

## **Decretal Federal Law No (10) of 2018 Regarding Netting**

**We Khalifa bin Zayed Al Nahyan**

**President of the United Arab Emirates,**

- Having perused the constitution;
- Federal Law No (1) of 1972, Regarding Jurisdictions of Ministries and Powers of Ministers;
- Federal Law No (10) of 1980, Regarding the Central Bank, the Monetary System and Organization of Banking and amendments thereto;
- Federal Law No (5) of 1985, Promulgating the UAE Civil Transactions Law and amendments thereto;
- Federal Law No (6) of 1985, Regarding Islamic Banks, Financial Institutions and Investment Companies;
- Federal Law No (11) of 1992, Promulgating the Civil Procedures Law and amendments thereto;
- Federal Law No (18) of 1993, Promulgating the Commercial Transactions Law and amendments thereto;
- Federal Law No (4) of 2000, Regarding the UAE Securities and Commodities Authority & Market and amendments thereto;
- Federal Law No (8) of 2004, Regarding Financial Free Zones;
- Federal Law No (6) of 2007, Regarding Establishment of The Insurance Authority & Organization of its Business, and amendments thereto;
- Federal Law No (2) of 2015, Regarding Commercial Companies and amendments thereto;
- Federal Law No (9) of 2016, Regarding Bankruptcy;
- Federal Law No (20) of 2016, Regarding Pledge of Movable Properties in Guarantee of Debt; and

- Based on the proposal of the Finance Minister, approval of the Council of Ministers and the National Federal Council and ratification of the Supreme Council of the Union;
- **Promulgated the following decretal law:**

## **Article (1)**

### **Definitions**

In the implementation of provisions of this decretal law, and unless the context otherwise requires, the following words and expressions shall have the meanings cited against each:

<b>State:</b>	: The United Arab Emirates.
<b>The Ministry</b>	: The Ministry of Finance.
<b>The Minister</b>	: The Minister of Finance.
<b>The Committee</b>	: Committee for Designation of Qualified Financial Contracts.
<b>The Regulatory Authorities in the State</b>	: The Central Bank of the United Arab Emirates, the Securities & Commodities Authority, and the Insurance Authority.
<b>Financial Free Zones</b>	: Financial free zones established in accordance with provisions of Federal Law No (8) of 2004 referred to.
<b>Qualified Financial Contracts</b>	: Financial contracts established under an agreement, contract or any transaction, including any terms and conditions attached thereto.
<b>Cash</b>	: Money credited to an account in any currency, or any other monetary claim for repayment of money, including money market deposits.
<b>Multi-Branch Netting Agreement</b>	: A Netting Agreement between two parties under which any of the parties enters into a Qualified Financial Contract through its Home Office in addition to one or more of its branches or agencies located in countries other than its Home Country.
<b>Person</b>	: A natural person or a judicial person.

<b>Insolvency and Bankruptcy Procedures</b>	: Any procedure under the provisions of laws relating to bankruptcy, insolvency, liquidation including any compulsory winding up procedure, reorganisation, composition with creditors, receivership, conservatorship or any other similar procedures in force in the State.
<b>Insolvent</b>	: The Person in respect to whom Insolvency and Bankruptcy Procedures have been initiated under laws in force in the State.
<b>Liquidator</b>	: The Person who is in charge of liquidation or receivership procedures, or nominated to carry out such procedures; or the trustee, conservator, supervisor for such procedures or other Person or entity, which administers the affairs of an Insolvent during Insolvency and Bankruptcy Proceedings under the laws in force in the State. All that is provided to secure or enhance a right or obligation arising out of a Netting Agreement or a contract of Qualified Financial Contracts, and including any of the following:
<b>Collateral</b>	: <ol style="list-style-type: none"> <li>1. Cash in any currency;</li> <li>2. Securities, and any rights or claims related thereto;</li> <li>3. Guarantees, letters of credit and obligations to reimburse; and</li> <li>4. Any asset commonly used as collateral in the State.</li> </ol> Any margin, variation margin, collateral or security procedures or other credit enhancement tools related to, or forming part of a Netting Agreement or one or more Qualified Financial Contracts entered into thereunder, or to which a Netting Agreement applies, including:
<b>Collateral Arrangement</b>	: <ol style="list-style-type: none"> <li>1. A pledge, mortgage, charge or any other form of security interest in Collateral, whether possessory or non-possessory;</li> <li>2. A title transfer Collateral Arrangement; and</li> <li>3. Any guarantee, letter of credit or reimbursement obligation by or to another party to a Qualified Financial Contract, in relation to those contracts.</li> </ol>
<b>Title Transfer Collateral</b>	: A margin, Collateral or security procedures related to a Netting Agreement based on the transfer of title to Collateral, whether by outright transfer or

