

# 金融機関等が行う特定金融取引の一括清算に関する法律

## Act on Close-Out Netting of Specified Financial Transactions Conducted by Financial Institutions

(平成十年六月十五日法律第百八号)

(Act No. 108 of June 15, 1998)

(目的)

(Purpose)

第一条 この法律は、金融機関等が行う特定金融取引の一括清算についての破産手続等における取扱いを確定することにより、金融機関等が行う特定金融取引の決済の安定性の確保とこれによる特定金融取引の活性化を図り、もって我が国の金融の機能に対する内外の信頼の向上と国民経済の健全な発展に資することを目的とする。

Article 1 This Act aims to ensure the stable settlement of specified financial transactions and to promote the use of these transactions by clarifying the handling of close-out netting of specified financial transactions entered into by financial institutions in bankruptcy and similar proceedings, thereby contributing to increased confidence in Japan's financial system both at home and abroad and to the sound development of the national economy.

(定義)

(Definitions)

第二条 この法律において「特定金融取引」とは、金利、通貨の価格、金融商品市場（金融商品取引法（昭和二十三年法律第二十五号）第二条第十四項に規定する金融商品市場をいう。）における相場その他の指標に係る変動、市場間の格差等（以下この項において「金利変動等」という。）に基づいて算出される金銭の授受を約する取引その他の金利変動等を利用して行われる取引のうち、同条第二十二項に規定する店頭デリバティブ取引その他の内閣府令で定めるものをいう。

Article 2 (1) In this Act, the term "specified financial transaction" means a transaction in which the parties promise to pay and receive the monies calculated based on something such as a fluctuation or intermarket difference in an interest rate, currency value, quotation on a financial instruments market (meaning a "financial instruments market" as prescribed in Article 2, paragraph (14) of the Financial Instruments and Exchange Act (Act No. 25 of 1948)), or other such indicator (hereinafter referred to as "interest rate fluctuation or something similar" in this paragraph) or any other such transaction that is carried out using an interest rate fluctuation or something similar, which constitutes an over-the-counter derivatives transaction as prescribed in Article 2, paragraph (22) of that Act any other transaction

prescribed by Cabinet Office Order.

2 この法律において「金融機関等」とは、次に掲げる法人をいう。

(2) In this Act, the term "financial institution" means a juridical person set forth in the following:

一 銀行法（昭和五十六年法律第五十九号）第二条第一項に規定する銀行又は長期信用銀行法（昭和二十七年法律第百八十七号）第二条に規定する長期信用銀行

(i) a bank as prescribed in Article 2, paragraph (1) of the Banking Act (Act No. 59 of 1981) or long-term credit bank as prescribed in Article 2 of the Long-term Credit Bank Act (Act No. 187 of 1952);

二 金融商品取引法第二条第九項に規定する金融商品取引業者（同法第二十八条第一項に規定する第一種金融商品取引業を行う者（同法第二十九条の四の二第九項に規定する第一種少額電子募集取扱業者を除く。）に限る。）

(ii) a financial instruments business operator as prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (but only a person engaged in type I financial instruments business as prescribed in Article 28, paragraph (1) of that Act (unless it is a type I small amount electronic public offering business operator under Article 29-4-2, paragraph (9) of that Act)); or

三 その他我が国の法令により営業若しくは事業の免許、登録等を受けている法人又は特別の法律により設立された法人であつて、自己又は顧客の計算において特定金融取引を相当の規模で行うものとして政令で定めるもの

(iii) any other juridical person that has received operational or business licensing or registration pursuant to the laws and regulations of Japan or has been incorporated pursuant to a special Act, and that is prescribed by Cabinet Order as a juridical person that conducts a substantial volume of specified financial transactions on its own account or on customer accounts.

3 この法律において「破産手続等」とは、破産手続、再生手続又は更生手続をいう。

(3) In this Act, the term "bankruptcy and similar proceedings" means bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings.

4 この法律において「一括清算事由」とは、破産手続開始、再生手続開始又は更生手続開始の申立てをいう。

(4) In this Act, the term "close-out netting event" means a petition for the commencement of bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings.

5 この法律において「基本契約書」とは、特定金融取引を行おうとする金融機関等とその相手方との間において二以上の特定金融取引を継続して行うために作成される契約書で、契約の当事者間において行われる特定金融取引に係る債務についてその履行の方法その他当該特定金融取引に関する基本的事項を定めるものをいう。

(5) In this Act, the term "master agreement" means a written agreement that is prepared to enable a financial institution seeking to carry out specified financial transactions and its counterparty to continuously carry out two or

more specified financial transactions between themselves, that provides for the means of performing the obligations associated with the specified financial transactions carried out between the parties to the agreement and other basic matters related to those specified financial transactions.

