provided by the debtor within a sixty-day period prior to the date when the court received the request for the liquidation proceeding, if such service was

	szerinti megtámadási és a (2) bekezdés szerinti visszakövetelési jog a) a pozíciólezáró nettósításra irányuló szerződés alapján történt nettósítás esetében; [….]	provided in order to give preference to a creditor, and if such service was not provided in the normal course of business. In particular, early payment of a debt is considered as giving preference to a creditor. [….] (4) The right to contest contracts under point c) of paragraph (1), and the right to reclaim services under paragraph (2), shall not apply: a) in the case of netting under a close-out netting arrangement; [….]
	47. § (3) [….] A pozíciólezáró nettósításról rendelkezõ szerzõdés vagy keretszerzõdés hatálya alá tartozó szerzõdésektõl elállni, azokat felmondani csak egyszerre lehet.	**Article 47** [prevention from 'cherry-picking'] (3) [….] Agreements falling within the scope of close-out netting arrangements or framework contracts can only be withdrawn or terminated concurrently.
Article 25 Netting agreements Netting agreements shall be governed solely by the law of the contract which governs such agreements.	No direct provisions covering Article 25 of the Directive	

REPUBLIC OF LATVIA		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1)** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.	**Finanšu nodrošinājuma likums** **9.pants. Izslēdzošais ieskaits** (1) Izslēdzošais ieskaits ir finanšu nodrošinājuma līgumā vai citā līgumā (darījuma aktā), kas paredz finanšu nodrošinājuma sniegšanu, ietvertie noteikumi, saskaņā ar kuriem, iestājoties izpildes notikumam, pēc savstarpēja pārrēķina, ieskaita vai citām tiesisko seku ziņā pielīdzināmām darbībām: 1) līdzēju savstarpējās saistības tiek grozītas tā, ka tās kļūst izpildāmas nekavējoties, un līdzēju maksājamās summas tiek noteiktas, ņemot vērā līdzēju sākotnējo saistību pašreizējo vērtību, vai līdzēju savstarpējās saistības tiek izbeigtas un aizstātas ar savstarpējo pienākumu samaksāt summas, kas tiek noteiktas, ņemot vērā līdzēju sākotnējo saistību pašreizējo vērtību; 2) tiek sagatavots aprēķins par summām, kas vienam līdzējam jāatmaksā otram līdzējam, pamatojoties uz to savstarpējām saistībām, un tas līdzējs, kura maksājamā summa ir lielāka, samaksā otram līdzējam tikai otra līdzēja maksājamās summas pārsniegumu (neto saldo).	**Law on Financial Collateral as adopted on 21 April 2005** **Article 9 Close-out netting** (1) 'Close-out netting' shall mean the rules in a financial collateral arrangement or any other arrangement (transaction document) for the provision of financial collateral, by which, on the occurrence of an enforcement event, through mutual recalculation, netting or some other procedure having similar legal consequences: 1) the mutual obligations of the parties shall be adjusted so that they become due immediately, and the amounts payable by the parties shall be determined by taking into account the current value of the obligations of the parties, or the mutual obligations of the parties shall be terminated and replaced with a mutual obligation to pay amounts that are determined by taking into account the current value of the obligations of the parties ; 2) a calculation shall be made of the amounts each party has to pay to the other party on the basis of their mutual obligations, and the party whose amount owing is larger shall pay the other party

Article 7 Recognition of close-out netting provisions 1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.	(2) Izslēdzošo ieskaitu piemēro arī tādā gadījumā, ja tā noteikumi nav ietverti finanšu nodrošinājuma līgumā vai citā līgumā (darījuma aktā), kas paredz finanšu nodrošinājuma sniegšanu, bet tā piemērošana noteikta normatīvajos aktos. (3) Izslēdzošo ieskaitu var piemērot un tā izpildi neietekmē: 1) finanšu nodrošinājuma devēja vai finanšu nodrošinājuma ņēmēja likvidācijas process vai maksātnespējas procesa pasākumi; 2) cesija, ar tiesas nolēmumu vai citādi veikta finanšu nodrošinājuma apķīlāšana, arests vai jebkura cita tiesiska darbība, kas vērsta uz finanšu nodrošinājuma atsavināšanu tādas personas prasījumu apmierināšanai, kura nav finanšu nodrošinājuma ņēmējs. (4) Ja līdzēji nav vienojušies citādi, uz izslēdzošo ieskaitu attiecināmi šā likuma 7.panta trešās daļas noteikumi.	only the amount in excess of the amount owed by other party (the net balance). (2) Close-out netting shall also be applied, even where it is not provided for in a financial collateral arrangement or any other arrangement (transaction document) prescribing the provision of financial collateral, if its application is required by law. (3) A close-out netting provision may apply and its enforcement shall not affected by: 1) winding-up or reorganisation measures in respect of the provider or taker of financial collateral; 2) the assignment or appropriation of financial collateral made by a court decree or in any other manner, or the seizure or any other legal activity taken to possess the financial collateral to satisfy the claim of a person other than the taker of the collateral. (4) Close-out netting shall be subject to the rules set out in Article 7(3) of this law, unless the parties have agreed otherwise.
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 23** Set-off 1. The adoption of reorganisation measures or the	**Kredītiestāžu likums** **1. pants** 53) prasījumu un saistību neto ieskaits – pirms parādnieka likvidācijas uzsākšanas vai likumā noteiktajā kārtībā atzītas maksātnespējas iestāšanās starp parādnieku un kreditoru uz rakstveida līguma	**Credit Institution Law** **Section 1**. 53) **netting of claims and obligations** – legal arrangement between a debtor and a creditor, based on a written agreement entered into before the commencement of the winding-up proceedings of the debtor or the declaration of insolvency in

opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	pamata nodibinātas tiesiskas attiecības no savstarpējiem līgumiem izrietošo prasījumu un saistību izteikšanai vienā prasībā vai saistībā tā, ka tiek celta tikai viena prasība un jāizpilda tikai viena saistība; 54) prasījumu un saistību dzēšana – pēc parādnieka likvidācijas uzsākšanas vai likumā noteiktajā kārtībā atzītas maksātnespējas iestāšanās no līguma izrietošo parādnieka un kreditora prasījumu un saistību pilnīga savstarpēja dzēšana neatkarīgi no prasījumu un saistību apmēra (summas). **158.pants.** (1) Reorganizācijas pasākumu vai likvidācijas darbību veikšana attiecībā uz kredītiestādi (arī tās filiāli) neietekmē prasījumu un saistību neto ieskaitu, atpakaļpirkumu un prasījumu un saistību dzēšanu vai citu tiesisku seku ziņā līdzīgu darbību izpildi, ja šādas darbības pieļauj likums attiecībā uz kredītiestādes prasījumiem. (2) Darījumus, kuri pamatoti ar prasījumu un saistību neto ieskaita vai atpakaļpirkuma līgumiem, regulē vienīgi tie likumi, kuri attiecas uz prasījumu un saistību neto ieskaita vai atpakaļpirkuma līgumu, saskaņā ar kuru šie darījumi tiek slēgti. (3) Šā panta otrās daļas noteikumi neierobežo šā likuma 218.panta izpildi. (4) Ieinteresētajām personām ir tiesības apstrīdēt	the manner prescribed by law, stating in a single claim or obligation the claims or obligations resulting from mutual arrangements, so that only one claim is made and one obligation has to be fulfilled; 54) **cancellation of claims and obligations** – full mutual cancellation of contractual claims and liabilities of a debtor and a creditor, irrespective of the amount of the claims and liabilities, after the commencement of winding-up proceedings of debtor or a declaration of insolvency in the manner prescribed by law. **Article 158.** (1) Reorganisation measures or the winding-up of a credit institution (or its branch) shall not affect the netting of claims and obligations, repurchases and cancellation of claims and obligations, or the execution of other measures having similar legal effect, if, in respect of claims of the credit institution, such measures are permitted by law. (2) Transactions based on netting or repurchase agreements concerning claims and obligations shall be governed solely by the laws relating to the netting or repurchase agreements underlying such transactions. (3) The provisions of paragraph 2 shall not limit the application of the Article 218 of this law. (4) The parties concerned shall have a right to challenge the execution of the activities mentioned

	šā pantā pirmajā un otrajā daļā noteikto darbību izpildi.	in paragraphs 1 and 2.
Article 25 Netting agreements Netting agreements shall be governed solely by the law of the contract which governs such agreements.	**214.pants.** Latvijas Republikas normatīvie akti regulē jautājumus, kas saistīti ar: 3) prasījumu un saistību neto ieskaitu, prasījumu un saistību dzēšanu, atpakaļpirkumu vai ar citām juridisko seku ziņā līdzīgām darbībām;	**Article 214** The Laws of the Republic of Latvia shall govern matters related to: 3) netting of claims and obligations, cancellation of claims and obligations and repurchases or the execution of other measures having similar legal effect.

REPUBLIC OF LITHUANIA		
Relevant Directives provisions	National netting legislation	Official translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1)** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party. **Article 7** Recognition of close-out netting provisions 1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms:	**Lietuvos Respublikos finansinio užtikrinimo susitarimų įstatymas** **2 straipsnio 5 dalis** Baigiamojo įskaitymo sąlyga - finansinio užtikrinimo susitarimo ar kito susitarimo, kurio dalis yra finansinio užtikrinimo susitarimas, sąlyga arba, jei tokios sąlygos nėra, teisės akto nuostata, pagal kurią, esant priverstinio vykdymo įvykiui, įskaitymu arba kitaip: 1) šalių įsipareigojimai įvykdomi nedelsiant prieš terminą ir išreiškiami kaip įsipareigojimas sumokėti sumą, atitinkančią esamą įsipareigojimų vertę, arba įsipareigojimai yra panaikinami ir pakeičiami įsipareigojimu sumokėti atitinkamą sumą; ir (arba) 2) įvertinama, kiek šalys turi sumokėti viena kitai pagal savo įsipareigojimus, ir šalis, skolinga didesnę sumą, turi sumokėti skirtumą kitai šaliai. **12 straipsnis** 1. Įsipareigojimams gali būti taikoma baigiamojo įskaitymo sąlyga, jei priverstinio vykdymo įvykis įvyksta tuo metu, kai:	**Law on Financial Collateral Arrangements** **Article 2, Part 5** 'Close-out netting provision' means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms a part, or, in the absence of such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or otherwise: 1) the obligations of the parties are accelerated so as to be immediately due, and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or 2) an account is taken of what is due from each party to the other in respect of their obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party. **Article 12** 1. A close-out netting provision may be applied to the obligations, if an enforcement event occurs

(a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.	1) dar neįvykdytas šio Įstatymo 11 straipsnio 2 dalies 1 punkte nurodytas įsipareigojimas; 2) dar neįvykdytas nors vienas užstato turėtojo įsipareigojimas perduoti lygiavertį finansinį užstatą pagal finansinio užtikrinimo susitarimą su nuosavybės teisės perdavimu. 2. Baigiamojo įskaitymo sąlyga gali būti įgyvendinama: 1) nepaisant to, kad yra pradėta ar vykdoma užstato davėjo ir (arba) užstato turėtojo likvidavimo procedūra ar reorganizavimo priemonės; 2) nepaisant jokio numatyto finansinio užstato perleidimo, arešto ar kitokio teisių apribojimo. 3. Baigiamojo įskaitymo sąlygos įgyvendinimas nepriklauso nuo jokių šio Įstatymo 9 straipsnio 5 dalyje nurodytų reikalavimų, jei šalys nesusitaria kitaip. **Lietuvos Respublikos įmonių bankoroto įstatymas** **10 straipsnio 7 dalis** Įsiteisėjus teismo nutarčiai iškelti bankroto bylą: […]	when: 1) the obligation indicated in subparagraph 1 of paragraph 2 of Article 11 has not yet been performed; 2) at least one obligation of the collateral taker to provide the equivalent financial collateral under the title transfer financial collateral agreement has yet not been performed. 2. A close-out netting provision can take effect: 1) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; 2) notwithstanding any purported assignment of the financial collateral, judicial or other attachment or other disposition of or in respect of such rights. 3. The operation of a close-out netting provision shall not be subject to any of the requirements set out in paragraph 5 of Article 9 of this Law, unless otherwise agreed by the parties. **Enterprise Bankruptcy Law** **Article 10, Part 7** After the court decision to institute bankruptcy proceedings becomes effective: […] 3) discharge of financial liabilities not met prior to

