EFET
EUROPEAN FEDERATION OF ENERGY TRADERS
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Tallinn, Riga, Vilnius, 2 January 2019

Legal Opinion Regarding the Enforceability of Close-Out Netting and the Validity and Enforceability of Collateral Arrangements under the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas

You have asked us to render an opinion as to the Estonian, Latvian and Lithuanian ("the **Baltic states**") law aspects on the enforceability of close-out netting provisions of the EFET General Agreement Concerning the Delivery and Acceptance of Gas (the "**EFET General Agreement**"), the validity and enforceability of collateral provided under the EFET Credit Support Annex to the EFET General Agreement (the "**EFET Credit Support Annex**") and other related issues as outlined below.

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Table of Contents

A. Documents Considered

The opinion is rendered in respect of the following documents ("**EFET Documents**") which are published on www efet.org and available on 24 May 2018:

1) EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2.0(a), published 11 May 2007) (the "**EFET General Agreement**").
2) EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2.0, published 6 January 2003).
3) EFET Credit Support Annex to the EFET General Agreement (Version 2.0, published May 2010).
4) EFET Credit Support Annex to the General Agreement (Version 1.0, published 5 April 2002) (the "**Credit -Support-Annex**").
5) EFET Allowances Appendix (Gas) to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published 3 April 2012) (the "**Allowances Appendix**").
6) EFET Allowances Appendix (Gas) to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 17 July 2008).
7) EFET Amendment Letter to the Allowances Appendix Version 2.0 (Version 2.0, published 3 April 2012).
8) EFET Allowances Appendix (Gas) to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published March 2006).
9) EFET VAT Annex for use with the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published November 2005).
10) EFET VAT Agreement for use with the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 20 November 2005).
11) EFET Sample Amendment Agreement to § 14 (VAT and Taxes), the definition of "Other Tax" and "Zero- Rated" in Annex 1, and the Election Sheet to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published July 2007)
12) EFET Sample Amendment Agreement to § 8 (Remedies for Failure to Deliver and Accept the Contract Quantity) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published October 2005).
13) EFET PVB Appendix Version 1.0 to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas 2.0(a) (Version 1.0, published 19 September, 2016, English language version).
14) EFET PSV Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published January 2007), English language version.
15) Italian Gas Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 24 June 2004).

16) Austrian VTP Appendix to the EFET General Agreement concerning the Delivery and Acceptance of Natural Gas 2.0(a) [(Version 2.0, published 20 September 2013).

17) EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 4.0, published 26 May 2014).

18) EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published April 2011).

19) EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published on 14 July 2006).

20) EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published on 1 June 2004).

21) French PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published 30 March 2015).

22) French PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 31 March 2008).

23) French PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 15 December 2004).

24) Belgian ZBT 2004 Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published June 2006).

25) Belgian ZBT 2012 Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 19 April 2013).

26) Belgian Zeebrugge Appendix (Version 1.0, published 4 December 2017).

27) UK 6:6 Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 2016)

    a) EFET UK 5:5 Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 7 September 2015).

    b) EFET UK Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 19 April 2013).

    c) EFET NBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 7 September 2015).

28) UK NBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published December 2006).

29) EFET Gaspool Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0/January 6, 2003 and Version 2.0(a)/May 11, 2007 (Version 1.1(a), published March 2012).

30) German GasPool Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0/January 6, 2003 and Version 2.0(a)/May 11, 2007 (Version 1.1, published 19 May 2010).

31) German GUD Appendix (Version 2.0, published 31 December 2008) (Version 1.0, published September 2007).
32) Italian ITAB Appendix (Version 1.0, published 1 December 2009).
33) Belgian/French Gas Capacity Appendix (Fluxys/GRTgaz) (Version 1.0, published 31 December 2008).
34) Polish VP Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 1.0, published 14 December 2013).
35) Spanish IBP Appendix (Version 1.0, published 4 December 2017).
36) Change Letter to amend § 14 (VAT and Taxes) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 16 December 2013).
37) EFET Individual Contract Virtual Gas Storage Service Transaction (single use).

(The Agreement, the Credit Support Annex, the Allowances Appendix and the Individual Contracts are hereinafter referred to together as the "**Documents**").

For purposes of Part V (**Confirmation Practices**) only:

38) EFET Electronic Confirmation Agreement (published 28 June 2005).
39) Confirmation of Allowance Transactions (including AEUA, EUA, CER & ERU Transactions) (Fixed Price, Third Compliance Period (Phase 3) and Fixed Price, Second Compliance Period (Phase 2)) to the Allowances Appendix to the EFET Gas Master Agreement (Version 2.0, published 3 April 2012).
40) Confirmation of Allowance Transactions (including EUA, CER & ERU Transactions) to the Allowances Appendix to the EFET Power Master Agreement or to the EFET Gas Master Agreement (Version 1.0, 6 March 2008).

For purposes of Part VI (**Core Provisions**) only:

41) EFET Cross Product Payment Netting Agreement (Version 1, published 20 October 2005).
42) CPMA Cross-Product Master Agreement (Version 1.0, published 16 February 2000) as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement (Version 1.0, published 23 June 2003).
43) EFET Cross-Product Credit Support Annex to the CPMA Cross-product Mater Agreement (Version 1.0, published 23 June 2003),
44) EFET Credit Support Annex to the Master Netting Agreement (Version 1.0, published 1 February 2011).
45) EFET Master Netting Agreement (Version 1.0, published 25 June 2010) (the "**Master Netting Agreement**").

Capitalised terms used in this opinion and not otherwise defined herein shall have the same meaning ascribed to such terms in the EFET Documents and references to the numbered paragraphs shall be to the respective paragraphs in the EFET General Agreement.

B. General Assumptions and Limitations

Our opinion is based on the following general assumptions:

1) Two counterparties enter into the EFET General Agreement and at least one of the counterparties is incorporated or organised or has its centre of main interest in the Baltic states ("**Party A**").
2) Party A is in relation to the Latvian jurisdiction:
    a. a capital company according to the Commercial Law of Latvia (e.g. in the form of a limited liability company (SIA or *sabiedriba ar ierobežotu atbildību*) or a joint stock company (AS or *akciju sabiedrība*)) (together "**Company**"). A capital company in a form of a joint stock company may be privately or publicly owned, where in the latter case the shares (stocks) are an object of public circulation;
    b. a partnership according to the Commercial law of Latvia in the form of a general partnership (*pilnsabiedrība*) or limited partnership (*komandītsabiedrība*)) ("**Partnership**");
    c. a joint stock company according to the Commercial Law of Latvia, which has a licence to engage in operations of a credit institution according to the Credit Institutions Law (Kredītiestāžu likums) (*kredītiestāde*) ("**Bank**");
    d. a co-operative company according to the Co-operative Company Law (kooperatīva sabiedrība) ("**Co-operative Company**");
    e. an investment management joint stock company according to the Commercial law of Latvia, which has a licence to provide certain investment management services according to the Law on Investment Management Companies (*Ieguldījumu pārvaldes sabiedrību likums*) ("**Investment Management Company**");
    f. an insurance company or reinsurance company, which is a joint stock company according to the Commercial Law of Latvia (*Komerclikums*), and which has received a licence to engage in operations of an insurance or reinsurance company according to the Insurance and Reinsurance Law (AAS or *apdrošināšanas akciju sabiedrība*) ("**Insurance company**");
    g. an investment brokerage company in the form of a limited liability company (SIA or *sabiedrība ar ierobežotu atbildību*) or a joint stock company (AS or *akciju sabiedrība*) according to the Commercial Law of Latvia, which has received a licence to engage in operations of investment brokerage according to the Financial Instruments Market Law ("**Investment Brokerage Company**");
    h. other Financial Institutions, which are supervised by the Latvian Financial and Capital Market Commission (*Finanšu un kapitāla tirgus komisija*) or other EU Member State financial and capital market supervision institution and have their place of business in Latvia, e.g. in a form of a branch of a foreign Bank ("**Financial institutions**");

Please note that state and municipal authorities may participate in business activities only in certain cases, e.g. to eliminate a deficiency in the market, to provide services or to manage the property which is strategically important for the development of the administrative territory or state security as set out in Article 88(1) of the Latvian State Administration Structure Law. Therefore, public authorities are not covered in this analysis.

Please also note that quasi-governmental entities under Latvian law are private law legal persons, which have been delegated certain tasks by a public law legal authority or derived public person. Fulfilment of this task is governed by the State Administration Structure Law. However, in relation to other activities performed by such private law legal entities these would fall under any of the categories of Party A mentioned above.

3) Party A is in relation to the Lithuanian jurisdiction:

   a. a private limited liability company (*uždaroji akcinė bendrovė*) or public limited liability company (*akcinė bendrovė*) (together referred to as the “**Company**”) as defined in the Lithuanian Law on Companies;
   b. a partnership (i.e. general (*tikroji ūkinė bendrija*) or limited partnership (*komandinė ūkinė bendrija*) according to the Lithuanian Law on Partnership (“**Partnership**”);
   c. a company licenced as a bank (credit institution) (*bankas*) (“**Bank**”);
   d. cooperative company licenced as credit union (*kredito unija*) as defined in the Lithuanian Law on Credit Unions and the Lithuanian Law on Cooperative Companies (“**Credit Union**”);
   e. collective investment undertakings (“**CIU**”), which according to Lithuanian law may be an investment fund or an investment company. Lithuanian CIUs according to the Law on Collective Investment Undertakings may be structured either as an investment fund or as an investment company. All investment funds and investment companies are the CIUs under the respective Law. All the CIUs (investment companies and investment funds) must be licensed under the Law. Only licensed investment funds and investment companies may use the notions of “investment company” or “investment fund” in their business names;
   f. a financial brokerage firm, i.e. a legal entity whose regular business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis (“**Brokerage Firm**”);
   g. a company under the Law on Insurance licenced as an insurance company (“**Insurance Undertaking**”);
   h. a company under the Law on Payment Institutions licenced as a payment institution which is entitled to carry out payment services (“**PI**”);
   i. Company under the Law on Electronic Money and Electronic Money Institutions licenced as an electronic money institution which is entitled to issue electronic money and provide payment services (“**EPI**”);

j. Company with its main business activities being to carry out financial services as defined in the Lithuanian Law on Financial Institutions (other than regulated financial services provided by a regulated financial institution noted above) ("**Financial Institutions**").

Please note that state and municipal authorities, bodies or entities are, as a general rule, restricted from engaging in business activities. Lending or investing into certain projects must be specifically approved by the Council of the Municipality or the Government. As the EFET General Agreement or Individual Contracts are related to business activities, such public bodies would not be entitled to enter into such contracts. Therefore, public bodies are not covered in this analysis.

Lithuanian law does not specifically provide for quasi-governmental bodies. Under Lithuanian laws private law legal persons may be entitled to perform certain public functions by a public law legal authority. However, in relation to other activities performed by such private law legal entities these would fall under any of the categories of Party A mentioned above.

4) Party A is in relation to Estonian jurisdiction:

a. a corporation incorporated under Estonian law (e.g. a private limited company (OÜ or *osaühing*) or a public limited company (AS or *aktsiaselts*), including corporations wholly or partially owned by the state, municipalities or any public authorities ("**Company**");
b. a partnership incorporated under Estonian law (e.g. a general partnership (TÜ or *täisühing*) or a limited partnership (UÜ or *usaldusühing*) ("**Partnership**");
c. a private limited company licenced to engage in operations of a credit institution under the Estonian Credit Institutions Act (*krediidiasutuste seadus*) ("**Bank**");
d. a company licenced to act as an investment services provider under the Estonian Securities Markets Act (*väärtpaberituru seadus*);
e. a company licenced to act as an insurance provider under the Estonian Insurance Activities Act (*kindlustustegevuse seadus*);
f. a company authorised to act as an investment fund manager under the Estonian Investment Funds Act (*investeerimisfondide seadus*);
g. other financial institutions authorised to provide financial services by the Estonian Financial Supervision Authority (*Finantsinspektsioon*), including consumer credit providers, consumer credit intermediaries, payment institutions, e-money institutions and financial institutions licenced and supervised in other EU Member States that have their place of business in Estonia, e.g. a branch of a foreign Bank ("**Financial Institutions**");

Please note that the state and municipalities are only allowed to participate in business activities under certain circumstances, i.e., the local municipalities are generally allowed to engage in transactions related to its obligation under the Estonian Local Government Organisation Act (*kohaliku omavalitsuse korralduse seadus*) and the state is only allowed to engage in derivative transactions if the respective transaction is permitted under the principles of management of the state's cash flow and the stabilisation reserve pursuant to regulation no 44 of the Government of Estonia, dated 21.03.2014. The transactions provided for in the regulation are not relevant in the context of this opinion, thus leaving the transactions covered by this opinion out of the scope of what the state is permitted to undertake. Therefore, public authorities are not covered in this analysis.

Estonian law does not recognise quasi-governmental bodies which means that although state, municipalities and public authorities may establish legal entities, they are treated as any other companies of the same kind. Any company wholly or partially owned by the state, municipalities or any public authorities would fall under any of the categories of Party A provided above.

