

NETTING OF FINANCIAL AGREEMENTS BILL 2014

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation

PART II

NETTING PROVISION

3. Enforceability of netting provision in qualified financial agreement
4. Form of financial collateral
5. Feature of qualified financial transaction
6. Power of Minister to prescribe other qualified financial agreement, netting provision and qualified financial transaction
7. Period of stay
8. Continued application of relevant provisions in other written laws
9. Power of Minister to amend Schedule

SCHEDULE

A BILL

i n t i t u l e d

An Act to provide for the enforceability of netting provision in financial agreements and to provide for related matters.

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ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Netting of Financial Agreements Act 2014.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“financial collateral” means an interest or a right that secures payment or performance of an obligation under a qualified financial agreement;

“Minister” means the Minister charged with the responsibility for finance;

“netting provision” means—

- (a) a provision in a qualified financial agreement which provides that upon the occurrence of the events specified by the parties in the agreement, all obligations owed by one party to another party under a qualified financial transaction are reduced to or replaced with a single net amount in accordance with the qualified financial agreement; or
- (b) any other mechanism which has the effect of determining a single net amount as netting provision prescribed by the Minister under paragraph 6(1)(b);

“prescribed” means prescribed by order published in the *Gazette*;

“qualified financial agreement” means—

- (a) a master agreement, with a netting provision, in respect of one or more qualified financial transactions, and where a master agreement is also in respect of one or more transactions that are not qualified financial transactions, the master agreement shall be a qualified financial agreement only with respect to the transactions that are qualified financial transactions;
- (b) any agreement or arrangement prescribed by the Minister under paragraph 6(1)(a); or
- (c) an agreement relating to financial collateral that secures payment or performance of an obligation, including any agreement under which title to property has been provided for the purpose of such security, with respect to one or more qualified financial transactions under a master agreement referred to in paragraph (a) or an agreement or arrangement referred to in paragraph (b);

“qualified financial transaction” means the transaction referred to in section 5 and includes any other transaction prescribed by the Minister to be a qualified financial transaction under paragraph 6(1)(c);

“securities” includes securities which are in accordance with Shariah.

PART II

NETTING PROVISION

Enforceability of netting provision in qualified financial agreement

3. Notwithstanding the provisions specified in Part I of the Schedule, the netting provision in a qualified financial agreement in respect of the qualified financial transactions referred to in section 5 shall be enforceable in accordance with the terms of the qualified financial agreement which may involve the following steps:

- (a) termination of qualified financial transactions entered into under the qualified financial agreement;
- (b) calculation of termination values owed by the parties to each other in respect of each of the qualified financial transactions under paragraph (a); and
- (c) determination of a single net amount of the termination values under paragraph (b) which becomes payable by one party to the other.

Form of financial collateral

4. The application of this Act in relation to financial collateral shall only extend to financial collateral provided in the form of—

- (a) cash or cash equivalents, including negotiable instruments and demand deposits;
- (b) securities, a securities account or a right to acquire securities; or
- (c) futures agreement or futures account.

Feature of qualified financial transaction

5. (1) For the purposes of this Act, a qualified financial transaction refers to a transaction which involves—

- (a) over-the-counter derivatives;
- (b) repurchase, reverse repurchase, buy-sell back in respect of securities; or

- (c) a lending or borrowing of unlisted debt securities under the Real Time Electronic Transfer of Funds and Securities System established under paragraph 44(1)(a) of the Central Bank of Malaysia Act 2009 [*Act 701*].

(2) In this section, “derivative” means any agreement including an option, a swap, futures or forward contract, whose market price, value, or delivery or payment obligation is derived from, referenced to or based on, but not limited to, securities, commodities, assets, rates (including interest rates, profit rates or exchange rates) or indices and shall include derivative which are in accordance with Shariah.

Power of Minister to prescribe other qualified financial agreement, netting provision and qualified financial transaction

6. (1) The Minister may, on the recommendation of the Central Bank of Malaysia, the Securities Commission, the Malaysia Deposit Insurance Corporation and the Pengurusan Danaharta Nasional Berhad, prescribe—

- (a) any other agreement or arrangement to be a qualified financial agreement;
- (b) any other mechanism which has the effect of determining a single net amount as netting provision; or
- (c) any other transaction to be a qualified financial transaction.

(2) An order under subsection (1) shall be laid before the Dewan Rakyat as soon as practicable after its publication in the *Gazette*.

