

# Federal Decree- Law No. (31) of 2024

## Regarding Netting

**We, Mohamed 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; 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-Decree- Law No (10) of 2018, Regarding Netting;
- Decretal Federal Law No (14) of 2018 Regarding the Central Bank and Organization of Financial Institutions and Activities, and its Amendments;
- Federal Decree - Law No. (51) of 2023 on Financial Restructuring and Bankruptcy;
- Based on the proposal of the Minister of Finance, and approval of the Cabinet;

**Promulgated the following Decree- Law:**

### Article (1)

#### Definitions

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

- |                             |   |  |
|-----------------------------|---|--|
| <b>The State</b>            | : | The United Arab Emirates   |
| <b>CBUAE</b>                | : | The Central Bank of the United Arab Emirates   |
| <b>Financial Free Zones</b> | : | Free zones subject to the provisions of Federal Law No. (8) of 2004 regarding financial free zones, or any other law replacing it. |

- Qualified Financial Contracts** : Contracts stipulated in Article (5) of this Decree-Law.
- Cash** : Money credited to an account in any currency, or any other monetary claim for repayment of money, including money market deposits.
- Netting Agreement** : An agreement between two or more persons, stipulating that netting procedure shall be carried out 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 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 outside its Home Country.
- Person** : A natural or legal person including, but not limited to, any company or corporation, any international or regional organization, bank or international or regional development institution, whether established under an international agreement or otherwise, and also including, but not limited to, any political subdivision or unit or entity owned by any political subdivision or unit of a central or regional government.
- Insolvency and Bankruptcy Procedures** : 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.
- Insolvent** : A person who is subject to insolvency and bankruptcy proceedings under the laws in force in the State.
- Liquidator** : The Person who carries out or administers liquidation or receivership procedures, or appointed 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.

**Collateral** : All that is provided to secure or enhance a right or obligation, including 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. Guarantees, letters of credit and obligations to reimburse; and
4. Any asset commonly used as collateral in the State.

**Collateral Arrangement** : Any mechanism or procedure that is made on margin, variation margin, collateral or security procedures or other credit enhancement tools related to, or forming part of “Netting Agreement” or one or more “Qualified Financial Contracts” entered into thereunder, or to which a “Netting Agreement” applies, including:

1. Any pledge, mortgage, security or any other form of security interest in Collateral, whether possessory or non-possessory;
2. Arrangements for title transfer Collateral; and
3. Any obligation to provide a guarantee, letter of credit or repayment by any party to another party in a “Qualified Financial Contract”, relating to any such contract.

**Collateral Title Transfer Arrangements** : Any mechanism or procedure that is made on margin, Collateral or security procedures related to a “Netting Agreement” or a “Qualified Financial Contract” based on the collateral transfer,

Whether by direct transfer or by security, including a sale and repurchase agreement, a securities lending agreement, a securities purchase or resale agreement or an insurance arrangement, the terms and conditions of which enable the security taker to dispose of the relevant security after it has been transferred to the security taker.

- Home Country** : The country where any of the parties to a Netting Agreement is incorporated, regulated or duly registered.
- Home Office** : The place of business at the Home Country of any party to a Netting Agreement.
- Foreign Party** : A party whose Home Country is outside the State, and for the purposes of implementing the provisions of this Decree-Law, 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 referred to in this Decree-Law.
2. Financial Free Zones and financial institutions licensed thereby shall be exempted from the application of the provisions of this Decree-Law, to the extent where there are similar legislations governing similar cases referred to in this Decree- Law.

