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Blockchain Law III: strengthening the rules on collateral over digital assets

The Luxembourg Parliament voted Bill of law No. 8055 on certain aspects of the DLT Pilot Regime into law on 14 March 2023. It introduces specific rules for financial collateral arrangements and is the third Luxembourg law on DLT/Blockchain (“Blockchain Law III”).

As a first mover in digital finance, the Luxembourg Parliament voted Bill of law No. 8055 on certain aspects of the DLT Pilot Regime into law on 14 March 2023. The DLT Pilot Regime allows firms to apply to operate a DLT-based trading facility and/or settlement system for financial instruments within a flexible regulatory environment (“**DLT Pilot Regime**”). The bill of law also introduces specific rules for financial collateral arrangements and is the third Luxembourg law on DLT/Blockchain (“**Blockchain Law III**”).

1. Blockchain Law III: collateral aspects

Blockchain Law III introduces amendments to the law of 5 August 2005 on financial collateral arrangements, as amended (“**Law of 2005**”), which is the cornerstone of the Luxembourg legislation on collateral arrangements. It is known to provide a very high degree of legal certainty for collateral arrangements, as confirmed a number of times by case law.

The aim of Blockchain Law III is to expressly confirm that financial instruments booked in securities accounts held on DLT qualify as financial instruments within the meaning of the Law of 2005. This in turn

means that financial collateral arrangements (such as pledges) over such financial instruments benefit from the full range of protection of the Law of 2005.

The Blockchain Law III amends Article 1 - 8) of the Law of 2005 as follows:

“whether these financial instruments are in physical form, dematerialised, transferable by book entry, including securities accounts held within or by means of secure electronic record-keeping mechanisms, **including distributed electronic ledgers or databases**, or delivery, bearer or registered, endorseable or not and regardless of their governing law;”

This amendment will thus enhance legal certainty by allowing e.g. securities accounts on DLT to be pledged whilst not altering the efficient system of the Law of 2005.

2. What is DLT?

In the spirit of favouring financial innovation and technological neutrality, none of the Blockchain Laws provide a definition of DLT, as they only refer to “secure electronic record-keeping mechanisms, including distributed electronic ledgers or databases”, (*“dispositif d’enregistrement électronique sécurisé”*).

This being said, a definition is provided in the DLT Pilot Regime, which defines DLT as “a technology that enables the operation and use of distributed ledgers” and defines distributed ledger as “an information repository that keeps records of transactions and that is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism”.

In layman’s terms, distributed ledgers are a new manner of recording transactions in a shared way which allows for, amongst other things, novel forms of delivering financial services whilst providing transparency and resiliency, and rendering unauthorised changes to such records more difficult.

3. Timeline

Blockchain Law III applies as from 23 March 2023.

4. Other considerations

Blockchain Law III also introduces amendments to other Luxembourg legislation to pave the way for the entry into application of the DLT Pilot Regime.

[Please refer to our separate newsflash on this topic available here_](#)

If you require any assistance or advice on the financial collateral law, please contact the Finance & Capital Markets Team_

If you require any assistance or advice on the Fintech regulatory framework or the new DLT Pilot Regime, please contact our Fintech experts_

[Read the Bill of law here_](#)

[Read Arendt Newsflash I on Blockchain here_](#)

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