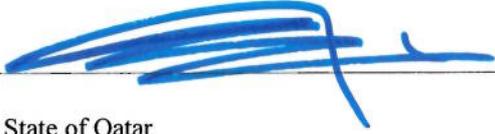


Netting Regulations 2017

QATAR FINANCIAL CENTRE
REGULATIONS NO. 20 OF 2017
QFC NETTING REGULATIONS

The Minister of Finance hereby enacts the following regulations pursuant to Article 9 of Law No. (7) of 2005.



Ali Shareef Al Emadi
Minister of Finance of the State of Qatar

Issued at: the Qatar Financial Centre, Doha

On: **19 OCTOBER 2017**

Corresponding to: **29 MUHARRAM 1439**

TABLE OF CONTENTS

1	Citation	5
2	Application	5
3	Commencement	5
4	Authoritative text of these regulations	5
5	Power of QFC Authority and Regulatory Authority to make rules	5
6	Interpretation	5
7	Conflict with other regulations	6
8	Definitions	7
9	Qualified financial instruments	9
10	Designation of kinds of instrument as qualified financial instruments	12
11	Enforceability of qualified financial instruments that are gambling contracts etc	12
12	Enforceability of qualified financial instruments formerly thought to be Shari'a-compliant	12
13	Enforceability of netting agreements—general rule	13
14	Effectiveness of netting obligations to make payments or deliveries	13
15	Limitation on powers of a liquidator	14
16	Limitation of insolvency laws prohibiting set-off	14
17	Liquidator's powers in relation to preferences and fraudulent transfers	15
18	Pre-emption	16

19	Realisation, appropriation and liquidation of collateral	16
20	Scope of these regulations	16
21	Governing law of netting agreements	17

1 Citation

These regulations are the *Netting Regulations 2017*.

2 Application

These regulations are made by the Minister of Finance under article 9 of the QFC Law and apply in the QFC. To the fullest extent permitted by the QFC Law, the laws, rules and regulations of the State of Qatar concerning the matters dealt with by or under these regulations do not apply in the QFC.

3 Commencement

These regulations come into force on the date on which the Minister of Finance signs them.

4 Authoritative text of these regulations

In accordance with a determination of the Minister of Finance under article 9 of the QFC Law, these regulations are written in English and the English text is the only authoritative text. A translation into another language is not authoritative.

5 Power of QFC Authority and Regulatory Authority to make rules

Each of the QFC Authority and the Regulatory Authority each within the scope of its jurisdiction, authority or powers conferred upon it, may make rules to the extent set out in the QFC Law, these regulations and any other regulations conferring powers, duties and functions on the QFC Authority and Regulatory Authority as it deems necessary or appropriate to implement, carry out or enforce these regulations.

6 Interpretation

(1) In these regulations:

-
- (a) a reference to a provision of a law or regulation includes a reference to that provision as amended or re-enacted from time to time;
 - (b) the masculine gender includes the feminine and the neuter;
 - (c) words in the singular include the plural and words in the plural include the singular; and
 - (d) a reference to writing includes any form of representing or reproducing words in legible form.
- (2) The heading to an article is for convenience only and does not affect its interpretation.
 - (3) A reference in these regulations to a Part or article by number only, without further identification, is a reference to the Part or article of that number in these regulations.
 - (4) A reference in these regulations to an article using a short form description of such article in parenthesis is for convenience only and the short form description shall not affect the construction of the article to which it relates.
 - (5) A reference in an article or other provision of these regulations to a paragraph, sub-paragraph or article by number or letter only, without further identification, is a reference to the paragraph, sub-paragraph or article of that number or letter in the article or other provision of these regulations in which that reference occurs.
 - (6) In these regulations, “including”, “in particular”, “for example”, “such as” and any other similar expression does not limit the generality of the expression preceding it.
 - (7) In these regulations, if a word or phrase is given a particular meaning, other parts of speech and grammatical forms of it have corresponding meanings.

7 Conflict with other regulations

In case of conflict or variance between the provisions of these regulations and any provisions in any other regulations in force in the QFC, the provisions of these regulations take precedence.