5) The relevant EFET General Agreement is governed by the laws of Germany or England & Wales.
6) Each EFET General Agreement and any of the above Annexes (including the EFET Credit Support Annex) are enforceable under the laws of any jurisdiction (other than the laws of the Baltic States) and each counterparty has been duly authorised, executed and delivered, and has the capacity to enter into, each document.
7) Each of Party A and Party B has the requisite licenses, permits and other governmental approvals necessary to carry on its business, including without limitation the business of trading in gas and/or Allowances, as applicable, as contemplated by the EFET Documents.
8) The entering into the EFET Documents and the execution and delivery of, and performance under the EFET Documents does not violate Party A's or Party B's constitutive documents.
9) On the basis of the terms and conditions of the EFET General Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the EFET General Agreement, the counterparties over time enter into a number of Individual Contracts which include all of the Individual Contracts described in Appendix B of the Request for Joint Quote of Services.
10) The Individual Contracts provide for the physical delivery of commodities or emission rights in exchange for cash, however, some of them may also provide for cash settlement.
11) Each of Party A and B when entering into the EFET Documents initially and as of the date of the conclusion of an Individual Contract is not insolvent (LV: maksātnespejīgs, EE: maksejõuetu LT: bakrutuojantis/bankrutavęs) under the Baltic States laws or any other law applicable to such party.
12) The Individual Contracts provide for the physical delivery of gas or emission rights in exchange for cash. However, some of them may also provide for cash settlement or, in the event that offsetting physical delivery obligations are entered at different times, may be settled by agreement through the combination of, as applicable, a partial or total cancellation of otherwise offsetting physical delivery obligations, coupled with a net financial payment.

Without derogation to the specific limitations and qualifications below, this opinion is subject to the following general limitations:

1) This opinion is limited to Latvian, Lithuanian and Estonian law as applied in the opinion and as in force and interpreted at the date hereof;
2) This opinion is strictly limited to the matters stated herein and is not to be read as extending by implication to any other matters in connection with the transactions under or in relation to the EFET General Agreement;
3) This opinion is limited to matters of law and does neither address any factual circumstances or statements of the parties to the EFET Documents, whether contained in representations or warranties of the parties thereunder or otherwise, nor any tax matters, including without limitation any tax consequences of the entering into, execution and delivery of, and performance under the EFET Documents.

C. Executive Summary

This executive summary highlights those issues identified in our legal opinion, which we, in our discretion, consider to be material in the context of Individual Contracts and Allowance Transactions. This executive summary does not, however, purport to be exhaustive and reading this executive summary is not a substitute for reading this legal opinion in its entirety. The executive summary is subject to the in depth discussion and the limitations as set out in this legal opinion.

1. <u>Enforceability of Close – out Netting</u>

   According to the laws of the Baltic states in the event of a Material Reason under § 10.5(c) of the EFET General Agreement, considering that the Parties have not agreed upon the application or Automatic Termination in the Election Sheet, the right of a Terminating Party to terminate the EFET General Agreement is generally enforceable, but certain exemptions regarding the insolvency status of Party A and corresponding rights of the insolvency administrator of the Party A to challenge the transactions due to causing of losses to Party A, and application of recovery and resolution measures to Party A are applicable.

   If Automatic Termination has been elected by the Parties to terminate the EFET General Agreement automatically upon a Material Reason described in § 10.5(c) of the EFET General Agreement, the Automatic Termination will be enforceable in the Baltic states. However, certain limitations would be applicable in case of application of crisis management measures or resolution measures and during insolvency proceedings.

In relation to the Latvian and Lithuanian jurisdictions we advise on application of a certain grace period in relation to Automatic Termination to apply upon occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement, since according to the procedural laws there is a period of uncertainty as to whether the insolvency proceedings in relation to a Party A will be proclaimed.

The provisions in § 11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount are enforceable under the laws of Latvia. However mandatory laws as described below in relation to netting in case of insolvency and legal protection proceedings of Party A shall be observed. The netting of all positive and negative Settlement Amounts is subject to review by the administrator during the insolvency proceedings due to them being detrimental to the interests of creditors as detailed in the laws of the respective Baltic jurisdiction.

Party A's obligation to pay the amount of any compensation claim in Euro, USD or GBP (as agreed between the parties in the Election Sheet) is enforceable under the laws of the Baltic states, and the laws do not limit the rights of the Party A to agree on the currency of the transaction.
Irrespective of the insolvency of Party A the rights of the Terminating Party under § 10.5 of the EFET General Agreement (excluding the provisions expressly referring to the insolvency of a Party) to terminate and close out the EFET General Agreement are recognised and enforceable under the laws of the Baltic states.

2. Multibranch Parties

There would not be any changes in the conclusions set forth in answers to the questions (a) – (f) based on the fact that Party A has entered into an EFET General Agreement on a multibranch basis prior to its insolvency.

The EFET General Agreement will be treated as a single unified agreement by the insolvency official under the laws of the respective jurisdiction in the Baltics, regardless of the treatment of the EFET General Agreement or Individual Contracts by an insolvency official in a country where close – out netting may be unenforceable. The branches of Party A would be considered as forming part of the Party A proceedings.

According to the laws of the Baltic states a branch is not a separate legal entity and hence cannot be subjected to separate legal proceedings, including bankruptcy proceedings. Hence the assets and liabilities of the branches in the Baltic states would be handled within the proceedings for Party F in Country H, unless secondary insolvency proceedings have been opened.

If there were separate proceedings in the Baltic states those would be secondary insolvency proceedings in the respective jurisdiction of the Baltic states and only in relation to the assets located in that state. Accordingly netting would be permitted according to the laws of the respective jurisdiction of the Baltic states during the insolvency or legal protection or other proceedings to the same effect.

Under Articles 34 and 3 (2) of the Insolvency Regulation secondary insolvency proceedings can be opened against that debtor only if it possesses an establishment within the territory of a Member State of EU. Article 2 (10) of the Insolvency Regulation defines establishment as any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets. It does not matter whether the establishment is considered a branch. This means that if Party F only has assets in the respective Latvian, Lithuanian or Estonian jurisdiction but has not operated out of that state in the period 3-months prior to the initiation of insolvency proceedings, there will be no basis for separate proceedings in Latvia, Lithuania or Estonia respectively.

3. <u>Collateral</u>

In relation to Latvia, the Financial Collateral Law would be the law to govern transfer of title to financial collateral in the form of cash and letters of credit in case of a financial collateral agreement, which foresees transfer of title to the collateral.

In Lithuania the Law on Financial Collateral Arrangements and the Civil Code, to the extent permitted by the Law on Financial Collateral Arrangements, govern transfer of title to financial collateral in the form of cash and letters of credit in case of a financial collateral agreement, which foresees transfer of title to the collateral.

In Estonia, the Law of Property Act and the Law of Obligations Act govern the transfer of title to financial collateral in the form of cash and letter of credit in case of a financial collateral agreement, which foresees transfer of title to the collateral.

On the grounds of the Latvian Financial Collateral Law, provided that the conditions in relation to provision of financial collateral set in the Latvian law are fulfilled, i.e., financial collaterals may be properly certified in writing and their sum or number may be clearly determined, and the agreement is entered into between eligible persons, cash and credit claims (in the form of a Letter of Credit) will be characterised as effecting an unconditional transfer of ownership in the respective cash and credit claims. In relation to Lithuania and based on its Law On Financial Collateral Arrangements transfer of ownership in assets would be qualified as a financial collateral and a title transfer arrangement, provided the financial collateral agreement is entered into by eligible parties and the collateral is formed by cash or financial instruments. Letters of Credit are not part of the Law On Financial Collateral

Arrangements and would not by itself constitute a security. In Estonia cash can be regarded as an eligible asset for the purposes of a financial collateral arrangement, if the Parties are eligible to conclude financial collateral arrangements. In any other case, i.e. if one of the Parties does not meet the conditions described above, then the transfer of cash as Eligible Credit Support would constitute a transfer of title as a contractual obligation. Regardless of the status of the Parties of the transaction, a Letter of Credit would as well, under the definition provided for in Appendix 1 of the Credit Support Annex, qualify as a transfer of title as a contractual obligation.

In the Baltic states the Parties do not need to take any action to ensure that title to the Eligible Credit Support delivered under the EFET General Agreement continues after transfer of title. There are no requirements necessary, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval. However, it would be advisable to have documentary evidence of such a transfer of title.

As to substitution pursuant to the laws of the Baltic states the transferor of a financial collateral has rights to replace or substitute the financial collateral with other equal financial collateral, and exercise of these rights does not affect the legal relationship arising out of the financial collateral agreement. Therefore there is no effect under the laws of the right to substitute collateral pursuant to § 6 of the EFET Credit Support Annex.

Assuming that § 11 of the Agreement is valid and enforceable in Estonia, Lithuania and Latvia, insofar it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, EFET § 11 of the Credit Support Annex is also valid to the extent that it provides for the value of the Credit Support provided, but not yet transferred to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as “other amounts payable”.

According to the laws of the Baltic states the rights of Party B are enforceable in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party.

In Latvia and Estonia validity and fulfilment of financial collateral arrangement is not affected by initiation or continuation of measures or liquidation or insolvency proceedings, and accordingly there is no suspect period within which a substitution transaction of financial collateral could be challenged prior to recognition of insolvency of a counterparty to a financial collateral arrangement. In Lithuania the suspect period is 36 months from the day of initiation of bankruptcy proceedings, after the insolvency administrator receives the documents of the insolvent entity.

The EFET Credit Support Annex is an appropriate form to create the intended outright transfer of ownership in the collateral pursuant to the laws of the Baltic states.

4. General Enforceability

Pursuant to the laws of the Baltic states the provisions of the EFET General Agreement and the Annexes are generally enforceable, including also provisions in relation to force majeure and limitation of liability, which are in line with the good morals and public order as accepted in the Baltics.

5. Confirmation Practices

Formation of a legally binding and enforceable Individual Contract under the laws of the Baltic states does not require any formal acts and does not have to be in writing, in particular in relation to derivative transactions. In relation to financial institutions, e.g. Banks, the agreements should be thereafter confirmed in writing or in other data bearing form.

An Individual Contract becomes legally binding and enforceable when the parties have exchanged the requisite unconditional offer and consent. In order to have evidence to prove existence or certain terms of an Individual Contract it would be advisable to document the agreement in writing.

Pursuant to Latvian law failure to object to incorrect terms in a received Confirmation constitute acceptance of those terms and the parties thus have entered into an agreement on those terms, including the incorrect ones. According to Lithuanian law such new – incorrect – terms compose a part of the agreement, unless such new terms change the essence of the agreement or the recipient of the Confirmation immediately objects to such new terms. From the Estonian law perspective in case of continuing business relationship the person must respond to the offer within a reasonable time to express its objections. In any other case acceptance must be expressed in an active manner.

The reference to the relevant EFET General Agreement is sufficient for the inclusion of the Individual Contract in the Agreement.

The civil procedure laws of the Baltic states provide for the requirements of admissible evidence and those generally include witness statements, written evidence, material evidence and expert opinions. Further written evidence include letters, figures, audio and video tapes, computer discs and similar. Finally if there is a requirement as to a specific form of an agreement, then evidence must be provided in that specific form.

6. Core Provisions

As long as the elections contemplated by the EFET General Agreement and any of the above Annexes (including the EFET Credit Support Annex) are made in line with applicable English or German law, our conclusions made in Part D.I (Enforceability of Close-out Netting) do not change.

However, as noted above, the laws specifically allow replacement of the financial collateral with a new one of an equivalent value, if such a possibility is agreed by the parties in the financial collateral arrangement. Thus, if no such possibility is established in a financial collateral arrangement or separately by the parties in writing, unilateral replacement of a financial collateral would not be permissible and enforceable under the laws of the Baltic states.

Material alteration of any provisions of the EFET General Agreement could affect the conclusions reached in that Part C.I or C.II including the provisions § 1, § 10.3(a), the second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv), § 11 and the related definitions contained in Annex 1 to the EFET General Agreement.

The inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) or the EFET Master Netting Agreement does not change the substance of our conclusions made in responses to questions (a)-(t).

7. Governing Law, Arbitration and Jurisdiction

The Parties' agreement on the governing law, submission to arbitration or jurisdiction (§ 22 of the EFET General Agreement) will be upheld in the courts of the Baltic states, considering the mandatory provisions of the respective laws. The choice regarding submission to arbitration shall be enforced against Party A in accordance with the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), to which the Baltic states, each separately, is a contracting state.

8. Regulatory Regime

There are no exchange control laws or licence requirement that may affect the enforceability of the relevant EFET General Agreement or of the Individual Contracts.

D. Issues and Additional Assumptions

1. General Overview of Insolvency Proceedings - Latvia

1.1. Insolvency

Insolvency, the procedural obligations and related aspects of it in Latvia are regulated by the Latvian Insolvency Law. Insolvency of credit institutions is governed by a separate law. In relation to other participants of the financial and capital markets, which are supervised by the Financial and Capital Market Commission, the provisions of the Latvian Insolvency Law are applicable, unless special provisions on these participants set out otherwise.

In relation to insolvency proceedings of a subject of the financial collateral agreement the provisions of the Insolvency Law are applicable taking into account the exceptions and additional provisions set out in the Financial Collateral Law.

The insolvency procedure is administered by an insolvency administrator appointed by the court. When submitting an application to the court, the initiation of insolvency may be requested by the debtor or its creditors.

Once the court has declared insolvency proceedings, the debtor loses the right to manage its assets and the management bodies of the debtor lose their powers. The administrator takes over the management of the debtor and transacts with, or handles, the assets – in this respect the administrator is entitled to decide either to continue to run the business or to discontinue it as well as to unilaterally withdraw from the concluded agreements or request the other party to fulfil the agreement.

1.1.1. Obligations of the administrator

Mainly the administrator is obliged to:

(i) acknowledge and sell the property of the debtor;
(ii) assess the claims of the creditors;
(iii) recover the debts from the debtors; and
(iv) satisfy the claims of the creditors from the obtained funds.

Beyond the aforementioned, the administrator may also bring claims before the court against the management institutions and shareholders of a company for the reimbursement of losses, evaluate the debtor`s property included in the sales plan, make a request to the shareholders of the company on the fulfilment of obligations related to the debtor`s share capital or other property (assets), etc.

