

Act to Amend Law of Property Act, Estonian Central Register of Securities Act, Credit Institutions Act, Insurance Activities Act, Bankruptcy Act, Law of Obligations Act, Private International Law Act and Securities Market Act¹

Passed 22 April 2004

(RT² I 2004, 37, 255),

entered into force 1 May 2004.

I. The Law of Property Act (RT I 1993, 39, 590; 1999, 44, 509; 2001, 34, 185; 93, 565; 2002, 47, 297; 53, 336; 99, 579; 2003, 13, 64; 17, 95; 78, 523; 2004, 20, 141) is amended as follows:

§ 1. Subsections 56 (3) and (4) are repealed.

§ 2. Section 56¹ is added to the Act worded as follows:

«§ 56¹. Acquisition in good faith

(1) If, on the basis of information entered in the land register, a person acquires immovable property ownership or a restricted real right by a transaction, information entered in the land register is deemed to be correct with regard to the person unless an objection is entered in the land register concerning the correctness of information entered in the land register or the acquirer knew or should have known that the information entered in the land register was incorrect.

(2) If the right of a person to dispose of a right entered in the land register is restricted for the benefit of a certain person, the restriction is valid with respect to the acquirer only if it is entered in the land register or if the acquirer is or should be aware of the restriction on transfer.

(3) If the making of an entry in the land register is required for the acquisition of immovable property ownership or a restricted real right, the time of submission of the registration application is determinative with respect to the good faith of the acquirer.

(4) The provisions of this section also apply if, on the basis of information entered in the land register, a legal act is performed for the benefit of a person or a transaction is concluded with such person by which a right of disposal not specified in this section over the right entered in the land register is transferred.”

§ 3. Section 314¹ is added to the Act worded as follows:

«§ 314¹. Financial collateral

(1) Encumbrance of a security or a financial claim with the right of security or transfer of the security or financial claim in order to provide collateral is deemed to be financial collateral if the collateral provider and the collateral taker each belong to one of the following categories:

1) a person specified in clauses 6 (2) 1)-7) of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591);

2) a person or organisation specified in paragraph 2 (b) of Article 1 of the Directive 2002/47/EC of the European Parliament and Council on financial collateral arrangements (OJ L 1168, 27.06.2002, p. 43–50);

3) an operator of a securities settlement system specified in subsection 214 (2) of the Securities Market Act;

4) another legal person similar to the persons specified in clauses 1)-3) of this subsection provided that the person has the right to be a collateral provider or a collateral taker according to legislation of a Contracting Party to the EEA or the EU.

(2) Encumbrance of a security or a financial claim with the right of security or transfer of the security or financial claim in order to provide collateral is deemed to be financial collateral also if the collateral provider or the collateral taker is a legal person and the counterparty to the transaction is a person specified in clauses (1) 1)-4) of this section.

(3) If a pledgee exercises the right to dispose of a pledged object granted thereto upon provision of financial collateral, the pledgee is required to replace the pledged objects with objects of the same type and with the same value not later than after the claim secured by the pledge becomes collectable, unless the parties have agreed otherwise.”

§ 4. Subsection (2¹) is added to § 315 worded as follows:

«(2¹) A financial collateral arrangement shall be entered into in a format which can be reproduced in writing.”

§ 5. section 319² is amended and worded as follows:

«§ 319². Permissibility of different agreement

(1) A pledgor and a pledgee may agree on a manner of selling the pledged object which differs from that provided by law. If a third person has a right in the pledged object which extinguishes upon sale of the object, the consent of the third person is required to change the manner of sale.

(2) An agreement cannot derogate from the provisions of subsection 292 (3) of this Act, except in the case of financial collateral specified in § 314¹ of this Act and if the agreement of the parties allows determination of the value of the pledged object.

(3) If, upon provision of financial collateral, an agreement specified in subsection (2) of this section has been entered into, then, upon creation of the right of sale, a claim secured by the pledge is deemed to be satisfied to the extent which corresponds to the agreed value of the pledged object.”

§ 6. Section 319⁷ is repealed.