8 Definitions

In these regulations:

cash means money credited to an account in any currency, or a similar claim for repayment or payment of money, such as a money market deposit;

collateral means the following:

- (a) cash;
- (b) securities of any kind, including debt securities, equity securities and sukuk, and any rights or claims associated with any such securities;
- (c) guarantees, letters of credit and obligations to reimburse;
- (d) commodities (including bullion); and
- (e) any other asset commonly used as collateral by banks operating in the QFC;

collateral arrangement means any margin, collateral, security or credit support arrangement or other credit enhancement related to or forming part of a netting arrangement or related to or forming part of one or more qualified financial instruments entered into under a netting agreement or to which a netting agreement applies, including:

- (a) a ***title transfer collateral agreement*** (that is, a margin, collateral or security arrangement that is related to a netting agreement or a qualified financial instrument and is effected by virtue of or on the basis of a transfer of title to collateral, whether an outright transfer or a transfer by way of security, and includes a sale and repurchase agreement, a securities lending agreement, a securities buy/sell-back agreement and an irregular pledge); and
- (b) a guarantee, letter of credit or reimbursement obligation by or to a party to a netting agreement or to one or more qualified financial instruments, in respect of one or more of that netting agreement or those instruments;

insolvency proceeding includes any procedure or proceeding under a law relating to bankruptcy, liquidation (including any compulsory winding up procedure or proceeding), reorganisation, composition

with creditors, administration, receivership, conservatorship and any other similar procedure or proceeding;

insolvent party means a party in relation to which an insolvency proceeding has been instituted;

liquidator includes an administrator, receiver, trustee, conservator and any or other person or entity that administers the affairs or assets of an insolvent party;

netting means the occurrence of any or all of the following:

- (a) the termination, liquidation or acceleration of any of the following:
 - (i) a payment or delivery obligation or entitlement;
 - (ii) an obligation to make, receive or require payments or deliveries;
 - (iii) an entitlement to make, receive or require payments or deliveries;

under one or more qualified financial instruments that were entered into under a netting agreement or to which a netting agreement applies;

- (b) the calculation or estimation of a close-out value, liquidation value, termination value, replacement value, market value or other relevant value (including the value of any damages which may arise from a party's failure to enter into a transaction required to be entered into under a netting agreement) in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under paragraph (a);
- (c) the conversion of values so calculated or estimated into a single currency;
- (d) the determination of the net balance of values so calculated and converted, whether by operation of law or otherwise; and
- (e) entry into a transaction under which such a net balance becomes payable directly or as part of the consideration for an asset or the

provision for the payment of damages relating to any non-performance of any such transaction;

netting agreement means an agreement that provides for the netting of obligations and/or entitlements arising under qualified financial instruments, other netting agreements or collateral arrangements;

non-insolvent party means the party other than the insolvent party;

person includes:

- (a) a natural person;
- (b) a partnership, a body corporate, an unincorporated association and any other form of business organisation, whether organised under the laws of the QFC or of any other jurisdiction;
- (c) a sovereign body, a sovereign-owned entity, a government or state and an agency or unit of a government or state; and
- (d) an international or regional development bank or other international or regional organisation;

QFC means Qatar Financial Centre;

QFC Authority means the Qatar Financial Centre Authority;

QFC Law means Law no. (7) of 2005 of the State of Qatar;

qualified financial instrument has the meaning given by article 9;

regulations, unless the context indicates otherwise, means these regulations; and

Regulatory Authority means the Qatar Financial Centre Regulatory Authority.

9 Qualified financial instruments

- (1) In these regulations:

qualified financial instrument means a financial instrument, agreement or transaction under which, at a specified time or within a specified period of time:

- (a) payment or delivery obligations are to be performed, or title to commodities or assets is to be transferred; or

-
- (b) obligations to make payments or deliveries, or to transfer title to commodities or assets, are to be entered into or incurred.
- (2) In particular, an instrument, agreement or transaction of one of the following kinds is a qualified financial instrument:
- (a) a currency, cross-currency, interest-rate or profit-rate swap;
 - (b) a basis swap;
 - (c) a spot, future, forward or other foreign-exchange transaction;
 - (d) a cap, collar or floor transaction;
 - (e) a commodity swap;
 - (f) a forward rate agreement;
 - (g) a currency or interest rate future;
 - (h) a currency or interest rate option;
 - (i) an equity derivative, such as an equity swap or equity index swap, equity forward, equity option or equity index option;
 - (j) a derivative relating to bonds or other debt securities, to *sukuk* or to a bond or debt security index or a *sukuk* index, such as a total return swap, index swap, forward, option or index option;
 - (k) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;
 - (l) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;
 - (m) a weather derivative, such as a weather swap or weather option;
 - (n) a bandwidth derivative;
 - (o) a freight derivative;
 - (p) an emissions derivative, such as an emissions allowance or emissions reduction transaction;
 - (q) an economic statistics derivative, such as an inflation derivative;
 - (r) a property index derivative;
 - (s) a spot, future, forward or other securities or commodities transaction;

