

[AS PASSED BY THE NATIONAL ASSEMBLY]

**A
BILL**

to provide for the enforcement of netting rights and collateral arrangements

WHEREAS it is expedient to provide for effective measures to enable parties to financial arrangements to terminate and enforce such arrangements in case of termination events, bankruptcy, insolvency, or otherwise as per their respective rights and obligations under the netting agreement or collateral arrangement, and further to provide for matters connected therewith and incidental thereto;

It is hereby enacted as follows: -

1. **Short title, extent and commencement.** - (1) This Act may be called the Netting of Financial Arrangements Act, 2026.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.** - (1) In this Act, unless there is anything repugnant in the subject or context, -

- (i) "centralized exchange" means any exchange regulated by the Commission, including licensed securities or future exchanges;
- (ii) "collateral-provider" means the party providing collateral to another party under a financial collateral arrangement;
- (iii) "collateral-taker" means the party receiving collateral under a financial collateral arrangement;
- (iv) "Commission" means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (v) "enforcement event" means a default, close-out, or any termination event as specified in the netting agreement that enforces the netting provisions with respect to qualified financial arrangements and financial collateral arrangements.

(vi) **“equivalent financial collateral”** includes–

- (a) in relation to cash, a payment of the same amount and in the same currency; and
- (b) in relation to financial instruments, financial instruments of the same class and of the same nominal value, currency and description, or
- (c) where the financial collateral arrangement provides for the transfer of other assets following the occurrence of any event relating to or affecting any financial instruments provided as financial collateral, such other assets;

(vii) **“financial collateral”** means any of the following:

- (a) cash or cash equivalents in any currency;
- (b) securities, a securities account, or a securities entitlement;
- (c) financial instruments;
- (d) futures agreement or futures account;
- (e) guarantees, letters of credit, and obligations to reimburse; or
- (f) any other asset commonly used in the financial market as collateral;

(viii) **“financial collateral arrangement”** means any margin, collateral, or security arrangement or other credit enhancement related to or forming part of a netting agreement or one or more qualified financial arrangements to which a netting agreement applies, including, without limitation:

- (a) a title transfers a financial collateral arrangement;
- (b) a pledge or any other form of security interest in collateral, whether possessory or non-possessory, any guarantee, letter of credit, or reimbursement obligation by or to a party to one or more qualified financial arrangements, in respect of those qualified financial arrangements or in respect of a netting agreement;

(ix) **“financial instrument”** includes -

- (a) shares or equivalent securities;

- (b) bonds, sukuk or other forms of instruments available in the market or traded on a centralized exchange;
 - (c) units or shares in an investment fund; or
 - (d) any other similar conventional or *Shariah* compliant instruments;
- (x) “insolvent party” means a party declared insolvent by a competent court of law or in relation to which an insolvency proceeding has been instituted;
- (xi) “insolvency proceeding” includes winding up proceedings or reorganization measures, by whatever name called, or any similar proceedings under the applicable laws;
- (xii) “liquidator” means a professional appointed in an insolvency proceeding, and includes any administrator, receiver, trustee, or other person or entity which administers the affairs or assets of an insolvent party during an insolvency proceeding;
- (xiii) “netting” means the set of provisions in an agreement between the two persons that has the following effect: -
 - (a) the termination, close-out, or acceleration of any present or future payment or delivery rights and obligations or entitlements arising under or in connection with one or more qualified financial arrangements to which a netting agreement applies;
 - (b) the calculation or estimation of a close-out value, market value, liquidation value, or replacement value in respect of rights and obligations terminated, liquidated, and/or accelerated under (a) and the conversion of such value in a single currency; and
 - (c) the determination of the net balance of the values calculated under (b), giving rise to the obligation of one person to pay an amount equal to the net balance to the other person.
- (xiv) “netting agreement” means any arrangement between two persons that provides for netting, including, without limitation:
 - (a) an agreement that provides for the netting of amounts due under two or more netting agreements; and

- (b) a financial collateral arrangement relating to or forming part of a netting agreement;
- (xv) “obligations” means monetary and non-monetary obligations
- (xvi) “over the counter financial agreement, contract or transaction” means any agreement, contract, or transaction negotiated directly between two or more parties without the involvement of any centralized exchange;
- (xvii) “party” means a person that is a party to a netting agreement,
- (xviii) “person” includes an individual, partnership, corporation, regulated entity such as a banking company, investment firm, insurance company or investment manager, or any other body corporate whether incorporated under the laws of Pakistan or under the laws of any other jurisdiction, and any unit or political sub-division of Federal or Provincial government, and any international or regional development bank or other international or regional organization;
- (xix) “qualified financial arrangement” means any over the counter or privately negotiated financial agreement, contract, or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract, or transaction, under which payment or delivery obligations are due to be performed at a certain time or within a certain period of time as specified in the First Schedule.
- (xx) “Schedule” means a schedule to this Act;
- (xxi) “security financial collateral arrangement” means an arrangement under which a collateral-provider provides financial collateral subject to a security interest to the collateral-taker or for the benefit of such collateral-taker;
- (xxii) “security interest” means any legal or equitable interest or any right in security created or otherwise arising from a security, including a pledge, a mortgage, or a charge;
- (xxiii) “*Shariah* compliant” means an arrangement made in accordance with the principles of *Shariah* and approved as such by the State Bank or the Commission or by any authority under the applicable laws;