- 6 この法律において「一括清算」とは、基本契約書に基づき特定金融取引を行っている当事者の一方に一括清算事由が生じた場合には、当該当事者の双方の意思にかかわらず、当該一括清算事由が生じた時において、当該基本契約書に基づいて行われている全ての特定金融取引についてその時における当該特定金融取引のそれぞれにつき内閣府令で定めるところにより算出した評価額を合算して得られる純合計額が、当該当事者間における一の債権又は一の債務となることをいう。

- (6) In this Act, the term "close-out netting" means that, regardless of the intentions of the parties carrying out specified financial transactions based on a master agreement, if a close-out netting event occurs with respect to one of them, the net total amount arrived at by combining the values at the time of the event that are calculated pursuant to Cabinet Office Order for each one of all of the specified financial transactions that are being carried out based on that contract when that event occurs, becomes a single claim or a single obligation that exists between the parties.

(一括清算と破産手続等との関係)

#### (Relationship Between Close-Out Netting and Bankruptcy and Similar Proceedings)

第三条 破産手続開始の決定、再生手続開始の決定又は更生手続開始の決定（以下この条において「破産手続開始決定等」という。）がされた者が、一括清算の約定をした基本契約書に基づき特定金融取引を行っていた金融機関等又はその相手方である場合には、当該基本契約書に基づいて行われていた全ての特定金融取引についてこれらの者が有する次の各号に掲げる法律に規定する当該各号に定める財産又は債権は、当該破産手続開始決定等に係る一括清算事由が生じたことにより、それぞれ、当該破産手続開始決定等がされた者が当該約定に基づき有することとなった一の債権又はその相手方が当該約定に基づき有することとなった一の債権とする。

Article 3 If a person subject to an order commencing bankruptcy proceedings, an order commencing rehabilitation proceedings, or an order commencing reorganization proceedings (hereinafter referred to as an "order commencing bankruptcy or other such proceedings" in this Article) is a financial institution or its counterparty that had been carrying out specified financial transactions pursuant to a master agreement that includes a close-out netting provision, the occurrence of a close-out netting event in association with the order commencing bankruptcy or other such proceedings causes the assets and claims specified in the relevant of the following items and prescribed in the Act set forth in that item which those parties hold in connection with all the specified financial transactions that they were carrying out pursuant to the

master agreement to become a single claim that the person subject to the order holds based on the relevant provisions of that agreement or a single claim that the other party holds based on the relevant provisions of that agreement:

一 破産法（平成十六年法律第七十五号） 破産財団に属する財産又は破産債権

(i) Bankruptcy Act (Act No. 75 of 2004): assets that belong to a bankruptcy estate or bankruptcy claims;

二 民事再生法（平成十一年法律第二百二十五号） 再生手続開始の時に再生債務者に属する財産又は再生債権

(ii) Civil Rehabilitation Act (Act No. 225 of 1999): assets that belong to a rehabilitation debtor at the time of commencement of rehabilitation proceedings or rehabilitation claims; and

三 会社更生法（平成十四年法律第一百五十四号）又は金融機関等の更生手続の特例等に関する法律（平成八年法律第九十五号） 更生手続開始の時に株式会社若しくは同法第二条第二項に規定する協同組織金融機関若しくは同条第六項に規定する相互会社に属する財産又は会社更生法第二条第十二項本文若しくは金融機関等の更生手続の特例等に関する法律第四条第十二項本文若しくは第六十九条第十二項本文に規定する更生債権等

(iii) Corporate Reorganization Act (Act No. 154 of 2002) or Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions (Act No. 95 of 1996): assets that, at the time of commencement of reorganization proceedings, belong to a stock company or to a cooperative structured financial institution as prescribed in Article 2, paragraph (2) of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions or to a mutual company as prescribed in paragraph (6) of that Article; or reorganization claims as prescribed in the main clause of Article 2, paragraph (12) of the Corporate Reorganization Act or in the main clause of Article 4, paragraph (12) or in the main clause of Article 169, paragraph (12) of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions.

第四条 更生手続開始の決定がされた者（一括清算の約定をした基本契約書に基づき特定金融取引を行っていた金融機関等又はその相手方に限る。以下この条において同じ。）の特定金融取引の相手方が、前条の規定により一の債権（以下この条において「一括清算後債権」という。）を有することとなる場合において、当該更生手続開始の決定がされた者と当該相手方との間において更生手続開始の申立て前に締結された担保権の設定を目的とする契約（その契約条項中において、基本契約書に基づき特定金融取引を行っている当事者の一方に更生手続開始の申立てがあった場合は、担保権者に弁済として担保権の目的である財産を帰属させることができることを約定しているものに限る。）に基づく一括清算後債権に係る担保権を有するときは、当該担保権の目的である財産（特定金融取引を行う当事者が相手方に対し債務の履行を担保する

ために預託する有価証券その他の内閣府令で定めるものに限る。以下この条において「一括清算対象財産」という。)は、当該更生手続開始の申立てがあった時において当該相手方に帰属する。