	3) draudžiama vykdyti visas finansines prievoles, neįvykdytas iki bankroto bylos iškėlimo, įskaitant palūkanų, netesybų, mokesčių ir kitų privalomųjų įmokų mokėjimą, išieškoti skolas iš šios įmonės teismo ar ne ginčo tvarka. Nutraukiamas netesybų ir palūkanų už visas įmonės prievoles, tarp jų už išmokų, susijusių su darbo santykiais, pavėluotą mokėjimą, skaičiavimas. Negali būti nustatoma priverstinė hipoteka. Įmonės kolektyvinės sutarties galiojimas ribojamas kreditorių susirinkimo nustatyta tvarka. Draudimai vykdyti finansines prievoles bei išieškoti skolas netaikomi Atsiskaitymų baigtinumo mokėjimo ir vertybinių popierių atsiskaitymo sistemose įstatymo ir Finansinio užtikrinimo susitarimų įstatymo nustatytais atvejais; 4) jei per 30 dienų nuo teismo nutarties iškelti bankroto bylą įsiteisėjimo dienos administratorius pranešė suinteresuotiems asmenims, kad įmonės sudarytų sutarčių, kurių vykdymo terminas dar nepasibaigė, nevykdys, šios sutartys (tarp jų nuomos, panaudos), išskyrus darbo sutartis ir sutartis, iš kurių kyla bankrutuojančios įmonės reikalavimo teisės, laikomos pasibaigusiomis, o dėl šios priežasties atsiradę reikalavimai yra tenkinami šio įstatymo 35 straipsnyje nustatyta tvarka; […] 6) teismas kreditorių prašymu gali nustatyti įmonės ūkinės komercinės veiklos ir disponavimo įmonės turtu, kurį be teismo leidimo draudžiama parduoti, išnuomoti, įkeisti, juo laiduoti, garantuoti kitų subjektų prievolių įvykdymą ar kitaip jį perleisti (perduoti), apribojimus;	the institution of bankruptcy proceedings, including payment of interest, penalties, taxes and other mandatory payments, also recovery of debts from the enterprise through court or without suit shall be prohibited. Computation of penalties and interest on all obligations of the enterprise, including on default in payments related to employment relationship, shall be suspended. […]Prohibitions to discharge financial liabilities and to recover debts are not applied in cases set out by the Law on Settlement Finality in Payment and Securities Settlement Systems and the Law on Financial Collateral Arrangements; 4) if the administrator does not notify the interested parties within 30 days from the effective date of the court decision to initiate bankruptcy proceedings that he will not implement the unexpired contracts entered into by the enterprise, the said contracts (including contracts of lease, loan for use agreements), except for employment contracts and contracts from which claims of the enterprise in bankruptcy arise, shall be deemed to have expired, and claims arising by reason thereof shall be met in the manner specified by Article 35 of this Law; […] 6) upon a motion by the creditors the court may impose restrictions on the enterprise's economic-commercial activities and disposal of its assets, which may be sold, leased, or pledged, also used as a collateral or a guarantee for the discharge of other entities' liabilities, or may be otherwise transferred (conveyed) only by leave of the court.

	11 straipsnio 3 dalis Administratorius: […] 8) patikrina bankrutuojančios įmonės sandorius, sudarytus per ne mažesnį kaip 36 mėnesių laikotarpį iki bankroto bylos iškėlimo, ir pareiškia ieškinius įmonės bankroto bylą nagrinėjančiame teisme dėl sandorių, priešingų įmonės veiklos tikslams ir (arba) galėjusių turėti įtakos tam, kad įmonė negali atsiskaityti su kreditoriais, pripažinimo negaliojančiais. Šiuo atveju laikytina, kad administratorius apie sandorius sužinojo nuo nutarties iškelti bankroto bylą įsiteisėjimo dienos; […] 13) per laikotarpį iki pirmojo kreditorių susirinkimo sprendžia klausimus dėl įmonės sudarytų sandorių, kurių įvykdymo terminas dar nepasibaigė, tolesnio vykdymo ir naujų sandorių, reikalingų įmonės ūkinei komercinei veiklai tęsti, sudarymo, jei įmonė tęsia ūkinę komercinę veiklą, ir ne vėliau kaip per 30 dienų nuo teismo nutarties iškelti bankroto bylą įsiteisėjimo dienos praneša suinteresuotiems asmenims apie tai, kad vykdys įmonės sudarytas sutartis, kurių vykdymo terminas dar nepasibaigė, arba jų nevykdys; […]. **14 straipsnio 1 ir 2 dalys** 1. Nuo nutarties iškelti bankroto bylą įsiteisėjimo dienos:	**Article 11, Part 3** The administrator shall: [...] 8) examine the contracts of the enterprise in bankruptcy entered into within an at least 36 months period before the institution of bankruptcy proceedings and bring actions for the invalidation of the contracts which are contrary to the objectives of the enterprise activities and/or which could have led to the disability of the enterprise to settle with creditors. In this case the administrator should be considered to have found out about the contracts from the effective date of the court decision to institute bankruptcy proceedings; [...] 13) in the period until the first meeting of creditors, decide on the further fulfilment by the enterprise of the contract which has not yet expired, and on entering into new contracts necessary for the enterprise in order to continue its economic-commercial activities, provided that the enterprise continues its economic-commercial activities, and shall within 30 days from the day the decision of the court to institute bankruptcy proceedings becomes effective give notice to the interested parties of his intent or refusal to fulfil the contracts entered into by the enterprise; [...] **Article 14, Parts 1 and 2** 1. From the day the decision to institute bankruptcy proceedings becomes effective:

	1) teisė valdyti, naudoti bankrutuojančios įmonės turtą (lėšas) ir juo disponuoti suteikiama tik administratoriui. Nė vienas įmonės kreditorius ar kitas asmuo neturi teisės perimti bankrutuojančiai įmonei priklausančio turto ir lėšų kitaip, negu nustatyta šio įstatymo, išskyrus Atsiskaitymų baigtinumo mokėjimo ir vertybinių popierių atsiskaitymo sistemose įstatymo ir Finansinio užtikrinimo susitarimų įstatymo nustatytus atvejus; 2) asmenims, išsinuomojusiems, pasiskolinusiems, saugantiems arba kitais pagrindais naudojantiems ar valdantiems bankrutuojančios įmonės turtą, draudžiama dėl šio turto sudaryti sandorius su trečiaisiais asmenimis. 2. Visi sandoriai, sudaryti pažeidžiant šio straipsnio 1 dalies nuostatas, yra negaliojantys nuo jų sudarymo. **Lietuvos Respublikos įmonių restruktūrizavimo įstatymas** **9 straipsnio 1 dalis** Nuo teismo nutarties iškelti įmonei restruktūrizavimo bylą įsiteisėjimo dienos: 1) draudžiama vykdyti visas finansines prievoles, neįvykdytas iki teismo nutarties iškelti įmonei restruktūrizavimo bylą įsiteisėjimo dienos,	1) the right to manage, use and dispose of the assets/funds of the enterprise in bankruptcy shall be granted only to the administrator. No creditor of the enterprise shall have the right to take over the property and funds owned by the enterprise otherwise than prescribed by this Law, except the cases set out by the Law on Settlement Finality in Payment and Securities Settlement Systems and the Law on Financial Collateral Arrangements; 2) persons who have leased, borrowed, are keeping in custody, or using or managing on any other grounds the assets of the enterprise in bankruptcy shall be prohibited from concluding with third parties contracts relating to the above assets. 2. All contracts entered into in breach of provisions of paragraph 1 of this Article shall be invalid as of their conclusion. **Law on Restructuring of Enterprises** **Article 9, Part 1** From the day when a decision to initiate restructuring proceedings becomes effective the following shall apply: 1) it shall be prohibited to discharge liabilities which were not discharged before the day when the court order to initiate the enterprise restructuring proceedings became effective, including payment of interest, default interest and

	įskaitant palūkanų, netesybų ir privalomųjų įmokų mokėjimą, išieškoti skolas iš šios įmonės teismo ar ne ginčo tvarka, nustatyti priverstinę hipoteką, servitutus, uzufruktą, įskaityti reikalavimus, įkeisti, išskyrus atvejus, kuriems taikoma šios dalies 5 punkto nuostata, parduoti ar kitaip perduoti įmonės turtą, reikalingą įmonės veiklai tęsti. Draudimai vykdyti finansines prievoles bei išieškoti skolas netaikomi Finansinio užtikrinimo susitarimų įstatymo nustatytais atvejais; […] 3) sustabdomas išieškojimas pagal vykdomuosius dokumentus bei reikalavimų įskaitymas, jei jie nenumatyti restruktūrizavimo plane, išskyrus Finansinio užtikrinimo susitarimų įstatymo nustatytu atveju; […] 5) jei restruktūrizavimo proceso metu būtina parduoti įkeistą turtą, tai įkaito turėtojo sutikimu turtas turi būti parduodamas panaikinus jo įkeitimą ir (ar) hipoteką, išskyrus atvejus, kai pirkėjas sutinka pirkti įkeistą turtą; […]. **17 straipsnio 5 dalis** Įsiteisėjus teismo nutarčiai iškelti įmonei restruktūrizavimo bylą, įmonės administratorius (jei jis paskirtas): […] 4) patikrina restruktūrizuojamos įmonės sandorius, sudarytus per laikotarpį, ne trumpesnį kaip 12 mėnesių iki restruktūrizavimo bylos iškėlimo, informuoja kreditorių komitetą	compulsory payments, to recover debts from the enterprise in a judicial or extrajudicial manner, to apply judgement mortgage, servitudes, usufruct, to offset claims, to pledge, with the exception of cases under subparagraph 5 of this paragraph, sell or transfer in any other way the assets of the enterprise necessary for the continuation of its activities. The prohibitions to perform financial obligations and to recover debts shall not apply in cases foreseen by the Law on Financial Collateral Arrangements; […] 3) recovery under writs of execution and a set-off of the claims shall be suspended if they are not provided for in the restructuring plan, except for the cases foreseen by the Law on Financial Collateral Arrangements; […] 5) if it is necessary, during the restructuring, to sell the pledged property, the property must be sold by the consent of the pledgee after the annulment of its pledge and/or mortgage, with the exception of cases when the buyer agrees to buy the pledged property; […]. **Article 17, Part 5** After the court order to initiate the enterprise restructuring proceedings becomes effective, the enterprise administrator, if such has been appointed, shall: [...] 4) check the contracts entered into by the

