

# IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

## INTERNATIONAL BRIEFINGS 2015



Adrian Chair

Level 10 Menara BRDB  
285 Jalan Maarof  
Bukit Bandaraya  
59000 Kuala Lumpur, Malaysia

**Tel:** +603 2780 2888  
**Fax:** +603 2780 2832  
**Email:** partner@kaaplaw.com  
**Web:** www.kaaplaw.com

### Malaysia

Kadir Andri &amp; Partners

## Clarification of netting enforceability

The Netting of Financial Agreements Act 2015 (Netting Act) came into force on March 30 2015, and clarifies that the netting provisions in a qualified financial agreement for qualified financial transactions are enforceable in accordance with the terms of the agreement.

The Netting Act clarifies the long-standing uncertainty on the enforceability of close-out netting arising from laws construed by the market as non-netting friendly. These are: (i) sections 29A and 41 of the Pengurusan Danaharta Nasional Berhad Act 1998 (Danaharta Act) which provide that appointment of a special administrator should not give rise to a termination or acceleration right, and impose a 12-month moratorium during which set-off is restricted except with Danaharta's consent; and (ii) section 346C of the Capital Markets and Services Act 2007 (CMSA), empowering the Securities Commission to require any person to take measures the Commission considers necessary for managing systemic risk.

The Netting Act expressly states that netting provisions are enforceable despite the above laws.

A qualified financial transaction includes an over-the-counter derivative, a repurchase, reverse repurchase, or buy-sell back in respect of securities, or a lending or borrowing of unlisted debt securities under the Real Time Electronic Transfer of Funds and Securities System.

A qualified financial agreement includes a master agreement with a netting provision in respect of one or more qualified financial transactions, and an agreement relating to financial collateral

that secures payment or performance of an obligation (including by title transfer) with respect to one or more qualified financial transactions under a master agreement. In this regard, the Netting Act also provides legal certainty for close-out netting of collateral provided for qualified financial transactions.

The enforceability of netting is stayed for two business days for the purposes of the Financial Services Act 2013, Islamic Financial Services Act 2013, Malaysia Deposit Insurance Corporation Act 2011 and Danaharta Act, which each provide for stay mechanisms. The two-business day stay period supercedes existing stay periods in these laws. This brief suspension period is needed to allow the authorities time to decide whether and how to resolve a troubled institution in an orderly fashion to mitigate financial stability risks.

The enforceability of close-out netting will provide credit risk reduction benefits, improve operational efficiency and reduce the systemic risk of the financial system. The close-out netting regime in Malaysia is now more in line with international practices.

*Adrian Chair and Constance Low*

### International Financial Law Review

For 30 years IFLR magazine has covered significant developments in the law of international finance. It is essential reading for banking, corporate and private practice lawyers. IFLR partners with local experts to provide its international readers with concise briefings on the latest developments in the jurisdictions they operate in.

[Click to access the latest issue.](#)

