LAW
ON FINANCIAL COLLATERAL

I. BASIC PROVISIONS

Subject matter and scope

Article 1

This Law lays down the conditions and manner of providing specific security for the performance of financial obligations subject to financial collateral arrangements entered into by financial market participants.

The scope of this Law is to achieve and improve the legal certainty and efficiency relating to the performance of obligations in the financial market in order to preserve and strengthen the stability of the financial system.

Financial collateral arrangement

Article 2

The financial collateral arrangement means an arrangement whereby the collateral provider, for the purpose of securing the performance of his or another person's financial obligation, undertakes to transfer title to collateral to the collateral taker or to establish a security right on the collateral in favour of the collateral taker, and the collateral taker undertakes to return to the collateral provider the collateral received or equivalent collateral in accordance with the terms of this arrangement upon and/or concurrently with the discharge of the financial obligation.

Subject to the financial collateral arrangement under which title to collateral is transferred, the collateral provider shall transfer to the collateral taker full ownership of:

1) cash or financial instruments constituting the collateral,
2) credit claims constituting the collateral.

The arrangement referred to in paragraph 2 of this Article shall also include repurchase/reverse repurchase agreements on the purchase/sale of financial instruments.

Where title to collateral is transferred to the collateral taker under the terms of the financial collateral arrangement, the collateral taker shall, unless otherwise provided, have the right of use and disposal of the cash and the financial instruments constituting the collateral, including the right of alienation of such cash and instruments.

Where the collateral taker acquires the security right on the collateral under the financial collateral arrangement, the collateral provider shall retain the title to such collateral.

The financial collateral arrangement may lay down the procedures for the valuation of the collateral and/or of the financial obligation.

The financial collateral arrangement may be in the form of a separate agreement or may form part of a master or another agreement.
The financial collateral arrangement shall be made out in writing or in electronic form and/or on a durable data carrier which enables the storing and reproduction of source data in unchanged form.

**Parties to the financial collateral arrangement**

**Article 3**

The provisions of this Law shall apply to financial collateral arrangements where the parties, the collateral provider and the collateral taker, belong to one of the following categories of entities:

1) Republic of Serbia, autonomous province, local government unit and public authorities, including public law bodies and organisations charged with the management of public debt and/or authorised to hold accounts for customers;

2) National Bank of Serbia;

3) financial institution having its head office in the Republic of Serbia subject to supervision by a competent authority, including a bank, insurance undertaking, broker-dealer company, investment fund management company, investment fund, voluntary pension fund management company, electronic money institution, payment institution, public postal operator in relation to the financial services it provides, factoring company and financial leasing company;

4) participant in the payment system and the securities settlement system having its head office in the Republic of Serbia, including the Central Securities Depository (hereinafter: Central Depository), central counterparty, settlement agent, clearing house and the system operator, regulated under the law governing payment services and/or the law governing the capital market;

5) European Union, European Union member state (hereinafter: member state), third country and public authorities in these countries, including public law bodies and organisations charged with the management of public debt and/or authorised to hold accounts for customers, other than entities whose obligations are guaranteed by the government, but which do not belong to the categories of entities referred to in items 6), 8), 9) and 10) of this paragraph;

6) European Central Bank and other central banks;

7) International Monetary Fund, Bank for International Settlements, European Investment Bank and multilateral development banks assigned the lowest credit risk weight subject to the regulation of the National Bank of Serbia governing capital adequacy of banks;

8) financial institution within the meaning of European Union regulations subject to supervision by a competent authority, including a credit institution, investment firm authorised to provide one or more investment services, financial institution as defined in European Union regulations governing credit institutions, institution based in a member state which performs the activity of a credit institution but is not subject to European Union regulations governing credit institutions, insurance undertaking, undertaking for collective investment in transferable securities and companies for management of undertakings for collective investment in transferable securities;

9) central counterparty, settlement agent and clearing house within the meaning of European Union regulations governing settlement finality in payment and securities settlement systems, including similar institutions acting in the futures, options and other financial derivatives markets under the regulations of the member state;
10) legal person which, in the capacity of a representative or otherwise, acts on behalf and/or for the account of the entities listed in items 1) to 9) of this paragraph or of any holders of debt securities or holders of other transferable securitised debt instruments issued by such persons.