	(susirinkimą) ir kreditorių komiteto (susirinkimo) nutarimu pareiškia ieškinius įmonės restruktūrizavimo bylą nagrinėjančiame teisme dėl įmonės veiklos tikslų neatitinkančių sandorių ir (ar) galėjusių turėti įtakos tam, kad įmonė negali atsiskaityti su kreditoriais, pripažinimo negaliojančiais; […]. **Lietuvos Respublikos bankų įstatymas** **85 straipsnio 3 ir 4 dalys** 3. Teismui priėmus nutartį iškelti bankui bankroto bylą: […]; 2) draudžiama vykdyti visas finansines prievoles, neįvykdytas iki bankroto bylos iškėlimo, tarp jų - mokėti palūkanas, netesybas, mokesčius ir kitas privalomąsias įmokas, taip pat iš bankrutuojančio banko išieškoti skolas teismo ar ne ginčo tvarka; […] 4. Šio straipsnio 3 dalies 2 punkte nustatyti draudimai netaikomi įstatymų, reglamentuojančių mokėjimų ir vertybinių popierių atsiskaitymo sistemų funkcionavimą, bei kitų įstatymų nustatytais atvejais, kai yra tiesiogiai nurodyta, kad bankas privalo vykdyti prievoles po bankroto bylos iškėlimo.	enterprise under restructuring during the period of at least 12 months preceding initiation of restructuring proceedings, give a notice to the creditors' committee/meeting and by a resolution of the creditors' committee/meeting bring actions in the court investigating the restructuring case for the invalidation of the contracts which are contrary to the objectives of the enterprise and/or which might have led to the inability of the enterprise to settle with creditors; [...]. **Law on Banks** **Article 85, Parts 3 and 4** 3. Upon the handing down of a ruling on the opening of bank bankruptcy proceedings: […]; 2) performance of all financial obligations not performed prior to the opening of bankruptcy proceedings, including the payment of interest, penalties, taxes and other mandatory payments as well as recovery of debts from the bank in bankruptcy through court or without suit shall be prohibited; […] 4. The prohibitions referred to in subparagraph 3 of paragraph 3 of this Article shall not be applied in the cases specified by the laws regulating the

	76 straipsnio 7 ir 8 dalys 7. Nuo sprendimo paskelbti banko veiklos apribojimą (moratoriumą) ir paskirti banko laikinąjį administratorių pateikimo bankui dienos: […] 3) bankui draudžiama vykdyti įsipareigojimus mokėti ar perleisti banko turtą, jei šie įsipareigojimai kyla iš sandorių ar kitų juridinių faktų, atsiradusių iki banko veiklos apribojimo (moratoriumo) paskelbimo dienos, išskyrus mokėjimus, būtinus apribotai banko veiklai apribojimo (moratoriumo) metu užtikrinti. Banko veiklos apribojimo (moratoriumo) metu netesybos už banko prievolės neįvykdymą ar netinkamą įvykdymą neskaičiuojamos ir nemokamos. Palūkanos pagal banko prievoles skaičiuojamos, tačiau išmokamos tik pasibaigus banko veiklos apribojimo (moratoriumo) terminui; 4) draudžiama įskaityti bet kokius banko ir jo klientų reikalavimus; […]. 8. Šio straipsnio 7 dalies 3 ir 4 punktuose nustatyti draudimai netaikomi, jeigu Lietuvos Respublikos įstatymai, reglamentuojantys mokėjimų ir vertybinių popierių atsiskaitymo sistemų funkcionavimą, bei kiti įstatymai nustato, kad bankas privalo vykdyti prievoles ir jo veiklą apribojus.	functioning of the payment and securities settlement systems, and by other laws, where a bank has been directly instructed to perform its obligations after the institution of bankruptcy proceedings. **Article 76, Parts 7 and 8** 7. As of the day of submission to a bank of a decision on the announcement of a moratorium on the activities of the bank and the appointment of the temporary administrator of the bank: […] 3) the bank shall be prohibited from performing payment obligations or transfer assets of the bank where these obligations result from the transactions concluded or other legal facts arising prior to the announcement of the moratorium on the activities of the bank, except for the payments necessary to ensure activities of the bank during the moratorium. During the moratorium on the activities of the bank, penalties for nonfeasance or misfeasance of an obligation of the bank shall not be calculated and paid. Interest on the bank's obligations shall be calculated, but shall be paid only after the expiry of the time limit for the moratorium on the activities of the bank; 4) it shall be prohibited to set off any claims of the bank and clients thereof; […]. 8. The prohibitions specified in subparagraphs 3 and 4 of paragraph 7 of this Article shall not be

	77 straipsnis 1. Priežiūros institucijai pritaikius šio Įstatymo 72 straipsnio 1 dalies 7 punkte ar 3 dalies 2 punkte nurodytą poveikio priemonę, asmuo, kuriam pritaikyta poveikio priemonė, neturi teisės disponuoti lėšomis, esančiomis jo sąskaitose Lietuvos banke bei kitose kredito įstaigose, ir kitu priežiūros institucijos sprendime nurodytu turtu. 2. Priežiūros institucija gali laikinai apriboti teisę disponuoti visomis lėšomis, esančiomis sąskaitose Lietuvos banke bei kitose kredito įstaigose, ir visu kitu turtu ar lėšų ir kito turto dalimi. 3. Priežiūros institucijos sprendimas laikinai apriboti teisę disponuoti lėšomis, esančiomis sąskaitose Lietuvos banke bei kitose Lietuvos Respublikoje įsteigtose kredito įstaigose, ir kitu Lietuvos Respublikos teritorijoje esančiu turtu laikomas turto arešto aktu. Jis teisės aktų nustatytais atvejais ir tvarka registruojamas turto arešto aktų registre. Priežiūros institucijos sprendime turi būti nurodyti duomenys, kurių reikia priežiūros institucijos sprendimui įregistruoti turto arešto aktų registre. Turto arešto aktų registrą reglamentuojančių teisės aktų nustatytais atvejais priežiūros institucijos sprendimas gali būti įregistruotas turto arešto aktų registre laikinai.	applied where laws of the Republic of Lithuania regulating the functioning of the payment and securities settlement systems, as well as other laws establish that a bank must perform obligations also when its activities are restricted. **Article 77** 1. Upon the imposition by the supervisory institution of a sanction referred to in subparagraph 7 of paragraph 1 or in subparagraph 2 of paragraph 3 of Article 72 of this Law, a person who is subject to the sanction shall not have the right to dispose of funds in his accounts in the Bank of Lithuania [Lietuvos bankas] and in other credit institutions and of other assets specified in the decision of the supervisory institution. 2. The supervisory institution may temporarily restrict the right to dispose of all funds in accounts in the Bank of Lithuania [Lietuvos bankas] and in other credit institutions and of all other assets or of part of the funds and other assets. 3. A decision of the supervisory institution to temporarily restrict the right to dispose of funds in accounts in the Bank of Lithuania [Lietuvos bankas] and in other credit institutions established in the Republic of Lithuania and of other assets in the territory of the Republic of Lithuania shall be considered a property seizure act. In the cases and according to the procedure set forth by legal acts, it shall be registered in the Register of Property Seizure Acts. The decision of the supervisory institution must include the data required to

		register the decision of the supervisory institution in the Register of Property Seizure Acts. In the cases specified by the legal acts regulating the Register of Property Seizure Acts, the decision of the supervisory institution may be temporarily registered in the Register of Property Seizure Acts.
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 23** Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	**Lietuvos Respublikos bankų įstatymas** **93 straipsnio 4-6 dalys** 4. Lietuvos Respublikoje ar kitoje Europos Sąjungos valstybėje narėje priimtas sprendimas taikyti banko veiklą ribojančias priemones ar sprendimas pradėti banko likvidavimo bylą neriboja banko kreditorių teisės įskaityti savo reikalavimus į banko reikalavimus, jei tai leidžia banko reikalavimą reglamentuojantys įstatymai. 5. Šio straipsnio 1-4 dalių nuostatos neriboja teisės Lietuvos Respublikos įstatymų nustatytais būdais teismo tvarka spręsti klausimus dėl sandorių, pažeidžiančių banko kreditorių interesus, negaliojimo, pripažinimo negaliojančiais ar uždraudimo juos vykdyti. 6. Šio straipsnio 5 dalyje nurodyti sandoriai negali būti laikomi negaliojančiais, negali būti pripažįstami negaliojančiais ir negali būti uždraudžiama juos vykdyti, jei suinteresuotas asmuo pateikia įrodymus, kad: 1) tokiam sandoriui taikoma ne Lietuvos Respublikos, o kitos Europos Sąjungos valstybės narės teisė, ir	**Law on Banks** **Article 93, Parts 4-6** 4. A decision taken in the Republic of Lithuania or in another Member State of the European Union on the adoption of the measures restricting activities of a bank or a decision on the opening of winding-up proceedings shall not restrict the right of the bank's creditors to set off their claims against the claims of the bank, where such a set-off is permitted by the laws regulating the bank's claim. 5. The provisions of paragraphs 1-4 of this Article shall not restrict the right, according to the procedure set forth by laws of the Republic of Lithuania, to resolve through court issues on the voidness, voidability or unenforceability of the transactions violating the interests of a bank's creditors. 6. The transactions referred to in paragraph 5 of this Article may not be considered void, recognised as voidable and unenforceable where the person concerned presents evidence that: 1) the law of another Member State of the

	2) tokiam sandoriui taikoma teisė nesuteikia galimybės ginčyti tokį sandorį nagrinėjamoje byloje. **Civilinis kodeksas** **1.37 straipsnio 1-3 dalys** 1. Sutartinėms prievolėms taikoma prievolės šalių susitarimu pasirinkta teisė. Toks šalių susitarimas gali būti numatytas pagal šalių sudarytos sutarties sąlygas arba gali būti nustatomas pagal faktines bylos aplinkybes. Šalys savo susitarimu gali pasirinkti tam tikros valstybės teisę, kuri bus taikoma visai sutarčiai arba atskirai jos daliai ar atskiroms dalims. […] 3. Aplinkybė, kad šalys susitarimu pasirinko sutarčiai taikytiną užsienio teisę, nėra pagrindas atsisakyti taikyti Lietuvos Respublikos ar kitos valstybės imperatyvias teisės normas, kurių šalys savo susitarimu negali pakeisti ar jų atsisakyti.	European Union rather than that of the Republic of Lithuania is applicable to the said transaction, and 2) the law applicable to the said transaction does not provide for a possibility to dispute the said transaction in the case pending in court. **Civil Code** **Article 1.37, Parts 1-3** 1. Contractual obligations shall be governed by the law agreed by the parties. Such agreement of the parties may be expressed in the form of separate terms of the concluded contract or it may be determined in accordance with the factual circumstances of the case. The law of the state designated by the agreement of the contracting parties may be applied to the whole contract or only to a part or parts thereof. […]. 3. The choice of the law applicable to a contract as made by the agreement of the parties may not be the grounds for refusing to apply the mandatory legal norms of the Republic of Lithuania or those of any other state that cannot be changed or declined by the agreement of the parties.
Article 25 Netting agreements Netting agreements shall be governed **solely** by the law of the contract which governs such	**Lietuvos Respublikos bankų įstatymo 2, 14, 20, 34, 46, 53, 55, 65, 69, 72, 90, 91, 92 straipsnių ir įstatymo priedo pakeitimo įstatymo projektas (užregistruotas Lietuvos Respublikos Seime 2005 m. gegužės 10 d.)**	**Draft Law on Amendment of Articles 2, 14, 20, 34, 46, 53, 55, 65, 69, 72, 90, 91, 92 of Republic of Lithuania Law on Banks and its Annex, registered with Lietuvos Respublikos Seimas on 10 May 2005.**

agreements.	**11 straipsnis (pakeičiantis Lietuvos Respublikos bankų įstatymo 90 straipsnį)** [...] 5) susitarimams dėl įskaitymo taikoma tokius susitarimus reglamentuojančioje sutartyje nurodyta teisė;	**Article 11 amending Article 90 of the Law on Banks** […] 5) Netting agreements shall be governed by the law of the contract which governs such agreements;

REPUBLIC of MALTA	
Relevant Directives provisions	National netting legislation
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1)** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party. **Article 7** Recognition of close-out netting provisions	**SET-OFF AND NETTING ON INSOLVENCY ACT as amended by act L.N. 177 of 2004 Financial Collateral Arrangements Regulations** **CHAPTER 459** To make provision for the enforceability of set-off and netting on bankruptcy or insolvency.1st June, 2003 ACT IV of 2003, as amended by Act I of 2004. 1. The short title of this Act is the Set-off and Netting on Insolvency Act. 2. In this Act, unless the context otherwise requires – "close-out netting provision" means a provision of a contract under which on the occurrence of a specified event, whether through the operation of netting or set-off or otherwise – (a) the benefit of time for the performance of relevant obligations by the debtor may no longer be claimed and, or the relevant obligations become immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount, and, or, (b) any obligation of a party to deliver property to the other is immediately performable notwithstanding any benefit of time granted to the debtor and expressed as an obligation to pay an amount representing its estimated current value or replacement value or is terminated and replaced by an