The list of property of the debtor, against which the claims of creditors are made, shall not include property in the possession of or held by the debtor, belonging to third persons. The administrator shall ensure the maintenance of property belonging to third persons until it is transferred to these persons. Financial means or financial instruments which, based on the financial collateral agreement, have been used as security for the execution of obligations also fall within the scope of third party property.

1.1.2. Rights of the creditor to submit an insolvency proceeding application

A creditor has a right to submit an insolvency proceedings application if:

(i) by imposing compulsory means of execution, it has not been possible to execute the decision of the court on the recovery of debts from the debtor;
(ii) the debtor (a limited liability company or a joint-stock company) has not fulfilled its obligations in respect of an amount no less than EUR 4,268 and the creditor has notified the debtor on its intent to submit an insolvency application, and the debtor has not paid its debt or has not provided reasonable objections to the claim within three weeks;
(iii) the debtor has not paid salaries to an employee in the full amount due, compensation for damage caused by an accident at workplace or compulsory social security contributions within two months period since the day of the prescribed payment;
(iv) the debtor has not fulfilled its obligations (the execution date of which has occurred) for a period exceeding two months;
(v) in the case of liquidation – the debtor lacks the assets to satisfy all justified claims of creditors, according to the liquidation financial report or it becomes known during the liquidation procedure;
(vi) in the case that the court ends legal protection proceedings on the basis that for the second time within a one-year period, a legal protection proceedings case is filed, but the procedure has not been declared as in the stage of execution or if the debtor fails to execute the legal protection proceedings plan for more than 30-day period;
(vii) in the case that the debtor provides false information or fails to act during the execution of legal protection proceedings.

If the insolvency proceedings application is submitted by a creditor, the court shall recognise the insolvency of the legal person, if on the day when the application is reviewed, the following conditions are met (a) the debtor has not settled the debts with the creditor; and (b) the debtor is unable to prove to the court that the debt does not exist, i.e. the debtor is unable to prove its solvency.

The creditor`s claims must be submitted to the administrator within one-month from the announcement of the record of the debtor`s insolvency proceedings in the insolvency register.

1.1.3. Obligation of the debtor to submit an insolvency proceedings application

The debtor has an obligation to submit an insolvency proceedings application if:

(i) the debtor has not fulfilled its obligations (the execution date of which has occurred) for a period exceeding two months and an agreement has not been concluded concerning the extension of payment deadlines or legal protection proceedings has not been initiated;

(ii) in case of liquidation – the debtor lacks the assets to satisfy all justified claims of creditors, according to the liquidation financial report or it becomes known during the liquidation procedure;

(iii) the debtor is no longer able to fulfil the legal protection proceedings plan.

If the insolvency application is submitted by the debtor, the court shall recognise and declare the insolvency of a legal person on the basis of declaration of insolvency – the debtor shall identify oneself as insolvent.

Noteworthy to mention is that a failure to submit an insolvency application by the debtor in accordance with the above incurs administrative liability.

1.1.4. Secured creditors

The secured creditor is a creditor whose rights of claim against a debtor or third person is secured via commercial pledge, mortgage registered with the Land Register or with the ship register, and established over the debtor`s property. Secured creditors are not permitted to file an insolvency application against the debtor, except for the part of the claim, which is not secured.

When applying for a claim, the secured creditor additionally identifies the amount for which the claim is secured, as well as the value of the pledged debtor`s property on the date of declaration of insolvency.

Both the secured creditor and the unsecured creditor shall supplement documents to the claim substantiating and justifying the claim itself.

1.1.5. Special rules for Banks

Insolvency proceedings of a credit institution (Bank) may be initiated by the bank itself, in circumstances were it is not able, or based on substantiated circumstances, will not be able to fulfil its debt liabilities. However the bank is obliged to file an insolvency application, if at least one of the following circumstances exists:

(i) the credit institution is not able to fulfil its debt liabilities within eight days after occurrence of the fulfilment term and no agreement with creditors on settlement of this debt has been made;

(ii) the liabilities of the credit institution exceed its assets.

A creditor or a group of creditors may submit an insolvency application, if at least one of the following circumstances exists:

(i) within five days after a creditor has submitted a statement of claim to the credit institution, the claim is neither satisfied, nor are objections raised to it, and after the expiration of this time period the creditor has informed the credit institution, in writing, about his or her intention to submit an insolvency petition at least three days before submitting it, and the credit institution has not been able to settle the debt also during this time period; or

(ii) the credit institution has informed the creditor, in writing, about its actual insolvency.

An insolvency application may not be submitted by secured creditors, except in relation to the unsecured part of its claim.

In any case, the insolvency application shall be first submitted to the Financial and Capital Market Commission, which will review the application within five days, and if after review a decision on insolvency is adopted the commission files the application in court. It can also decide to suspend the decision for a time period or to refuse filing of the insolvency application in court.

Upon a declaration of insolvency of a credit institution:

(i) the credit institution loses the right to administer its property, as well as the property of third parties in the possession or care of the credit institution, and such rights shall be acquired by the administrator; and

(ii) the activities of the administrative bodies of the credit institution shall be suspended, and the management of the credit institution shall be conducted by the administrator.

The administrator has all the duties, rights and powers of the administrative bodies and the heads of such institutions, provided for by law and in the articles of association of the credit institution.

An administrator has the following rights and powers, *inter alia*:

(i) to alienate the property of the credit institution in accordance with the procedures determined by the Insolvency Law;

(ii) to bring an action in a court that transactions of the credit institution, which the credit institution has entered into, within five years before being declared insolvent, with third parties, or for the benefit of third parties, whereby, losses to the creditors have been or may be incurred, as well as transactions which have been entered into with any of the creditors whereby losses to other creditors have been or may be incurred, be declared void;

(iii) to withdraw unilaterally from performance of the contract if the performance thereof reduces assets of the credit institution and the contract does not regulate the provision of financial service;

(iv) to submit to the court any claim of the credit institution against a third person;

1.2. Legal protection proceedings (LPP)

Legal protection proceedings (LPP) are a set of actions regulated by the Insolvency Law, the aim of which is to renew the ability of the debtor to fulfil its obligations in case the debtor has met financial difficulties or believes that it will meet them. It is expected that after successful execution of LPP, the debtor has settled the debts and successfully continues the business activity.

A legal person may request the initiation of LPP by submitting an application to the court. The LPP is not mandatory for the debtor and it is not required to submit a claim – LPP is a free choice of the debtor, in case the debtor has met or will meet financial difficulties in the near future and the debtor is willing to continue successful business activity.

The LPP is initiated when the court accepts the LPP application and decides on the initiation on LPP.

The initiation of LPP has the following consequences:

(i) the execution processes of effective court decisions against the debtor are suspended;

(ii) a prohibition on the demand of sale of the debtor`s property by the secured creditors is imposed; (except when the prohibition poses a significant harm to the interests of such creditor);

(iii) a prohibition for creditors to submit an insolvency application is imposed;

(iv) a prohibition to execute the liquidation of the debtor is imposed;

(v) suspension of the increase in the contractual penalty;

(vi) suspension of increase of interest amount;

(vii) suspension of increase of late payment interest amount; and

(viii) suspension of increase in late payment interest amount of tax payments.

Legal protection proceedings are not applicable to the following participants of the financial and capital market: insurers, insurance brokerage companies, regulated market organisers, investment brokerage companies, depositories, alternative investment fund managers, investment management companies, savings companies, credit institutions and private pension funds.

1.2.1. LPP plan

After initiation of LPP, the debtor is required to prepare an LPP plan, which must be agreed with the majority of creditors and must be submitted to the court for approval. After the initiation of LPP it is not yet known whether the creditors will agree to the prepared LPP plan and whether the court will approve the LPP plan.

The LPP plan reflects the factual financial situation of the debtor, the planned methods and cash flow predictions for the solution of financial difficulties.

The LPP plan is prepared by the debtor or by a specialist hired by the debtor. The LPP plan has to be prepared within two months from the day when the court initiated LPP. The debtor may reach an agreement with the majority of creditors on the extension of the deadline for the preparation of the LPP plan by one-month, by notifying the court immediately.

1.2.2. The term of LPP

The term of the execution of the LPP plan is two years from the day the court approves the LPP plan. The term of execution of the LPP plan may be extended by another two years, if the majority of creditors agree to such an extension. In such a case the LPP plan has to be amended and agreed upon with the majority of creditors and it has to be submitted to the court for approval.

1.2.3. Obligations of the debtor and restrictions to the operations of the debtor

After the approval of the LPP plan and during the execution of the LPP plan, the debtor must:

(i) execute the LPP plan;
(ii) redirect all income to the fulfilment of the LPP plan;
(iii) notify the administrator on the execution of LPP plan at least once a month;
(iv) upon the request of the administrator, immediately provide information concerning the execution of the LPP plan and to ensure the possibility to examine (check) the business activities and documents of the debtor in person;
(v) notify the administrator immediately concerning any circumstances that shall prevent the debtor of executing the LPP plan;
(vi) notify the administrator about the change of legal address or any other changes in the information recorded in the public registers;
(vii) notify the administrator of each significant event in the debtor's activity.

After the approval of the LPP plan and during the execution of the LPP plan it is forbidden:

(i) to conclude any transactions or perform activities that may worsen the financial situation or harm the interests of creditors;
(ii) to issue loans (credits);
(iii) to provide guarantees, make gifts (as a transaction) or donations, to give bonuses to the debtor`s board and council members or other additional material remuneration;
(iv) to alienate, i.e. sell, donate, invest in a company or exchange or encumber the real estate property rights, except if it is provided in the LPP plan;
(v) to distribute and pay dividends from the income;
(vi) to fulfil material obligations, which are not included in the LPP plan.

1.3. Crisis management

In order to promote a stable operation of the financial system when applying recovery and resolution measures in relation to credit institutions and other financial institutions, Latvia has adopted the Law on Recovery and Resolution of Credit Institutions and Investment Brokerage Companies. The law has been adopted to implement the requirements of the Directive 2014/59/EU. The law provides for crisis management measures to prevent the deficiencies and unsustainability in the operations of the legal subjects of this law.

The law is applicable to:

(i) credit institutions;
(ii) investment brokerage companies;
(iii) financial institutions such as financial holding companies, mixed financial holding companies and mixed-activity holding companies;
(iv) parent financial holding companies in Latvia, EU parent financial holding companies registered in in Latvia, parent mixed financial holding companies in Latvia, EU parent mixed financial holding companies registered in Latvia;
(v) foreign branches of credit institutions and investment brokerage companies.

In order to review the business activities of financial institutions and to prevent the possible insolvency, the following crisis management measures may be applied:

(i) the Financial and Capital Market Commission ("**FCMC"**) may transfer the assets, rights and obligations of the financial institution to an asset management company;
(ii) FCMC executes write-off or conversion rights in relation to the obligations of the financial institution;
(iii) the issued shares or other property rights or assets, rights and obligations may be transferred to a temporary institution; and

(iv) FCMC may transfer the issued shares or other property rights or assets, rights and obligations to a buyer, other than a temporary institution.

The above-mentioned measures can be taken if:

(i) the FCMC, after consultation with, for example, the Bank of Latvia (or vice versa), has indicated that the financial institution becomes or is likely to become insolvent;
(ii) considering the time resources and other crucial aspects, there are no reasonable prospects of preventing insolvency of a financial institution within a reasonable timeframe;
(iii) the measures are necessary for the interests of the public.

1.4. Debt restructuring

Prior to insolvency proceedings, the debtor and the creditor have an option to enter into an agreement and mutually agree upon the debt restructuring, as a result of which both parties attempt to come to an agreement to change the terms of the debt repayment in a manner that allows the debtor to continue executing the business activities.

The basis for the debt restructuring is the reaching of an agreement which does not threaten or negatively affect the debtor's or creditor's rights.

Debt restructuring may not be applicable to all debtors and is only suitable where a debtor may be able to resolve its financial difficulties after such debt restructuring. If this is unlikely, then the debtor should instead be declared insolvent.

Debt restructuring is a process which avoids the insolvency process. One of the main principles of when to apply the debt restructuring process is when there are conditions that allow the debtor to offer a solution to overcome the financial difficulties and keep the business operational in the long term. If no such conditions do exist, then the company should instead be declared insolvent.

1.4.1. Proposals for debt restructuring and restructuring plan

It is the obligation of the debtor and its advisers to prepare proposals for debt restructuring, which are based on a business plan that contains information regarding the necessary steps which should be taken in order to solve the debtor's financial problems. The plan may, for example, determine the sale of assets, a repayment schedule for creditors, debt forgiveness, gaining additional financing, and guarantee and loan capitalisation.

There is no minimum content required by the law concerning the debt restructuring plan. However, if the debtor is unable to convince the relevant creditors that the debtor will be able to resolve its financial problems in the near future, the creditors will most likely not agree to a moratorium or forgiveness of the debt.

2. General Overview of Insolvency Proceedings – Lithuania

2.1. Insolvency

Enforcement of contractual obligations is generally subject to strict limitations in case of insolvency procedures being instituted against Party A under applicable Lithuanian law in case of Party A's insolvency. In a nutshell, the various insolvency procedures against Party A qualifying as a Lithuanian party and their main impact on Party A's ability to abide by its obligations under the EFET Documents can be described as follows.

2.1.1 Bankruptcy

Bankruptcy proceedings, including the enforcement of claims and the questions relating to insolvency and bankruptcy in general are dealt with by the Law on Enterprise Insolvency ("**Lithuanian Law on Bankruptcy**")[1].

