

Close-Out Netting Arrangement Under The Bankruptcy Regime

Legal Update | October 2026

On 12 August 2026, the Government of Vietnam issued Decree No. 318/2026/ND-CP detailing several provisions of the Law on Recovery and Bankruptcy No. 142/2025/QH15 (***the Law on Bankruptcy 2025***) regarding exceptions applicable to derivative contracts containing close-out netting provisions (***Decree 318***). Decree 318 came into immediate effect on its issuance date.

Vietnam has historically remained absent from the 90 global jurisdictions where the International Swaps and Derivatives Association (ISDA) has recognised clean legal netting opinions. A fundamental obstacle was the lack of express statutory safe harbours under Vietnamese bankruptcy legislation:

- Enforcement stays: Automatic court moratorium froze security assets and suspended bilateral debt collection.
- Cherry-picking: Bankruptcy asset manager held broad statutory discretion to reject or terminate unfavourable contracts.
- Clawback risk: Pre-petition settlements and margin transfers were vulnerable to avoidance under clawback rules.

Decree 318 marks a critical milestone by establishing statutory safe harbours for qualifying interest rate derivatives, shielding early termination, close-out netting, and collateral realisation from judicial intervention during bankruptcy proceedings.

This legal update examines the statutory framework under Decree 318 and outlines strategic implications for credit institutions, project sponsors, and corporate borrowers operating in Vietnam.

Scope of Application and Covered Transactions

Decree 318 introduces statutory safe harbours under the Law on Bankruptcy 2025, but strictly circumscribes their application across market counterparties, transaction types, and contractual architecture:

- Eligible counterparties: Applies to licensed credit institutions and foreign bank branches operating in Vietnam when transacting with corporate enterprises, cooperatives, or other financial entities.¹
- Covered transactions (interest rate hedges strictly): Limited exclusively to interest rate derivative contracts (*hợp đồng phái sinh lãi suất* in Vietnamese) entered into to hedge interest rate exposures in compliance with State Bank of Vietnam regulations.²

Excluded asset classes: Standard treasury instruments—such as foreign exchange (FX) forwards, cross-currency swaps (CCS), commodity derivatives, and equity derivatives—remain outside Decree 318 and do not benefit from these safe harbours.

- Eligible netting architecture: Contracts must incorporate an express net settlement (*thanh toán ròng* in Vietnamese) mechanism, establishing that early termination across covered transactions collapses all mutual positions into a single, aggregated net payable or receivable amount.³

¹ Article 2 Decree 318.

² Articles 1 and 3.1 Decree 318.

³ Article 3.2 Decree 318.

Practical Application to Master Agreements

While Decree 318 does not explicitly cite the ISDA Master Agreement, its definitions of net settlement arrangements⁴ and bankruptcy early termination mechanics⁵ align closely with standard international close-out netting provisions.

Consequently, standard market documentation (whether governed by Vietnamese or foreign laws) should qualify for statutory safe harbour protections, provided that:

- The trades strictly comprise eligible interest rate derivatives; and
- At least one party is a licensed credit institution or foreign bank branch in Vietnam.

⁴ Article 3.2 Decree 318.

⁵ Article 7 Decree 318.

The Four Pillars of the Close-Out Netting Arrangement

Decree 318 dismantles statutory bankruptcy hurdles across each stage of the enforcement process under the Law on Bankruptcy 2025:

Statutory Pillar	General Bankruptcy Rule under the Law on Bankruptcy 2025	Decree 318 Safe Harbour	Post-Enforcement Requirements and Status
1. Collateral Enforcement⁶	Statutory moratorium: Enforcement against secured assets is frozen once the court accepts the bankruptcy petition. ⁷	Immediate asset realisation: Secured hedging counterparties can enforce or liquidate the secured asset straight away, bypassing statutory moratorium. ⁸	Secured creditor must provide to the bankruptcy asset manager/judge upon written request: (i) legal basis for non-suspension, (ii) asset details, (iii) commencement date, and (iv) enforcement venue. ⁹
2. Clawback Protection¹⁰	Clawback risk: Transactions executed within the six-month window prior to bankruptcy proceedings risk being declared invalid. ¹¹	Exempt from clawback: Margin transfers, contractual settlements, and set-offs executed during the six-month clawback window are protected. ¹²	Contracting parties must disclose to the bankruptcy asset manager/judge upon written request: (i) relevant netting terms, (ii) settlement or set-off dates, and (iii) supporting transaction records. ¹³
3. Contract Continuity¹⁴	Unilateral termination: The court or bankruptcy asset manager may suspend or terminate ongoing commercial contracts. ¹⁵	Protection against cherry-picking: Valid interest rate derivative master agreements cannot be judicially stayed,	Contracting parties must provide to the bankruptcy asset manager/judge upon written request: (i) relevant netting terms and (ii) documents

⁶ Article 4 Decree 318.

⁷ Article 27.2 and 40.3 Law on Bankruptcy 2025.

⁸ Article 4.1 Decree 318.

⁹ Article 4.2 Decree 318.

¹⁰ Article 5 Decree 318.

¹¹ Article 49.1(c) Law on Bankruptcy 2025.

¹² Article 5.1 Decree 318.

¹³ Article 5.2 Decree 318.

¹⁴ Article 6 Decree 318.