1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.	obligation to pay such an amount, and (c) an account is taken of what is due from each party to the other in respect of such obligations and those obligations fall to be discharged by the payment of an aggregate net sum equal to the balance of account by the party from whom the larger amount is due; "netting" means the conversion into one net claim or one net obligation of claims and obligations arising under any contract with the result that only a net claim can be demanded or a net obligation be owed. **3.** (1) Notwithstanding the provisions of any other law, any close-out netting provision or any other provision in any contract providing for or relating to the set-off or netting of sums due from each party to the other in respect of mutual credits, mutual debts or other mutual dealings shall be enforceable in accordance with its terms, whether before or after bankruptcy or insolvency, in respect of mutual debts, mutual credits or mutual dealings which have arisen or occurred before the bankruptcy or insolvency of one of the parties, against: (*a*) the parties to the contract, (*b*) any guarantor or any person providing security for any party to the contract, (*c*) the liquidator, receiver, curator, controller, special controller or other similar officer of either party to the contract, and (*d*) the creditors of the parties to the contract. (2) When a close-out netting provision is enforced, obligations expressed in different currencies are converted into a single currency and such obligations shall be discharged by the payment of an aggregate net sum equal to the balance of account by the party from whom the larger amount is due. (3) Any authority or mandate in a contract to implement any close-out netting provision shall not be revoked by the declaration of bankruptcy or the insolvency of any other party to the contract. (4) Subarticle (1) shall not apply in respect of any close-out netting agreement

	entered into at a time at which the other party knew or ought to have known that an application for the dissolution and winding up of the company by reason of insolvency was pending, or that the company has taken formal steps under any applicable law to bring about its dissolution and winding up by reason of insolvency. (5) Subarticle (1) shall also not apply where the insolvent party is an individual or a commercial partnership other than a company and the other party knew or ought to have known of events of the same nature as stated in the preceding subarticle in relation to the insolvent party. (6) Notwithstanding the provisions of any other law, nothing shall limit or delay the application of any provision of any contract providing for or relating to set-off or netting which would otherwise be enforceable and no order of any court nor any warrant or injunction or similar order issued by a court or otherwise and no proceedings of whatever nature shall have any effect in relation thereto. (7) Nothing in subarticle (6) shall - (*a*) prevent the application of any law which would render netting or set-off unenforceable in any particular case on the grounds of fraud or on any similar ground, or (*b*) permit the enforceability of netting or set-off under this article if any provision of a contract between the parties concerned would make netting or set-off void because of fraud or any similar ground. (8) Articles 303, 304 and 315 of the Companies Act and article 485 of the Commercial Code shall only be applicable in relation to a close-out netting provision where there is fraud on the part of the party to the agreement not being the insolvent party. **4.** It shall be lawful for the parties to a contract, when entering into the contract - (*a*) to agree on any system or mechanism which will enable the parties to convert a non-financial obligation into a monetary obligation of equivalent value and to value such obligation for the purposes of any set-off or netting; (*b*) to agree on the rate of exchange or the method to be used to establish the

	rate of exchange to be applied in effecting any set-off or netting when the sums to be set off or netted are in different currencies, and to establish the currency in which payment of the net sum is to be effected; (*c*) to agree that any transactions or other dealings carried out pursuant to any contract, whether identified specifically or by reference to a type or class of transactions or dealings, shall be treated as a single transaction or dealing for the purpose of the set-off or netting provisions in the contract and that all such transactions or dealings shall be treated as a single transaction or dealing by the parties or any liquidator, receiver, curator, controller or special controller or other officer acting for the parties and any court. **5.** A close-out netting provision entered into by a party which is a branch in Malta of an overseas company shall be valid and enforceable in accordance with the provisions of this Act notwithstanding the provisions of any other law which may be applicable to such party, including the law under which such company is constituted. **6.** An assignment of a debt or an action forming a part of an agreement containing a close-out netting provision shall not be subject to the provisions of article 2013(3) of the Civil Code. **7.** (1) The Minister may make regulations to give effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may in particular make regulations to transpose and implement any Directive of the European Parliament and of the Council on financial collateral arrangements; and, in particular, regulations relating to any aspect concerning financial collateral agreements and similar arrangements; such regulations may define financial collateral, may provide for the rights and obligations of the collateral taker and the collateral provider, establish formal requirements and rules on the enforcement of financial collateral agreements and similar arrangements, the recognition of title and the non-applicability of certain rules of the Civil Code and of legal provisions relating to bankruptcy and insolvency, and such regulations may also provide for relative rules on conflict of laws and for any other matters as are incidental or connected thereto. (2) Regulations made under this article may be made and published in the English language only.

Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions	**L.N. 228 of 2004 BANKING ACT (CAP. 371) Credit Institutions (Reorganisation and Winding Up) Regulations, 2004**
Article 23 Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	Article 11. […] (2) In relation to a Maltese credit institution, the law of Malta shall be the applicable law and shall determine in particular […] (c) the conditions under which set-off may be invoked […] (h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, the rights of creditors who have obtained partial satisfaction after the opening of the winding-up order by virtue of a right in rem or through set-off […] (l) the rules relating to the voidness, violability or unenforceability of legal acts detrimental to all the creditors. Article 25. (1) The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights of creditors to demand the set-off of their claims against the claims of the Maltese credit institution where such a set-off is permitted by the law of the Member State or EEA State which is applicable to the claim of the Maltese credit institution.

	(2) This regulation does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors referred to in regulation 11 (2) (l), above.
Article 25 Netting agreements Netting agreements shall be governed solely by the law of the contract which governs such agreements.	Article 27. Pursuant to the provisions of the Set-Off and Netting on Insolvency Act, netting agreements shall be governed by the law of the contract which governs such agreements.

REPUBLIC of POLAND		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1)** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.	**ustawa o niektórych zabezpieczeniach finansowych z dnia 2 kwietnia 2004 r.(Dz.U. Nr 19, poz. 871)** **Art. 3** **3)** klauzula kompensacyjna - klauzulę przewidującą w razie wystąpienia podstawy realizacji zabezpieczenia natychmiastowe potrącenie lub kompensatę wierzytelności, oraz sposób ich dokonania i rozliczenia stron, zawartą w umowie o ustanowienie zabezpieczenia finansowego, umowie ramowej związanej z tą umową lub w umowie szczegółowej zawartej w wykonaniu umowy ramowej; **Art. 4.** **1.** Wierzytelności stron wynikające z umowy o ustanowienie zabezpieczenia finansowego lub będące jej przedmiotem mogą być przedmiotem kompensaty, jeżeli strony w umowie ustanowiły klauzulę kompensacyjną. **2**. Kompensata jest dopuszczalna także wtedy, gdy wierzytelności nie są wymagalne. **3.** Poprzez kompensatę: 1) kwota netto wynikająca z obliczenia wzajemnych wierzytelności stron jest	**Act on Certain Forms of Financial Collateral of 2 April 2004 (publication: Dz.U. [2004] No. 19 Item 871; entered into force on 1 May 2004)** **Article 3** **3)** A 'netting provision' **[*klauzula kompensacyjna*; a specific term devised in the context of financial contracts]** means a provision in a financial collateral agreement, a master agreement associated with that agreement, or a specific agreement concluded during the performance of a master agreement, which provides for the immediate offsetting or netting [potrącenie lub kompensata] of the liabilities in the event of grounds for the foreclosure of the collateral arising, as well as providing for the method of performance thereof and of the settlement between the parties. **Article 4** **1.** The debts of the parties under a financial collateral agreement, or those which are the subject of it, may be subject to netting **[*kompensata*]** if a netting provision **[*klauzula kompensacyjna*]** has been included in the agreement by the parties.

	płatna stronie, której wierzytelność lub suma wierzytelności jest wyższa; 2) wierzytelność o zapłatę kwoty, o której mowa w pkt 1, jest wymagalna, także wtedy, gdy wierzytelności będące przedmiotem kompensaty nie były wymagalne.	**2**. Netting shall also be permitted in cases where the debts are not due. **3**. By way of netting: 3) the net amount resulting from the calculation of the parties' mutual liabilities shall be payable to the party whose claim or sum of claims is greater; 4) the claim for the payment of the amount referred to in pt. 1) shall become due, even when the debts which are subject to netting are not due.
Article 7 Recognition of close-out netting provisions 1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other	**Ustawa Prawo upadłościowe i naprawcze z dnia 28 lutego 2003 r. (Dz.U. Nr 60 poz. 535 z późn. zm.)** **Art. 77** **1.** Czynności prawne upadłego dotyczące mienia wchodzącego do masy upadłości, wobec którego upadły utracił prawo zarządu, są nieważne. **[...]**	**The new Bankruptcy and Rehabilitation Law of 28 February 2003 (publication: Dz.U. [2003] No. 60 Item 535 as amended; entered into force on 1 October 2003)** **Article 77** **1.** The transactions of the bankrupt in respect of the assets within the estate in bankruptcy over which the bankrupt has lost the right of management, shall be invalid. **[…]** **4. [as inserted by the Article 17 Point 1 of the**

disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.	**4.** Przepisu ust. 1 nie stosuje się do ustanowienia zabezpieczenia finansowego zgodnie z przepisami ustawy z dnia 2 kwietnia 2004 r. o niektórych zabezpieczeniach finansowych (Dz. U. Nr 91, poz. 871), jeżeli zawarcie umowy lub ustanowienie zabezpieczenia finansowego nastąpiło w dniu ogłoszenia upadłości, a uprawniony z zabezpieczenia wykaże, że nie wiedział i przy zachowaniu należytej staranności nie mógł wiedzieć o wszczęciu postępowania upadłościowego. **Art. 85.** **1.** Jeżeli umowa ramowa, której jedną ze stron jest upadły, zastrzega, że poszczególne umowy szczegółowe, których przedmiotem są terminowe operacje finansowe lub sprzedaż papierów wartościowych ze zobowiązaniem do ich odkupu, będą zawierane w wykonaniu umowy ramowej oraz że rozwiązanie umowy ramowej powoduje rozwiązanie wszystkich umów szczegółowych zawartych w wykonaniu tej umowy: 1) wierzytelności z tytułu poszczególnych umów szczegółowych zawartych w jej wykonaniu nie są obejmowane układem; 2) syndykowi nie przysługuje uprawnienie do odstąpienia od umowy ramowej, o którym mowa w art. 98. **2**. Przez terminowe operacje finansowe, o których mowa w ust. 1, rozumie się operacje, w których	**Act on Certain Forms of Financial Collateral, with effect of 1 May 2004]** The provisions of paragraph 1 shall not apply to the establishment of financial collateral pursuant to the provisions of the Act on Certain Forms of Financial Collateral of 2 April 2004 (Dz.U. No. 91 Item 871) if the agreement was made or the establishment of a financial collateral took place on the day of the declaration of bankruptcy and the person entitled to such collateral can prove that they were not aware and could not have been aware, even with the exercise of due diligence, of the commencement of the bankruptcy proceedings. **Article 85** **1.** If a master agreement, of which one of the parties becomes bankrupt, provides that the individual agreements for derivatives transactions **[*terminowe operacje finansowe*]** or securities repurchase agreements are to be concluded under the terms of the master agreement, and that the termination of the master agreement shall terminate all individual agreements concluded under it: 1) the obligations resulting from individual agreements concluded under the terms of the master agreement, shall not be subject to reorganisation **[*układ*; i.e. a type of bankruptcy proceedings involving creditors' agreement]**; 2) the receiver shall not be vested with the