Please note that currently the Ministry of Finance is preparing a new Law on Bankruptcy, that will be wider in scope than the current Lithuanian Law on Bankruptcy. Additionally, it includes many reforms to the bankruptcy and restructuring procedure, which may considerably impact the answers given in this opinion. The new insolvency law is currently only in a reconciliation stage, which means that the final form of the law and its entry into force are unknown.

Under the Lithuanian Law on Bankruptcy, bankruptcy proceedings can be initiated by:

1. a debtor itself (i. e. the management or shareholders). If an entity cannot repay and will not be able to repay its debts to the creditors, then it must file a request for bankruptcy to the court;
2. the creditors of an entity. Prior to filing a request to initiate bankruptcy proceedings to the court, a creditor must first submit a formal request to the entity, requesting it to repay the debt within a period of no less than 30 days from the receipt of the notification (the "Pre-trail Procedure"). Such notification must also include a warning that a creditor will file to the court initiation of the bankruptcy proceedings, if the debt is not paid within the chosen time). If the debtor does not fulfil the request to repay the due debt, the creditor may then file to the court a request to initiate bankruptcy proceedings. The Pre-trial Procedure is not necessary if the creditor tried to refer the debt for forced recovery by a bailiff and such bailiff returned documents notifying the creditor that there are no

[1] Lietuvos Respublikos įmonių bankroto įstatymas.

assets that the debt can be enforced from. In such case the creditor may initiate bankruptcy proceedings directly in court;

3. a liquidator of an entity may file a request to the court to initiate bankruptcy proceedings if, during the liquidation, it appears that the company is actually insolvent.

Decision on the initiation of the bankruptcy proceedings is issued by a competent court, which is decided according to location of the registered office of the entity. However, in certain cases bankruptcy proceedings may be initiated out-of-court (“**Non-judicial Bankruptcy**”). Non-judicial Bankruptcy proceedings may be initiated only if the following conditions are met:

(i) the entity is not involved in any litigation regarding monetary claims; and
(ii) there are no pending forced recovery proceedings against that entity.

Non-judicial Bankruptcy proceedings may be initiated by the management of the relevant entity or its shareholders. They must inform all creditors on the intention to initiate the proceedings and invite them to a creditors meeting. Non-judicial Bankruptcy proceedings are initiated only if creditors having at least ¾ of all debts of an entity agree to the process.

In any event, the bankruptcy proceedings are led and coordinated exceptionally by the court-appointed (or creditors-appointed in case of Non-judicial Bankruptcy proceedings) bankruptcy administrator. The bankruptcy administrator is the only person entitled to act in the name of an entity in bankruptcy.

During the initiation stage (when a court accepts to hear a petition for bankruptcy until a decision to initiate bankruptcy comes into effect) any forced recovery from a debtor is suspended.

In general, once a ruling to initiate the bankruptcy proceedings is in force, the entity is forbidden to perform any payments to any of its creditors. Any recovery of the debt from any entity (either judicial or not) including set-off, is forbidden.

Once the bankruptcy proceedings are initiated, all assets of an entity - debtor fall in one pool and are equally and proportionally divided towards the creditors according to the creditor ranking (pari passu rule). The general rule is that the principal debt amount is recovered for all ranks of creditors firstly and only secondly – the interest may be recovered from the bankrupt estate. Pledge/mortgage creditors have absolute priority vis-a-vis other creditors of an entity in bankruptcy. Their secured claims are satisfied from the proceeds received from the sale of the collateral. Afterwards, claims of employees, creditors for damages caused by injury, professional disease or death at work, farmers (for the payment for agricultural products) are satisfied from the bankruptcy estate (first rank claims). Taxes, other payments to the budget, loans from the state, also loans secured with the state guarantee, aid received from the EU or the state are satisfied as a second rank. All other creditors are treated equally in the third rank.

2.1.2 Special rules for financial institutions

In general, bankruptcy of a financial institution is governed by the same Lithuanian Law on Bankruptcy on the same principles detailed above with the below exceptions:

(i) if Party A is a regulated financial institution, only the Bank of Lithuania can initiate bankruptcy proceedings. Meanwhile management or shareholders of a financial institution can initiate bankruptcy proceedings only if the Bank of Lithuania confirms that it will not take any crisis management measures with respect to the regulated financial institution;

(ii) bankruptcy proceedings are performed only in court;

(iii) creditors ranking slightly differs. In case of regulated financial institution, the law distinguishes seven ranks of creditors:

a. pledge/mortgage creditors have absolute priority vis-a-vis other creditors of an entity in bankruptcy;

b. claims of employees, creditors for damages caused by injury, professional disease or death at work, farmers (for the payment for agricultural products) are satisfied from the bankruptcy estate as first rank creditors;

c. claims on the insured deposits, as well as State Deposit Insurance Fund for the claims of insurance paid to the depositors of the bankrupt financial institution is a second rank;

d. taxes, other payments to the budget, loans from the state, also loans secured with the state guarantee, aid received from the EU or the state are satisfied as third rank creditors;

e. claims of natural persons and small entities for the deposits that have not been covered by the state insurance are satisfied as fourth line creditors;

f. claims of other creditors than stipulated in (a)-(e) and (g)-(i) are satisfied as a fifth line creditors;

g. claims of subordinated loan creditors are satisfied as sixth line creditors;

h. shareholders and management's claims are satisfied as last in line.

2.1.3 Crisis management

As to certain regulated financial institutions crisis management measures may be taken according to the Lithuanian Law on Financial Sustainability (the "**Law on Financial Sustainability**"). The Law on Financial Sustainability implements the EU Directive 2014/59[2] and applies to the following financial institutions:

(i) Banks;

(ii) Central Credit Union;

(iii) Brokerage Firms;

[2] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance ("**EU Directive 2014/59**")

(iv) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in the Union;
(v) parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State, Union parent mixed financial holding companies;
(vi) branches of third country Banks and Brokerage Firms established in Lithuania.

According to the Law on Financial Sustainability, the following crisis management measures can be taken so as to prevent insolvency of a financial institution or manage and mitigate adverse consequences thereof:

(i) transfer of business, i.e. assets and/or liabilities are transferred to another entity;
(ii) temporary institution, i.e. a temporary institution is created, and assets and/or liabilities are transferred thereto;
(iii) separation of assets, i.e. assets and/or liabilities are transferred to one or a few other entities (e.g. good and bad bank);
(iv) saving by private funds, i.e. changing the shareholding structure.

The Bank of Lithuania may apply one or several of the abovementioned measures, except for the separation of assets, which is always used together with any of the other measures.

The above measures can be taken if:

(i) the Bank of Lithuania considers that a financial institution is failing or may fail, i.e. an institution breaches or within a short period will breach requirements for a license; liabilities exceed or within a short period will exceed the amount of assets; an institution cannot or within a short period will not be able to repay its debts; state aid is necessary to support liquidity and solvency of the institution;
(ii) there is no possibility to avoid failure by alternative measures within a reasonable time;
(iii) measures are necessary to achieve the aim of the measures and bankruptcy or liquidation will not reach such aims.

The Bank of Lithuania may also appoint a special manager to perform management actions of the financial institution.

If obligations that are to be transferred to another entity are secured, security follows the transferred obligations. In other words, a transferee takes over a secured obligation to the same extent as it was secured in favour of a transferor.

2.2 Restructuring

Another measure to cope with issues related to insolvency of an entity is restructuring. Restructuring is regulated by the Law on Enterprise Restructuring ("**Lithuanian Law on Restructuring**").[3] It should be noted that the respective law does not apply to the Banks, Credit Unions, PI, EMI, Insurance Undertakings, Management Firms, CIUs, Investment Firms.

The restructuring can be initiated when an entity has certain financial problems that are not as critical as leading to bankruptcy.

The restructuring can only be initiated by the management of an entity. In order to start the restructuring proceedings, management must prepare the outline of the restructuring that includes description of the entity, reasons of financial problems, creditors of the entity, any securities given to third parties, pending litigation, plan for voluntary payments to creditors during the restructuring, preliminary business plan, expenses for administration of restructuring. This outline must by confirmed by at least 2/3 of the shareholders of an entity, attending the shareholders' meeting.

It is up to the shareholders (by the vote of 2/3) to make a decision to confirm the restructuring plan, appoint a restructuring administrator and refer to the court for initiation of the restructuring proceedings. Once the shareholders make this decision, the management of the entity must refer the matter to the competent court.

There are limitations as to the performance of the obligations after the court accepts a petition for restructuring to be heard. From that moment, no forced recovery from an entity is allowed. An entity can only make necessary payments to maintain commercial activity.

When a court's decision to initiate restructuring proceedings comes into effect, the creditors are invited to submit their claims towards an entity. From that moment in time it is prohibited to perform any payments to any of the creditors. Any recovery of the debt from the claimant (either judicial or not) is forbidden, including the set-off (subject to exceptions described below). Also, any calculation of interest or impunity towards the company is suspended.

During the restructuring proceedings, an entity is managed by its management, but a restructuring administrator is appointed to supervise its activities.

[3] Lietuvos Respublikos Įmonių restruktūrizavimo įstatymas.

An entity under restructuring must act only in accordance with the restructuring plan. The plan must be prepared by a management of an entity and adopted by the shareholders. Afterwards, the restructuring plan is handed to a restructuring administrator, who reviews the plan and informs all creditors about the plan, inviting them to attend the meeting. The plan must be confirmed by the creditors holding more than 2/3 of all debts of the entity. The restructuring plan is then submitted to the court for approval. The plan must be submitted to court within 6 months from the initiation of restructuring proceedings. Otherwise, the restructuring proceedings shall be terminated.

The restructuring plan must include the goals of the restructuring, business plan, creditors' list and schedule for payments, creditors' assistance to an entity (e.g. postponement of claims execution, waiving of claims, replacement of a monetary obligation with another obligation (e.g. settlement of the company's assets and (or) company's shares), etc.

Restructuring can last no longer than 4 years. In exceptional circumstances the court may extend this period for an additional year.

The ranking of creditors in the restructuring proceedings is similar to the one in bankruptcy just the law distinguishes the shareholders or participants of an entity as third line creditors.

During the restructuring, the creditor's claims are covered only when they become due under the underlying contract (contrary to bankruptcy, where all debts become immediately due when a court's decision to initiate bankruptcy proceedings comes into effect).

3. General Overview of Insolvency Proceedings – Estonia

3.1. Bankruptcy

All matters concerning the bankruptcy of Party A are dealt with under the Estonian Bankruptcy Act (*pankrotiseadus*), with some minor specifications in other Estonian laws (for example, amongst others, there are some differences found in other legislation governing the bankruptcy of financial institutions).

When Party A becomes insolvent and this financial situation is not temporary, bankruptcy proceedings may be initiated by the submission of a bankruptcy petition by one of the following persons:

- (i) a creditor of Party A;
- (ii) Party A itself (if Party A is a Bank, it may only submit a bankruptcy petition only with the written consent from the Estonian Financial Supervision Authority ("EFSA"));
- (iii) a liquidator of Party A in cases prescribed by law, usually if during the liquidation it appears that the assets of Party A are insufficient to satisfy all claims of the creditors (i.e. Party A is insolvent);
- (iv) any other person authorised by law (i.e. EFSA ( ) in case of entities under the supervision of EFSA).

Any creditor of Party A has the right to, and Party A itself is obliged to, submit a bankruptcy petition to the court, commencing bankruptcy proceedings. Under the EFET General Agreement, the enforceability of the termination right of the Terminating Party depends on whether the Early Termination occurs prior or after the declaration of bankruptcy of Party A.

In the event the Party A is an institution under the supervision of EFSA, EFSA is allowed to submit a bankruptcy petition. In case of fund managers, under § 397 (1) of the Estonian Investment Funds Act, only EFSA, the fund manager itself or a liquidator of a fund manager is allowed to submit a bankruptcy petition. Under § 166 (2) of the Estonian Insurance Activities Act, only EFSA and a liquidator may submit a bankruptcy petition against an insurance provider. Under § 123 (2) of the Estonian Credit Institutions Act, a credit institution itself is only allowed to submit a bankruptcy petition if EFSA has given a written permission (but a bankruptcy petition may be submitted by EFSA, a liquidator of the credit institution or any of the creditors under § 123 (1) of the Credit Institutions Act).

Usually, after receiving a bankruptcy petition, the court will appoint an interim trustee (*ajutine haldur*) the main task of whom is to assess the monetary situation of the debtor and within 30 days (or up to 2 months, if reasonable according to an assessment performed by the court) from the nomination of an interim trustee, the court decides upon declaration of bankruptcy of the debtor.

After the declaration of the bankruptcy of Party A, the debtor's assets become a part to the bankruptcy estate and the debtor will be deprived of its right to administer its assets or enter into further transactions. Under § 42 of the Estonian Bankruptcy Act, all claims of the creditors of Party A are deemed to have fallen due unless otherwise provided by law.

Under § 46 (1) of the Estonian Bankruptcy Act, the trustee generally has the right to perform an unperformed obligation arising from a contract entered into by the debtor or to abandon performance of such an obligation at its discretion. This serves as a general rule but there are specific provisions for derivative transactions provided in the Estonian Bankruptcy Act.