<b>Arrangement</b>	by way of security, including a sale and repurchase agreement, securities lending agreement, securities buy/sell-back agreement or a pledge or mortgage in accordance with special terms and conditions.
<b>Home Country</b>	: The jurisdiction where any of the parties to a Netting Agreement is incorporated, regulated or duly registered.
<b>Home Office</b>	: The office at the Home Country of any party to a Netting Agreement.
<b>Foreign Party</b>	: A party whose Home Country is outside the State or within the Financial Free Zones.

## **Article (2)**

### **Scope of Application of the Law**

1. The provisions of this decretal law shall apply to all Qualified Financial Contracts, Netting Agreements specified under this decretal law or Collateral Arrangement, which are entered into by any Person in the State.
2. This decretal law does not apply to the Financial Free Zones and financial institutions licensed thereby to the extent where there are similar legislations governing similar cases referred to in this decretal law.

## **Article (3)**

### **Cases of Netting**

Netting includes the following cases:

1. Termination, liquidation and/or acceleration of any payment, obligation to deliver entitlement or obligation to make, receive or require payments or deliveries, under a Qualified Financial Contract entered into under a Netting Agreement or to which a Netting Agreement applies;
2. Calculation, estimation, or adoption according to an index of a close-out or termination value, market value, liquidation value, replacement value or any other relevant value – including the value of any damages, which may arise from a party's failure to enter into or perform a transaction required to be entered into under or pursuant to provisions of a Netting Agreement of the kind as referred to in this decretal law – in respect of each

- obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under item (1) of this article;
3. Conversion of any values calculated or estimated under item (2) of this article into a single currency;
  4. Determination of the net balance of the values calculated under item (2) of this article, as converted under item (3) of this article, whether by operation of set-off, offset, or net out of obligations or otherwise; and
  5. Entry by the parties into a transaction pursuant to or by virtue of which such a net balance becomes payable directly or as part of the consideration for a specific asset or the provision for the payment of damages relating to any non- performance of any such transaction.

## **Article (4)**

### **Cases of Netting Agreement**

1. An agreement is considered a Netting Agreement in any of the following cases:
  - a. Any agreement between two Parties that provides for Netting of present or future payment or delivery obligations or entitlements or obligations, or entitlement to make, receive or require payment or delivery, arising under or in connection with one or more Qualified Financial Contracts entered into under such agreement by the parties to the agreement referred to as a "Master Netting Agreement";
  - b. Any master agreement between two parties that provides for Netting of the amounts due under two or more Master Netting Agreements;
  - c. Any Collateral Arrangement such as credit support annexes or credit support deed related to or forming part of one or more of the foregoing agreement referred to in paragraphs (a) and (b) of this article; and
  - d. Any agreement or arrangement in accordance with Shari'ah rules, with a view to having similar purposes as any Netting Agreements or arrangement referred to in paragraphs (a), (b), and (c) of this article.
  - e. If it includes agreements, contracts or transactions, which fall within the framework of Qualified Financial Contracts referred to in Article (5) of this decretal law.

2. Any arrangement shall be deemed to be a Collateral Arrangement if it includes agreements, contracts or transactions that fall within the framework Qualified Financial Contracts referred to in Article (5) of this decretal law or within the definition of Netting Agreements referred to in this article.
3. Any Netting Agreement and all Qualified Financial Contracts to which such netting agreement applies shall constitute a single agreement.
4. A "Netting Agreement" shall include "Multi-Branch Netting Agreement"; however, the provisions of the Multi-Branch Netting Agreement referred to in this decretal law shall be enforceable on the Foreign Party's Branch/Agency, in case of its separate insolvency.