	ustalono cenę, kurs, stopę procentową lub indeks - a w szczególności nabywanie walut, papierów wartościowych, złota lub innych metali szlachetnych, towarów lub praw, w tym umowy obliczone tylko na różnicę cen, opcje i prawa pochodne - zawarte na umówioną datę lub umówiony termin, w obrocie rynkowym. **3.** Każda ze stron może wypowiedzieć umowę, o której mowa w ust. 1, z zachowaniem ustalonego w tej umowie sposobu rozliczenia stron na wypadek rozwiązania umowy.	authority referred to in Article 98 hereof to terminate the master agreement. **2**. The term 'derivatives transactions' **[*terminowe operacje finansowe*]** referred to in paragraph 1 shall mean transactions in which the price, exchange rate, interest rate or index has been specified – in particular [such transactions as] the acquisition of currencies, securities, gold or other precious metals, commodities or rights, including contracts computed on price differentials, options and derivative rights – and which have been entered into in the market for settlement on a specified date or for a specified period of time. **3.** Each of the parties may rescind **[*wypowiedzieć*; i.e. with the effect of termination]** the agreement referred to in paragraph 1, subject to observing the method of settlement between the parties stipulated in the agreement in the event of the termination of the agreement.
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 23** Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their	**4**. Dopuszczalne jest potrącenie wierzytelności wynikającej z rozliczenia stron. **5.** Do poszczególnych umów szczegółowych mających za przedmiot terminowe operacje finansowe lub sprzedaż papierów wartościowych	**4.** Offsetting **[*potrącenie*; general Civil Code concept]** of obligations resulting from the settlement between the parties shall be permitted. **5.** The provisions of Articles 98 and 99 shall not apply to individual agreements involving derivatives transactions **[*terminowe operacje finansowe*]** nor securities repurchase agreements,

claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	ze zobowiązaniem do ich odkupu - nawet jeżeli nie zostały one zawarte w wykonaniu umowy ramowej, o której mowa w ust. 1 - nie stosuje się przepisów art. 98 i 99. **Art. 93.** **1.** Potrącenie wierzytelności upadłego z wierzytelnością wierzyciela jest dopuszczalne, jeżeli obie wierzytelności istniały w dniu ogłoszenia upadłości, chociażby termin wymagalności jednej z nich jeszcze nie nastąpił. **2.** Do potrącenia przedstawia się całkowitą sumę wierzytelności upadłego, a wierzytelność wierzyciela tylko w wysokości wierzytelności głównej wraz z odsetkami naliczonymi do dnia ogłoszenia upadłości. **3.** Jeżeli termin płatności nieoprocentowanego długu upadłego w dniu ogłoszenia upadłości nie nastąpił, do potrącenia przyjmuje się sumę należności zmniejszoną o odsetki ustawowe, nie wyższe jednak niż sześć procent, za czas od dnia ogłoszenia upadłości do dnia płatności i nie więcej niż za okres dwóch lat. **Art. 98.** **1.** Jeżeli w dniu ogłoszenia upadłości zobowiązania z umowy wzajemnej nie zostały wykonane w całości lub w części, syndyk może wykonać zobowiązanie upadłego i zażądać od drugiej strony spełnienia świadczenia wzajemnego lub od umowy odstąpić.	even if they were not entered into under the terms of the master agreement referred to in paragraph 1. **Article 93** **1.** The offsetting **[*potrącenie*; a general Civil Code concept]** of the obligations of the bankrupt and of the creditor shall be permitted, provided that such obligations existed on the day of the declaration of bankruptcy, even if an obligation was not then due. **2.**The whole amount of a bankrupt's obligations shall be used for the purpose of offsetting, while the creditor's obligation shall only include [for this purpose] the base amount and the interest accrued up to the date of declaration of bankruptcy. **3.** If a bankrupt's net of interest debt is not yet due on the date of declaration of bankruptcy, the amount of the [bankrupt's] liability used in offsetting shall be decreased by the amount of statutory interest, at a rate not above six per cent, accrued for the period from the declaration of bankruptcy until the date when the payment is due, no longer [however] than two years. **Article 98** **1.** If on the date of the declaration of bankruptcy, the obligations under an agreement have not been fulfilled in whole or in part, the receiver may fulfil the bankrupt's obligations and demand performance by the other party in return, or may

		revoke **[*odstąpić*; i.e. with the effect of withdrawal from obligation]** the agreement.
Article 25 Netting agreements Netting agreements shall be governed solely by the law of the contract which governs such agreements.	**Art. 467.** Czynność kompensowania podlega prawu właściwemu dla zobowiązań umownych, mającemu zastosowanie do tych umów.	**Article 467** Netting agreements **[c*zynność kompensowania*]** shall be governed by the law of the contract which governs such agreements.
	Article 498 **1.** Z dniem wszczęcia postępowania naprawczego: [...] 3) potrącenie wierzytelności dopuszczalne jest z zachowaniem przepisu art. 89; **[...]** **5.** Wszczęcie postępowania naprawczego nie narusza uprawnień wynikających z zamieszczonej w umowie klauzuli kompensacyjnej, o której mowa w ustawie wskazanej w art. 77 ust. 4.	**Article 498** **1.** On the date of the commencement of the rehabilitation proceedings **[*postępowanie naprawcze*;** a type of insolvency proceedings resulting in obtaining protection from creditors; the rehabilitation proceedings under Bankruptcy and Rehabilitation Law are assumed not to apply in relation to banks, due to existence of specific provisions in the Banking Law of 1997]: […] 3) the offsetting **[*potrącenie*; general Civil Code concept]** of debt shall be permitted in accordance with the provisions of Article 89; **[...]** **5.** The commencement of rehabilitation proceedings shall be without prejudice to the rights under a netting provision **[*klauzula kompensacyjna*]** included in an agreement, as referred to in Article 77, paragraph 4 of the Act.
	Ustawa Kodeks postępowania cywilnego z dnia	**Civil Procedure Code of 17 November 1964 (Dz.**

	17 listopada 1964 r. (Dz. U. Nr 43, poz. 296, z późn. zm.) TYTUŁ II. EGZEKUCJA ŚWIADCZEŃ PIENIĘŻNYCH **DZIAŁ IV. EGZEKUCJA Z INNYCH WIERZYTELNOŚCI I INNYCH PRAW MAJĄTKOWYCH** **Art. 902[1]** Zajęcie wierzytelności nie narusza uprawnień wynikających z zamieszczonej w umowie klauzuli kompensacyjnej, o której mowa w ustawie z dnia 2 kwietnia 2004 r. o niektórych zabezpieczeniach finansowych (Dz. U. Nr 91, poz. 871).	**U. [1964] No. 43, Item 296, as amended; entered into force on 1 January 1965)** TITLE II. ENFORCEMENT OF MONEY OBLIGATIONS **SECTION IV. ENFORCEMENT OF OTHER DEBTS AND OTHER PROPERTY RIGHTS** **Article 902[1]** **[as inserted by the Article 14 of the Act on Certain Forms of Financial Collateral, with effect from 1 May 2004]** Seizure of debts shall not prejudice the rights under netting provisions **[*klauzula kompensacyjna*]** included in an agreement, as referred to in the Act on Certain Forms of Financial Collateral of 2 April 2004 (Dz.U. No. 19, Item 871).

SLOVAK REPUBLIC		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements **Article 2 (1)** (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.	**Zákon č. 328/1991 Zb. o konkurze a vyrovnaní v znení neskorších predpisov** **účinný do 1. januára 2006** **Účinky vyhlásenia konkurzu** **§ 14** (1) Vyhlásenie konkurzu má tieto účinky: ... f) zanikajú práva na oddelené uspokojenie (§ 28), ktoré sa týkajú majetku patriaceho do podstaty a veritelia ich získali v posledných dvoch mesiacoch pred podaním návrhu na vyhlásenie konkurzu; ak sa konkurz zrušil podľa § 44 ods. 1 písm. a), možno tieto práva znova uplatniť. Ak sa však veci alebo tieto pohľadávky pri výkone rozhodnutia v uvedenej lehote speňažili, bude výťažok na ne pripadajúci zahrnutý do podstaty; i) započítanie vzájomne inak započítateľnej pohľadávky patriacej do podstaty nie je možné; (2) Ak zmluvu o vzájomnom plnení ešte v čase vyhlásenia konkurzu nesplnil ani úpadca ani druhý účastník zmluvy, alebo sa splnila len čiastočne, každá zmluvná strana môže od zmluvy odstúpiť.	**Act 328/1991 Coll. on Bankruptcy and Composition, as amended** **applicable until 1 January 2006** **Effects of the declaration of bankruptcy** **Article 14** A bankruptcy declaration shall have the following effects: ... (f) rights to separate satisfaction (Article 28) which relate to property belonging to the bankruptcy estate and which were acquired by the creditors in the last two months prior to the filing of a bankruptcy petition shall be extinguished; if the bankruptcy proceedings were cancelled pursuant to Article 44 (1) (a), such rights may once more be exercised. If, however, property or claims have been realised by the execution of a decision within a given time limit, such proceeds shall be included in the bankruptcy estate; (i) set-off of any claim against a claim of the bankrupt estate, which would otherwise be possible, shall not be possible; (2) If, at the date of the declaration of bankruptcy, neither the bankrupt nor the other contracting party

Article 7 Recognition of close-out netting provisions 1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties.	[…] ***Odporovateľné právne úkony*** ***§ 15*** (1) Konkurzný veriteľ alebo správca sa môže domáhať, aby súd určil, že dlžníkove právne úkony podľa odsekov 2 až 6, ak ukracujú uspokojenie vymáhateľnej pohľadávky konkurzného veriteľa, sú voči konkurznému veriteľovi právne neúčinné. Toto právo má konkurzný veriteľ alebo správca aj vtedy, ak je nárok proti dlžníkovi z jeho odporovateľného právneho úkonu už vymáhateľný alebo ak už bol uspokojený. (2) Odporovať možno právnemu úkonu, ktorý dlžník urobil v posledných troch rokoch pred začatím konkurzu v úmysle ukrátiť svojho konkurzného veriteľa, ak tento úmysel musel byť druhej strane známy. (3) Odporovať možno tiež právnemu úkonu, ktorým bol konkurzný veriteľ dlžníka ukrátený a ku ktorému došlo v posledných troch rokoch pred začatím konkurzu medzi dlžníkom a a) osobou jemu blízkou; 4) b) právnickou osobou, v ktorej má dlžník alebo osoba uvedená v písmene a) majetkovú účasť aspoň 10% v čase, keď sa uskutočňuje tento právny úkon;	have carried out performance of the agreement or if the agreement has only been partially performed, each contracting party may withdraw from the agreement. [...] **Challengeable transactions [of the debtor]** **Article 15** (1) A creditor in bankruptcy proceedings or the administrator may request the court to determine that the debtor's transactions pursuant to paragraphs 2 to 6 shall be without legal effect vis-à-vis the creditor if they prejudice the satisfaction of the recoverable claims of the creditor. A creditor in bankruptcy or the administrator shall have this right, even if a claim against the debtor resulting from the debtor's challengeable transaction is already recoverable or has already been satisfied. (2) It shall be possible to challenge a transaction of the debtor carried out in the last three years prior to the commencement of bankruptcy proceedings with the intention of prejudicing the rights of a creditor in bankruptcy, provided that such intention must have been known to the counterparty [to the transaction with the debtor]. (3) It shall also be possible to challenge a transaction which prejudices a debtor's creditor in bankruptcy, and which has been effected in the last three years prior to the commencement of