- (xxiv) **"State Bank"** means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (xxv) **"termination event"** means the occurrence of any event mentioned in the netting agreement which gives one or both parties the right to terminate relevant transactions under the netting agreement;
- (xxvi) **"title transfer financial collateral arrangement"** means a margin, collateral, or security arrangement related to a netting agreement or to one or more qualified financial arrangements based on the transfer of title to collateral; and
- (xxvii) **"winding up proceedings"** means proceedings initiated in court or any other authority under relevant law to wind up a company, body corporate, or entity, or voluntary winding up.

(2) A word or expression used in this Act and not defined shall have the same meaning as is assigned thereto in the Companies Act, 2017 (Act No. XIX of 2017) or the Securities and Exchange Commission of Pakistan Act, 1997 (Act No. XLII of 1997).

3. Application.- The provisions of the Act shall apply to the qualified financial arrangements made between the parties where at least one of the parties is regulated by the State Bank of Pakistan or the Commission or is established under any Federal law.

4. Netting agreement and financial collateral arrangement. - (1) A netting agreement and financial collateral arrangement shall respectively be a netting agreement or, as the case may be, a financial collateral arrangement, if these contain provisions or clauses relating to a qualified financial arrangement.

(2) For the purpose of this Act, a netting agreement shall be deemed to be a netting agreement if it contains provisions or clauses which are related to the qualified financial arrangements, notwithstanding the fact that it may also contain provisions or clauses relating to agreements or transactions that are not qualified financial arrangements.

(3) For the purpose of this Act, a financial collateral arrangement shall be deemed to be such an arrangement if it contains provisions or clauses which form part of the netting

agreement and qualified financial arrangements, notwithstanding the fact that it may also contain provisions or clauses not related to qualified financial arrangements.

(4) For the purpose of this Act, a netting agreement and all qualified financial arrangements entered into thereunder or to which such netting agreement relates shall constitute a single contract.

5. Enforceability of netting agreements and financial collateral arrangements. - (1) Save as otherwise provided in this Act, the provisions of a netting agreement and of a financial collateral arrangement shall be enforceable in accordance with the terms stated therein, and may not be stayed, avoided, or otherwise limited by any action taken or power exercised by the liquidator or anyone authorized under any insolvency laws or any other law.

(2) If, at the time a person enters into a qualified financial arrangement, the person is satisfied that the arrangement is Shariah-compliant, the person may not subsequently avoid or challenge the arrangement on the basis that the arrangement is inconsistent with Shariah.

6. Limitation on obligation to make payment and delivery.- After commencement of insolvency proceedings in relation to any party to a netting agreement, the only obligation, if any, of either party to make payment or delivery under the netting agreement in respect of all rights and obligations subject to the application of close-out netting shall be its obligation to pay a net amount to the other party as determined in accordance with the terms of such netting agreement.

7. Limitation on right to receive payment and delivery.- After commencement of insolvency proceedings in relation to any party to a netting agreement, the only right, if any, of either party to receive payment or delivery under the netting agreement in respect of all rights and obligations subject to the application of netting shall be equal to its right to receive a net amount from the other party as determined in accordance with the terms of such netting agreement.

8. Pre-emption.- No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, liquidator, or otherwise, shall limit or delay application and enforcement of netting agreements and financial collateral arrangements in accordance with sections 4, 5, 6, and 7 of this Act.

9. **Limitation of powers of the liquidator.** - Any powers of the liquidator to resume or repudiate individual contracts or transactions will not prevent the termination, liquidation, and/or acceleration of all payment or delivery obligations or rights under one or more qualified financial arrangements to which a netting agreement applies.

10. **Limitation of insolvency laws prohibiting set-off.** - The provisions of a netting agreement that provide for the determination of net balance of the amount calculated in respect of payment or delivery obligation under one or more qualified financial arrangements to which the netting agreement applies shall have effect notwithstanding anything to the contrary provided in the insolvency laws or any other law for the time being in force.

11. **Realization and liquidation of collateral.** - Unless otherwise agreed by the parties, the terms of a financial collateral arrangement may be enforced, without prior notice, consent, or approval of any person or authority.

12. **Powers to notify qualified financial arrangement.** - The Federal Cabinet, on recommendation of the State Bank, with the concurrence of the Commission in writing and by notification in the official Gazette, may further add or remove such agreement, contract, or transaction as qualified financial arrangements to or from the list of agreements defined under the Schedule:

Provided that the removal of an agreement, contract, or transaction shall not affect any such agreements, contracts, or transactions entered into before the removal takes effect.

