

Federal Decree-Law No. (31) of 2024

On Netting

We, Mohamed bin Zayed Al Nahyan

President of the United Arab Emirates,

- Having reviewed the Constitution,
- And Federal Law No. (1) of 1972 on the Competencies of Ministries and Powers of Ministers, and its amendments,
- And Federal Law No. (4) of 2000 on the Emirates Securities and Commodities Authority and Market, and its amendments,
- And Federal Law No. (8) of 2004 on Financial Free Zones,
- And Federal Decree-Law No. (10) of 2018 on Netting,
- And Federal Decree-Law No. (14) of 2018 on the Central Bank and Organization of Financial Institutions and Activities, and its amendments,
- And Federal Decree-Law No. (51) of 2023 promulgating the Financial Reorganisation and Bankruptcy Law,
- And based on the proposal of the Minister of Finance, and the approval of the Cabinet,

We have issued the following Decree-Law:

Article (1)

Definitions

For the purposes of this Decree-Law, the following words and phrases shall have the meanings assigned to each of them, unless the context otherwise requires:

The State : The United Arab Emirates.

The Central Bank : The Central Bank of the United Arab Emirates.

Financial Free Zones : The free zones subject to the provisions of Federal Law No. (8) of 2004 on Financial Free Zones, or any other law that replaces it.

Qualified Financial Contracts	: The contracts stipulated in Article (5) of this Decree-Law.
Cash	: Monetary funds credited to an account in any currency, or any other monetary claims for the repayment of money, including money market deposits.
Netting Agreement	: An agreement between two or more persons, which provides for netting in accordance with any of the cases referred to in Article (4) of this Decree-Law.
Multi-Branch Netting Agreement	: A netting agreement between two or more persons, at least one of whom is a foreign party, under which any party thereto enters into qualified financial contracts through its head office in addition to one or more of its branches located in countries outside its domicile.
Person	: A natural or legal person including, but not limited to, any company or institution, or any international or regional organisation, bank or international or regional development institution, whether established by an international agreement or otherwise, and also includes, but is not limited to, any political subdivision or entity owned by any political subdivision of a central or regional government.
Insolvency and Bankruptcy Proceedings	: Any proceeding conducted in accordance with the provisions of laws relating to insolvency and bankruptcy, or liquidation including compulsory liquidation proceedings, or restructuring or composition with creditors, or receivership, or guardianship or any other similar proceedings in force in the State.
Insolvent Person	: A person who is subject to insolvency and bankruptcy proceedings under the laws in force in the State.
Liquidator	: The person who conducts or administers liquidation or receivership proceedings, or who is appointed to carry out such proceedings, or the trustee, guardian

or supervisor of such proceedings, or any other person or entity that manages the business of the insolvent person during the insolvency and bankruptcy proceedings under the laws in force in the State.

Collateral : Anything provided to secure or enhance a right or obligation, and includes any of the following:

1. Cash in any currency.
2. Securities, including but not limited to, Sukuk, commodities and commodity contracts, and any rights or claims relating thereto.
3. Insurances, letters of credit, and repayment obligations.
4. Any assets commonly used as a collateral instrument in the State.

Collateral Arrangement : Any mechanism or procedure for margin, value guarantee margin or any other collateral, security or credit enhancement relating to or forming part of a netting agreement or one or more qualified financial contracts entered into under such arrangements or to which a netting agreement applies, including the following:

1. Any pledge, mortgage, insurance or any other lien on the collateral, whether by possession or otherwise.
2. Title transfer collateral arrangements.
3. Any obligation to provide collateral, a letter of credit or repayment from any party to another party in a qualified financial contract relating to any of such contracts.

Title Transfer Collateral Arrangement : Any mechanism or procedure for margin or any collateral or security, relating to a netting agreement or a qualified financial contract, based on the transfer of title to the collateral, whether through outright transfer or on a security basis, including a sale and

repurchase agreement, a securities lending agreement, a purchase and resale of securities agreement or a security arrangement, the terms and conditions of which enable the collateral taker to dispose of the title to the relevant collateral after its transfer to the collateral taker.

Domicile	: The state in which a party to a netting agreement is established, registered or organised.
Head Office	: The place of business in the domicile of any party to a netting agreement.
Foreign Party	: A party whose domicile is located outside the State, and for the purposes of implementing the provisions of this Decree-Law, it includes parties located in the financial free zones in the State.

Article (2)

Scope of Application of the Decree-Law

1. The provisions of this Decree-Law shall apply to all netting agreements, qualified financial contracts, or collateral arrangements contained in this Decree-Law.
2. Financial free zones and the financial institutions licensed by them are excluded from the application of the provisions of this Decree-Law, to the extent that there is legislation regulating the same cases provided for in this Decree-Law.