## **Article (5)**

### **Qualified Financial Contracts**

Without prejudice to provisions of Article (7) of this decretal law Qualified Financial Contracts shall be final and enforceable and shall include the following:

1. All types of swaps in relation to currencies, interest rate, basis rate, or commodities;
2. Foreign exchange, securities, or commodities transactions, whether spot, future, forward or other such transactions;
3. A cap, collar or floor transaction;
4. A forward rate agreement;
5. A currency or interest rate future;
6. A currency or interest rate option;
7. Equity derivatives, such as an equity or equity index swap, equity forward, equity option or equity index option;
8. A derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option 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 derivative, oil derivative, coal derivative or gas derivative;
11. A weather derivative, such as a weather swap or weather option;

12. A bandwidth derivative;
13. A freight derivative;
14. An emissions derivative, such as emissions allowance or emissions reduction transaction;
15. An economic statistics derivative, such as an inflation derivative;
16. A property index derivative;
17. A securities contract, including (a margin loan and an agreement to buy, sell, borrow or lend securities), such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell back agreement, including any such contract or agreement relating to a loan based on mortgage loans, interests in mortgage loans or mortgage related securities;
18. A commodities related contract, including agreements (to buy, sell, borrow or lend commodities), such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell back agreement;
19. A collateral arrangement;
20. An agreement to clear or settle securities transactions or to act as a depository for securities;
21. Any agreement, contract or transaction similar to any agreement, contract or transaction referred to in items (1) to (20) of this article, with respect to one or more reference items or indices relating to interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value;
22. Any derivative such as swap, forward, option, contract for differences or other derivative in respect of, or combination of, one or more agreements or contracts referred to in items (1) to (21) and item (23) of this article; and
23. Any Shari'ah-compliant contract or undertaking, which individually or together with any other such contract or undertaking has or is entered into with a view to having an economic effect similar to any instrument of a kind described in any of items (1) to (22)

of this article – including a murabaha contract, musawama contract, master collateralized Murabaha agreement, restricted and unrestricted wakala agreement, alternative profit rate swap, alternative cross currency swap, alternative foreign exchange forward, other alternative hedging and investment instruments, arnoun principle, or unilateral wa'ad and single wa'ad.

## **Article (6)**

### **Obligations Arising from Qualified Financial Contracts**

The following shall be established pursuant to Qualified Financial Contracts, whether they are entered into or incurred at a certain time or within a certain period of time and whether or not subject to any condition or contingency, pursuant to which:

1. Payment or delivery obligations are due to be performed or title to commodities or assets is to be transferred for consideration or
2. Obligation to make payments or deliveries, or to transfer title to commodities or assets for consideration.

## **Article (7)**

### **Committee for Designation of Qualified Financial Contracts**

A committee named the 'Committee for Designation of Qualified Financial Contracts' shall be formed in the Ministry by a resolution from the Minister, chaired by a representative of the Ministry and includes in its membership two (2) representatives of each of the Regulatory Authority in the State. The Committee shall have the following terms of reference:

1. Provide opinion on topics related to Qualified Financial Contracts;
2. Designate any additional financial agreement, contract or transaction as a Qualified Financial Contract;
3. Remove or add any financial agreement, contract or transaction from the list of Qualified Financial Contracts referred to in Article (5) of this decretal law;
4. Replace any financial agreement, contract or transaction in the list of Qualified Financial Contracts referred to in Article (5) of this decretal law with any another financial agreement, contract or transaction; or



5. Any other functions designated by the Cabinet.

The resolution shall specify the mechanism for discharge of the Committee's functions.

## **Article (8)**

### **Enforceability of Qualified Financial Contracts**

All Qualified Financial Contracts in accordance with the provisions of this decretal law shall not be void, unenforceable, or not final for any reason related to aleatory contracts (**Gharar**) provisions referred to in the Civil Transactions law.

## **Article (9)**

### **Enforceability of Netting Agreements**

Netting Agreements shall be final and enforceable in accordance with their terms, including against an Insolvent, a guarantor, or any other Person providing security for any party to this agreement, even if this Person becomes Insolvent. The execution of a Netting Agreement shall not be suspended or stopped or otherwise impose conditions on its execution based on:

1. The appointment of, or any application for the appointment of a Liquidator or any action of the Liquidator;
2. Any other provision of law relating to Insolvency and Bankruptcy Procedures; or
3. Any other provision of law that may be applicable to an Insolvent.