II. The Estonian Central Register of Securities Act (RT I 2000, 57, 373; 2001, 48, 268; 79, 480; 89, 532; 93, 565; 2002, 23, 131; 63, 387; 110, 657; 2003, 51, 355; 88, 591) is amended as follows:

§ 7. Subsection (7¹) is added to § 6 worded as follows:

«(7¹) If securities held in a nominee account are pledged on the basis of a financial collateral arrangement specified in § 314¹ of the Law of Property Act (RT I 1993, 39, 590; 1999, 44, 509; 2001, 34, 185; 93, 565; 2002, 47, 297; 53, 336; 99, 579; 2003, 13, 64; 17, 95; 78, 523; 2004, 20, 141), the owner of the nominee account is required to maintain records on securities such that securities encumbered by financial collateral are separated from other securities held in the account of the pledgor. With regard to securities encumbered with financial collateral, the owner of the nominee account shall:

1) only fulfil the orders of the pledgee as of the date of entry into force of the irrevocable right to dispose of the securities encumbered with financial collateral granted to the pledgee and communicated to the owner of the nominee account by the pledgor;

2) fulfil the joint orders of the pledgor and pledgee until the date specified in clause 1) of this subsection.”

§ 8. Subsection 16 (6) is amended and worded as follows:

«(6) Upon failure to satisfy a claim secured by a pledge of securities, the pledged securities may, in order to cover the claim, be transferred on the basis of an order issued to the account administrator of the pledgor by the bailiff, unless otherwise provided by an agreement between the pledgee and the pledgor. On the basis of an agreement between the pledgor and the pledgee, the term for the advance notice to be given of a transfer of pledged securities may be shorter than the term provided by § 293 of the Law of Property Act. The account administrator and the registrar do not verify the existence of a legal basis for the transfer of pledged securities and are not liable for any potential damage arising from the transfer.»

§ 9. Subsection (7) is added to § 16 worded as follows:

«(7) The provisions concerning the pledge of rights in the Law of Property Act apply to a pledge of securities unless otherwise provided for in this Act.»

§ 10. Section 16¹ is added to the Act worded as follows:

«§ 16¹. Pledging of securities upon provision of financial collateral

(1) The provisions of § 16 of this Act apply to the pledging of securities on the basis of a financial collateral arrangement specified in § 314¹ of the Law of Property Act in so far as this section does not provide otherwise.

(2) The registrar shall transfer the securities pledged on the basis of a financial collateral arrangement to the special securities account of the pledgor (hereinafter pledge account) on the order of the account administrator of the pledgor.

(3) With regard to third persons, securities are deemed to be pledged on the basis of a financial collateral arrangement as of transfer of the securities to the securities account. With regard to third persons, a pledge established on securities on the basis of a financial collateral arrangement is deemed to extinguish as of transfer of the securities from the securities account.

(4) The registrar shall make a notation in the register concerning the pledgee, the type and amount of securities pledged for the benefit of the pledgee and the right of disposal granted to the pledgee by the pledgor in respect of the pledged securities.

(5) Only the pledgee may issue orders to the account administrator regarding the securities transferred to the pledge account as of the date of entry into force of the irrevocable right to dispose of the pledged securities granted to the pledgee by the pledgor.

(6) The pledgor may issue orders to the account administrator regarding securities transferred to the pledge account until the date specified in subsection (5) of this section only with the consent of the pledgee.

(7) Upon termination of a claim secured by a pledge and also on other bases provided by legislation, the pledgor may request that the pledgee transfer securities from the pledge account to the securities account of the pledgor.

(8) The provisions of subsections 16 (4) and (6) of this Act do not apply to the disposal of securities pledged on the basis of a financial collateral arrangement.”

§ 11. Subsection 34 (2) is amended and worded as follows:

«(2) An account administrator is required to execute the legal orders to perform register acts issued by the owners of securities accounts, bailiffs, trustees in bankruptcy and, in the cases provided for in § 16¹ of this Act, by pledgees.”

