

# The Bilateral Netting of Qualified Financial Contracts Act, 2020

## Chapter-II Application of Act

### Section 5: Enforceability of netting.

5. (1) Netting of the qualified financial contract shall be enforceable—

(a) where such contract is entered into with a netting agreement, in accordance with the terms of the netting agreement:

Provided that the inclusion of any non-qualified financial contract in a netting agreement shall not invalidate the enforceability of netting of qualified financial contract under such agreement; or

(b) where such contract is entered into without a netting agreement, in accordance with the provisions of [section 6](#).

(2) A qualified financial contract shall not be void and shall be deemed never to have been void or unenforceable by reason of any law for the time being in force.

(3) Close-out netting of a qualified financial contract shall be enforceable against an insolvent party, and, wherever applicable, against a guarantor or other person providing collateral or security for a party and shall not be affected or stopped or otherwise limited by:—

(i) the appointment of, or any application for the appointment of, an administration practitioner, or

(ii) applicability of any provision of law relating to administration, or

(iii) any other provision of law that may be applicable to an insolvent party.

(4) Where a qualified financial market participant is subject to administration, then notwithstanding,—

(i) any stay, injunction, avoidance, moratorium or similar proceedings or any other order of a court, tribunal or authority, or

(ii) any order of adjudication or dissolution or winding up or resolution or insolvency, or

(iii) any rule, regulation, scheme, direction, guideline, circular or order,

made or issued under any law for the time being in force, close-out netting shall be applicable and nothing contained therein shall affect the validity of close-out netting under this Act.

(5) The amount payable or other claims to be made in accordance with the close-out netting under this Act shall be final, irrevocable and binding upon the parties to a qualified financial contract and upon the administration practitioner, of the party in administration.

**Disclaimer:** While every effort is made to avoid any mistake or omission, this document including case-summary/brief about the decision/ add. info/headnote/ judgment/order/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this document. The authenticity of this text must be verified from the original source.