Article (3)

Netting

Netting shall be any of the following cases:

1. The termination, liquidation, or acceleration of any payment, obligation to deliver a right, or any obligation relating to performance, receipt, demand for payment, or fulfillment, which arises under a qualified financial contract entered into under a netting agreement, or which was subject to the provisions of a netting agreement.

2. A calculation, estimation, or determination, made in accordance with a termination or close-out valuation index, or in accordance with the market value, liquidation value, replacement value, or any other relevant value, including the value of any damages that may arise from a breach by any party in entering into or performing any of the transactions required to be concluded under the provisions of a netting agreement in accordance with the provisions of this Decree-Law with respect to any obligation, right, or set of obligations or rights that are terminated, liquidated, or accelerated, under clause (1) of this Article.
3. The conversion of any of the values calculated or estimated under clause (2) of this Article into a single currency.
4. The determination of the net balance of the values calculated in accordance with clause (2) of this Article to be paid, or for which an obligation to pay may arise, and under the conversion value provided for in clause (3) of this Article, whether this is done through a process of novation, substitution, or otherwise.
5. The obligation of one party to a netting agreement to pay, or to continue to pay the net balance in accordance with clause (2) of this Article, or as a result of the parties entering into a transaction by which the net balance becomes due immediately or as part of the consideration for a specific asset or as a provision for the payment of damages related to the non-performance of that transaction.

Article (4)

Netting Agreement

1. An agreement shall be considered a netting agreement in any of the following cases:
 - a. If it is an agreement that results in netting relating to current or future payments, or the performance of obligations or rights, or the obligation or right to make, receive, or demand payment or fulfillment, which arises under or is connected to a qualified financial contract entered into between the parties to the agreement, or between those to whom this agreement applies.
 - b. If it is a master agreement, entered into between two parties relating to the netting of an amount due under two or more netting agreements.

- c. If it is a collateral arrangement, such as annexes or credit support documents relating to one or more of the agreements provided for in paragraphs (a) and (b) of this Article, or if it is considered part thereof.
- d. If they are agreements or arrangements compliant with the provisions of Islamic Sharia, which have the same purposes as the netting agreements or arrangements provided for in paragraphs (a), (b), and (c) of this Article.
- e. If it includes agreements, contracts, or transactions that fall within the framework of the qualified financial contracts provided for in Article (5) of this Decree-Law.

2. Any arrangement shall be considered a collateral arrangement if it includes agreements, contracts, or transactions that fall within the framework of the qualified financial contracts provided for in Article (5) of this Decree-Law, and the framework of the netting cases provided for in this Article.

3. Any netting agreement, and all qualified financial contracts to which that agreement applies, shall be deemed to be a single agreement.

4. A netting agreement includes a multi-branch netting agreement, and the provisions of the multi-branch netting agreement stipulated in this Decree-Law shall apply to the branch of the foreign party in accordance with Article (16) of this Decree-Law.

5. If a netting agreement includes provisions relating to contracts, agreements, or other transactions other than qualified financial contracts, this agreement shall be considered a netting agreement only with respect to those contracts that fall within the definition of qualified financial contracts.

Article (5)

Qualified Financial Contracts

Subject to what is stated in Article (7) of this Decree-Law, qualified financial contracts are considered final and enforceable, and include, but are not limited to, any of the following contracts, transactions, or procedures:

1. All types of swap contracts related to currency, interest rate, basis rate, or commodities.

2. Foreign exchange transactions and securities and commodities transactions, whether spot, futures, forward, or otherwise.
3. A transaction based on a cap, floor, or collar option.
4. A forward rate agreement.
5. A currency or interest rate futures contract.
6. A currency or interest rate option.
7. Equity derivatives, such as an equity swap, equity index swap, equity forward, equity option, or equity index option.
8. A derivative related to bonds, other debt instruments, or Sukuk, or a derivative related to a bond index, debt instrument index, or Sukuk index, such as a total return swap, index swap, forward derivative, or index option.
9. A credit derivative, such as a credit default swap, credit default basket swap, total return swap, or credit default option.
10. An energy derivative, such as an electricity, oil, coal, or gas derivative.
11. A weather derivative, such as a weather-based swap or weather option.
12. A data transfer derivative.
13. A shipping derivative.
14. An emissions derivative, such as emissions rights or emissions reduction transactions.
15. An economic statistics derivative, such as inflation derivatives.
16. A real estate index derivative.
17. A securities contract, including a margin loan, and a purchase, sale, borrowing, or lending of securities agreement, such as a repurchase agreement, reverse repurchase agreement, securities lending, or purchase or resale of securities, including any contract or agreement related to a mortgage-backed loan, rights related to mortgage loans, or mortgage-related securities.
18. A commodity-related contract, including agreements to purchase, sell, borrow, or lend commodities, such as a commodity repurchase agreement, reverse commodity repurchase agreement, or lending, purchase, or resale of commodities.
19. Collateral arrangements.
20. An agreement to complete payment, or settle securities transactions, or act as a securities depository.