An entity other than those included in paragraph 1 of this Article and a natural person may be a party to a financial collateral arrangement if they enter into this arrangement with an entity referred to in paragraph 1 of this Article.

A European Union member state within the meaning of paragraph 1, item 5) of this Article shall be a European Union member state and a state signatory to the Agreement on the European Economic Area.

A third country, within the meaning of paragraph 1, item 5) of this Article, shall be a foreign country which is not a European Union member state or a state signatory to the Agreement on the European Economic Area.

**Special rules for natural persons**

**Article 4**

A natural person may only be a collateral provider within the meaning of this Law, that is, the provider of collateral in respect of which the collateral taker acquires the security right.

A natural person, within the meaning of this Law, shall mean a consumer, entrepreneur, farmer, a natural person who carries on a professional activity or any other natural person regardless of whether they carry on an activity and/or whether they are entering the financial collateral arrangement for business and professional activity purposes, providing they do not belong to one of the categories of entities referred to in Article 3, paragraph 1 of this Law.

Prior to entering into a financial collateral arrangement where a natural person is the collateral provider, the collateral taker shall provide information and explanations to such person relating to the financial collateral arrangement, particularly with regard to the requirements for the realisation of the collateral, and shall submit, after entering into the arrangement and at such person’s request, information, data and instructions relating to these requirements and their contractual relationship in writing or on another durable data carrier.

Under the financial collateral arrangement where a natural person is the collateral provider, the collateral taker may realise the collateral and/or settle the claim in accordance with Articles 14 and 15 of this Law no earlier than eight days from the day of giving notice to the collateral provider and the debtor, if they are not the same person.

The provisions of this Law shall be without prejudice to the obligations of the collateral taker to the collateral provider as laid down in the law governing the protection of financial service consumers or the provisions of another law regulating consumer protection or the protection of consumers of services provided by financial institutions.

**Financial obligation**

**Article 5**

A financial obligation shall be an obligation which is secured by a financial collateral arrangement and which gives a right to the creditor to cash settlement and/or delivery and/or transfer of financial instruments.
A financial obligation may be present or future, conditional or unconditional, standing or temporary, of a specified kind and/or class, as well as another financial obligation arising from an arrangement, pursuant to law.

A financial obligation may be denominated in dinars or in a foreign currency.

II. COLLATERAL

Types of collateral

Article 6

Within the meaning of this Law, the collateral may be:

1) cash;
2) financial instruments;
3) credit claims.

Revenues and other inflows arising from the collateral shall belong to the collateral taker, unless otherwise provided in the financial collateral arrangement.

The acquisition and/or transfer of cash, financial instruments and credit claims constituting the collateral within the meaning of this Law between a resident and/or a non-resident – entities referred to in Article 3 of this Law, and the establishing of a security right on these types of collateral, shall be subject to the restrictions laid down in regulations governing foreign exchange operations.

Cash

Article 7

Cash constituting the collateral shall include dinar or foreign currency amounts in a deposit, payment or another designated money account.

The cash referred to in paragraph 1 of this Article shall not include banknotes and coins.

Financial instruments

Article 8

Financial instruments constituting the collateral shall mean securities, money market instruments and other financial instruments within the meaning of the law governing the capital market which are freely transferrable and/or negotiable.

The collateral referred to in paragraph 1 of this Article shall not include own shares of the collateral provider.

Financial instruments constituting the collateral shall be valued at their market value, unless otherwise provided in the financial collateral arrangement.

Where financial instruments constitute the collateral within the meaning of this Law, the law of the country of the head office of the authorised institution maintaining the register of these instruments and/or the account where these instruments are registered shall apply to financial collateral arrangements, with regard to matters relating to the type and legal nature of financial instruments and the rights arising from such instruments, requirements for entering into financial collateral arrangements and the provision of financial instruments as collateral, determination of rights in respect of third persons under financial instruments, and claims settlement and close-out netting procedures.