-
- (t) a securities contract, including a financing collateralised by securities such as a margin loan, 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 mortgage loans, interests in mortgage loans or mortgage-related securities;
 - (u) a commodities contract, including an agreement 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;
 - (v) a collateral arrangement;
 - (w) an agreement to clear or settle securities transactions or to act as a depository for securities;
 - (x) any other instrument, agreement or transaction similar to an instrument, agreement or transaction of a kind referred to in paragraphs (a) to (w) with respect to one or more reference items relating to interest rates, currencies, commodities, energy products, electricity, equities, weather, sukuk, bonds or other debt instruments, precious metals, quantitative measures associated with an occurrence, the 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 value;
 - (y) a swap, forward, option, contract for difference or other derivative in respect of, or combination of, one or more instruments referred to in paragraphs (a) to (x);
 - (z) an instrument, agreement or transaction that is or effects one of the instruments, agreements or transactions referred to in paragraphs (a) to (y) through use of a *murabaha*, *musawama* or *wa'ad* or any other structure commonly used for the purpose of effecting Shari'a compliant instruments, agreements or transactions.

-
- (3) However, an insurance or reinsurance contract entered into by a licensed or authorised insurance company as part of its insurance business is not a qualified financial instrument.

10 Designation of kinds of instrument as qualified financial instruments

- (1) The QFC Authority and the Regulatory Authority, acting jointly, may, by publishing a notice to that effect, designate as a qualified financial instrument any kind of instrument, agreement or transaction in addition to those specifically mentioned in article 9.
- (2) The QFC Authority and the Regulatory Authority, acting jointly, may, revoke a designation by publishing a notice to the effect, revoke the designation of any kind of instrument, agreement or transaction. However, the revocation of a designation does not apply:
- (a) to an instrument, agreement or transaction entered into before the revocation; or
 - (b) to a transaction (whether entered into before or after the revocation) entered into under an instrument or agreement entered into before the revocation or to which an instrument or agreement entered into before the revocation applies.

11 Enforceability of qualified financial instruments that are gambling contracts etc

A qualified financial instrument is not, and shall never have been, void or unenforceable because it is, or has the characteristics of, a wager or lottery, or a gambling or gaming contract.

12 Enforceability of qualified financial instruments formerly thought to be Shari'a-compliant

If, at the time a person enters into a qualified financial instrument (or an agreement relating to such an instrument), the person believes, represents or indicates that it is satisfied that the instrument or agreement is Shari'a-compliant, the person may not subsequently avoid or challenge its obligations or entitlements under the instrument

or agreement on the basis that the instrument or agreement has been found to be, or is perceived to be, inconsistent with a rule or principle of Shari'a.

13 Enforceability of netting agreements—general rule

- (1) A netting agreement is enforceable in accordance with its terms, including against:
 - (a) an insolvent party; and
 - (b) any guarantor or other person providing security for a party (even if the guarantor or other person is insolvent).
- (2) The operation of a provision of a netting agreement shall not be stayed, avoided or otherwise limited by:
 - (a) the appointment of, or an application for the appointment of, a liquidator;
 - (b) any action of a liquidator;
 - (c) any law relating to any insolvency proceeding to which law a party is subject, including any provision of such a law that would otherwise invalidate or render void:
 - (i) any provision of the agreement; or
 - (ii) any payment or delivery made under the agreement;by reference only to the time before the commencement of any insolvency proceeding that such payment or delivery was made or fell to be made; or
 - (d) any other provision of law applicable to an insolvent party.

14 Effectiveness of netting obligations to make payments or deliveries

After the commencement of insolvency proceedings in relation to a party to a netting agreement, any provisions of the agreement:

- (a) by which obligations of the parties to make payments or deliveries; or
- (b) relating to the making of payments or deliveries;

under the agreement, or a qualified financial instrument to which the agreement applies, are converted into net claims or obligations or otherwise netted (including through entry by the parties into or the requirement that they enter into a transaction of the kind referred to in paragraph (e) of the definition of *netting*) take effect in accordance with the terms of the netting agreement.