(3) In this section—

“Central Bank of Malaysia” means the Central Bank of Malaysia which continues to exist pursuant to subsection 3(1) of the Central Bank of Malaysia Act 2009;

“Malaysia Deposit Insurance Corporation” means the Malaysia Deposit Insurance Corporation which continues to exist pursuant to subsection 3(1) of the Malaysia Deposit Insurance Corporation Act 2011 [*Act 720*];

“Pengurusan Danaharta Nasional Berhad” means the Pengurusan Danaharta Nasional Berhad incorporated under the Companies Act 1965 [*Act 125*] for such purposes provided under the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*];

“Securities Commission” means the Securities Commission established under section 3 of the Securities Commission Act 1993 [*Act 498*].

Period of stay

7. (1) The Minister may, on the recommendation of the relevant authority having the power to enforce the provisions specified in Part II of the Schedule, prescribe any period during which the enforceability of the netting provision under section 3 shall be stayed for the purposes of the provisions specified in Part II of the Schedule.

(2) The Minister shall cause a reasonable notice to be given to persons affected by the period of stay prescribed under subsection (1), unless the circumstances do not permit.

(3) The period prescribed under subsection (1) shall apply notwithstanding that any other period has been provided or prescribed under the provisions specified in Part II of the Schedule.

Continued application of relevant provisions in other written laws

8. Except as provided in this Act, nothing in this Act shall affect the continued application of the provisions specified in Part III of the Schedule with respect to qualified financial agreements.

Power of Minister to amend Schedule

9. (1) The Minister may, by order published in the *Gazette*, amend the Schedule upon consultation with the relevant authority having the power to enforce the provisions specified in the Schedule or having the power to enforce the provisions proposed to be added into the Schedule.

(2) An order under subsection (1) shall be laid before the Dewan Rakyat as soon as practicable after its publication in the *Gazette*.

SCHEDULE

[Sections 3, 7 and 8]

PART I

1. Sections 29A and 41 of the Pengurusan Danaharta Nasional Berhad Act 1998
2. Section 346C of the Capital Markets and Services Act 2007 [Act 671]

PART II

1. Subsections 115(3) and 180(1) of the Malaysia Deposit Insurance Corporation Act 2011
2. Subsection 209(2) of the Financial Services Act 2013 [Act 758]
3. Subsection 220(2) of the Islamic Financial Services Act 2013 [Act 759]
4. Section 41 of the Pengurusan Danaharta Nasional Berhad Act 1998

PART III

1. Subsections 115(3) to 115(7) and 180(2) to 180(5) of the Malaysia Deposit Insurance Corporation Act 2011
2. Subsections 209(3) to 209(6) of the Financial Services Act 2013
3. Subsections 220(3) to 220(6) of the Islamic Financial Services Act 2013

EXPLANATORY STATEMENT

This Bill seeks to provide for the enforceability of netting provision in financial agreements and to provide for related matters.

2. *Clause 1* contains the short title and commencement of the proposed Act.

3. *Clause 2* contains the definition of certain words and expressions used in the proposed Act.
4. *Clause 3* seeks to provide that the netting provision of a qualified financial agreement shall be enforceable in accordance with its terms notwithstanding the provisions set out in Part I of the Schedule.
5. *Clause 4* seeks to set out the form of financial collateral to which the proposed Act applies.
6. *Clause 5* seeks to set out the features of qualified financial transactions to which the proposed Act applies.
7. *Clause 6* seeks to empower the Minister to prescribe other qualified financial agreement, netting provision and qualified financial transaction, upon the recommendation of the Central Bank of Malaysia, the Securities Commission, the Malaysia Deposit Insurance Corporation and the Pengurusan Danaharta Nasional Berhad. The order prescribed shall be laid before the Dewan Rakyat as soon as practicable after its publication in the *Gazette*.
8. *Clause 7* seeks to provide that the Minister may prescribe a period of stay of the enforceability of the netting provision for the purposes of the provisions specified in Part II of the Schedule, upon the recommendation of the authorities having the power to enforce the provisions specified in Part II of the Schedule. Such period of stay shall prevail notwithstanding any other period of stay as may be provided or prescribed under the provisions specified in Part II of the Schedule.
9. *Clause 8* seeks to provide for the continued application of relevant provisions in other written laws specified in Part III of the Schedule.
10. *Clause 9* seeks to empower the Minister to amend the Schedule by an order published in the *Gazette* upon consultation with the relevant authority. The order shall be laid before the Dewan Rakyat as soon as practicable after its publication in the *Gazette*.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)2925]