Under § 48 (1) of the Bankruptcy Act neither the trustee nor the Terminating Party has the right to require performance of an obligation of Party A who is bankrupt when such an obligation arises from a derivative transaction whereas at least one of the Parties is:

(i) a person subject to article 1 (2) b) or d) of directive (EU) 2002/47/EC;
(ii) any of the following persons under the supervision of EFSA: a credit institution in the meaning of the Estonian Credit Institutions Act, investment firm in the meaning of the Estonian Securities Market Act (*väärtpaberituru seadus*), fund manager in the meaning of the Estonian Investment Funds Act (*investeerimisfondide seadus*), investment fund in the meaning of the Estonian

Investment Funds act, insurance provider in the meaning of the Estonian Insurance Activities Act (*kindlustustegevuse seadus*), and other financial services providers such as payment institution and e-money institution in the meaning of the Estonian Payment Institutions and E-money Institutions Act (*makseasutuste ja e-raha asutuste seadus*), and consumer credit provider and consumer credit intermediary in the meaning of the Estonian Creditors and Credit Intermediaries Act (*krediidiandjate ja -vahendajate seadus*);

(iii) any private or public corporation or partnership which meets at least two of the following criteria: (i) an average number of employees of the company during the financial year of over 250; (ii) the annual balance sheet total of the company exceeds 43 million euros; or (iii) the annual turnover of the company exceeds 50 million euros.

The practical meaning of the above is that if party A meets the criteria provided for in § 48 (1) of the Bankruptcy Act, as explained above, the Terminating Party does not have the right to demand performance of the EFET General Agreement when Party A is in bankruptcy. If as a result of set-off, the Terminating Party has a claim against Party A, the Terminating Party may only submit claims against Party A arising from the failure of Party A to perform its obligations. Any such claim shall be filed by the Terminating Party (as a creditor) in the bankruptcy proceedings. Nevertheless, if the trustee does demand from the Terminating Party performance of the obligations arising from the EFET General Agreement, the Terminating Party has the right to decline, provided that the derivative transaction meets the conditions under § 48 (1) of the Estonian Bankruptcy Act (as explained above), unless it is obvious that the purpose of the respective transaction was to injure other creditors and the Terminating Party was aware thereof and the transaction was made within a year before the appointment of an interim trustee. We have not detected any court practice in Estonia regarding such revocation of derivative transactions as described above. It should be noted that in any case where the transaction does not meet the criteria provided for in § 48 (1) of the Bankruptcy Act, the general rules prescribed in § 46 of the Bankruptcy Act applies and the trustee does have the right (but not the obligation) to demand performance of the obligations.

3.2. Reorganisation

In case of economic difficulties (i.e. the company is likely to become insolvent in the future) Party A has the right to submit an application for the commencement of reorganisation proceedings (*saneerimine*) under the Estonian Reorganisation Act (*saneerimisseadus*) (the "**Estonian Reorganisation Act**"). In the context of this opinion, this applies to companies other than Banks, payment institutions, e-money institutions, investment firms, fund managers, investment funds established as public limited companies.

Under § 2 of the Estonian Reorganisation Act the reorganisation of an enterprise means the application of a set of measures in order for an enterprise to overcome economic difficulties, to restore its liquidity, improve its profitability and ensure its sustainable management. An application for reorganisation can only be submitted by the undertaking itself.

Under § 8 (1) of the Estonian Reorganisation Act, the court shall commence reorganisation proceedings if the undertaking has substantiated that:

(i) the undertaking is likely to become insolvent in the future;
(ii) the enterprise requires reorganisation;
(iii) the sustainable management of the enterprise is likely after the reorganisation.

The reorganisation adviser shall promptly notify the creditors of the commencement of the reorganisation proceedings and the amount of the claims that they have against the undertaking according to the list of debts known to the adviser.

As a general principle under § 6 (1) of the Estonian Reorganisation Act, Early Termination due to judicial reorganisation (*saneerimine*) of a debtor would not be enforceable within the period from the commencement of reorganisation proceedings until failure of the reorganisation, unless otherwise stated in the law. There are, however, some exemptions regarding derivative transactions.

Within the period from the commencement of reorganisation proceedings until the failure of reorganisation or adoption of the reorganisation plan, all enforcement procedures regarding the assets of Party A are suspended by the court (with some exemptions which are not relevant in this context) and the calculation of any penalty for delay (i.e. late payment interest) shall be suspended until failure or approval of the reorganisation plan. If any amount under the EFET General Agreement becomes due prior to or within the period from the commencement of the reorganisation proceedings and Party A does not fulfil its monetary obligations under the EFET General Agreement, any calculation of Default Interest shall be suspended from the commencement of the reorganisation proceedings until the approval of the reorganisation plan or failure thereof.

After the commencement of the reorganisation proceedings, a reorganisation adviser shall prepare a reorganisation plan in the name of the undertaking. The reorganisation plan must be submitted to the court within a given time and a reorganisation plan shall be accepted if at least one-half of all the creditors who hold at least two-thirds of all the votes vote in favour. If the creditors have accepted the reorganisation plan, it shall be submitted to the court for approval.

As a result of the reorganisation proceedings, some of the obligations of Party A may be reorganised. Under § 22 (2) of the Estonian Reorganisation Act, derivative contracts cannot be transformed in a reorganisation plan, provided that at least one of the parties of the derivative transaction is:

(i) a person subject to article 1 (2) b) or d) of directive (EU) 2002/47/EC;
(ii) any of the following persons under the supervision of EFSA: a credit institution in the meaning of Estonian Credit Institutions Act, investment firm in the meaning of Estonian Securities Market Act

(*väärtpaberituru seadus*), fund manager in the meaning of Estonian Investment Funds Act (*investeerimisfondide seadus*), investment fund in the meaning of the Estonian Investment Funds act, insurance provider in the meaning of the Estonian Insurance Activities Act (*kindlustustegevuse seadus*), and other financial services providers such as payment institution and e-money institution in the meaning of the Estonian Payment Institutions and E-money Institutions Act (*makseasutuste ja e-raha asutuste seadus*), and consumer credit provider and consumer credit intermediary in the meaning of the Estonian Creditors and Credit Intermediaries Act (*krediidiandjate ja -vahendajate seadus*);

(iii) any private or public corporation or partnership which meets at least two of the following criteria: (i) an average number of employees of the company during the financial year is over 250; (ii) the annual balance sheet total of the company exceeds 43 million euros; (iii) the annual turnover of the company exceeds 50 million euros.

If neither of the Parties of the EFET General Agreement is an eligible person (as described above), reorganisation of the transaction can be considered, meaning, for example, that the term for the parties to fulfil their obligations may be extended. The creditor has the opportunity to submit objections to the reorganisation plan and eventually, to vote against the acceptance of the reorganisation plan or file an appeal to against a ruling of the court by which the reorganisation plan has been approved.

During the term of validity of the reorganisation plan, statements of claim may not be filed on the basis of the claims to which the reorganisation plan applies. During the term of validity of the reorganisation plan, bankruptcy petitions shall not be filed on the basis of the claims to which the reorganisation claim applies, or which existed before the approval of the reorganisation plan. If a transaction is reorganised with the reorganisation plan, usually the term for the parties to fulfil their obligations may be extended. Before the reorganisation plan has been approved, the creditor has the opportunity to submit objections to the reorganisation plan and eventually, to vote against the acceptance of the reorganisation plan or file an appeal against the ruling of the court by which the reorganisation plan has been approved. Most derivative transactions falling under the EFET General Agreement are likely to fall under an exemption and thus cannot be transformed in a reorganisation plan.

3.3. Liquidation

Party A may submit an application declaring liquidation of the company, causing the company to dissolve after the liquidation proceedings. Liquidation proceedings are held under the provisions of the Estonian Commercial Code (*äriseadustik*) with some exemptions in other Estonian laws, especially concerning financial institutions under the supervision of EFSA. If Party A does not have enough funds to cover all of its claims, bankruptcy proceedings of Party A will be initiated by the liquidator. No challenging of any claims takes place during the liquidation proceedings.

3.4. Enforcement procedure

In the event an enforcement instrument has been obtained regarding a claim against Party A, enforcement procedures can be initiated towards Party A. Under Estonian law, enforcement of the enforcement instruments is generally organised by a bailiff (*kohtutäitur*) pursuant to the Estonian Code of Enforcement Procedure (*täitemenetluse seadustik*). If the claim of the creditor cannot be fulfilled using the assets of the debtor (e.g. to fulfil the claim, specific assets are to be handed over such as a certain plot of land etc), a creditor has the right to challenge transactions which have been entered into by the debtor within three years before such an action of the creditor, if the transaction has been performed to knowingly damage the interests of the creditor and the other counterparty of such a transaction knew or should have known thereof at the time of entering into the transaction (e.g. the sale of such assets). There are no exemptions regarding derivative transactions. In the event the debtor is discovered to be insolvent, bankruptcy proceedings are to be initiated.

3.5. Moratorium

EFSA may demand suspension of the activities of a credit institution (and by doing so establish a state of moratorium) established in Estonia or a branch of such a credit institution founded in a contracting state or a branch of a credit institution of a third country founded in Estonia, if the respective credit institution or a branch of a credit institution is suspected to have insolvency problems. During the moratorium, some of the transactions of the credit institution or investment firm may be suspended. The duration of a moratorium may not exceed six months. Establishment of a moratorium is a rare measure and has not been applied before by EFSA. There are also no exemptions regarding derivative transactions

3.6. Crisis Prevention and Resolution Measures

If Party A is a credit institution or investment firm established in Estonia (or subsidiary thereof that is a financial institution established in Estonia or branch established in another country), financial holding company established in Estonia which is a part of a consolidation group of a credit institution or an investment firm established in Estonia, resolution proceedings can be conducted if there is a risk that its financial situation may rapidly deteriorate or if it is likely that it is insolvent or might become insolvent. Recovery proceedings are regulated under the Estonian Financial Crisis Prevention and Resolution Act (*finantskriisi ennetamise ja lahendamise seadus*) and implements directive (EU) 2014/59/EU. The recovery proceedings are conducted by EFSA. It may decide to apply restrictions to the termination of any agreements entered into by Party A by the other Party from the publication of the notice regarding recovery proceedings until the end of the following business day. Under certain conditions, EFSA has the right to terminate any derivative contracts. The recovery proceedings have never been initiated by EFSA.

I. Enforceability of Close out Netting

1. Winding – up, Insolvency or Attachment

a) ***Assuming the Parties have <u>not</u> specified that Automatic Termination (as defined in § 10.4 of the EFET General Agreement) applies, are the provisions of the EFET General Agreement permitting the Terminating Party to terminate the Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement enforceable under the laws of the appropriate Baltic States or is there a risk that (i) the entering into the EFET General Agreement, (ii) the entering into Individual Contracts thereunder or (iii) the termination by notice itself could be challenged by a liquidator, receiver or third party?***

Our Opinion is based on the following additional assumption:
After entering into the Individual Contracts and prior to the maturity thereof, Party A becomes the subject of voluntary or involuntary proceedings under the insolvency laws of the appropriate Baltic State law and, subsequent to the commencement of the insolvency, either Party A or an insolvency official seeks to perform only the confirmations representing profitable ("in the money") Individual Contracts for the insolvent counterparty.

Latvia

In the event of a Material Reason under § 10.5(c) of the EFET General Agreement, considering that the Parties have not agreed upon the application of Automatic Termination in the Election Sheet, the right of a Terminating Party to terminate the EFET General Agreement is generally enforceable.

However in case of insolvency proceedings the Terminating Party has the right to terminate the EFET General Agreement based on the contractual undertaking either before or after the proclamation of bankruptcy, unless it has been done by the administrator. According to Article 101 of the Insolvency Law if the agreement entered into by the debtor – insolvent company is not fulfilled or is fulfilled partly on the day of proclamation of insolvency, the administrator is entitled to request fulfilment from the other contracting party or unilaterally withdraw from the agreement, and accordingly in relation to the liabilities the term for fulfilment of which falls after proclamation of insolvency of the debtor falls due on the day of proclamation of insolvency.

In relation to challenging of transactions in case of insolvency proceedings as a general rule under Article 96 of the Insolvency Law the administrator has the duty to evaluate the debtor's transactions and bring an action to court regarding the recognition of the respective transaction as invalid regardless of the type of transaction, if it has been concluded:

i) after the day of the proclamation of the insolvency proceedings of a legal person, or four months prior to the day of the proclamation of the insolvency proceedings of a legal person, that losses have been caused to the debtor. This applies regardless of whether the person with whom or for whose benefit the transaction has been concluded, knew or did not know of the losses caused to the creditors;
ii) within three years prior to the day of the proclamation of the insolvency proceedings of a legal person losses have been caused to the debtor, and the person with whom or for whose benefit a transaction has been concluded, knew or should have known of the causing of such losses.

Specifically in relation to Banks Article 173 of the Credit Institutions Law upon claim of the administrator the following transactions may be recognised invalid, notwithstanding the type of the transaction, if:

i) if they have been entered into after the day of occurrence of insolvency and the bank has caused losses to the creditors by the same;
ii) they have been concluded five years prior to the occurrence of insolvency, the bank has knowingly caused losses to the creditors and the person, with which or in which favour the transaction has been concluded, knew on such causing of losses;
iii) they have been concluded five years prior to occurrence of insolvency, and the court has established that the bank has been led to insolvency based on criminally punishable wrongdoing and the person with which or in which favour the transaction has been concluded, knew on such wrongdoing.

Based on the above in case of occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement an insolvency administrator may challenge the EFET General Agreement or Individual Contract entered into with Party A or the termination by notice itself, provided the above conditions set in laws have been fulfilled, and consequently the court may proclaim the EFET General Agreement or Individual Contract or the termination by notice to be invalid.

In relation to third parties and their rights to challenge the EFET General Agreement, Individual Contract or termination by notice Latvian law does not provide for specific grounds for challenge, which could be relied upon by third parties, upon occurrence of Material Reason described in § 10.5(c) of the EFET General Agreement.

It must be noted that in case of application of crisis management measures pursuant to the Law On Recovery and Resolution of Operations of Credit Institutions and Investment Brokerage Companies to a Party A the right of the Terminating Party to terminate the EFET General Agreement may not be enforceable during a certain period of time when the measures are applicable.