III. The Credit Institutions Act (RT I 1999, 23, 349; 2002, 17, 96; 21, 117; 23, 131; 53, 336; 63, 387; 102, 600; 105, 612; 2003, 17, 95; 23, 133; 81, 544) is amended as follows:

§ 12. Subsection 114 (4) is amended and worded as follows:

«(4) During a moratorium, it is permitted to:

1) perform obligations arising from payment orders accepted for settlement by the credit institution before the establishment of the moratorium;

2) perform netting through a payment system;

3) execute payment orders issued for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314¹ of the Law of Property Act (RT I 1993, 39, 590; 1999, 44, 509; 2001, 34, 185; 93, 565; 2002, 47, 297; 53, 336; 99, 579; 2003, 13, 64; 17, 95; 78, 523; 2004, 20, 141) if the payment orders for the disposal of objects of financial collateral are issued before establishment of a moratorium or at a time specified in subsection (11) of this section.”

§ 13. Subsections (10) and (11) are added to § 114 worded as follows:

«(10) The provisions of this section do not affect the validity of disposition for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314¹ of the Law of Property Act, or the netting performed through a payment system specified in subsection 87 (2) of this Act or through a securities settlement system specified in subsection 213 (1) of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591).

(11) Provision of financial collateral and disposal of objects of financial collateral provided for in § 314¹ of the Law of Property Act after the establishment of a moratorium are valid if carried out on the date of establishment of the moratorium and the counterparty to the financial collateral arrangement proves that they were not aware nor should have been aware of establishment of the moratorium.”

IV.

§ 14. Subsections (5¹) and (5²) are added to § 51 of the Insurance Activities Act (RT I 2000, 53, 343; 2001, 43, 238; 48, 268; 59, 359; 87, 529; 93, 565; 2002, 35, 215; 63, 387; 102, 600; 105, 612; 2003, 17, 95; 2004, 14, 90) worded as follows:

«(5¹) The provisions of subsection (5) of this section do not affect the validity of disposition for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314¹ of the Law of Property Act (RT I 1993, 39, 590; 1999, 44, 509; 2001, 34, 185; 93, 565; 2002, 47, 297; 53, 336; 99, 579; 2003, 13, 64; 17, 95; 78, 523), or the netting performed through a payment system specified in subsection 87 (2) of the Credit Institutions Act (RT I 1999, 23, 349; 2002, 17, 96; 21, 117; 23, 131; 53, 336; 63, 387; 102, 600; 105, 612; 2003, 17, 95; 23, 133; 81, 544) or through a securities settlement system specified in subsection 213 (1) of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591).”;

(5²) Provision of financial collateral and disposal of objects of financial collateral provided for in § 314¹ of the Law of Property Act after the establishment of a special regime are valid if carried out on the date of declaration of the special regime and the counterparty to the financial collateral arrangement proves that they were not aware nor should have been aware of establishment of the special regime.”

V. The Bankruptcy Act (RT I 2003, 17, 95) is amended as follows:

§ 15. Subsection (5) is added to § 18 worded as follows:

«(5) The application of measures for securing a bankruptcy petition does not affect the validity of disposition for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314¹ of the Law of Property Act (RT I 1993, 39, 590; 1999, 44, 509; 2001, 34, 185; 93, 565; 2002, 47, 297; 53, 336; 99, 579; 2003, 13, 64; 17, 95; 78, 523; 2004, 20, 141), or the netting performed through a payment system specified in subsection 87 (2) of the Credit Institutions Act (RT I 1999, 23, 349; 2002, 17, 96; 21, 117; 23, 131; 53, 336; 63, 387; 102, 600; 105, 612; 2003, 17, 95; 23, 133; 81, 544) or through a securities settlement system specified in subsection 213 (1) of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591).»

§ 16. A second sentence is added to subsection 36 (4) worded as follows:

“Provision of financial collateral and disposal of objects of financial collateral provided for in § 314¹ of the Law of Property Act after the declaration of bankruptcy are valid if carried out on the date of the declaration of bankruptcy and the counterparty to the financial collateral arrangement proves that they were not aware nor should have been aware of commencement of the bankruptcy proceedings.”

§ 17. A second sentence is added to subsection 109 (2) worded as follows:

“The provisions of this subsection do not apply to the provision of financial collateral and disposal of objects of financial collateral provided for in § 314¹ of the Law of Property Act, or the netting performed through a payment system specified in subsection 87 (2) of the Credit Institutions Act or through a securities settlement system specified in subsection 213 (1) of the Securities Market Act.”