## **Article (3)**

### **Netting**

Any of the following cases shall be considered as Netting:

1. Termination, liquidation or acceleration of any payment, obligation to deliver entitlement or obligation to make, receive or require payments or fulfilment, 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 Decree- Law – in respect of each liability or entitlement or group of liabilities or entitlements terminated, liquidated or accelerated under Clause (1) of this article;
3. Conversion of any of the values calculated or estimated under Clause (2) of this Article into a single currency;
4. Determining the net balance of the calculated values in accordance with Clause (2) of this Article that must be paid, or that an obligation may arise to pay, and in accordance with the transfer value stipulated in Clause (3) of this article, whether this is done through the process of settling obligations by exemption, replacement, or otherwise; and
5. Obligation of one of the parties to the netting agreement to pay, or continue payment of the net balance in accordance with Clause (2) of this article, or as a result of the parties entering into a transaction under which or pursuant to which the net balance becomes due for payment directly or as part of the consideration for a specific asset or as a provision to pay damages related to the failure to implement that transaction.

## **Article (4)**

### **Netting Agreement**

1. An agreement shall be considered as a Netting Agreement in any of the following cases:
  - a. If an agreement that results in a netting relates to current or future payments, or the fulfilment of obligations or entitlements, or the obligation or entitlement to make, or to receive or require payment or fulfilment, arising under or in connection with a qualifying 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 concluded between two parties relating to the netting of an amount due under two or more netting agreements;

- c. If the 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. If the agreements or arrangements are compliant with the provisions of Islamic Shari'ah, having the same purposes as the netting agreements or arrangements stipulated 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 Decree- Law.
2. Any arrangements shall be deemed Collateral Arrangements if it includes agreements, contracts or transactions that fall within the framework of Qualified Financial Contracts referred to in Article (5) of this Decree- Law or within the definition of Netting Agreements stipulated 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 stipulated in this Decree- Law shall apply to the Foreign Party's Branch in accordance with Article (16) of this Decree- Law.
5. If a netting agreement contains provisions relating to contracts, agreements or transactions other than Qualified Financial Contracts, such agreement shall be deemed a Netting Agreement only with respect to those contracts that fall within the definition of Qualified Financial Contracts.

## **Article (5)**

### **Qualified Financial Contracts**

Without prejudice to provisions of Article (7) of this Decree- Law, the Qualified Financial Contracts shall be final and enforceable, and shall include, but not be limited to, any of the following contracts, transactions or procedures:

1. All types of swaps contracts in relation to currencies, interest rate, base 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 contract;
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, other debt securities, Sukuk, or to a bond or debt security index, or Sukuk 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 risk 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 derivatives, agreements, contracts or transactions of digital assets of the types set forth 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 set forth in any of Clauses (1) to (21), and Clauses (23) to (25) of this Article;
23. Any agreement, contract or transaction similar to any agreement, contract or transaction set forth in Clauses (1) to (22) 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 and Sukuk, Digital assets, voluntary carbon credits or other types of carbon credits, 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;
24. 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 (23) and Clause (25) of this article; and
25. Any contract, undertaking or transaction, which individually or together with any other such contract, undertaking or transaction 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 (24) of this article through the use of one or more of 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, wa'ad or other contract, undertaking or transaction used for the purpose of effecting instruments, agreements or transactions compliant with the provisions of Islamic Shari'ah; and
26. Any financial agreement, contract or transaction that the CBUAE decides to consider as a Qualified Financial Contract.



## **Article (6)**

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

Qualifying Financial Contracts, whether entered into or become binding at a specific time or within a specific period, and whether contingent upon the fulfilment of any condition or contingent event, give rise to one or more of the following obligations:

1. Payment of due obligations, or transfer of title to commodities or assets for consideration; or
2. Obligation to make payments or repayments, or transfer of title to commodities or assets for consideration.

## **Article (7)**

### **Central Bank Powers**

The CBUAE shall have the authority to:

1. Designate any financial agreement, financial contract or other financial transaction as a Qualified Financial Contract, in addition to the types mentioned in Article (5) of this Decree-Law.
2. Remove or add any financial agreement, financial contract or financial transaction from the list of Qualified Financial Contracts mentioned in Article (5) of this Decree-Law.
3. Any other powers related to the provisions of this Decree-Law determined by a decision of the Cabinet.

When exercising its powers stated in this Article, the CBUAE shall coordinate with the Securities and Commodities Authority (SCA), and may consult with any other regulatory authority at its discretion.