21. Any derivatives, agreements, contracts, or digital asset transactions of the types specified in any of clauses (1) to (20), and clauses (22) to (25) of this Article.
22. Any derivatives, agreements, contracts, or transactions of voluntary carbon credit or other types of carbon credit of the types specified in any of clauses (1) to (21), and clauses (23) to (25) of this Article.
23. Any other agreement, contract, or transaction similar to any agreement, contract, or transaction as provided for in clauses (1) to (22) of this Article, regarding one or more reference indices related to interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, Sukuk, precious metals, digital assets, voluntary carbon credit or other types of carbon credit, and quantitative measures related to the occurrence, or probability of occurrence, of unforeseen events, associated with financial, commercial, or economic consequences or financial or economic indices, or measures of economic or financial risks or values.
24. Any swap, forward, option, contract for difference, or other derivative related to one or more agreements or contracts as provided for in clauses (1) to (23), and clause (25) of this Article.
25. Any contract, undertaking, or transaction entered into individually, or with other similar contracts, undertakings, or transactions, for the purpose of creating an economic effect equivalent to the economic effect of any of the types of contracts provided for in clauses (1) to (24) of this Article, through the use of one or more Murabaha contracts, Musawama contracts, collateralised master Murabaha agreements, restricted and unrestricted agency contracts, profit rate swaps, foreign exchange rate swap alternatives, forward foreign exchange transaction alternatives, or any other alternative hedging or investment instruments, Wa'd (promise), or other contracts, undertakings, or transactions used for the purpose of concluding instruments, agreements, or transactions compliant with the provisions of Islamic Sharia.
26. Any other financial agreement, financial contract, or financial transaction that the Central Bank decides to consider a qualified financial contract.

Article (6)

Obligations Arising from Qualified Financial Contracts

Qualified financial contracts, whether entered into, or becoming necessary at a specific time, or within a specified period, and whether suspended on the fulfillment of any condition, or contingent event, shall give rise to one or more of the following obligations:

1. Payment of due obligations, or transfer of ownership of goods or assets for consideration.
2. An undertaking to pay or an obligation to pay, or transfer ownership of goods or assets for consideration.

Article (7)

Competencies of the Central Bank

The Central Bank shall exercise the following competencies:

1. To determine any financial agreement, financial contract, or other financial transaction as a qualified financial contract, in addition to the types listed in Article (5) of this Decree-Law.
2. To delete or add any financial agreement, financial contract, or financial transaction from the list of qualified financial contracts listed in Article (5) of this Decree-Law.
3. Any other competencies related to the provisions of this Decree-Law determined by a Cabinet decision.

When exercising its competencies specified under this Article, the Central Bank shall coordinate with the Securities and Commodities Authority, and may consult with any other regulatory body at its discretion.

Article (8)

Enforceability of Qualified Financial Contracts

1. No qualified financial contract shall be considered void, or unenforceable, for any reason related to the provisions of Gharar (uncertainty) as stipulated in any law, including those related to games, matches, gambling, betting, or lotteries.
2. If a person undertakes, upon entering into a qualified financial contract or any agreement related to this qualified financial contract,

or one party undertakes to the other party in the qualified financial contract, that the qualified financial contract is compliant with Islamic Sharia, that person may not subsequently contradict, deny, disavow, or refuse, in whole or in part, their obligations under the qualified financial contract, on the basis that the qualified financial contract is no longer compliant with Islamic Sharia, due to a change in the interpretation of any relevant rule or principle of Islamic Sharia for any other reason.

Article (9)

Enforceability of Netting Agreements

A netting agreement shall be deemed final and enforceable in accordance with its terms, including what it imposes on the insolvent party, the guarantor, or any other person providing a guarantee to any of the parties to this agreement, even if that person becomes insolvent, and the enforcement of a netting agreement may not be suspended or stayed, nor may conditions be placed on its enforcement on the basis of any of the following:

1. The appointment or request for the appointment of a liquidator, or any action taken by the liquidator.
2. Any other provision contained in any law relating to insolvency and bankruptcy proceedings.
3. Any other provision contained in any law that may be applicable to the insolvent person.