## **Article (10)**

### **Enforceability of Netting during Insolvency and Bankruptcy Proceedings**

During Insolvency and Bankruptcy Proceedings relating to a party to a Netting Agreement, the obligations of any party to make payments or deliveries, which pursuant to that agreement are converted into net claims or obligations or otherwise netted – including through entry by the parties into a transaction of the kind referred to in item (5) of the definition of Netting referred to in Article (3) of this decretal law – shall take effect, in accordance with the terms of the applicable Netting Agreement.

The same applies to Qualified Financial Contracts and to financial contracts and transactions

to which such Netting Agreement applies.

## **Article (11)**

### **Scope of Powers of the Liquidator**

Without prejudice to the provisions of the registered owner and beneficial owner referred to in the legislations issued within the jurisdiction of the Regulatory Authorities in the State, any powers of the Liquidator to perform or not to perform specific contracts or obligations, transactions or claims will not prevent the termination, liquidation, acceleration and/or conversion into net claims or obligations of all payment or delivery obligations or entitlements, and all obligations or entitlements relating to the making of payments or deliveries 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.

Any of such powers shall apply only to the net amount due in respect of all of such Qualified Financial Contracts in accordance with the terms therein.

## **Article (12)**

### **Limits on Application of the Provisions of the Insolvency and Bankruptcy**

#### **Laws Prohibiting Set-off, Offset or Net Out of Obligations**

The provisions of a Netting Agreement, which provide for the determination of a net balance of the close-out values, shall be enforced in respect of an Insolvent and any other party in accordance with its terms. The same shall apply in respect of market values, liquidation values and replacement values calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements under one or more Qualified Financial Contract entered into under or in connection with a Netting Agreement.

The provisions of a Netting Agreement shall not be suspended, resolved, made conditional or not performed in any manner based on the provisions of the Insolvency and Bankruptcy laws in force, which limit the exercise of rights to set-off, offset or net out obligations, entitlements, payment amounts or termination values owed between an Insolvent and another party.

## **Article (13)**

### **Preferences and Fraudulent Transfers**

1. The Liquidator shall not annul, stop or refuse the performance of any of the following operations, on the grounds of it constituting a preference due to a non-Insolvent:
  - a. any payment, transfer, delivery, substitution or exchange of cash, Collateral or any other interests, property, asset, or financial instruments, both conventional and Shari'ah-compliant, under or in connection with a Netting Agreement made from the Insolvent party to the non- Insolvent party;
  - b. any obligations incurred under or in connection with a Netting Agreement by the Insolvent and owing to the non-Insolvent to make any payment, transfer, delivery, substitution or exchange of cash, Collateral or any other interest or property; or
  - c. any transaction entered into by the Insolvent in accordance with the terms of any Netting Agreement in order to give effect to the netting provisions of this agreement.
2. As an exemption to the provisions of item (1) of this article, the Liquidator may have the right to annul or stop or refuse the performance of the operations mentioned in it, where there is clear and convincing evidence that the non-Insolvent party made such operations with the intention to hinder, delay, or defraud any party to which the Insolvent party was indebted or became indebted, during or after the date such operations were made.

## **Article (14)**

### **Prohibition to Limit, Suspend, or Delay Application of Provisions of Netting Agreements**

No limit, suspend, or delay application of otherwise enforceable provisions of a Netting Agreement in accordance with articles nos. (9) and (10) of this decretal law under the proceeding of stay or any other similar proceeding or order.

## **Article (15)**

### **Realization and Liquidation of Collateral**

The realization, appropriation and/or liquidation of collateral shall take effect or occur

without any requirement that prior notice shall be given to, or consent be received from, any party, Person or entity, provided that:

1. There is no agreement between the parties otherwise and
2. Legislations in force in the State requiring that the realization, appropriation and/or liquidation of collateral is conducted in a commercially reasonable manner shall be taken into consideration.