Lithuania

As a general rule, all transactions can be challenged under an *actio Pauliana* claim by a creditor of an entity (i.e. debtor) or a bankruptcy administrator. According to the Lithuanian Civil Code, an *actio Pauliana* claim is to be upheld by court, if all the circumstances below are proved:

(i) an entity in bankruptcy had no obligation to enter into such a contract (transaction);

(ii) a contract or transaction is detrimental to the creditors of an entity in bankruptcy. In case of bankruptcy, a contract or transaction can be recognised as detrimental if:

   a) an entity was already *de facto* insolvent and preferred one of its creditors; or

   b) a contract or transaction caused insolvency of an entity; or

   c) other situations which reduced the entity's ability to settle with its creditors.[4]

(iii) a counterparty was aware of the situation or had to be aware of it, i.e. acted dishonestly. It is recognised by case law that a counterparty acts dishonestly if a party is aware that an entity is insolvent or that an entity will not be able to repay debts to its other creditors as a result of an executed contract.

A limitation period for *actio Pauliana* claims is one year from the moment an aggrieved party becomes aware of the transaction (negative effects caused by the transaction). Thus, in case of bankruptcy of a Lithuanian Participant, the limitation period for *actio Pauliana* claims starts as of the moment a bankruptcy administrator receives documents of the entity in bankruptcy.

Statutory obligation to inspect transactions within at least 36 months before the bankruptcy does not limit the administrator's right to challenge transactions concluded within a longer period before the bankruptcy. An administrator can contest transactions that are older than 36 months. However, it is very unlikely that older transactions would fit the criteria for *actio Pauliana* claim. An administrator must file a claim within one year from the receipt of documents.

Based on the above detailed statutory regulation, a bankruptcy administrator or third parties may challenge the EFET General Agreement or Individual Contract under an *actio Pauliana* claims. If a bankruptcy administrator or a third party proves to court's satisfaction all the conditions of an *actio Pauliana* claim, the challenged contract (the EFET General Agreement or Individual Contract) may be declared by a court as null and void as being detrimental to other creditors of the Party A.

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[4] Ruling of the Court of Appeal of the Republic of Lithuania, 15 November 2016, in case No. 2A-771-241/2016.

Estonia

In the event of a Material Reason under § 10.5(c) of the EFET General Agreement, considering that the Parties have not agreed upon the application or Automatic Termination in the Election Sheet, the right of a Terminating Party to terminate the EFET General Agreement is generally enforceable, but the following exemptions are to be taken into account.

There are some restrictions regarding bankruptcy proceedings to the termination of the agreements after the declaration of bankruptcy of a debtor which are not relevant in the context of this opinion. Generally, the Terminating Party has the right to terminate the EFET General Agreement either before or after the declaration of bankruptcy. What has to be kept in mind is that claims not due as at the date of the declaration of bankruptcy of Party A are deemed to have fallen due as of the declaration of bankruptcy, meaning that the Early Termination Date (or the date to be taken into account when calculating the Termination Amount) is the date for the declaration of bankruptcy of Party A. If Party A is an eligible person in terms of § 48 (1) of the Estonian Bankruptcy Act (as explained above), under § 48 (3) of the Estonian Bankruptcy Act, the Parties may agree upon a different date in the EFET General Agreement for the calculation of the Termination Amount, which may not in any case be later than on the second Business Day after the declaration of bankruptcy of Party A. In the latter case, if the date agreed upon in the EFET General Agreement is more than two Business Days from the declaration of bankruptcy, the calculation of the Termination Amount must be based on the present value as on the date of declaration of bankruptcy.

If § 48 (1) of the Estonian Bankruptcy Act is applicable to Party A, the agreement between Parties is not challengeable by the trustee or any third person, provided that the calculations for the Termination Amount are made correctly, unless it is obvious that the purpose of the respective transaction was to injure other creditors and the counterparty to the transaction was aware thereof and the transaction was made within a year before the appointment of an interim trustee. In any other case (i.e. if § 48 (1) of the Estonian Bankruptcy Act is not applicable), the possibility of the provisions in the EFET General Agreement to be challenged by the trustee cannot be ruled out, if the transaction has damaged the interests of the creditors and other conditions prescribed in the Estonian Bankruptcy Law have been met. It can be presumed that if a transaction had been concluded within six months before the appointment of an interim trustee, the other party of the transaction must have known that the debtor damaged the interests of the creditors. Transactions made up to five years prior to the appointment of the interim trustee can be challenged but in case of transactions made more than six months before the appointment of an interim trustee, the transactions can only be challenged if the counterparty of such transactions knew of should have known that the transactions shall be made to injure other creditors of Party A.

During reorganisation proceedings, within the period from the commencement of reorganisation proceedings until failure of the reorganisation or adoption of the reorganisation plan, early termination right is only enforceable if at least one of the Parties is an eligible person under § 48 (1) of the Estonian

Bankruptcy Act. In the latter case, the termination of the EFET General Agreement cannot be challenged by the trustee. For the sake of clarity, the Estonian Reorganisation Act does not apply to Banks and other financial institutions as pointed out above (please see the general overview of the insolvency proceedings).

Furthermore, if Party A is a Bank and EFSA has established a moratorium to Party A, it has the right to demand suspension of the fulfilment of some of the transactions of the credit institution or investment firm (including any derivative transactions). Therefore, it is possible, that during a limited period of time, the right of the Terminating Party to terminate the EFET General Agreement may not be enforceable.

In addition, if Party A is a Bank or an investment firm established in Estonia (or subsidiary thereof that is a financial institution established in Estonia or branch established in another country), financial holding company established in Estonia, which is a part of a consolidation group of a credit institution or an investment firm established in Estonia, and resolution proceedings of Party A are initiated by EFSA, EFSA has the right to temporarily restrict termination of any agreements entered into by Party A.

During the enforcement procedure, a creditor of Party A may have the right to challenge any of the transactions under the EFET General Agreement which have been entered into by the debtor within three years before such action of the creditor, if the creditor can prove that the transaction has been performed to knowingly damage the interests of the creditor and the other counterparty of such transaction knew or should have known thereof at the time of entering into the transaction. There are no limitations regarding derivative transactions.

b) ***Assuming the Parties have elected Automatic Termination to apply, are the provisions of the EFET General Agreement terminating the Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement enforceable under the laws of the appropriate Baltic State or is there a risk that the automatic termination could be challenged by a liquidator, receiver or third party?***

Latvia

Assuming the Parties have elected Automatic Termination to apply, the provisions of the EFET General Agreement terminating the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement are enforceable under the laws of Latvia. However certain reservations as set out in the answer to question (a) are applicable. In particular, in case of application of recovery or resolution measures to Party A pursuant to the Law On Recovery and Resolution of Operations of Credit Institutions and Investment Brokerage Companies the application of this automatic termination may not be available.

In relation to third parties and their rights to challenge Automatic Termination, Latvian law does not provide for specific grounds for challenge of such exercise of Automatic Termination.

Lithuania

In general, the provisions of the EFET General Agreement terminating the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement are enforceable under the laws of Lithuania safe for the below detailed exceptions.

According to the Law on Financial Sustainability, the Bank of Lithuania may apply one of the crisis management measures (as detailed above). However, the law explicitly provides that the application of the crisis management measures is not qualified as bankruptcy of a financial institution or an enforcement event as defined in the Law on Financial Collateral Arrangements. Therefore, pursuant to article 53 of the Law on Financial Sustainability a crisis management measure including the occurrence of any event directly linked to the application of such a measure, if the substantive obligations under the EFET General Agreement and Individual Contracts continue to be performed, shall not, per se, make it possible for anyone to exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

(i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;
(ii) any group entity which includes cross-default provisions.

Taking into account events detailed in § 10.5(c) of the EFET General Agreement and crisis management measures provided in the Law on Financial Sustainability, crisis management measures could be qualified as a Material Reason under § 10.5(c) of the EFET General Agreement. Since the Law on Financial Sustainability establishes that crisis management measures may not result in the right to exercise any termination, suspension, modification, netting or set-off rights, therefore, Automatic Termination provision triggered by a crisis management measure would not be enforceable under Lithuanian law.

Also, an Automatic Termination could be challenged by a bankruptcy administrator according to Article 6.218 (1) of the Lithuanian Civil Code. This provision provides for an obligation for a non-defaulting party to notify a defaulting party in advance about unilateral termination of a contract. Unless a contract provides otherwise, a 30-day prior notice is to be delivered to a defaulting party. The Supreme Court has clarified that:

(i) the respective notification obligation aims to protect the party in default;
(ii) failure to meet the notification requirement does not invalidate termination of a contract per se; and

(iii) if failure to notify about unilateral termination resulted in losses to a defaulting party, a non-defaulting party could be obliged to reimburse the proved losses. The defaulting party would be obliged to prove the exact amount of losses suffered due to failure of the non-defaulting party to notify about unilateral termination.

On the other hand, there is no case-law which would confirm that the respective art. 6.218(1) of the Lithuanian Civil Code is to be qualified as an overriding mandatory rule which would apply irrespectively of the law chosen by the parties to a contract (art. 9(1) of the Rome I[5]). However, following the construction of the respective law provision and reasoning of the Supreme Court (namely, confirmation that failure to meet notification requirement does not invalidate termination as such), we are of the opinion that this provision would not qualify as an overriding mandatory rule under article 9 of the Rome I Regulation which could be applied with an aim to invalidate Automatic Termination clause or claim losses of Party A occurred due to Automatic Termination provision.

Estonia

In general, if Automatic Termination has been elected by the Parties to terminate the EFET General Agreement automatically upon a Material Reason described in § 10.5(c) of the EFET General Agreement, the provisions of the EFET General Agreement are enforceable under Estonian law in case of insolvency of Party A, but the exemptions provided for in the answer to question (a) and additional explanations provided below are to be taken into account.

Automatic Termination under Estonian law may represent a resolutive condition which usually is deemed to be equal to the unconditional claims. This does not affect the enforceability of Automatic Termination. We have not found any court practice in Estonia which would state that Automatic Termination is contrary to good morals or *ordre public.*

It should be emphasised that in case of bankruptcy proceedings of Party A, if Automatic Termination has been elected by the Parties and as a consequence the claim is deemed due and payable on any date after the declaration of the bankruptcy of Party A, some restrictions may apply to the calculation of the Termination Amount (please see also answer to question (a)).

As explained above, generally, Automatic Termination is not allowed during judicial reorganisation, i.e. from the commencement of reorganisation proceedings until the failure of the reorganisation proceedings or adoption of the reorganisation plan. This is especially important to be kept in mind in case of Automatic

[5]Regulation (Ec) No 593/2008 Of The European Parliament And Of The Council of 17 June 2008 on the law applicable to contractual obligations (“**Rome I**”)

Termination. Termination of the EFET General Agreement (including Automatic Termination thereof) is only allowed as an exemption in the event at least one of the Parties of the EFET General Agreement is an eligible person under § 48 (1) of the Estonian Bankruptcy Act.

The same applies to the Parties who have elected Automatic Termination that has been explained in the answer to question (a) regarding resolution proceedings, moratorium and enforcement proceedings against Party A and the right of any person to challenge the termination rights.

c) ***Would you recommend to elect Automatic Termination to apply upon a Material Reason described in § 10.5(c) of the EFET General Agreement or upon other events not specified therein? Would it be necessary or recommendable to modify the scope of Automatic Termination (e.g., by adding other Material Reasons upon the occurrence of which Automatic Termination should also apply) or to specify, or to refrain from specifying, a certain grace period as contemplated in §10.5(c)(iv) of the EFET General Agreement?***

Latvia

Pursuant to Articles 341.[6] and 363.[11] of the Civil Procedure Law an application on initiation of legal protection proceedings or on commencement of insolvency proceedings is filed in court. First, the court reviews such an application, adopts a decision, *inter alia,* on initiation or refusal on initiation of the respective proceedings and appoints a supervising person – administrator, who then issues an opinion on the person subject to supervision. Second, no later than after 15 (fifteen) days the supervising person provides an opinion the court adopts a decision, *inter alia*, on recognition of insolvency or commencement of legal protection proceedings.

Further in relation to Banks Article 146 of the Credit Institutions Law an application on commencement of insolvency proceedings shall be filed first in the Financial Capital and Market Commission, the supervision institution, which reviews the application within five days and, if decided, files the application in court within three days after its decision.

It follows from the above that there is a period of at least 15 (fifteen) days when it is not certain whether legal protection proceedings or insolvency proceedings will be recognised by court in relation to Party A. Therefore we would advise applying a grace period as foreseen in §10.5(c)(iv) of the EFET General Agreement to make sure that the Automatic Early Termination or Termination by notice really occurs when the respective insolvency or legal protection proceedings have been recognised. This would avoid a situation when any of the above proceedings are initiated, the EFET General Agreement is terminated either by Automatic Early Termination or Termination by notice, but thereafter the court does not approve recognition of the respective proceedings and the EFET General Agreement could have been continued. Hence we would advise a grace period of 15 (fifteen) days.

Lithuania

We would recommend electing Automatic Early Termination to apply upon a Material Reason described in § 10.5(c) of the EFET General Agreement or upon other events not specified therein.

No further supplements are necessary from Lithuanian law perspective to ensure efficiency of the Automatic Termination option.

We recommend specifying a certain grace period as contemplated in §10.5(c)(iv) of the EFET General Agreement. It is a real risk that state/municipality authorities may be due to operational or other mistake file claim in court to initiate bankruptcy proceedings or a third-party creditor which seeks to make a hard push to a debtor files such a claim (fraudulent behaviour). Thus, if there is a reasonable time period (i.e. at least 30 days) to dismiss such a mistaken/fraudulent claim, the potentially profitable transactions concluded under the EFET General Agreement may be saved. Hence we would advise a grace period of 30 (thirty) days.