Article (10)

Enforceability of Netting upon Commencement of Insolvency and Bankruptcy Proceedings

The obligations of any party to pay or perform shall be enforceable in accordance with the terms of a netting agreement, in the event of the commencement of insolvency and bankruptcy proceedings relating to one of the parties to a netting agreement, under which the obligations of any party have been converted to net claims or obligations or have been netted, including any of the transactions provided for in clause (5) of Article (3) of this Decree-Law, and the same provision shall apply to qualified

financial contracts, and financial contracts and transactions subject to the netting agreement.

Article (11)

Scope of the Liquidator's Powers

1. The powers granted to the liquidator to perform, or refrain from performing certain contracts, obligations, transactions, or claims, shall not prevent the possibility of terminating, liquidating, accelerating, or converting to net claims, or net obligations all payments, or the fulfillment of obligations and rights related to making payment or performance, in accordance with the provisions of one or more qualified financial contracts entered into under a netting agreement, or to which a netting agreement applies.
2. The powers of the liquidator shall only apply to the net amount due relating to those qualified financial contracts, and in accordance with the terms contained therein.

Article (12)

Limits on the Enforcement and Application of Netting Agreement Provisions in Cases of Insolvency and Bankruptcy

1. The provisions of a netting agreement that include a method for determining the net balance of the close-out values of obligations on a net basis between the insolvent person and any other party shall be enforced, in accordance with the terms contained in that agreement, and the same provision shall apply to the market value, liquidation value, and replacement value calculated in relation to the acceleration or termination of payment, or the fulfillment of obligations or rights under one or more qualified financial contracts entered into under or related to a netting agreement.
2. The provisions of a netting agreement may not be suspended, terminated, or not enforced, or made conditional in any way, based on the provisions of applicable insolvency and bankruptcy laws that restrict the right to set-off obligations, rights, payment amounts, or termination values due between the insolvent person and any other party, whether by release, substitution, or on a net basis.

Article (13)

Priority of Debts and Fraudulent Transfers

1. A liquidator may not void, stay, or refuse to perform any of the following operations, on the basis that it constitutes a preferential debt by an insolvent party:
 - a. Any payment, transfer, performance, substitution, or exchange of cash, collateral, or any other interest, property, asset, or financial instrument, whether traditional or compliant with the provisions of Islamic Sharia, and whether made under or in connection with a "netting agreement", made by an insolvent party.
 - b. Any obligations incurred by an insolvent party under or in connection with a netting agreement, to pay, transfer, perform, substitute, or exchange cash, collateral, or any other interest or funds.
 - c. Any transaction carried out by an insolvent party in accordance with the terms of a netting agreement to implement the provisions of netting.
2. Notwithstanding the provisions of clause (1) of this Article, the liquidator may void, stay, or refuse to perform any of the operations contained therein, if there is clear and convincing evidence that the insolvent party carried out those operations with the intent to hinder, delay, or defraud any party to whom the insolvent party owes, or became indebted, during or after the date of carrying out those operations.

Article (14)

Prohibition of Restricting, Suspending, or Delaying the Enforcement of Netting Agreements

The enforcement of a netting agreement that is enforceable in accordance with the provisions of Articles (9) and (10) of this Decree-Law may not be restricted, suspended, or its enforcement delayed, by virtue of stay proceedings or any other proceedings or orders.

Article (15)

Sale and Liquidation of Collateral

1. In a title transfer collateral arrangement by outright transfer, the transfer of title to the relevant collateral shall be effective in accordance

with the terms of the title transfer collateral arrangement, and such transfer should not be described as creating a security arrangement.

2. The sale, acquisition, or liquidation of collateral, and the enforcement of any collateral arrangement, shall be carried out without sending any prior notice to any party, person, or entity or obtaining its consent, in the following cases:

- a. The absence of an agreement between the parties to the contrary.
- b. Compliance with the legislation in force in the State that requires the sale, acquisition, or liquidation of collateral in a commercially reasonable manner.

Article (16)

Enforceability of a Multi-Branch Netting Agreement in Case of Insolvency of a Foreign Party's Branch

1. With respect to a multi-branch netting agreement, the obligation of the insolvent foreign party, or the obligation of the liquidator of an insolvent foreign party, shall be calculated in accordance with the insolvency and bankruptcy proceedings in the State, from the date of termination of the qualified financial contracts to which the multi-branch netting agreement applies, and the right of the non-insolvent party to receive payments shall be limited in any of the following cases:

- a. The obligation of the insolvent foreign party to pay the net amount due.
- b. The obligation of the branch of the insolvent foreign party to pay the net amount due, whichever is less.