Credit claims
Article 9

Credit claims constituting the collateral shall mean pecuniary claims arising out of an agreement on a loan granted by a bank or another person which, in accordance with law, is authorised to grant loans.

Only the entities referred to in paragraph 1 of this Article may agree on, transfer and acquire as collateral the credit claims where the debtor is a natural person, subject to the restrictions defined by the law governing the protection of financial service consumers.

A bank may agree on and transfer pecuniary claims as collateral in respect of a legal person under a loan agreement, subject to the restrictions defined by the law and regulations of the National Bank of Serbia governing risk management in banks.

A credit claim may constitute the collateral if the following conditions are met:

1) that the debtor under the credit claim has given its consent to the transfer and processing of only such data which are necessary to the collateral taker for the purposes of realising such collateral, and which are considered a banking or other secret in accordance with law,

2) that the debtor under the credit claim has given a statement that he shall not set off his credit claim in respect of the creditor which has been provided as financial collateral, for the period of validity of such collateral.

Equivalent collateral

Article 10

Equivalent collateral means:

1) in relation to cash – a payment of the same amount and in the same currency;

2) in relation to financial instruments – financial instruments of the same issuer, forming part of the same issue or class and of the same nominal amount, currency and other essential elements as the originally provided collateral, or other collateral where this is specified under a financial collateral arrangement.

The equivalent collateral and/or the exercise of rights and discharge of obligations arising from such collateral shall be subject to the provisions of the same financial collateral arrangement to which the original financial collateral was subject.

II. PROVISION, USE AND CHANGE OF COLLATERAL

Provision of collateral

Article 11

The provisions of this Law shall apply only to financial collateral arrangements where the collateral taker has been provided collateral and/or where the collateral taker, his representative or another person acting on behalf and/or for the account of the collateral taker has, on the basis of the collateral transferred or the security right established, acquired possession or control of the collateral (hereinafter: provision of collateral), which shall be evidenced in writing.

The collateral taker shall acquire the collateral and/or the security right on the collateral at the time when such collateral is provided to the collateral taker, within the meaning of this Law.
Evidence in writing of the provision of the collateral shall be considered appropriate if it is sufficient to establish clearly that the collateral has been provided in accordance with the financial collateral arrangement.

In order to establish that the collateral has been provided, it is sufficient to provide evidence in writing:

1) that cash has been credited to and/or forms a credit in a designated money account – where cash is provided as collateral,

2) that financial instruments have been transferred to a designated financial instruments account and/or that the security right on the financial instrument has been registered in favour of of the collateral taker – where financial instruments are provided as collateral,

3) that the collateral taker has received, in addition to the financial collateral arrangement, a list of credit claims which shall contain details on the debtor under such claim, the amount of the claim (principal, interest and fees) and the date of issuance of the statements referred to in Article 9, paragraph 4 of this Law – where credit claims are provided as collateral.

The Central Depository shall prescribe detailed conditions and manner of recording the transfer of financial instruments and/or registering the security right on the financial instrument as collateral under a financial collateral arrangement.

The National Bank of Serbia may prescribe detailed conditions and manner of recording the transfer of cash and credit claims as collateral under financial collateral arrangements.

**Right of use and disposal of security financial collateral**

**Article 12**

The financial collateral arrangement may set out that the collateral taker shall have the right of use and/or the right of disposal of the collateral to which his security right is registered (hereinafter: security collateral).

The scope and content of the right of use and disposal referred to in paragraph 1 of this Article shall be regulated by the financial collateral arrangement, and these rights may be equal to the rights which the collateral taker would have if he were the owner of the collateral.

Where a collateral taker exercises the right of use and/or disposal of the security collateral, he shall:

– at the latest on the due date for the performance of the financial obligation, return and/or transfer either the same or equivalent collateral to the collateral provider in accordance with the financial collateral arrangement; and/or

– on the due date for the performance of the financial obligation, to the extent that the terms of the financial collateral arrangement so provide, set off the value of the collateral against and/or apply that value in discharge of the financial obligation.