		bankruptcy proceedings, between the debtor and
	c) právnickou osobou, v ktorej je dlžník alebo osoba uvedená v písmene a) štatutárnym orgánom alebo členom štatutárneho orgánu, prokuristom alebo likvidátorom;	(a) a person closely connected to[4] the debtor;
	d) právnickou osobou, v ktorej má osoba uvedená v písmene c) majetkovú účasť aspoň 34% v čase, keď sa uskutočňuje tento právny úkon;	(b) a legal entity in which the debtor or a person referred to in (a) has a participation of at least 10 % at the time when such transaction is carried out;
	alebo ktorý dlžník urobil v uvedenom čase v prospech tejto osoby; to však neplatí, ak druhá strana preukáže, že nemohla ani pri náležitej starostlivosti poznať úmysel dlžníka ukrátiť konkurzného veriteľa.	(c) a legal entity of which the debtor or a person referred to in (a) is a statutory body or a member of a statutory body, proxy-holder or liquidator;
		(d) a legal entity in which a person referred to in (c) has a participation of at least 34 % at the time when such transaction is carried out;
	(4) Odporovať možno tiež právnemu úkonu, ktorým bol konkurzný veriteľ dlžníka ukrátený a ku ktorému došlo v posledných troch rokoch pred začatím konkurzu medzi dlžníkom, ktorý je právnickou osobou, a	or which was carried out by the debtor at the specified time for the benefit of such person; this shall not apply if the counterparty proves that, even by taking due care, they could not have been aware of the debtor's intention to prejudice a creditor in bankruptcy.
	a) členom jeho štatutárneho orgánu, jeho prokuristom, likvidátorom alebo spoločníkom;	(4) It shall also be possible to challenge a transaction which prejudices a debtor's creditor in bankruptcy, and which has been effected in the last three years prior to the commencement of bankruptcy proceedings, between a debtor which is a legal entity and
	b) osobou blízkou 4) osobe uvedenej v písmene a);	
	c) právnickou osobou, v ktorej má dlžník alebo osoba uvedená v písmenách a) a b) majetkovú účasť aspoň 10% v čase, keď sa uskutočňuje tento právny úkon;	
	d) právnickou osobou, v ktorej je osoba uvedená v písmenách a) a b) štatutárnym orgánom alebo	(a) a member of its statutory body, its proxy-holder, liquidator or partner;

	členom štatutárneho orgánu, prokuristom alebo likvidátorom; e) právnickou osobou, v ktorej má osoba uvedená v písmene d) majetkovú účasť aspoň 34% v čase, keď sa uskutočňuje tento právny úkon; alebo ktorý dlžník urobil v uvedenom čase v prospech tejto osoby; to však neplatí, ak druhá strana preukáže, že nemohla ani pri náležitej starostlivosti poznať úmysel dlžníka ukrátiť konkurzného veriteľa. (5) Odporovať možno tiež právnemu úkonu dlžníka, ak právny úkon bol vykonaný v poslednom roku pred začatím konkurzu a hodnota prijatá dlžníkom bola nižšia, ako bola primeraná hodnota v čase vykonania právneho úkonu, a dlžník bol v úpadku alebo sa dostal do úpadku v dôsledku takého právneho úkonu. (6) Odporovať možno tiež právnemu úkonu dlžníka, ktorý bol vykonaný v poslednom roku pred začatím konkurzu a ktorým dlžník na seba prevzal zmluvnú sankciu neprimeranú svojmu majetku. (7) Odporovateľným právnym úkonom nemožno vyrovnať vzájomnú pohľadávku odporcu proti úpadcovi. ---------- 4) § 116 Občianskeho zákonníka č. 40/1964 Zb. v znení neskorších predpisov.	(b) a person closely connected to[4] a person referred to in (a); (c) a legal entity in which the debtor or a person referred to in (a) or (b) has a participation of at least 10 % at the time when such transaction is carried out; (d) a legal entity of which a person referred to in (a) or (b) is a statutory body or a member of a statutory body, proxy-holder or liquidator; (e) a legal entity in which a person referred to in (d) has a participation of at least 34 % at the time when such transaction is carried out; or which was carried out by the debtor at the specified time for the benefit of such person; this shall not apply if the counterparty proves that, even by taking due care, they could not have been aware of the debtor's intention to prejudice a creditor in bankruptcy. (5) It shall also be possible to challenge a transaction of the debtor, if such transaction was carried out in the last year prior to the commencement of bankruptcy proceedings, and if the amount received by the debtor was less than a reasonable amount at the time when the transaction was carried out, and if the debtor was insolvent or became insolvent because of such transaction.

		(6) It shall also be possible to challenge a transaction of the debtor which was carried out in the last year prior to the commencement of bankruptcy proceedings and on the basis of which the debtor accepted a contractual obligation inappropriate to the debtor's assets. (7) It shall not be possible to set off a claim of a contestant against a claim of the bankrupt. ---------- 4) Article 116 of the Civil Code No. 40/1964 Zb., as amended
	Zákon č. 483/2001 Z. z. o bankách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov **§ 59** (1) Účinky zavedenia nútenej správy v banke, ktorá má pobočku umiestnenú v inom členskom štáte, ak ide o ... d) vlastnícke alebo iné práva k investičným nástrojom, 37a) ktoré musia byť evidované vo verejnom registri cenných papierov alebo v inej obdobnej evidencii a ktoré sú držané alebo sa nachádzajú v členskom štáte, sa spravujú právnym poriadkom členského štátu, na ktorého území sa vedie príslušný verejný register alebo iná obdobná	**Act 483/2001 Z. z. on Banks and on Amendments to Certain Laws, as amended** **Article 59** (1) The effects of the imposition of an administration order on a bank having its branch office located in another Member State, if the matters concerned are ... (d) ownership or other rights to investment instruments[37a] which must be entered in a public register of securities or similar register and which

	evidencia; to rovnako platí aj pre právne úkony vykonané po zavedení nútenej správy, týkajúce sa investičných nástrojov a pre práva s tým spojené, pri ktorých sa vyžaduje ich zápis do verejného registra alebo inej obdobnej evidencie vedenej v členskom štáte,	are held or located in a Member State shall be governed by the laws of the Member State in the territory of which the respective public register or similar register is kept; this shall apply equally to transactions carried out upon the imposition of an administration order relating to the investment instruments and the rights associated with them that are required to be entered in the public register or similar register kept in the Member State,
	e) zmluvy o urovnaní alebo iné obdobné dohody, ktorých účelom je nahradenie alebo zmena celkového rozdielu viacerých vzájomných pohľadávok a záväzkov zmluvných strán na jedinú súhrnnú vzájomnú pohľadávku a záväzok týchto zmluvných strán, zmluvy o kúpe so spätnou kúpou a zmluvy o burzových obchodoch sa spravujú právnym poriadkom, ktorý je rozhodujúci pre tieto zmluvy.	(e) contracts for settlement or similar agreements, the purpose of which is to compensate or adjust the overall difference between several mutual claims and obligations of the contracting parties into one single mutual claim and obligation of the contracting parties, contracts for purchase and repurchase, and contracts for stock exchange transactions shall be governed by the law which governs these contracts.
	(2) Počas šiestich mesiacov od zavedenia nútenej správy nemožno postupovať pohľadávky voči banke a započítavať vzájomné pohľadávky medzi bankou, nad ktorou bola zavedená nútená správa, a inými osobami okrem prípadov, ak právny poriadok iného členského štátu, v ktorom má veriteľ bydlisko alebo sídlo, umožňuje postúpenie pohľadávky a započítanie pohľadávok aj počas zavedenia reorganizačného opatrenia.	(2) For a period of six months from the imposition of an administration order, no assignment of claims against a bank or set-off of claims between the bank subject to an administration order and other persons shall be permitted, except for cases where the laws of another Member State in which the creditor is resident or has its registered office allows for the assignment of a claim or set-off of claims, even during the introduction of reorganisation measures.
	(3) Správca môže odporovať právnemu úkonu, 53) ktorý bol urobený v posledných troch rokoch pred zavedením nútenej správy v úmysle ukrátiť banku alebo jej veriteľov, ak tento úmysel musel byť banke známy; to neplatí, ak druhá strana preukáže, že nemohla ani pri náležitej starostlivosti poznať	(3) An administrator may challenge a transaction[53] carried out in the last three years prior to the imposition of an administration order with the intention of prejudicing the bank or its creditors, if such intention must have been known to the bank;

	úmysel banky ukrátiť veriteľa banky. (4) Správca môže odporovať aj právnemu úkonu, 53) ktorým bola banka ukrátená a ku ktorému došlo v posledných troch rokoch pred zavedením nútenej správy medzi bankou a osobou s osobitným vzťahom k banke. (8) Zavedenie nútenej správy alebo zahraničného reorganizačného opatrenia v členskom štáte a ustanovenia odsekov 2, 5, 6 a 7 nie sú prekážkou pre podanie návrhu na súd o určenie neplatnosti právnych úkonov alebo neúčinnosti odporovateľných právnych úkonov poškodzujúcich veriteľov, návrhu o určenie práva odstúpiť od právnych úkonov alebo návrhu na vyslovenie neplatnosti právnych úkonov poškodzujúcich veriteľov, ani návrhu na vydanie predbežného opatrenia o povinnosti zdržať sa vykonania právnych úkonov poškodzujúcich veriteľov banky v nútenej správe alebo veriteľov zahraničnej banky, v ktorej je zavedené zahraničné reorganizačné opatrenie. Ak sa pred zavedením nútenej správy začalo v členskom štáte súdne konanie týkajúce sa aktíva alebo práva, ktoré bolo banke odňaté, toto konanie sa aj po zavedení nútenej správy spravuje právnym poriadkom členského štátu, v ktorom sa toto konanie začalo a uskutočňuje. --- 37a) § 5 zákona č. 566/2001 Z. z. 53) § 42a a 42b Občianskeho zákonníka	this shall not apply if the counterparty proves that, even by taking due care, they could not have been aware of the intention of the bank to prejudice the bank's creditors. (4) An administrator may also challenge a transaction[53] between the bank and a person with a special relationship with the bank which prejudices the bank and which was effected within the last three years prior to the imposition of an administration order. (8) Neither the imposition of an administration order, or of a foreign reorganisation measure, in a Member State nor the provisions of paragraphs 2, 5, 6, and 7, shall be an obstacle to the filing of a motion with the court to determine the voidness of transactions or the invalidity of challengeable transactions detrimental to creditors, a motion to determine the right to withdraw from transactions, or a motion to pronounce the voidness of transactions detrimental to creditors, or a motion to issue a warning concerning an obligation to refrain from the performance of transactions detrimental to the creditors of a bank subject to an administration order or the creditors of a foreign bank in which a foreign reorganisation measure has been introduced. If, prior to the imposition of an administration order, court proceedings concerning an asset or right which has been withdrawn from a bank have been commenced in a Member State, such proceedings shall be governed by the laws of the Member State in which the proceedings have been commenced and conducted, even after the imposition of an administration order.

		--- 37a) Article 5 of Act 566/2001 Z. z. 53) Articles 42a and 42b of the Civil Code
	Zákon č. 7/2005 Z. z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov účinný od 1. januára 2006	**Act No. 7/2005 Z. z. on Bankruptcy and Reorganisation and on Amendments to the Certain Laws applicable as of 1 January 2006**
	§ 180 Zmluva o záverečnom vyrovnaní ziskov a strát	**Article 180 Close-out netting of profits and losses agreement**
	(1) Zmluva o záverečnom vyrovnaní ziskov a strát je zmluva uzatvorená medzi osobami podľa osobitného predpisu32) vo vzťahu k jednému alebo viacerým derivátovým obchodom, obchodom o prevode cenných papierov so spätným prevodom, obchodom s prevoditeľnými cennými papiermi, pôžičkám cenných papierov, obchodom s devízovými hodnotami, obchodom so zabezpečovacími právami k finančným nástrojom alebo iným obdobným obchodom uzatvoreným mimo organizovaného verejného trhu alebo upravujúca také obchody, ktorá upravuje výpočet výšky jediného čistého záväzku vo vzťahu k skutočným alebo odhadovaným stratám alebo skutočným alebo odhadovaným ziskom, vzniknutým v súvislosti s ukončením alebo zrušením jedného alebo viacerých obchodov uzavretých v súvislosti s takou zmluvou alebo podľa takej zmluvy.	(1) An agreement for the close-out netting of profits and losses is a contract concluded between entities pursuant to a special arrangement in relation to one or more of derivatives transactions, repurchase agreements for the transfer of securities, transactions for transferable securities, securities lending transactions, foreign exchange transactions, transactions with collateral rights in financial instruments or other similar transactions concluded outside an organised market, or a contract concerning such transactions which regulates the calculation of the amount of a single net obligation in relation to real or anticipated losses and/or real or anticipated profits incurred in connection with the termination or cancellation of one or more transactions concluded in connection with such agreement or according to it.