2. Any amount of the obligation stated in clause (1) of this Article that has been paid to the non-insolvent party, or has been received by it in respect of the obligation of the insolvent foreign party to pay the net amount due under the multi-branch netting agreement, which, if added to its liquidator's obligation, exceeds the obligation of the insolvent foreign party to pay the net amount due in accordance with the provisions of this Article, shall be deducted.

3. The obligation of the liquidator of the branch of the insolvent foreign party towards a non-insolvent party under a multi-branch netting agreement shall be reduced by deducting the fair market value of the collateral that secures, or supports the obligations of the insolvent foreign

party or the value of any proceeds of such collateral, which has been enforced to satisfy the obligations of the insolvent foreign party towards the non-insolvent party in accordance with this agreement.

4. The right of the insolvent foreign party to payments based on payments made in accordance with its insolvency and bankruptcy proceedings in other jurisdictions shall be limited as follows:

a. The obligation of the non-insolvent party shall be reduced by deducting any amount that has been paid to its liquidator or any liquidator or receiver of the insolvent foreign party in its domicile or in any other country, or received by them, in respect of the rights of the insolvent foreign party to the net amount due under the multi-branch netting agreement, which may exceed the rights of the insolvent foreign party to the net amount due if it is added to the obligation of the non-insolvent party in accordance with the provisions of this Article.

b. The obligation of the non-insolvent party towards the liquidator under a multi-branch netting agreement shall be reduced by deducting the fair market value of the collateral or the value of any proceeds of this collateral that secures or supports the obligations of the non-insolvent party, which has been enforced in satisfaction of the obligations of the non-insolvent party towards the insolvent foreign party in accordance with this multi-branch agreement.

5. The non-insolvent party in a multi-branch netting agreement, if it has a first-ranking lien on collateral, or any other title, mortgage, or lien enforceable against other parties under that agreement, may retain this collateral in whole, and may, upon termination of that agreement, enforce on that collateral in accordance with the terms contained therein, in satisfaction of any claims secured under that collateral, provided that the total value enforced for the payment of those claims does not in any case exceed the obligation of the insolvent foreign party to pay the net amount due, if any, and in this case, any surplus of the value of the collateral must be returned.

Article (17)

General Provisions

1. The rights of the branch of the foreign party in the net amount due shall be equal to the amount owed by the non-insolvent party, if any, to a

foreign party under a multi-branch netting agreement, after netting the qualified financial contracts concluded between the non-insolvent party and the branch of the foreign party in the State under that agreement.

2. The obligation of the branch of the foreign party to pay the net amount due shall be equal to the amount owed by a foreign party to the non-insolvent party, if any, under a multi-branch netting agreement after netting the qualified financial contracts concluded between the non-insolvent party and the branch of the foreign party that take place in the State under that agreement.

3. The rights of the foreign party in the net amount due shall be equal to the total amount owed by the non-insolvent party, if any, to a foreign party, and includes what may arise from all its branches and affiliated institutions, and this applies after the commencement of the obligation to the provisions contained in a multi-branch netting agreement regarding all qualified financial contracts that are subject to netting operations under that agreement, or on the total amounts that created a debt if the multi-branch netting agreement provides for the payment of any payments to any party in the event of termination of the qualified financial contracts that were concluded under that agreement.

4. The obligation of the foreign party to pay the net amount due shall be equal to the total amount owed by the foreign party in all its branches and affiliated institutions, to a non-insolvent party after complying with the netting provisions contained in the multi-branch netting agreement with respect to all qualified financial contracts subject to the netting process under that agreement.

Article (18)

Repeals and Priority of Application of the Provisions of this Decree-Law

1. Any provision that violates or contradicts the provisions of this Decree-Law shall be repealed, and Federal Decree-Law No. (10) of 2018 on Netting shall also be repealed.

2. The provisions of this Decree-Law shall have priority over any other law or provision that conflicts with them, and in the event of subsequent laws being issued after this Decree-Law, the provisions of this Decree-Law shall

remain in force unless the subsequent law explicitly provides for the repeal of the provisions of this Decree-Law or a provision thereof.

Article (19)

Publication and Entry into Force of the Decree-Law

This Decree-Law shall be published in the Official Gazette, and shall enter into force as of 2 January 2025.

**Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates**

Issued by us at the Presidential Palace - Abu Dhabi:

On: 28 / Rabi' al-Awwal / 1446H

Corresponding to: 1 / October / 2024G