Where the collateral taker, under paragraphs 1 and 2 of this Article, alienates the security collateral, the security right of the collateral taker on such collateral shall cease and a third person shall acquire this collateral free from any encumbrance.

The right of use and disposal of the collateral referred to in this Article shall cease with the discharge of the financial obligation or settlement against the collateral in accordance with Articles 15 and 16 of this Law or the netting of claims and obligations in accordance with Article 17 of this Law.
When using and disposing of the security collateral, the collateral taker shall act with increased care, according to professional rules and customs (the standard of care of a good expert), taking into account market circumstances.

The right of use and disposal of the security collateral referred to in this Article shall not apply to credit claims.

**Change of collateral**

**Article 13**

The financial collateral arrangement may lay down:

1) an obligation for the collateral provider to top-up, i.e. to provide additional collateral if the value of the collateral decreases relative to the financial obligation;
2) the right of the collateral provider to withdraw a part of the collateral, if the value of collateral increases relative to the financial obligation;
3) the right of the collateral provider to substitute the provided collateral with other collateral of at least the same value.

Where the financial collateral provider makes the substitution of collateral under paragraph 1, item 3) of this Article, the financial collateral provider shall provide, i.e. give to the collateral taker new collateral no later than by the time of withdrawal and/or substitution of the previously provided collateral.

The terms of the financial collateral arrangement relating to the originally provided collateral shall apply to any such new and/or additional collateral.

The right of the collateral provider to withdraw the collateral and/or substitute the provided collateral shall not prejudice the rights of the collateral taker in respect of collateral under the financial collateral arrangement.

**III. REALISATION OF COLLATERAL**

**Requirements for realisation of collateral**

**Article 14**

The requirements for the realisation of collateral shall include default on a due financial obligation or another similar event or circumstance specified in the financial collateral arrangement, upon the occurrence of which:

1) the collateral taker is entitled to realise his claim from the collateral through out-of-court proceedings in accordance with Articles 15 and 16 of this Law; and/or
2) claims and obligations shall be netted off between the collateral provider and the collateral taker in accordance with Article 17 of this Law.

The collateral shall be realised in the manner laid down in the financial collateral arrangement, in accordance with Articles 15 to 17 of this Law.

Unless otherwise specified in the financial collateral arrangement, the realisation of collateral may be:

1) without submitting prior notice to the collateral provider or the debtor under the financial obligation (where this is not the same person as the collateral provider) of the intention to realise collateral, except in the case referred to in Article 4, paragraph 4 of this Law;
2) without approval or decision of a court, public authority or other person;
3) without public auction or in any other prescribed manner;
4) without specifying any additional time period that must have elapsed from the occurrence of the enforcement event until the realisation.

The collateral shall be realised notwithstanding the commencement of bankruptcy or liquidation proceedings or reorganisation measures in respect of the collateral provider or the collateral taker, nor may any other measure or consent of the competent authority in such proceedings constitute a prior or subsequent condition for the realisation of collateral.

**Settlement of claims against security collateral**

**Article 15**

Upon the occurrence of an enforcement event under Article 14 of this Law, the collateral taker shall no longer have the obligation to return to the collateral provider the collateral received or equivalent collateral, but may settle his claims against the security collateral by:

1) direct settlement against cash constituting the collateral, by setting off the amount of cash against and/or applying it in discharge of the financial obligation;

2) sale or appropriation, i.e. retention of ownership of the financial instrument constituting the collateral (the collateral taker acquires the title to the financial instrument);

3) sale or appropriation, i.e. retention of the credit claim constituting the collateral (the collateral taker becomes the holder of the claim).

The collateral taker shall settle his claims through sale of the security collateral by offsetting the amount of cash proceeds from the sale of such collateral against, and/or using this amount in discharge of, the financial obligation.

The collateral taker shall settle his claims through appropriation of the security collateral – acquisition of title to the financial instrument and/or acquisition of the credit claim, by offsetting the value of the appropriated collateral against, and/or by applying this value in discharge of, the financial obligation.