13. **Overriding effect.** - The provisions of this Act shall prevail notwithstanding anything to the contrary contained in insolvency laws or any other law for the time being in force:

Provided that-

- (a) the Securities Act, 2015 (III of 2015), the Futures Markets Act, 2016 (XIV of 2016), the Central Depositories Act, 1997 (XIX of 1997), or the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), along with rules and regulations made thereunder, shall, *mutatis mutandis*, apply; and

- (b) nothing in this Act shall have effect on any function or activity being carried out on a licensed securities exchange, futures exchange, or clearing house, including but not limited to settlement, execution, or netting of contracts, unless otherwise prescribed by the Commission and subsequently notified under section 12 of this Act.

14. Power to make rules. -The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

15. Power to make regulations. - In addition to the powers conferred by any other provision under this Act, the State Bank and the Commission, in their respective domains and in consultation with each other, may by notification make regulations for carrying out the purposes of this Act.

16. Removal of difficulties. - If a difficulty arises in giving effect to any provision of this Act, the Federal Government may make such order, not inconsistent with this Act, as may be necessary for the removal of such difficulty.

Schedule –
Qualified Financial Arrangements
[see sections 2(xix) and 12]

Qualified financial arrangement may include:

- (i) a currency, cross-currency, or interest rate swap agreement;
- (ii) a basis swap agreement;
- (iii) a spot, future, forward, or foreign exchange agreement;
- (iv) a cap, collar, or floor transaction;
- (v) a commodity swap;
- (vi) a forward rate agreement;
- (vii) a currency or interest rate future;
- (viii) a currency or interest rate option;
- (ix) equity derivatives, such as equity or equity index, swaps, equity options, and equity index options;
- (x) credit derivatives, such as credit default swaps, credit default basket swaps, total return swaps, and credit default options;
- (xi) energy derivatives, such as electricity derivatives, oil derivatives, coal derivatives, and gas derivatives;
- (xii) weather derivatives, such as weather swaps or weather options;
- (xiii) bandwidth derivatives;
- (xiv) freight derivatives,
- (xv) carbon emissions derivatives,
- (xvi) spot, future, forward, or another commodity contract;
- (xvii) a repurchase, reverse repurchase, or other similar financing agreement;
- (xviii) an agreement to buy, sell, borrow, or lend securities, such as a securities lending transaction;
- (xix) a title transfer collateral arrangement;

- (xx) an agreement to clear or settle securities transactions or to act as a depository for securities;
- (xxi) a commodities contract
- (xxii) any other agreement similar to any agreement or contract referred to in sub-clauses (i) to (xxi) with respect to reference items or indices relating to interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds, and other debt instruments and precious metals;
- (xxiii) any derivative or option in respect of or combination of one or more agreements or contracts referred to in sub-clauses (i) to (xxii);
- (xxiv) any Shariah-compliant financial contract or arrangement or undertaking or transaction related to the transactions referred to in sub-clause (i) to (xxiii).
- (xxv) any other agreement, contract or transaction notified as such under section 12 of this Act except which are traded or executed on a centralized exchange or clearing house under the Securities Act, 2015 (III of 2015), the Futures Markets Act, 2016 (XIV of 2016), the Central Depositories Act, 1997 (XIX of 1997) or Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) along with its rules and regulations framed thereunder shall not be considered as qualified financial arrangements unless notified under section 12 of this Act;

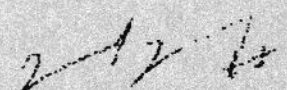
STATEMENT OF OBJECTS AND REASONS

Over the years, the development of domestic financial markets in Pakistan has led to the introduction of innovative financial products and increased bilateral exposures of banks and other financial market participants. The complexities introduced by such new products and increased bilateral exposures of the banks, require adoption of laws that could prevent and reduce risks in the financial system.

2. In this regard, the financial services industry typically use contractual rights of set-off and netting arrangements to not only to reduce such risks, but also to efficiently utilize credit, thus ensuring optimal use of regulatory capital. In Pakistan, such netting arrangements are established bilaterally between the counterparties to the financial contracts through privately negotiated agreements or standardized agreements used globally, like International Swaps and Derivatives Association (ISDA) Master Agreements. However, enforceability of such netting rights under such agreements, in case of a termination event, bankruptcy or insolvency proceedings are not always certain, and an absence of a clear law obstructs the development of not only the domestic financial markets, but also becomes restrictive for international financial counterparties to transact with local counterparties.

3. The proposed law removes any uncertainty in enforcing the netting rights in case of a termination event, bankruptcy, or insolvency proceedings, limits the powers of the liquidators to prevent any cherry picking of qualified financial arrangements, which fall under the ambit of netting provisions, and allows financial collateral arrangement under such netting rights. Once the law is enforced, the qualified financial arrangements will always be settled on the basis of 'netting' in the presence of the netting agreement.

4. The Netting of Financial Arrangements Bill is designed to achieve the aforementioned purposes.


Senator Muhammad Aurangzeb
Minister for Finance and Revenue