§ 18. Subsection (4) is added to § 114 worded as follows:

«(4) Transactions concluded for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314¹ of the Law of Property Act shall not be recovered.”

VI. The Law of Obligations Act (RT I 2001, 81, 487; 2002, 60, 374; 2003, 78, 523; 2004, 13, 86) is amended as follows:

§ 19. Section 712¹ is added to the Act worded as follows:

«§ 712¹. Obligations of account manager upon provision of financial collateral

(1) Upon encumbrance of money in an account, a deposit or another similar financial claim (hereinafter in this section cash instruments) with financial collateral specified in § 314¹ of the Law of Property Act, an account manager is required to maintain records on cash instruments in the account such that the cash instruments subject to financial collateral are separated from other cash instruments held in the account of the pledgor.

(2) An account manager is required:

1) as of the date of entry into force of the irrevocable right to dispose of the cash instruments encumbered with financial collateral granted to the pledgee and communicated to the account manager by the pledgor, to fulfil only the orders of the pledgee to debit the corresponding account with an amount not exceeding the cash instruments encumbered with financial collateral;

2) until the date specified in clause 1) of this subsection, to fulfil the joint orders of the pledgor and pledgee to debit the corresponding account with an amount not exceeding the cash instruments encumbered with financial collateral.”

§ 20. Subsection 917 (2) is amended and worded as follows:

«(2) In the cases provided by law, rights which are expressed and transferred only by the making of a registry entry are also deemed to be securities. Unless otherwise provided by this Act, the provisions concerning rights contained in this Act and the Law of Property Act do not apply to such rights.”

§ 21. Section 917¹ is added to the Act worded as follows:

«§ 917¹. Pledging of securities upon provision of financial collateral

(1) If book entry securities specified in subsection 917 (2) of this Act and § 2 of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591) are encumbered on the basis of a financial collateral arrangement specified in § 314¹ of the Law of Property Act, the registrar of the securities register is required to maintain records on the securities such that the securities subject to financial collateral are separated from other securities held in the account of the pledgor.

(2) With regard to securities encumbered with financial collateral, the registrar of the register of the corresponding securities shall:

- 1) only fulfil the orders of the pledgee as of the date of entry into force of the irrevocable right to dispose of the securities encumbered with financial collateral granted to the pledgee and communicated to the registrar of the securities register by the pledgor;
- 2) fulfil the joint orders of the pledgor and pledgee until the date specified in clause 1) of this subsection.”

VII. The Private International Law Act (RT I 2002, 35, 217) is amended as follows:

§ 22. Subsection 6 (3) is amended and worded as follows:

«(3) If the provisions of § 23¹ of this Act or Division 1 of Chapter 1 of Part 6 of this Act prescribe application of a foreign law, the rules of the substantive law of such state apply.”

§ 23. Section 23¹ is added to Part 4 of the Act worded as follows:

«§ 23¹. Book-entry security

(1) Shares, debt obligations and other rights which are expressed by the making of a registry entry (book-entry security) shall be governed by the law of the state where the corresponding register is maintained.

(2) If one person (administrator) administers a book-entry security in the interests of and on behalf of another person elsewhere than in the register or account specified in subsection (1) of this section (corresponding register), the right expressed by the making of an entry in the corresponding register (security held by an administrator) shall be governed by the law of the state where the corresponding register of securities held by an administrator is maintained.

(3) On the basis of the law applicable to book-entry securities and securities held by an administrator, the following, in particular, shall be determined:

- 1) the legal nature of a security;
- 2) the content, creation and extinguishment of a real right in respect of a security;
- 3) the consequences of the disposal of a security to the rights arising from the security;
- 4) the conditions for the exercise of rights arising from a security;

- 5) provision of a security as collateral, including creation and exercise of the right of sale;
- 6) the ranking of the rights encumbering a security;
- 7) the rights and obligations of the administrator regarding a security held by the administrator.”

VIII.

§ 24. Subsection 166 (2) of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591) is repealed.

IX.

§ 25. Entry into force of Act

This Act enters into force on 1 May 2004.

¹ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (Official Journal L 168, 27.06.2002, p. 43–50).

² RT = *Riigi Teataja* = *State Gazette*