The appropriation of the security collateral shall only be possible if the collateral taker and the collateral provider have explicitly agreed on such appropriation and the manner of collateral valuation in that case.

The collateral taker shall without delay return any excess security collateral remaining after the settlement of claims to the collateral provider. If otherwise, the collateral taker shall pay the prescribed default interest to the collateral provider for the period elapsed between the settlement date and the date the excess amount is returned.

The collateral taker shall, no later than the day following the day the claims are settled against the collateral, give a notification of the settlement of claims to the collateral provider and debtor under the financial obligation, if they are not the same person, which must contain information on the amount of the settlement and any excess amount referred to in paragraph 5 of this Article.

At the time of settling the claims and/or valuing the collateral and calculating the financial obligation, the collateral taker shall act with the standard of care of a good expert, taking into account market circumstances.

**Settlement of claims against acquired collateral**

**Article 16**
Where the collateral taker has acquired the collateral under a financial collateral arrangement referred to in Article 2, paragraph 2 of this Law, and upon the occurrence of an enforcement event under Article 14 of this Law, the collateral taker shall no longer have the obligation to return to the collateral provider the collateral received or equivalent collateral but may settle his claim against the acquired collateral.

The settlement of claims of the collateral taker in the case of acquired collateral shall be subject to mutatis mutandis application of the provisions on settlement against security collateral referred to in Article 15, paragraphs 3 to 7 of this Law.

**Close-out netting**

**Article 17**

The financial collateral arrangement may lay down that, following the occurrence of an enforcement event in accordance with Article 14 of this Law:

1) mutual obligations in respect of one or more financial collateral arrangements shall be considered due and expressed as a pecuniary obligation, or shall be terminated and replaced by a new pecuniary obligation, in accordance with their estimated current value and/or the value determined as set out in the financial collateral arrangement, and/or

2) mutual claims and obligations of parties are netted (set off) under one or more financial collateral arrangements, so that the difference in the amount of claims (net amount) is payable by the party from whom the larger amount is due to the other party.

The valuation of collateral and the calculation of financial obligations in the case referred to in paragraph 1 of this Article shall be performed with the standard of care of a good expert, taking into account market circumstances.

**IV. APPLICATION OF OTHER REGULATIONS TO THE FINANCIAL COLLATERAL ARRANGEMENT**

**Protection of the financial collateral arrangement in the event of bankruptcy, liquidation and reorganisation measures**

**Article 18**

The rights and obligations arising from a financial collateral arrangement, including the provision, acquisition, change and realisation of collateral, shall be exercised freely regardless of the commencement and continuation of bankruptcy and liquidation proceedings or reorganisation measures in respect of the collateral provider or the collateral taker.

The provisions of the financial collateral arrangement and the provision, acquisition or change of collateral under such arrangement may not be declared invalid or void on the sole basis that the financial collateral arrangement has come into existence or the collateral has been provided, acquired or changed prior to the issuance of an appropriate decision on the commencement of bankruptcy or liquidation proceedings or reorganisation measures, and/or the taking of legal action regarding those proceedings, or in a prescribed period prior to the commencement of bankruptcy or liquidation proceedings or the application of reorganisation measures in respect of such collateral provider or collateral taker.

Where a financial collateral arrangement has come into existence or the collateral was provided, acquired or changed on the day of commencement of
bankruptcy or liquidation proceedings or application of reorganisation measures, but after the moment of issuance of an appropriate decision on the commencement of such proceedings or application of measures, the financial collateral arrangement and the provision, acquisition and change of collateral shall be legally enforceable and binding if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such proceedings or measures.

The invalidation of legal transactions and actions of a bankruptcy debtor who is a financial collateral taker or financial collateral provider shall be subject to the provisions of the law governing bankruptcy, except where they conflict with the provisions of this Law.

Bankruptcy or liquidation proceedings, within the meaning of this Law, mean bankruptcy or liquidation proceedings or another procedure for collective settlement of creditors' claims and claims of shareholders or other members of the company from the debtor's assets, regardless of whether such proceedings are voluntary or compulsory, conducted with the participation of a court or another competent authority.