	(2) Záverečným vyrovnaním ziskov a strát je výpočet, v súlade s podmienkami zmluvy o záverečnom vyrovnaní ziskov a strát, výšky jediného čistého záväzku vo vzťahu k skutočným alebo odhadovaným stratám alebo skutočným alebo odhadovaným ziskom, vzniknutým v súvislosti s ukončením alebo zrušením jedného alebo viacerých obchodov uzavretých v súvislosti s takou zmluvou o záverečnom vyrovnaní ziskov a strát alebo podľa takej zmluvy o záverečnom vyrovnaní ziskov a strát. Spôsob výpočtu výšky takého jediného čistého záväzku si zmluvné strany dohodnú v zmluve o záverečnom vyrovnaní ziskov a strát, pričom výpočet sa uskutočňuje s ohľadom na skutočné alebo odhadované straty, prípadne skutočné alebo odhadované zisky zmluvných strán týkajúce sa akýchkoľvek platieb alebo plnení, ktoré by boli uhradené alebo uskutočnené, ak by nedošlo k udalosti, ktorá spôsobila ukončenie alebo zrušenie jedného alebo viacerých takých obchodov, vrátane akýchkoľvek nákladov alebo výnosov vzniknutých v súvislosti s takým ukončením alebo zrušením; výpočet môže vychádzať z kotácií úrokových sadzieb, výmenných kurzov alebo cien získaných od iných účastníkov príslušných finančných trhov v súvislosti s takými ukončenými alebo zrušenými obchodmi.	(2) In accordance with requirements of an agreement for the close-out netting of profits and losses, the close-out netting of profits and losses calculates the amount of a single net obligation in relation to real or anticipated losses and/or real or anticipated profits incurred in connection with the termination or cancellation of one or more transactions concluded in connection with such an agreement for the close-out netting of profits and losses or according to such agreement for the close-out netting of profits and losses. A method for calculating the amount of such single net obligation shall be agreed upon by the contracting parties in the agreement for the close-out netting of profits and losses, where the calculation shall be made taking into account the real or anticipated losses and/or real or anticipated profits of the contracting parties relating to any payments or performance which would have been paid or carried out if there were no event causing the termination or cancellation of one or more of such transactions, including any costs or proceeds incurred in connection with such termination or cancellation; the calculation may be based on quotations of interest rates, exchange rates or prices obtained from other participants in relevant financial markets in connection with such terminated or cancelled transactions.
	(3) Vyhlásenie konkurzu ani povolenie reštrukturalizácie nemá žiadne účinky na záverečné vyrovnanie ziskov a strát podľa zmluvy o záverečnom vyrovnaní ziskov a strát. Ak zmluvné strany uzatvorili obchody	(3) Neither a declaration of bankruptcy nor authorisation of reorganisation shall have any effect on the close-out netting of profits and losses made

	podľa zmluvy o záverečnom vyrovnaní ziskov a strát alebo v súvislosti s ňou a dôjde k ukončeniu alebo zrušeniu obchodov, ktoré podliehajú záverečnému vyrovnaniu ziskov a strát podľa tejto zmluvy o záverečnom vyrovnaní ziskov a strát, vo vzťahu k týmto obchodom bude splatný iba jediný čistý záväzok, ktorého výška sa určí spôsobom stanoveným v zmluve o záverečnom vyrovnaní ziskov a strát. Ak pohľadávku vo vzťahu k takému čistému záväzku podľa zmluvy o záverečnom vyrovnaní ziskov a strát má úpadca voči druhej strane zmluvy o záverečnom vyrovnaní ziskov a strát, správca takú pohľadávku uplatní voči druhej strane iba vo výške určenej pri záverečnom vyrovnaní ziskov a strát. Ak pohľadávku vo vzťahu k takému čistému záväzku podľa zmluvy o záverečnom vyrovnaní ziskov a strát má druhá strana zmluvy o záverečnom vyrovnaní ziskov a strát, môže takú pohľadávku uplatniť iba prihláškou vo výške určenej pri záverečnom vyrovnaní ziskov a strát. (4) Odstúpenie od zmluvy, ktorej súčasťou je zmluva o záverečnom vyrovnaní ziskov a strát, sa nedotýka ustanovení o záverečnom vyrovnaní ziskov a strát, ktoré sú jej súčasťou. Ak zmluvné strany uzatvorili obchody podľa zmluvy o záverečnom vyrovnaní ziskov a strát alebo v súvislosti s ňou a dôjde k odstúpeniu od takej zmluvy o záverečnom vyrovnaní ziskov a strát, vo vzťahu k obchodom, ktoré podliehajú záverečnému vyrovnaniu ziskov a strát podľa takej zmluvy o záverečnom vyrovnaní ziskov a strát, bude splatný	according to an agreement for the close-out netting of profits and losses. If the contracting parties concluded transactions according to the agreement for the close-out netting of profits and losses or in connection with such agreement, and the transactions which are subject to the close-out netting of profits and losses according to the agreement will be terminated or cancelled, only the single net obligation shall be payable in relation to these transactions, and its amount shall be determined by a method set out in the agreement for the close-out netting of profits and losses. If a bankrupt has a claim against the other contracting party to an agreement for the close-out netting of profits and losses in relation to such net obligation according to an agreement for the close-out netting of profits and losses, the administrator shall make a claim against the other party only for the amount determined by the close-out netting of profits and losses. If the other contracting party to an agreement for the close-out netting of profits and losses has a claim in relation to such net obligation according to the agreement for the close-out netting of profits and losses, it may assert such claim only to the extent of the amount determined by the close-out netting of profits and losses. (4) Withdrawal from an agreement, part of which forms an agreement for the close-out netting of profits and losses, shall be without prejudice to the provisions for the close-out netting of profits and losses which form a part of such agreement. If the contracting parties concluded such transactions

	iba jediný čistý záväzok, ktorého výška sa určí spôsobom stanoveným v takej zmluve o záverečnom vyrovnaní ziskov a strát. Ak pohľadávku vo vzťahu k takému čistému záväzku podľa takej zmluvy o záverečnom vyrovnaní ziskov a strát má úpadca voči druhej strane takej zmluvy o záverečnom vyrovnaní ziskov a strát, správca takú pohľadávku uplatní voči druhej strane iba vo výške určenej pri záverečnom vyrovnaní ziskov a strát. Ak pohľadávku vo vzťahu k takému čistému záväzku podľa takej zmluvy o záverečnom vyrovnaní ziskov a strát má druhá strana takej zmluvy o záverečnom vyrovnaní ziskov a strát, môže takú pohľadávku uplatniť iba vo výške určenej pri záverečnom vyrovnaní ziskov a strát. --- 32) § 152me Občianskeho zákonníka **Zákon č. 635/2004 Z. z. ktorým sa mení a dopĺňa zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch) v znení neskorších predpisov a o zmene a doplnení niektorých zákonov** **§ 53a** (1) Ustanovenia § 45 ods. 3 a 4, § 46, § 50 ods. 3, § 51 ods. 4 až 7 sa nepoužijú pri záložnom práve k cenným papierom, ak záložný veriteľ a záložca patria medzi tieto osoby: a) orgány verejnej moci členského štátu,	pursuant to an agreement for the close-out netting of profits and losses or in connection with it, and such agreement for the close-out netting of profits and losses will be withdrawn, a single net obligation shall only be payable in relation to transactions which are subject to such agreement for the close-out netting of profits and losses, and the amount of the obligation shall be determined by a method set out in such agreement for the close-out netting of profits and losses. If a bankrupt has a claim against the other contracting party to such agreement for the close-out netting of profits and losses, or in relation to such net obligation pursuant to such agreement for the close-out netting of profits and losses, the administrator shall make a claim against the other party only for the amount determined by the close-out netting of profits and losses. If the other contracting party to such agreement for the close-out netting of profits and losses has a claim in relation to such net obligation pursuant to such agreement for the close-out netting of profits and losses, it may assert such claim only to the extent of the amount determined by the close-out netting of profits and losses. --- 32) Article 152me of the Civil Code **Act 635/2004 Z. z. amending Act 566/2001 Z. z. on Securities and Investment Services and on Amendments to Certain Laws (Act on Securities) as amended, and on Amendments to Certain**

	b) Národná banka Slovenska alebo centrálna banka iného štátu, Európska centrálna banka, Medzinárodný menový fond, Európska investičná banka, medzinárodná rozvojová banka /47a/ a Banka pre medzinárodné zúčtovanie, c) banka, zahraničná banka, obchodník s cennými papiermi, zahraničný obchodník s cennými papiermi, poisťovňa, zahraničná poisťovňa, správcovská spoločnosť, zahraničná správcovská spoločnosť, inštitúcia elektronických peňazí, zahraničná inštitúcia elektronických peňazí, subjekt kolektívneho investovania a zahraničný subjekt kolektívneho investovania, d) centrálny depozitár cenných papierov, zahraničný centrálny depozitár alebo osoba, ktorej predmetom činnosti je zúčtovanie a vyrovnanie obchodov s investičnými nástrojmi, e) iné osoby, ako sú uvedené v písmenách a) až d), s výnimkou fyzických osôb, ak je druhou zmluvnou stranou niektorá z osôb uvedených v písmenách a) až d). ---------- /47a/ § 2 písm. l) opatrenie Národnej banky Slovenska zo 16. januára 2004 č. 4/2004 o primeranosti vlastných zdrojov financovania bánk (oznámenie č. 36/2004 Z. z.) **§ 53b** (3) Ak pohľadávka zabezpečená zmluvným záložným právom k cennému papieru podľa § 53a	**Laws** **Article 53a** (1) Provisions of Article 45 (3) and (4), Article 46, Article 50 (3), Article 51 (4) to (7) shall not apply to a pledge of securities, if the pledgor and pledgee is one of the following: (a) a public authority of a Member State, (b) the National Bank of Slovakia (Národná banka Slovenska) or the central bank of another state, the European Central Bank, International Monetary Fund, European Investment Bank, The International Bank for Reconstruction and Development **[Editing note: It is not clear, but it is assumed that the IBRD is intended]**[47a] and Bank for International Settlements, (c) a bank, foreign bank, stockbroking firm, foreign stockbroking firm, insurance company, foreign insurance company, asset management company, foreign asset management company, electronic money institution, foreign electronic money institution, collective investment undertaking and foreign collective investment undertaking, (d) central securities depository, foreign central securities depository, or an entity whose business is the clearing and settlement of transactions in investment instruments,

	ods. 1 nie je riadne a včas splnená, záložný veriteľ je oprávnený založený cenný papier predať alebo nadobudnúť vlastnícke právo k založenému cennému papieru, ak tak bolo dohodnuté v zmluve o založení cenného papiera a zároveň bol dohodnutý aj spôsob ocenenia založeného cenného papiera. O výkone záložného práva k cennému papieru záložný veriteľ nie je povinný vopred informovať záložcu. Záložný veriteľ je oprávnený založený cenný papier predať alebo nadobudnúť vlastnícke právo k založenému cennému papieru odo dňa nasledujúceho po dni, v ktorom nebola riadne a včas splnená pohľadávka zabezpečená zmluvným záložným právom k cennému papieru.	(e) other entities than those referred to in (a) to (d), other than individuals, if the other contracting party is one of the entities referred to in (a) to (d). ---------- - 47a Article 2 (l) of Provision of Národná banka Slovenska No. 4/2004 on capital adequacy of banks (Announcement No. 36/2004 Z. z.) **Article 53b** (3) If a claim secured by a contractual pledge of securities pursuant to Article 53a (1) is not paid when due, the pledgor may sell the pledged securities or acquire ownership of the pledged securities, if so provided for in the contract for the pledge of securities and if the method of valuation of the pledged securities has also been agreed. The pledgor is not obliged to notify the pledgee in advance of the execution of the pledge of securities. The pledgor may sell the pledged securities or acquire ownership of the pledged securities from the day following the day on which a claim secured by the contractual pledge of securities has not been paid when due.
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions **Article 23**	**Zákon č. 7/2005 Z. z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov, účinný od 1. januára 2006** **§ 54** **Započítanie pohľadávok**	**Act No. 7/2005 Z. z. on Bankruptcy and Reorganisation and on Amendments to the Certain Laws** **applicable as of 1 January 2006** **Article 54**

Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	(1) Proti pohľadávke, ktorá vznikla úpadcovi po vyhlásení konkurzu, nie je možné započítať pohľadávku, ktorá vznikla voči úpadcovi pred vyhlásením konkurzu; to isté platí aj pre podmienené pohľadávky, ktoré sa v konkurze uplatňujú prihláškou. (2) Pohľadávku neprihlásenú spôsobom ustanoveným týmto zákonom, prihlásenú pohľadávku nadobudnutú prevodom alebo prechodom po vyhlásení konkurzu a pohľadávku nadobudnutú na základe odporovateľného právneho úkonu nie je možné započítať proti žiadnej úpadcovej pohľadávke. (3) Započítanie iných pohľadávok nie je vylúčené.	**Set-off of claims** (1) It shall not be possible to set off a claim against a bankrupt, arising after the declaration of bankruptcy, against a claim of the bankrupt which arose prior to the declaration of bankruptcy; the same shall apply to conditional claims which should be registered under the bankruptcy proceedings in the form of an application. (2) It shall not be possible to set-off a claim which has not been filed in the form laid down by this act, a filed claim which has been acquired by assignment or transfer after the declaration of bankruptcy, or a claim acquired on the basis of a challengeable transaction against any of the bankrupt’s claims. (3) Set-off of other claims shall not be excluded.
Article 25 Netting agreements Netting agreements shall be governed solely by the law of the contract which governs such agreements.	**§ 192** (1) Záverečné vyrovnanie ziskov a strát sa v konkurze riadi výlučne právom členského štátu, ktorým sa spravuje zmluva o záverečnom vyrovnaní ziskov a strát. (2) Obchod so spätným prevodom sa v konkurze riadi výlučne právom členského štátu, ktorým sa spravuje zmluva o obchode so spätným prevodom. (3) Obchod uskutočnený na organizovanom trhu sa	**Article 192** (1) In bankruptcy proceedings, close-out netting of profits and losses shall be governed solely by the law of the Member State governing the agreement for the close-out netting of profits and losses. (2) In bankruptcy proceedings, a repurchase agreement shall be governed solely by the law of the Member State governing the contract for the repurchase agreement.

	v konkurze riadi výlučne právom členského štátu, ktorým sa spravuje zmluva, na základe ktorej bol obchod uzatvorený. (4) V konkurze nemožno odporovať právnemu úkonu, ak ten, proti komu sa právo odporovať právnemu úkonu uplatňuje, preukáže, že právny úkon sa spravuje právom iného členského štátu a že toto právo nepripúšťa možnosť odporovať tomuto právnemu úkonu. (5) Účinky vyhlásenia konkurzu na prebiehajúce súdne konanie týkajúce sa majetku podliehajúceho konkurzu sa riadia výlučne právom členského štátu, v ktorom sa súdne konanie vedie.	(3) In bankruptcy proceedings, a transaction carried out in an organised market shall be governed solely by the law of the Member State governing the contract on the basis of which the transaction was concluded. (4) In bankruptcy proceedings, it shall not be possible to challenge a transaction if the person against whom the right to challenge a transaction is exercised proves that the transaction is governed by the law of another Member State, and the applicable law does not allow such transaction to be challenged. The effect of a declaration of bankruptcy on pending court proceedings relating to property which is subject to such bankruptcy shall be governed solely by the law of the Member State in which the court proceedings are conducted.

REPUBLIC OF SLOVENIA		
Relevant Directives provisions	National netting legislation	Unofficial translation into English
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements	**Zakon o finančnih zavarovanjih (ZFZ)**	**Collateralisation Act**
	Zbirni podatki čistopisa:Prva objava: Uradni list RS, št. 47-2235/2004, stran 6277 Datum objave: 30.4.2004 Veljavnost: od 1.5.2004	Adopted on 22 April 2004 Published in Official Gazette of RS No 47/2004 of 30 April 2004, p. 6277 Entry into force on 1 May 2004
Article 2 (1) (n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.	**3. člen** Posamezni izrazi, uporabljeni v tem zakonu, imajo za potrebe tega zakona naslednji pomen: […] 11. Dogovor o pobotu zaradi predčasnega prenehanja pomeni, da se z nastankom pogojev za izvršitev zavarovanja štejejo vse nedospele zavarovane terjatve za dospele, da se nedenarne terjatve spremenijo v denarne terjatve in da se lahko med seboj pobotajo po njihovi trenutni vrednosti (clone-out netting);	**Article 3** For the purposes of this Act, the terms used shall have the following meanings: […] 11. Agreement on set-off due to premature winding-up shall mean that, upon the occurrence of conditions for the enforcement of a collateral arrangement, all non-due secured claims shall be considered as due, that non-monetary claims shall be converted into monetary claims, and that they may be set off at their current value (close-out netting); […]
Article 7		

Recognition of close-out netting provisions 1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms: (a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or (b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights. 2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4) [Enforcement of financial collateral arrangements], unless otherwise agreed by the parties. **Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions** **Article 23** Set-off 1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law	[…] **10. člen** (1) V primeru finančnega zavarovanja iz 4. točke 3. člena tega zakona, lahko prejemnik finančnega zavarovanja, če ni s pogodbo o finančnem zavarovanju dogovorjeno drugače, v času trajanja finančnega zavarovanja razpolaga s finančnim instrumentom ali gotovino. (2) Če ni s pogodbo o finančnem zavarovanju dogovorjeno drugače, lahko prejemnik finančnega zavarovanja takoj, ko se izpolnijo pogoji za izvršitev zavarovanja, obdrži v zavarovanje preneseno gotovino ali finančni instrument, proda finančni instrument, ali opravi pobotanje z zavarovano terjatvijo. Presežek vrednosti mora prenesti na dajalca finančnega zavarovanja. (3) Če ni s pogodbo o finančnem zavarovanju dogovorjeno drugače, mora prejemnik finančnega zavarovanja, ki v času trajanja zavarovanja razpolaga s finančnimi instrumenti ali gotovino, najkasneje na dan dospelosti zavarovane terjatve zagotoviti nadomestni predmet. (4) Če pogoj za izvršitev zavarovanja nastane pred dnevom, ko je prejemnik finančnega zavarovanja dolžan zagotoviti nadomestno zavarovanje, lahko prejemnik zavarovanja opravi	**Article 10** (1) In the case of a financial collateral arrangement referred to in point 4 of Article 3 of this Act, within the term of a financial collateral arrangement, and unless otherwise agreed in the contract on financial collateral, the financial collateral taker may dispose of a financial instrument or cash. (2) Unless otherwise agreed in a contract on a financial collateral, when the conditions for the enforcement of a collateral arrangement are fulfilled, the financial collateral taker may retain cash or a financial instrument transferred in a collateral arrangement, sell a financial instrument, or make a set-off against the secured claim. He shall transfer the excess value to the financial collateral provider. (3) Unless otherwise agreed in the contract on financial collateral, a financial collateral taker who disposes of financial instruments or cash within the term of a collateral arrangement, must provide a substitute subject, at the latest on the contractually determined due date for the secured claim. (4) If the conditions for enforcement of a collateral arrangement are fulfilled before the date when the taker of financial collateral is obliged to provide substitute collateral, the collateral taker may make a set-off due to the premature winding-up.

applicable to the credit institution's claim. 2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).	pobotanje zaradi predčasnega prenehanja. **12. člen** Dogovor o pobotu zaradi predčasnega prenehanja ostane v veljavi tudi v primeru, kadar je proti dajalcu ali prejemniku finančnega zavarovanja začet ali je v teku postopek prisilne poravnave, stečaja ali neprostovoljne likvidacije, ali kadar prejemnik finančnega zavarovanja odstopi, obremeni ali drugače razpolaga z zavarovano terjatvijo.	**Article 12** An agreement for set-off due to premature winding-up shall remain valid even in cases where compulsory composition, bankruptcy and liquidation proceedings have been commenced or are ongoing against the financial collateral taker or provider, or where the financial collateral taker abandons, encumbers or in some other manner disposes of the secured claim.
Article 25 Netting agreements Netting agreements shall be governed solely by the law of the contract which governs such agreements.	**Zakon o mednarodnem zasebnem pravu in postopku (ZMZPP) (Ur.l. RS, št. 56/1999)** **19. člen** (1) Za pogodbo se uporabi pravo, ki sta si ga izbrali pogodbeni stranki, če ta zakon ali mednarodna pogodba ne določa drugače.	**Private International Law and Procedure Act (Official Gazette RS, No 56/1999)** **Article 19** (1) The law stipulated by the contractual parties shall apply to the contract, unless this Act or an international treaty provide otherwise.

Annex II

Mr. Sáinz de Vicuña, Antonio	Chairman
Ms. Aggergaard, Birthe Mr. Mortensen, Michael (Alternate)	Nordea Bank Denmark
Ms. Alonso Jimenez, Nuria	Banco Bilbao Vizcaya Argentaria
Mr. Blokbergen, Cornelius	ING Groep
Mr. Bloom, David T.	HSBC Holdings
Ms. Butragueño, Natalia	BSCH
Mr. Daunizeau, Jean Michel Mrs. Heriaud-Chalant, Betarice	Crédit Agricole
Mr. Ferreira Malaquias, Pedro	Uria & Menéndez (on behalf of Portuguese Euribor banks)
Ms. Gillen, Marie-Paule	Kredietbank Luxembourg
Mr. Harding, Mark	Barclays Bank
Mr. Hartenfels, Holger	Deutsche Bank
Mr. Jardel, Etienne	Société Génerale
Dr. Kienle, Christopher	Dresdner Bank
Mr. de Lillo, Emilio Mr. Stringat, Mauro (Alternate)	San Paolo IMI
Mr. Löber, Klaus	Secretary, ECB
Mr. Maladorno, Antonio	Unicredito Italiano
Mr. Mijs, Wim	ABN Amro Bank
Ms. Moran, Helen	AIB
Mr. Myhrman, Olof	SEB
Mr. Nierop, Erwin	ECB
Dr. Parche, Ulrich	HypoVereinsbank
Dr. Poggemann, Klaus	WestLB
Mr. Ross-Stewart, Charles Ms. Moir, Carol	UBS Warburg
Mr. Tillian, Frank	BankAustria Creditanstalt
Dr. Tsibanoulis, Dimitris	Tsibanoulis & partners (on behalf of Greek Euribor banks)

Mr. de Vauplane, Hubert	BNP Paribas
Ms. Viitala, Merja	Nordea Bank Finland
Mr. Vloemans, Dirk	Fortis