15 Limitation on powers of a liquidator

- (1) Any powers of a liquidator to assume or repudiate individual qualified financial instruments, agreements, transactions, claims or obligations do not prevent the netting of:
 - (a) payment or delivery obligations or entitlements; and
 - (b) obligations or entitlements relating to the making of payments or deliveries;under any qualified financial instrument or netting agreement.
- (2) Those powers apply, if at all, only after the liquidator has given effect to the terms of any applicable netting agreement.

16 Limitation of insolvency laws prohibiting set-off

A law that limits the exercise of rights to set off, offset or net obligations, payment amounts or values between an insolvent party and another party has no effect in relation to the provisions of a netting agreement that provide for the determination of, or for payment of or in respect of, the net balance of the close-out values, termination values, market values, liquidation values, replacement values or other relevant values (including the value of any damages which may arise from a party's failure to enter into a transaction required to be entered into under or pursuant to such provisions of the netting agreement) calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements, or accelerated and/or terminated obligations or entitlements relating to the making of payments or deliveries, in either case under one or more qualified financial instruments entered into thereunder or to which such netting agreement applies (including a payment or delivery in

respect of an instrument, agreement or transaction required to be entered into under or pursuant to such provisions).

17 Liquidator's powers in relation to preferences and fraudulent transfers

(1) Subject to sub-article (2), the liquidator of an insolvent party to a netting agreement may not avoid or render ineffective:

- (a) a payment, transfer, delivery, substitution or exchange of cash, collateral or any other interests or property under or in connection with the netting agreement from the insolvent party to the non-insolvent party; or
- (b) an obligation under the netting agreement, or to which the netting agreement applies, of the insolvent party to make a payment, transfer, delivery, substitution or exchange of cash, collateral or any other interest or property; or
- (c) a transaction entered into by the insolvent party in accordance with the terms of the netting agreement to give effect to the netting provided for by the agreement,

on the grounds of it constituting a preference by the insolvent party to the non-insolvent party.

(2) Sub-article (1) does not prevent a liquidator of an insolvent party from exercising a power to avoid or render ineffective a payment, transfer, delivery, substitution, exchange obligation or transaction of a kind referred to in sub-article (1) if there is clear and convincing evidence that the insolvent party:

- (a) made the payment, transfer, delivery, substitution or exchange; or
- (b) incurred the obligation; or
- (c) entered into the transaction,

with actual intent to hinder, delay, or defraud a person to which the insolvent party was indebted or became indebted, on or after the date on which the transfer, delivery, substitution or exchange was made, the obligation was incurred or the transaction was entered into.

18 Pre-emption

No stay, injunction, avoidance, moratorium or similar proceeding or order, whether issued or granted by a court, administrative agency, liquidator or otherwise, limits or delays the application or performance of an otherwise enforceable netting agreement or any transaction entered into under it or to which an otherwise enforceable netting agreement applies.

19 Realisation, appropriation and liquidation of collateral

- (1) The realisation, appropriation or liquidation of collateral under a collateral arrangement does not require any party to the arrangement, or any other person, to give notice or consent, unless the parties agree otherwise.
- (2) However, sub-article (1) does not affect the operation of any law in force in the QFC requiring the realisation, appropriation and liquidation of collateral to be conducted in a commercially reasonable manner.

20 Scope of these regulations

- (1) A netting agreement remains a netting agreement even if it contains provisions relating to instruments, agreements or transactions that are not qualified financial instruments. However, for the purposes of these regulations, such a netting agreement is a netting agreement only with respect to instruments, agreements or transactions that are qualified financial instruments.
- (2) A collateral arrangement remains a collateral arrangement even if it contains provisions relating to instruments, agreements or transactions that are not netting agreements or qualified financial instruments. However, for the purposes of these regulations, such a collateral arrangement is a collateral arrangement only with respect to agreements, contracts or transactions that are "netting agreements" or "qualified financial instruments" entered into under netting agreements, or that are instruments, agreements or transactions to which a netting agreement applies.

-
- (3) A netting agreement and all qualified financial instruments entered into under it, or to which it applies constitute a single agreement.

21 Governing law of netting agreements

A netting agreement, every transaction to which it applies, and all rights and obligations under the agreement and every such transaction, are governed exclusively by:

- (a) the law specified in the agreement as its governing law; or
- (b) if the agreement does not specify a governing law, the governing law determined in accordance with the applicable rules regarding choice of law in respect of contracts.