Estonia

Currently there is no reason to differentiate Automatic Early Termination from termination by submitting a notice in terms of possible consequences under Estonian law, therefore it is not necessary to apply Automatic Early Termination.

Under Estonian law, the EFET General Agreement with applicable Automatic Early Termination could be seen as a conditional transaction. Provided that the EFET General Agreement shall automatically be terminated upon the arrival of any of the conditions under § 10.5(c) of the EFET General Agreement, this could be challenged under certain conditions as explained in the answers to questions (a) and (b), especially if neither of the Parties of the EFET General Agreement is an eligible person as defined in § 48 (1) of the Estonian Bankruptcy Act as explained above.

d) ***Are the provisions in § 11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount enforceable under the laws of the appropriate Baltic State, or is there a risk that such determination could be challenged by a liquidator, receiver or third party?***

Latvia

The provisions in § 11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount are enforceable under the laws of Latvia. However mandatory laws as described below in relation to netting in case of insolvency and legal protection proceedings of Party A shall be observed.

The calculation of the Termination Amount by a terminating party and the calculation method (including the abstract calculation method provided as an alternative) are valid, albeit subject to judicial review if the amount so calculated is being contested. Such a transaction would be subject to review by the administrator in case of insolvency proceedings and could be challenged on the grounds of Article 96 of the Insolvency Law described above and Article 173 of the Credit Institutions Law respectively.

Netting of termination values is not possible during the legal protection proceedings until adoption of the legal protection plan. After adoption of the plan, set-off is possible in accordance with the plan and provided the claim of the debtor against the creditor have arisen at least three months prior to initiation of the legal protection proceedings, as required by the Insolvency Law.

As to netting during insolvency proceedings it is enforceable after proclamation of insolvency proceedings and provided the mutual claims of the debtor and creditor have arisen at least six months prior to proclamation of the insolvency proceedings, as required by the Insolvency Law.

In relation to Banks the Credit Institutions Law provides that liquidation proceedings do not affect implementation of netting and such netting agreements are governed solely by the laws of the state that apply to such agreements; whereas legal protections proceedings are not applicable to credit institutions.

As to insolvency proceedings of a Bank, according to the Credit Institutions Law complete or partly netting of claims and liabilities is not permitted, except for cases when a credit institution and its client prior to insolvency of the credit institution performed netting of claims and liabilities on a regular basis and when the due date has fallen before insolvency of the credit institution. A party with legal interest could challenge the decision of the credit institution on application of netting.

During application of crisis management measures according to the Law On Recovery and Resolution of Credit Institutions and Investment Brokerage Companies implementation of netting is generally not permitted.

Lithuania

The provisions in § 11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount are enforceable under the laws of Lithuania.

The calculation of the Termination Amount by a terminating party and the calculation method (including the abstract calculation method provided as an alternative) are valid, albeit subject to judicial review if the amount so calculated is being contested as erroneous.

Estonia

The provisions of § 11 of the EFET General Agreement providing for netting of all positive and negative Settlement Amounts in determining the Termination Amount are enforceable under the laws of Estonia with the exemptions described below.

When it comes to bankruptcy of Party A, a creditor may set off mutual claims arising from one or several derivative transactions also after the declaration of bankruptcy if (i) a party to the derivative transaction is an eligible person in terms of § 48 (1) of the Estonian Bankruptcy Act and (ii) the terms of the set-off have been agreed on upon concluding the derivative transaction or earlier. The terms agreed upon in the EFET General Agreement are applicable to such set-off with the restrictions regarding the determination of the present value explained under answer to question (a).

Netting of termination values is not possible during the judicial reorganisation proceedings until adoption of the reorganisation plan. After adoption of the plan, set-off is possible in accordance with the plan. As explained in the opinion regarding question (a), derivative agreements with at least one of the parties being an Eligible Person cannot be reorganised.

e) ***Do the laws of the appropriate Baltic State, recognise that the close-out netting provisions in section §§ 10 to 11 of the EFET General Agreement apply to all Individual Contracts or could it be challenged by a liquidator, receiver or third party? Would we need the single agreement concept in order to preserve the enforceability of the termination right and the ability to calculate a net amount?***

Latvia

The applicability of close-out netting provisions in §§ 10-11 of the EFET General Agreement is enforceable under Latvian law to all Individual Contracts. The Latvian law does not specifically govern the matter of multiple or single agreements. Treating multiple transactions as one agreement does not violate the Latvian public order or good morals.

However terms and conditions for challenge of close – out netting provisions previously discussed must be taken into account.

Lithuania

It is necessary to distinguish (1) insolvency and (2) bankruptcy proceedings under Lithuanian law. An entity becomes insolvent when it fails to perform its obligations and its overdue obligations exceed a half of its balance assets. An entity changes its status into "entity in bankruptcy" (a) only after a court adopts a decision to commence bankruptcy proceedings or (b) creditors of the entity adopt a decision to commence non-judicial bankruptcy proceedings (the latter is not applicable to financial institutions).

As a general rule, before a decision to commence bankruptcy proceedings against the Party A has been adopted by the court or meeting of the creditors in case of non-judicial bankruptcy proceedings, close-out netting provisions are enforceable under Lithuanian laws. Nonetheless, close-out netting exercised towards the insolvent Party's A obligations before a decision to commence bankruptcy proceedings has been adopted may be challenged by a bankruptcy administrator of the Party A or a third-party creditor under general law provisions such as an *actio Pauliana* claim (please see response to question (a) above).

If the Party A is an entity other than stipulated in article 1 (2) of the Insolvency Regulation, close-out netting provisions in sections §§ 10 to 11 of the EFET General Agreement would be enforceable under the Insolvency Regulation.

If the Party A is a Credit Institution, Insurance Undertaking, Investment Firm or CIU, the Insolvency Regulation does not apply. As a general rule, according to Lithuanian Law on Bankruptcy which is applied to the abovementioned regulated financial institutions, set-off of counterclaims as well as performance of any other financial obligations after a court has adopted a decision to initiate bankruptcy proceedings against the respective regulated financial institutions are forbidden. On the other hand, pursuant to the Law on Financial Collateral Arrangements the EFET General Agreement and Individual Contracts would be qualified as a close-out netting arrangement which may be enforceable even in case of bankruptcy of any party thereto. Therefore, if the Party A is one the abovementioned regulated financial institutions which is an eligible counterparty to a close-out netting arrangement under the Law on Financial Collateral Arrangements, close-out netting provisions in sections §§ 10 to 11 of the EFET General Agreement would be enforceable under Lithuanian laws.

If Party A and Party B are not eligible parties to a close-out netting arrangements under the Law on Financial Collateral Arrangements (two Companies or two Partnerships (not Financial Institutions), etc.) and both are incorporated in Lithuania (which means that the Insolvency Regulation does not apply), after court's decision to initiate bankruptcy proceedings against Party A or Party B close-out netting provisions in sections §§ 10 to 11 of the EFET General Agreement would not be enforceable under Lithuanian laws.

In all cases, a set-off of counterclaims and netting exercised before bankruptcy of Party A may be challenged by a bankruptcy administrator or third-party creditor of Party A under general grounds such as an *actio Pauliana* claim as detrimental to other creditors of Party A (please see response to question (a) above).

While the single agreement concept, i.e. the linking of various agreements in respect of multiple transactions so as to be treated as one agreement for the purposes of termination, close-out netting calculation of one Termination Amount etc., is not specifically regulated under Lithuanian substantive law, such linking is, within the general limits of applicable Lithuanian law, valid and the particular aspects of such treatment as one agreement do not, as discussed below, violate Lithuanian substantive law or the Lithuanian public order.

Under Lithuanian law, it is not necessary that the obligations to be netted form part of a single agreement in order for the netting and close out provisions to be effective. For set-off and netting to be valid, counterclaims must be mutual (towards each party but not towards third persons) and performance must become due on the date of netting and be of the same nature (e.g. two-way payments, exchange of services/goods). However, as the EFET General Agreement is governed by English or German law, close-out netting shall be performed based on the applicable law and not Lithuanian laws (i.e. conditions that must be met to enforce netting).

Subject to the enforceability of the "Single Agreement" concept under the law chosen by the Parties, the "Single Agreement" concept would also be enforceable in an insolvency scenario, but only if the EFET General Agreement and/or Individual Contracts are not successfully challenged by a bankruptcy administrator or third-party creditor under general grounds such as *actio Pauliana*.

Estonia

The close-out netting provisions in §§ 10-11 of the EFET General Agreement are applicable to all Individual Contracts under the Estonian legislation.

Under Estonian law, a single contract may be comprised of various documents, therefore, even if the Estonian law would be applicable in that matter, there would be no barriers for the Parties to treat Individual Contracts as parts of the EFET General Agreement.

Furthermore, as stated in § 99 (5) of the Estonian Bankruptcy Act, mutual claims from more than one derivative transaction concluded between the Parties can be set off in bankruptcy proceedings, provided that at least one of the Parties of the EFET General Agreement is an eligible person defined in § 48 (1) of the Estonian Bankruptcy Act as explained above.

Therefore, when it comes to setting off mutual claims deriving from derivative transactions in bankruptcy proceedings, under usual conditions setting off claims under various Individual Contracts is supported by the Estonian Bankruptcy Law. In any other case, treating multiple transactions as one agreement does not violate the Estonian *ordre public* or good morals and §§10 and 11 of the EFET General Agreement must thus be recognised as applicable to the Individual Contracts.

When setting off mutual claims, the restriction concerning the determination of present value as explained above in answer to question (a) should be taken into account.

f) ***Is the insolvent counterparty obligation to pay the amount of any compensation claim in Euro, USD or GBP (as agreed between the parties in the Election Sheet) enforceable under the laws of Baltic States, or could the calculation in a foreign currency be challenged by a liquidator, receiver or third party?***

Latvia

Party A's obligation to pay the amount of any compensation claim in Euro, USD or GBP (as agreed between the parties in the Election Sheet) is enforceable under Latvian laws, and Latvian laws do not limit the rights of the Party A to agree on the currency of the transaction.

However, according to the general practice in Latvia if such a claim is filed in or enforced by Latvian courts the claim amount shall be set in the official currency – Euro. There is no detailed regulation as to when the conversion to Euro from other currencies shall be performed.

Lithuania

There are no Lithuanian substantive law rules that could give reasonable ground to challenge calculation and payment of compensation in other currency than Euro. On the other hand, if a Lithuanian court adopts a decision on compensation (which is not realistic as jurisdiction is explicitly chosen by the parties), the payable amount would be in Euros only.

Estonia

Under Estonian law, the Parties are not restricted from making any agreements concerning the currency of the compensation claim, if it has been agreed upon beforehand in the Election Sheet. Under § 93(1) of the Estonian Law of Obligations Act (*võlaõigusseadus*), the compensation claim can be paid in Euros, which is the official currency of Estonia, or in any other currency such as USD or GBP, provided that the currency is valid at the time of payment.

However, under § 124 (1) of the Estonian Code of Civil Procedure (*tsiviilkohtumenetluse seadustik*) the claim amount has to be calculated into Euros for the purpose of declaring the value of the claim to the court regarding any court proceedings or insolvency proceedings. For the purpose of this calculation, the daily rate of the European Central Bank as at the date of submitting the claim or, in case of enforcement proceedings, as at the date of the satisfaction of the claim or distribution of the enforcement proceeds or preparation of the distribution plan. Such conversion does not affect the validity or currency of the claim. Therefore, although the obligation to pay the compensation in any currency other than Euros cannot be challenged as long as the currency is a currency valid in any jurisdiction, the calculation of the value of the claim into Euros can be challenged by the court, the liquidator, a trustee in terms of bankruptcy proceedings or any third party involved in the proceedings if the calculation itself is incorrect or it is based on an incorrect exchange rate.

2. Non-Insolvency Related Reasons

g) ***Are the rights of the Terminating Party to terminate and close-out the Agreement enforceable in accordance with the terms of the EFET General Agreement, irrespective of the insolvency of Party A?***

Latvia

Irrespective of the insolvency of Party A the rights of the Terminating Party under § 10.5 of the EFET General Agreement (excluding the provisions expressly referring to the insolvency of a Party) to terminate and close out the EFET General Agreement are recognised and enforceable under Latvia law.

Lithuania

In general, the rights of the Terminating Party to terminate and close-out the EFET General Agreement are enforceable in accordance with the terms of the EFET General Agreement, irrespective of the insolvency of Party A, are recognised and enforceable under Lithuanian law.

As noted above, a crisis management measure taken with respect to Party A under the Law on Financial Sustainability does not allow counterparty to exercise any termination, suspension, modification, netting or set-off rights. Thus, termination and set-off of the EFET General Agreement and Individual Contracts due to occurrence of a crisis prevention measure or a crisis management measure would not be enforceable under Lithuanian law.

Estonia

Notwithstanding the insolvency of Party A, the rights of the Terminating Party under § 10.5 of the EFET General Agreement (excluding the provisions expressly referring to the insolvency of a Party) are generally enforceable in accordance with the given terms, whereas the following exemption is to be taken into account.

Depending on the agreement between the Parties regarding the determination of present value when calculating the Termination Amount, the restrictions in § 48 (3) of the Estonian Bankruptcy Act could have an effect on the enforceability of the agreed terms as further explained in the answer to question (a).