¹⁵ Articles 51.1 and 51.5 Law on Bankruptcy 2025.

		suspended, or terminated. ¹⁶	verifying contract validity and effectiveness. ¹⁷
4. Close-Out Netting¹⁸	Prior reporting barrier: Mutual payment obligations cannot be set off without advance reporting to the presiding judge under Article 53.1 of the Law on Bankruptcy 2025.	Direct netting: Parties can immediately terminate trades and calculate a single net termination amount without prior judicial reporting. ¹⁹	(a) Audit submission: Contracting parties must provide underlying netting agreements and the calculation methodology to the bankruptcy asset manager or judge upon written request. ²⁰
			(b) Claim status: Recovering any resulting net claim against the company follows standard statutory bankruptcy distribution priorities (ranking as an ordinary unsecured claim, except to the extent satisfied by collateral realised under Article 4).

Transitional Application

Decree 318 applies retroactively to ongoing recovery and bankruptcy proceedings accepted by the court prior to 12 August 2026, provided that no judicial declaration of bankruptcy was issued prior to that date.²¹

¹⁶ Article 6.1 Decree 318.

¹⁷ Article 6.2 Decree 318.

¹⁸ Article 7 Decree 318.

¹⁹ Article 7.1 Decree 318.

²⁰ Article 7.3 Decree 318.

²¹ Article 9 Decree 318.

Practical Implications for Creditors and Distressed Debtors & Sponsors

Subject	Implications for Lenders & Financial Counterparties	Implications for Distressed Debtors/Sponsors
Instant Netting & Settlement ²²	Immediate action without court delays: Lenders can close out swaps and collapse all trades into a single net figure the moment a bankruptcy default occurs, without seeking prior court approval. <i>Note:</i> While calculation is immediate, any remaining unsecured net shortfall ranks as an ordinary unsecured claim subject to standard statutory bankruptcy distributions.	Termination amounts fixed immediately: Debtors cannot rely on court-supervised rehabilitation to keep underwater hedges open in the hope that interest rates will reverse. Mark-to-market liabilities crystallise on default, locking in the bank's net claim against the company (though actual payment of any unsecured net balance still ranks alongside ordinary unsecured creditors in bankruptcy distributions).
Collateral Realisation ²³	Immediate asset enforcement: Lenders can enforce or liquidate collateral securing interest rate swaps straight away. There is no requirement to wait out the statutory court moratorium under Articles 27.2 and 40.3 of the Law on Bankruptcy 2025.	Loss of vital operating assets: Cash reserves or critical assets pledged toward interest rate hedges can be seized immediately. The court moratorium cannot shield them to keep day-to-day operations running.
Clawback Protection ²⁴	Protected pre-petition cash flows: Routine margin calls, credit support transfers, and contractual settlements executed within the six-month clawback period preceding the opening of bankruptcy procedures are shielded from transaction avoidance under Article 49.1(c) of the Law on Bankruptcy 2025.	Pre-filing cash cannot be recovered: Insolvent companies and ordinary creditors cannot reverse legitimate hedging payments made before the filing to replenish company funds.
Protected Excluded Products ²⁵ vs	Only interest rate hedges are protected: Safe harbours cover interest rate swaps, whilst FX forwards, currency swaps, and commodity hedges remain exposed. Bundling multiple asset types under one agreement risks freezing non-covered trades in court proceedings.	Fragmented treasury treatment: Debtors can use statutory court freezes to stall banks on commodity and FX hedges, but banks retain the right to terminate interest rate swaps unilaterally.

²² Article 7 Decree 318.

²³ Article 4 Decree 318.

²⁴ Article 5 Decree 318.

²⁵ Articles 1 and 3 Decree 318.

Audit & Record-Keeping ²⁶	Act immediately, prove later: Lenders can enforce rights without advance court approval, but must retain full audit trails. The court or bankruptcy asset manager can demand underlying contracts, pricing models, and calculation sheets at any moment.	Right to challenge calculations: Debtors retain the legal right to inspect how banks derived the final balance and dispute inflated valuations, arbitrary inputs, or off-market rate quotes.
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Recommended Actions for Market Participants

In light of Decree 318, financial institutions, project sponsors, and corporate borrowers should consider the following strategic measures:

- Unbundle multi-asset master agreements:
 - For banks: Isolate interest rate derivatives under dedicated master agreements or ring-fenced schedules so non-covered products (e.g. FX or commodities) do not contaminate or stall statutory netting protections;
 - For borrowers: Audit existing treasury hedges to identify which positions will crystallise immediately upon default versus those sheltered under the Law on Bankruptcy 2025 moratorium.
- Review security packages and intercreditor deeds:
 - For hedging banks & syndicated lenders: Audit intercreditor terms and security-sharing trust deeds to ensure direct enforcement under Article 4 of Decree 318 does not breach collective standstill, voting, or pro-rata sharing covenant.
 - For project sponsors & corporate borrowers: Review existing financing security packages to assess whether separate hedge security could expose critical project assets to immediate unilateral enforcement outside the main syndicated loan standstill.
- Establish robust, auditable close-out valuation procedures:
 - For financial counterparties: Document all internal valuation models, market polling algorithms, and replacement quotation sources in an auditable trail to justify close-out calculations under Article 7.3 of Decree 318.
 - For corporate borrowers & project sponsors: Require transparency in the counterparty's close-out statement and independently verify the pricing inputs, valuation formulas, and market data used to ensure the final net balance is fair, accurate, and defensible.
- Institute rapid-response disclosure protocols:
 - For financial counterparties: Pre-package standardised compliance dossiers—including contract validity files, netting clauses, signatory authority trails, and net calculation workpapers—ready for immediate disclosure upon written demand under Articles 4.2, 5.2, 6.2, and 7.3 of Decree 318.
 - For corporate borrowers & project sponsors: Establish internal protocols to demand and review these compliance dossiers immediately upon receiving any early termination notice, ensuring the bank's close-out figures, signatory powers, and contractual bases are fully substantiated before agreeing to net settlements.

²⁶ Articles 4.2, 5.2, 6.2, and 7.3 Decree 318.

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