Reorganisation measures, within the meaning of this Law, mean measures applied by a court or another competent authority intended to preserve or improve the financial situation of the debtor, where such measures affect the acquired rights of third parties, including in particular measures relating to prohibition or restriction of payments, discharge of obligations or a reduction of claims.

Relation to other regulations

Article 19

The collateral referred to in this Law may be agreed in accordance with this Law or another law regulating collateral.

The financial collateral arrangement referred to in this Law shall be subject to the provisions of the law regulating contracts and torts and to the provisions of other regulations, except where they conflict with the provisions of this Law.

The provisions of this Law shall not be to the prejudice of the National Bank of Serbia’s remit relating to the restructuring of a bank or banking group as laid down in the law governing banks, subject to which certain limitations may be set in relation to legal consequences of a financial collateral arrangement, realisation of collateral, close-out netting or in any other way, and the requirements for the realisation of collateral.

V. SUPervision

Supervision of implementation of the provisions of this Law

Article 20

The National Bank of Serbia shall supervise the implementation of the provisions of this Law by entities subject to its supervision under separate laws, in accordance with the provisions of such laws governing the supervisory powers of the National Bank of Serbia.

Where a collateral taker supervised by the National Bank of Serbia in accordance with the provisions of a separate law does not comply with the provisions of this Law, regulations, general terms of business or good business practice relating to financial collateral or obligations under a financial collateral arrangement, the collateral provider or the debtor under a credit claim, where they are natural persons, shall have the right to the protection of their interests in the procedure of protection of
rights and interests under the law regulating the protection of financial service consumers or another separate law and/or regulation of the National Bank of Serbia.

The Securities Commission shall supervise the implementation of the provisions of this Law by entities subject to its supervision under separate laws, in accordance with the provisions of such laws governing the supervisory powers of the Commission.

The ministry in charge of finance shall supervise the entities not included by the supervision referred to in paragraphs 1 and 3 of this Article.

The supervisory authority referred to in paragraphs 1, 3 and 4 of this Article may set out in detail the conditions and manner of supervision of implementation of the provisions of this Law within its remit.

VII. PENALTY PROVISIONS

Offences

Article 21

A legal person shall be fined from RSD 100,000 to RSD 2,000,000 for an offence:

1) if it enters into a financial collateral arrangement where neither of the parties is an entity listed in Article 3, paragraph 1 of this Law, with the intention to apply the provisions of this Law to that arrangement (Article 3);

2) if, as the collateral taker, it acts in breach of the provisions of Article 4, paragraphs 3 and 4 of this Law (Article 4, paragraphs 3 and 4);

3) if it enters into a financial collateral arrangement where the credit claim is the collateral, and the requirements referred to in Article 9, paragraph 4 of this Law are not met (Article 9, paragraph 4);

4) if, as the collateral taker, at the time of settlement against the security collateral, it acts in breach of Article 15, paragraphs 4 and 6 of this Law (Article 15, paragraphs 4 and 6);

5) if, by mutatis mutandis application of Article 15, paragraphs 4 and 6 of this Law, it fails, as the collateral taker, to act in accordance with those provisions at the time of settling the claims against the acquired collateral (Article 16, paragraph 2).

For the actions referred to in paragraph 1 of this Article, a responsible person within a legal person shall also be fined ranging from RSD 20,000 to RSD 150,000.

For the actions referred to in paragraph 1 of this Article, an entrepreneur shall be fined ranging from RSD 30,000 to RSD 500,000.

VIII. FINAL PROVISIONS

Arrangements concluded before the application date of this Law

Article 22

Mutual rights and obligations of entities referred to in Article 3 of this Law under arrangements establishing the collateral and entered into before the start of application of this Law shall be subject to the regulations valid prior to the application date of this Law.

Entry into force

Article 23
This Law shall enter into force on the eighth day following the day of its publication in the RS Official Gazette and shall apply as of 1 January 2017.