Article 4 (1) If a counterparty to specified financial transactions with a person that has become subject to an order commencing reorganization proceedings (limited to a financial institution or counterparty to a financial institution that had been carrying out specified financial transactions pursuant to a master agreement that includes a close-out netting provision; hereinafter the same applies in this Article) comes to hold a single claim pursuant to the provisions of the preceding Article (hereinafter referred to as a "claim after close-out netting" in this Article), and that counterparty holds a security right associated with the claim after close-out netting under a contract that is meant to establish a security right and that the person subject to the order commencing reorganization proceedings and the counterparty have entered into prior to the filing of the petition for the commencement of reorganization proceedings (such a contract is limited to one with a clause stipulating that if a petition for commencement of reorganization proceedings is filed against either party to specified financial transactions under a master agreement, the property that is the subject of the security right may be vested in the security right holder as payment of a debt), the property that is the subject of the security right (limited to the property specified by Cabinet Office Order such as securities to be deposited by a party engaged in specified financial transactions to ensure the performance of obligations to the counterparty; hereinafter referred to as "property subject to close-out netting" in this Article) vests in the counterparty at the time the petition for the commencement of reorganization proceedings is filed.

2 前項の場合において、当該相手方に帰属する一括清算対象財産の評価額（内閣府令で定めるところにより算出した額をいう。次項において同じ。）が一括清算後債権の額を超えるときは、当該相手方は、当該更生手続開始の決定がされた者に対して、その超える額に相当する金銭を遅滞なく支払わなければならない。ただし、当該一括清算対象財産の一部をもって、当該金銭の全部又は一部に代えることができる。

(2) In the case referred to in the preceding paragraph, if the value of the property subject to close-out netting that vests in the counterparty (meaning the value calculated pursuant to Cabinet Office Order; the same applies in the following paragraph) exceeds the amount of the claim after close-out netting, the counterparty must pay an amount of money equivalent to the amount in excess without delay to the person subject to the order commencing reorganization proceedings; provided, however, that part of the property subject to close-out netting may be substituted for all or part of that money.

3 第一項の規定により一括清算対象財産が更生手続開始の決定がされた者の相手方に帰属するときは、一括清算対象財産の評価額（その額が一括清算後債権の額を超える

ときは、一括清算後債権の額)を一括清算後債権の額から控除するものとする。

(3) If property subject to close-out netting vests in the counterparty of a person subject to an order commencing reorganization proceedings pursuant to the provisions of paragraph (1), the value of the property subject to close-out netting (or the amount of the claim after close-out netting, if that value exceeds the amount of that claim after close-out netting) is to be deducted from the amount of the claim after close-out netting.

4 前三項(第二項ただし書を除く。)の規定は、更生手続開始の決定がされた者とその特定金融取引の相手方との間において、更生手続開始の申立て前に担保権の設定を目的とする契約(その契約条項中において、基本契約書に基づき特定金融取引を行っている当事者の一方に更生手続開始の申立てがあった場合は、担保権者に担保権の目的である財産を処分させることができることを約定しているものに限る。)が締結されている場合に準用する。この場合において、第一項中「当該更生手続開始の申立てがあった時」とあるのは「当該相手方が更生手続開始の申立て以後更生手続開始前に第三者に譲渡した時」と、「当該相手方に」とあるのは「当該第三者に」と、第二項中「当該相手方に」とあるのは「当該第三者に」と、「評価額(内閣府令で定めるところにより算出した額をいう」とあるのは「譲渡価額(その額が内閣府令で定めるところにより算出した評価額に照らして不当に低いときは、当該評価額」と、前項中「更生手続開始の決定がされた者の相手方」とあるのは「第三者」と、「評価額」とあるのは「譲渡価額」と読み替えるものとする。

(4) The provisions of the preceding three paragraphs (excluding the proviso to paragraph (2)) apply mutatis mutandis if the person subject to an order commencing reorganization proceedings and its counterparty to specified financial transactions have entered into a contract that is meant to establish a security right prior to the filing of the petition for the commencement of reorganization proceedings (such contract is limited to a contract with a clause stipulating that if a petition for the commencement of reorganization proceedings is filed against either party to specified financial transactions under a master agreement, the security right holder is entitled to dispose of the property that is the subject of the security right). In this case: in paragraph (1), the phrase "vests in the counterparty at the time the petition for the commencement of reorganization proceedings is filed" is deemed to be replaced with "vests in a third party at the time the counterparty transfers that property to that third party after the petition for the commencement of reorganization proceedings is filed and before the reorganization proceedings commence"; in paragraph (2), the phrase "vests in the counterparty" is deemed to be replaced with "vests in the third party" and the phrase "the value of...(meaning the value calculated pursuant to Cabinet Office Order" is deemed to be replaced with "the transfer value...(or the value calculated pursuant to Cabinet Office Order, if the transfer value is unjustifiably low in light of the value so calculated)"; and in the preceding paragraph, the phrase "the

counterparty of a person subject to an order commencing reorganization proceedings" is deemed to be replaced with "the third party" and the term "value" is deemed to be replaced with "transfer value".