## **Article (8)**

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

1. No Qualified Financial Contract shall be deemed void or unenforceable for any reason relating to aleatory contracts (Gharar) provisions of any law, including in relation to games, matches, gambling, betting or lotteries.
2. If a person undertakes, upon entering into a Qualified Financial Contract or any agreement relating to such Qualified Financial Contract, undertakes or otherwise indicates to the other party to the

Qualified Financial Contract, that the Qualified Financial Contract is Shari'ah compliant, such person may not subsequently repudiate, deny, disavow or reject, in whole or in part, its obligations under the Qualified Financial Contract on the grounds that the Qualified Financial Contract is no longer Shari'ah compliant, due to a change in the interpretation of any relevant Shari'ah rule or principle for any other reason.

## **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 any law relating to Insolvency and Bankruptcy Procedures; or
3. Any other provision of any law that may be applicable to an Insolvent.

## **Article (10)**

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

The obligations of any party to payment or fulfilment shall be enforceable in accordance with the terms of the Netting Agreement, in the event of insolvency and bankruptcy proceedings relating to one of the parties to the Netting Agreement, pursuant to which the obligations of any party have been converted to net claims or obligations or have been netted, including any of the transactions stipulated in Clause (5) of Article (3) of this Decree-Law. The same provision shall apply to Qualified Financial Contracts, and financial contracts and transactions subject to the Netting Agreement.

## **Article (11)**

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

1. The powers granted to the liquidator to execute, or refrain from executing, certain contracts or obligations, transactions or claims shall not prevent the possibility of terminating, liquidating, accelerating or converting to net claims, or net obligations of all payments, or fulfilling obligations and entitlements, related to making payments or fulfilling, 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 Implementation and Application of Netting Agreement Provisions in Cases of Insolvency and Bankruptcy**

1. 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 or terminated payment or fulfillment liabilities or entitlements under one or more Qualified Financial Contract entered into under or in connection with a Netting Agreement.
2. The provisions of a Netting Agreement shall not be suspended, terminated, made conditional or not performed in any manner based on the provisions of the Insolvency and Bankruptcy laws in force, which restrict the rights to settle obligations, entitlements, payment amounts or termination values due between the insolvent and any other party, whether by exemption, replacement or on a net basis.

## **Article (13)**

### **Preferences and Fraudulent Transfers**

1. The Liquidator shall not annul, stop or refrain from executing any of the following transactions, on the grounds that they constitute a preference by an insolvent party:
  - a. Any payment, transfer, fulfillment, replacement, or exchange of cash, Collateral or any other interests, property, asset, or financial instruments, both conventional and Shari'ah-compliant, and whether made under or in connection with a "netting agreement", made by an Insolvent party;
  - b. Any liabilities incurred by an insolvent party under or in connection with a Netting Agreement to pay, transfer, fulfil, exchange or swap cash, collateral or any other interest or fund;
  - c. Any transaction undertaken by an Insolvent party in accordance with the terms of any Netting Agreement in order to give effect to the netting provisions of this agreement.
2. As an exception to the provisions of Clause (1) of this Article, the liquidator may nullify, suspend or decline to execute any of the transactions contained therein, where there is a clear and convincing evidence that the Insolvent Party has carried out those transactions with the intent to hinder, delay or defraud any party to whom the Insolvent Party was indebted, or became indebted, during or after the date of carrying out those transactions.

## **Article (14)**

### **Prohibition to Restrict, Suspend, or Delay Enforcement of Provisions of Netting Agreements**

The implementation of a Netting Agreement enforceable in accordance with the provisions of Articles (9) and (10) of this Decree-Law may not be restricted, suspended or delayed by means of stay of execution procedures or any other procedures or orders.

