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## **Insolvency close-out netting: A comparative study of English, French and US laws in a global perspective**

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# Insolvency Close-out Netting

A Comparative Study of English,  
French and US Laws in a Global  
Perspective

B. MUSCAT

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This comparative study has as its central theme insolvency close-out netting provisions, a core aspect of financial netting agreements. It takes as a point of departure the fact that close-out netting developed as a market tool under the *lex mercatoria*, as defined in this study, which should be given recognition “in accordance with its terms”. This study compares the development of three national close-out netting regimes, namely English law being a common law jurisdiction, France as a civil law jurisdiction and US as a hybrid (common/civil law) jurisdiction. This choice of jurisdictions is intended to bring out contrasts in the philosophy and precepts of their diverse legal systems. The study takes a holistic view of the effect of various aspects of the recognition of close-out netting, primarily by comparing close-out netting to the analogous concept of set-off, by considering its interaction with mandatory insolvency law and the fulfilment of state insolvency goals, and, lastly, by gauging the impact of national resolution regimes on the exercise of close-out netting rights resulting from the pursuit of cross-border public interest objectives such as financial stability and systemic risk. The result serves to demystify stereotypes of creditor-friendliness jurisdictions typically associated with common law jurisdictions and to reveal the adaptability of modern legislators in civil law countries to remain competitive in the market.

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