

CLJET ALERT | SEPTEMBER 2026

New insolvency protections for close-out netting under credit institutions' interest rate derivatives

Decree No. 318/2026/ND-CP

Effective 12 August 2026, Decree No. 318/2026/ND-CP introduces targeted protections for interest rate derivative contracts of credit institutions and foreign bank branches licensed in Vietnam containing net settlement provisions. Decree 318 removes specific rehabilitation and bankruptcy provisions that could otherwise restrict enforcement, payment, set-off and close-out netting rights.

Scope of application

Decree 318 applies to interest rate derivative contracts of Vietnamese-licensed credit institutions and foreign bank branches that contain net settlement provisions (**covered contracts**). For this purpose:

Interest rate derivative contract	An agreement establishing the parties' rights and obligations for hedging or limiting interest rate risk, in accordance with the laws governing the business and provision of interest rate derivative products by credit institutions and foreign bank branches (being Circular 01/2015/TT-NHNN, as amended by Circular 25/2021/TT-NHNN (Circular 01)).
Net settlement	An arrangement under which, upon termination at or before scheduled maturity, amounts payable under one or more contracts between the parties are netted and settled as a single net receivable or payable on the maturity or early termination date.

The protections are limited to interest rate derivatives and do not extend to other asset classes, such as foreign exchange, commodity or credit derivatives. This is narrower than close-out netting safe harbours in many jurisdictions which commonly cover a broader range of financial contracts.

Covered contracts, as defined under Circular 01, include those between:

- (i) Vietnamese-licensed credit institutions or foreign bank branches and their local customers; and
- (ii) Vietnamese-licensed credit institutions or foreign bank branches and foreign financial institutions, whether governed by Vietnamese or foreign law.

Protections for covered contracts

Decree 318 provides the following protections for covered contracts:

01 No automatic stay on security enforcement A secured creditor may continue enforcement notwithstanding the court's acceptance of a petition for rehabilitation or bankruptcy.	02 Protection for payments and set-offs Payments or set-offs under a covered contract during the six months before the court opens bankruptcy proceedings are not void solely by reason of having occurred within that period.
03 No suspension or termination A contract in force when the court accepts the petition or opens bankruptcy proceedings continues notwithstanding either event.	04 Close-out netting without court approval Following the opening of bankruptcy proceedings, pre-existing covered contracts may be terminated and netted in accordance with the parties' agreement. This can include terminating all interest rate derivative contracts with the same counterparty and calculating a single net balance, without first reporting to or obtaining approval from the judge.

Decree 318 protects the calculation of a single net balance. Payment or recovery of the resulting net amount remains subject to applicable priorities and procedures under the rehabilitation and bankruptcy laws.

Transitional application

The decree also applies to covered contracts in rehabilitation or bankruptcy cases accepted by the court before 12 August 2026, provided that no declaration of bankruptcy had been issued by that date.

While the new regulations improve certainty around close-out netting for credit institutions' interest rate derivatives, which facilitates the hedging of interest rate risk, their limited scope remains a constraint.

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