## **Article (15)**

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

1. In a Title Transfer Collateral Arrangement based on the transfer of title to Collateral by outright transfer, the transfer of the title to the relevant Collateral shall be effective as a transfer of title to the relevant Collateral in accordance with the terms of the Title Transfer Collateral Arrangement and such transfer shall not be characterized as creating a security arrangement.
2. The realization, appropriation or liquidation of the collateral and the enforcement of any collateral arrangement shall be effected without prior notice to, or consent of, any party, person or entity, if:
  - a. The parties do not agree otherwise.
  - b. Legislations in force in the State requiring the sale, appropriation or liquidation of the collateral to be effected in a commercially reasonable manner.

## **Article (16)**

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

1. In relation to a multi-branch Netting Agreement, the liability of the insolvent foreign party, or the liability of the liquidator of an insolvent foreign party, shall be calculated in accordance with the applicable insolvency and bankruptcy procedures 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 restricted in any of the following cases:
  - a. the Insolvent Foreign Party's obligation to pay the net amount due.
  - b. the Insolvent Foreign Party's branch's obligation to pay the net amount due, whichever is less.
2. Any amount of the liability referred to in paragraph (1) of this Article that has been paid to, or received by, the Non-Insolvent party in respect of the Insolvent Foreign Party's liability to pay the net amount due under the multi-branch Netting Agreement, which, if added to its liquidator's liability, exceeds the Insolvent Foreign Party's obligation to pay the net amount due in accordance with the provisions of this Article, shall be deducted.

3. The liability of the liquidator of the Insolvent Foreign Party branch to the Non-Insolvent Party under a Multi-Branch Netting Agreement shall be reduced by deducting the fair market value of the collateral securing or supporting the insolvent foreign party's liabilities or the value of any proceeds from such collateral, which were executed to satisfy the Insolvent Foreign Party's liabilities to the Non-Insolvent Party under such agreement.
4. The insolvent 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 Party shall be reduced by deducting any amount otherwise paid to or received by the Liquidator or any other liquidator or receiver of the insolvent Foreign Party in its Home Country or any other country in respect of the insolvent Foreign Party Net Payment Entitlement pursuant to such Multi-Branch Netting Agreement, which if added to the liability of the Insolvent under this Article would exceed the non-insolvent 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 deducting the fair market value of, or the amount of any proceeds of the Collateral that secures or supports the liabilities of the Non-Insolvent and has been applied to satisfy the liabilities of the non-Insolvent to the Foreign Party pursuant to such Multi-Branch Netting Agreement.
5. A non-insolvent party to a Multi-Branch Netting Agreement may, if it has a first-degree lien on a collateral, or any title, mortgage, or other lien enforceable against third parties under that agreement, retain that security in its entirety and may, upon termination of that agreement, enforce that collateral in accordance with the terms thereof, in satisfaction of any claims secured by that collateral, provided that the total amount enforced in satisfaction of such claims shall not in any event exceed the insolvent Foreign Party's liability to pay the net amount due, if any, in which case any excess of the collateral value shall be returned.

## **Article (17)**

### **General Provisions**

1. A Foreign Party's Branch net payment obligation 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 party with the branch of the Foreign Party, which takes place in the State under such an agreement.
2. A Foreign Party's Branch net payment liability 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 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, if any, to the Foreign Party – including all its subsidiaries and affiliates. 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)**

### **Cancellations and Priority of Application of The Provisions of this Decree-Law**

1. Any provision that contradicts or conflicts with the provisions of this Decree- law shall be repealed, and Decretal Federal Law No. (10) of 2018, Regarding Netting shall be repealed.
2. The provisions of this Decree- law shall have priority over the provisions of any other law or provision conflicting with the provisions of this Decree- law and in the case of new laws enacted

after this Decree- law, the provisions of this Decree- law shall remain in effect unless such later law expressly stipulates to cancel the provisions of this Decree- law or any of its provisions.

## **Article (19)**

### **Decree- Law Publication and Application**

This Decree- law shall be published in the Official Gazette, and shall come into force starting from 2 January 2025.

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

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

**Date: 28 / Rabi' Al-Awwal /1446 H**

**Corresponding to: 01 /October / 2024 AD**