## **Article (16)**

### **Enforceability of a Multi-Branch Netting Agreement in an Insolvency of a Foreign Party's Branch/Agency**

1. The liability of a Foreign Party's Branch/Agency, in case of insolvency, or the liability of its Liquidator in the State under a Multi-Branch Netting Agreement shall be calculated as of the date of the termination of the Qualified Financial Contracts entered into under such Multi-Branch Netting Agreement in accordance with the terms of this agreement. The non-Insolvent's right to receive payments shall be limited to the lesser of either (i) the Foreign Party Net Payment Obligation or (ii) the Foreign Party's Branch/Agency Net Payment Obligation.
2. The liability referred to in item (1) of this article otherwise paid to or received by the non-Insolvent shall be reduced by any amount in respect of the Foreign Party Net Payment Obligation pursuant to such Multi-Branch Netting Agreement, which if added to the liability of the liquidator would exceed the Foreign Party Net Payment Obligation, under this article.
3. The liability of the liquidator of an Insolvent branch or agency of a Foreign Party to the non-Insolvent under a Multi-Branch Netting Agreement shall be reduced by the fair market value of, or the amount of any proceeds of, Collateral that secures or supports the obligations of the Foreign Party under the Multi-Branch Netting Agreement and has been applied to satisfy the obligations of the Foreign Party pursuant to the Multi-Branch Netting Agreement to the non-Insolvent.
4. The Foreign Party's rights to receive payment based on payments made in accordance with its Insolvency and Bankruptcy Proceedings in other jurisdictions shall be limited as follows:

- a. The liability of the non- Insolvent shall be reduced by any amount otherwise paid to or received by the Liquidator or any other liquidator or receiver of the Foreign Party in its Home Country or any other country in respect of the Foreign Party Net Payment Entitlement pursuant to such Multi-Branch Netting Agreement, which if added to the liability of the non-Insolvent under this article would exceed the Foreign Party Net Payment Entitlement.
  - b. The liability of the non-Insolvent to the Liquidator pursuant to such Multi-Branch Netting Agreement also shall be reduced by the fair market value of, or the amount of any proceeds of the Collateral that secures or supports the obligations of the Non-Insolvent and has been applied to satisfy the obligations of the non-Insolvent to the Foreign Party pursuant to such Multi-Branch Netting Agreement.
5. The non-Insolvent to a Multi-Branch Netting Agreement which has a perfected security interest in Collateral, or other valid title, lien or security interest enforceable against third parties pursuant to such Multi-Branch Netting Agreement, may retain all such Collateral and upon termination of such agreement in accordance with its terms apply such Collateral in satisfaction of any claims secured by the Collateral, provided that the total amount so applied to such claims shall in no event exceed the Foreign Party Net Payment Obligation, if any. Any excess Collateral shall be returned.

## **Article (17)**

### **General Provisions**

1. A Foreign Party's Branch/Agency Net Payment Entitlement shall be the amount that would have been owed by the non-Insolvent Party, if any, to a Foreign Party, under a Multi-Branch Netting Agreement, after Netting that Qualified Financial Contract entered into by the non-Insolvent with the branch or agency of the Foreign Party, which takes place in the State under such an agreement.
2. A Foreign Party's Branch/Agency Net Payment Obligation shall be the amount that would have been owed by the Foreign Party, if any, to the non-Insolvent, under a Multi-Branch Netting Agreement, after Netting those Qualified Financial Contracts entered into by the non-Insolvent with the branch or agency of the Foreign Party, which takes place in the State

under such an agreement.

3. A Foreign Party Net Payment Entitlement shall be the aggregate amount owed by the non-Insolvent – including all its subsidiaries and affiliates, if any, to the Foreign Party. This shall apply after giving effect to the Netting provisions of a Multi-Branch Netting Agreement with respect to all Qualified Financial Contracts subject to Netting under such agreement – or the aggregate amounts that would be owed if the relevant Multi-Branch Netting Agreement provided for any payments to either party, upon termination of Qualified Financial Contracts thereunder, under such agreement.
4. A Foreign Party Net Payment Obligation shall be the aggregate amount owed by the Foreign Party – including all its subsidiaries and affiliates to the non-Insolvent after giving effect to the Netting provisions of a Multi-Branch Netting Agreement with respect to all Qualified Financial Contracts subject to netting under such agreement.

## **Article (18)**

### **Conflict with Other Laws**

Any provisions of any other law contrary to or conflicting with the provisions of this decretal law shall be cancelled.

## **Article (19)**

### **Decretal Law Publication and Application**

This decretal law shall be published in the Official Gazette, and shall come into force one month following the date of its publication.

**Khalifa Bin Zayed Al Nahyan**

**President of the United Arab Emirates**

Promulgated by us at the Presidential Palace, Abu Dhabi on:

Muharram 10, 1440 Hijri

September 20, 2018 Gregorian