II. Multibranch Parties

1. Baltic States – Multibranch Parties

We base our opinion on the assumptions outlined under the following additional assumption:

Party A has entered into Individual Contracts under the EFET General Agreement through offices in one of the Baltic States, as well as through one or more branches located abroad. After entering into these Individual Contracts and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of the appropriate Baltic State’s law.

h) ***Would there be any change in your conclusions reached in response to questions (a)-(f) based upon the fact that Party A has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency?***

Latvia

According to Article 22 of the Latvian Commercial Law a branch is an organisationally independent part of an undertaking, which is territorially or otherwise separated from the principal undertaking and at the location of which commercial activities are systematically performed in the name of the business entity. A branch does not have the status of a separate legal entity. It follows from this that the principal undertaking is responsible for the transactions entered into through its branch.

Therefore our conclusion reached in responses to questions (a)-(f) would not change in based upon the fact that Party A has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency.

Lithuania

According to the Lithuanian Civil Code, neither representative office nor a branch has the status of a legal person. Moreover, a legal entity (incorporator of a branch or representative offices) bears liability for any activities performed by its branch or office. Therefore, our conclusions reached in responses to questions (a)-(f) above do not change in case the Party A enters into the EFET General Agreement and Individual Contracts through its offices or branches incorporated in Lithuania.

Also, the conclusions made in responses to questions (a)-(f) above would not be affected if the Lithuanian Party A entered into the EFET General Agreement and Individual Contracts through a branch established in a jurisdiction other than Lithuania, provided that the laws applicable to such foreign branch characterise the branch as being legally part of the Lithuanian Party A and hence recognise that the branch is not a separate legal entity.

Estonia

There would not be any changes in the conclusions set forth in answers to the questions (a) – (f) based on the fact that Party A has entered into an EFET General Agreement on a multibranch basis prior to its insolvency. Regarding the insolvency proceedings, please see also answer to questions (j) and (k) below.

i) ***Would the EFET General Agreement be treated as a single unified agreement by the Baltic States receiver under the laws of the appropriate Baltic State, regardless of the treatment of the EFET General Agreement or Individual Contracts by an insolvency official in a country where close-out netting may be unenforceable?***

Latvia

The EFET General Agreement will be treated as a single unified agreement by the insolvency administrator under Latvian law, regardless of the treatment of the EFET General Agreement or Individual Contracts by an insolvency official in a country where close – out netting may be unenforceable. The Latvian law does not specifically govern the matter of multiple or single agreements, and under Latvian law it is not required that the obligations to be netted form part of a single agreement. We assume that the branches would be part of the insolvency proceedings of Party A.

Lithuania

As noted above, the single agreement concept is not specifically regulated under Lithuanian substantive law. Moreover, under Lithuanian law it is not necessary that the obligations to be netted form part of a single agreement in order for the netting and close out provisions to be effective. Therefore, a bankruptcy administrator would treat the EFET General Agreement following its terms and conditions which explicitly state that EFET General Agreement and its annexes form a single agreement.

Estonia

Most probably the EFET General Agreement will be treated as a single unified agreement by an insolvency officer under Estonian law regardless of the treatment of the EFET General Agreement or Individual Contracts by an insolvency official in a jurisdiction where close-out netting may be unenforceable, provided that the branch of Party A would not be considered a separate entity in the country where it is established. The Estonian insolvency regime recognises the unity and universality principle in case of insolvency of Party A, meaning that the branches are considered as a part of Party A.

2. Foreign Multibranch Parties

Our Opinion is based on the following additional assumptions:

(iv) corporation, a bank, an investment services provider or any other similar financial institution ("**Party F**") incorporated, organised or having its centre of main interest in a country ("**Country H**") other than one of the Baltic States has entered under the EFET General Agreement into Individual Contracts both through its home office and through one or more branches located in other countries including in each case a branch of Party F located in and subject to the laws of the appropriate Baltic State (“**Estonian Branch**”, “**Latvian Branch**” or “**Lithuanian Branch**”).

(v) After entering into these Individual Contracts and prior to the maturity thereof, Party F becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Country H.

j) ***Would there be separate proceedings in Baltic States with respect to the assets and liabilities of the appropriate Branch upon the start of the insolvency proceedings for Party F in Country H? Or would the relevant authorities in the appropriate Baltic States defer to the proceedings in Country H, so that the assets and liabilities of the appropriate Branch would be handled as part of the proceedings for Party F in Country H? Could local creditors of the appropriate Branch initiate separate proceedings in Baltic States, even if the relevant authorities in Baltic States, did not do so?***

Latvia

According to Article 22 of the Latvian Commercial Law a branch is not a separate legal entity; hence branches do not have separate legal capacity and cannot be subjected to separate legal proceedings, including bankruptcy proceedings. Henceforth the Latvian Insolvency Law does not apply to branches of foreign entities.

However, under Article 34 of the Regulation (EU) of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings secondary insolvency proceedings may be opened by creditors in another Member State, where establishment of the debtor is present, specifically in relation to the assets located in that territory of the Member State.

Therefore there would be no separate insolvency proceedings in Latvia with respect to the assets and liabilities of the Latvian branch upon the start of the insolvency proceedings for Party F in Country H. Instead, the assets and liabilities of the Latvian branch would be handled within the scope of the proceedings for Party F in Country H, unless secondary insolvency proceedings have been opened.

Lithuania

According to Article 2.53(2) of the Civil Code, a branch is not a separate legal entity[6]. Consequently, branches do not have legal capacity and cannot be parties to proceedings in court, including bankruptcy proceedings[7].

On the other hand, pursuant to the Insolvency regulation, there is a possibility for secondary insolvency proceedings[8]. Following the Lithuanian case law, if a foreign entity of another Member State has an establishment in Lithuania (holds assets, employees, economic interests), the secondary insolvency proceedings can be opened against such a foreign entity (not a branch) in Lithuania under Lithuanian law with respect to its assets located in Lithuania.

Estonia

An Estonian branch of a foreign company is not a separate company as stated in § 2 of the Estonian Commercial Code and therefore under § 8 (1) of the Estonian Bankruptcy Act the Estonian branch of a foreign company cannot be subject to separate insolvency proceedings in Estonia. However, under Article 34 of the Regulation (EU) 2015/848 on insolvency proceedings (recast) (the **Insolvency Regulation**), secondary insolvency proceedings can be opened in Estonia, if the debtor possesses an establishment in Estonia. Even if relevant authorities have not initiated bankruptcy proceedings, the local creditors can also initiate bankruptcy proceedings under § 9 (1) of the Estonian Bankruptcy Act. The effects of secondary bankruptcy proceedings shall be restricted to the assets of the debtor situated within the territory of Estonia.

k) ***If there were separate proceedings in the appropriate Baltic State with respect to the assets and liabilities of the Baltic State Branch would the receiver or liquidator in the Baltic States and the Baltic States courts, based on the facts above, include Party F´s position under the EFET General Agreement, in whole or in part, among the assets of the appropriate Baltic State and, if so, would the receiver or liquidator and the appropriate Baltic State courts recognise the close-out netting provisions of the EFET General Agreement in accordance with their terms? The most significant problem arising would be if an appropriate Baltic State receiver, liquidator or court considering a single EFET General Agreement were to require a counterparty of the appropriate Baltic State Branch of Party F to pay the mark-to-market value of Individual Contracts entered into with the appropriate Baltic State Branch to the liquidator or receiver of the appropriate Baltic State Branch, while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from***

[6] Article 2.53(2) of the Civil Code.
[7] Article 38(1) of the Lithuanian Code of Civil Procedure (the "**Code of Civil Procedure**").
[8] Article 27 of the Regulation on Insolvency Proceedings.

other Individual Contracts with Party F under the same EFET General Agreement. In considering this issue, please assume that close-out netting under the EFET General Agreement would be enforced in accordance with its terms in the proceedings for Party F in Country H.

Latvia

As set out in our answer above under question (j) any assets of Party F located in Latvia, including also in a form of a branch would be part of the insolvency proceedings of Party F in Country H. Secondary insolvency proceedings could be initiated in Latvia only in relation to the assets of Party F located in Latvia. The law applicable to the secondary proceedings would be that of Latvia.

As a general rule in accordance with Article 38(3) of the Latvian Insolvency Law netting is permitted within the legal protection proceedings as one of the applicable methods in the LPP, but the mutual claims of the debtor and creditor must have arisen at least three months prior to initiation of the legal protection proceedings by court. Further, in relation to insolvency proceedings in accordance with Article 104 of the Latvian Insolvency Law netting is permitted during the insolvency law, provided the mutual claims of the debtor and creditor have arisen at least six months prior to recognition of insolvency of the legal entity.

In particular, in relation to Banks, Article 158 of the Latvian Credit Institutions Law provides that reorganisation or liquidation measures in relation to a Bank do not influence implementation of close – out netting. Further it provides that transactions based on close-out netting agreements are only governed by the laws, according to which the agreements are concluded.

Therefore, the administrator within the insolvency proceedings will recognise the EFET General Agreement and the relevant close-out netting provisions, but the administrator will be obliged to observe the limitations set by the respective Latvian insolvency or legal protection proceedings laws.

Lithuania

As noted above, secondary insolvency proceedings in Lithuania would be initiated only in relation to the assets of Party F located in Lithuania.

According to Lithuanian laws close-out netting provisions of the agreement would be recognised in the secondary bankruptcy proceedings opened in Lithuania. The claims arising from a derivative transaction shall be set off in accordance with the terms of the set-off agreement entered into between the debtor and creditor provided the agreements has been concluded before insolvency proceedings have been initiated in Lithuania. Thus, the Lithuanian bankruptcy administrator would not force the counterparty to pay the market value if the close-out netting provisions provides for otherwise.

Estonia

As explained under question (j) above, there is no need to have separate proceedings in Estonia. If any secondary insolvency proceedings in Estonia are still initiated, the position would likely be accounted among the assets of Party F. Under Article 2 (9) (viii) of the Insolvency Regulation, claims against a debtor are considered to be assets situated in the Member State within the territory of which the debtor has the centre of its main interests. The effects of the insolvency proceedings in Estonia are under Article 34 of the Insolvency Regulation restricted to the assets of the debtor situated within the Estonian territory.

As explained above, even if any proceedings are initiated in Estonia, close-out netting provisions of the agreement would be recognised in bankruptcy proceedings. The claims arising from a derivative transaction shall be set off in accordance with the terms of the set-off agreement entered into between the debtor and creditor. Thus, the Estonian bankruptcy trustee would not force the counterparty to pay the market value.

According to the Estonian Reorganisation Act, netting of termination values is not possible during the judicial reorganisation proceedings until adoption of the reorganisation plan. However, the Reorganisation Act does not allow reorganisation of most transactions under the EFET General Agreement (see also answer to question (a)) and it does not prohibit including set-off in the reorganisation plan whereas after adoption of the reorganisation plan, set-off is possible in accordance with the plan.

l) ***Please consider your answer to your question assuming instead that Party F has no branch located in the appropriate Baltic State, but has assets in the appropriate Baltic State.***

Latvia

Under Articles 34 and 3 (2) of the Insolvency Regulation secondary insolvency proceedings may be opened against a debtor only if it possesses an establishment within the territory of Latvia. Article 2 (10) of the Insolvency Regulation defines establishment as any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets. There is no requirement for establishment to take any specific legal form.

It follows from the above that if Party F only has assets in Latvia and carries out or has carried out operations in the 3-month period prior to the request to open main insolvency proceedings, secondary proceedings could be initiated in Latvia. In such a case the above answers to secondary insolvency proceedings would be applicable. In other circumstances when Party F has assets, but has not carried out operations in the 3-month period prior to the request to open insolvency proceedings, there will be no basis for separate proceedings in Latvia.

Lithuania

As a general rule, bankruptcy proceedings under Lithuanian law may be opened only against legal entities established in Lithuania. On the other hand, pursuant to the Insolvency Regulation, there is a possibility for secondary insolvency proceedings[9]. Following the Lithuanian case law, if a foreign entity of another Member State has an establishment in Lithuania (holds assets, employees, economic interests), the secondary insolvency proceedings can be opened against such a foreign entity (not a branch) in Lithuania under Lithuanian law with respect to its assets located in Lithuania. According to the provisions of the Insolvency Regulation, this means that if Party F only has assets in Lithuania but has not operated in Lithuania within the period 3-months prior to the initiation of insolvency proceedings, there will be no basis for separate proceedings in Lithuania.

Estonia

Under Articles 34 and 3 (2) of the Insolvency Regulation secondary insolvency proceedings can be opened against a debtor only if it possesses an establishment within the territory of Estonia. Article 2 (10) of the Insolvency Regulation defines establishment as any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets. It does not matter whether the establishment is considered a branch. This means that if Party F only has assets in Estonia but has not operated out of Estonia in the period 3-months prior to the initiation of insolvency proceedings, there will be no basis for separate proceedings in Estonia.

[9] Article 27 of the Regulation on Insolvency Proceedings.

III. Collateral

Our opinion is based on the following additional assumptions:

(A) Although the EFET Credit Support Annex is bilateral such that it contemplates that each party may be required to post collateral to the other, we assume that (i) Party A is at all times Transferor under the EFET Credit Support Annex and (ii) that the collateral is owned by Party A or that Party A is authorised and empowered to transfer ownership in the collateral.

(B) The counterparties agree that Eligible Credit Support will include cash and Letters of Credit. Cash is denominated in a freely convertible currency and is held in an account under the control of Party B maintained in the jurisdiction of the relevant currency.

m) ***Under the laws of the appropriate Baltic State, what law governs the transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Credit Support Annex?***

Latvia

The EFET General Agreement and the EFET Credit Support Annex provides for Eligible Collateral in the form of Cash or a Letter of Credit, which according to Latvian Financial Collateral Law (*Finanšu nodrošinājuma likums*) are recognised as financial collateral.

1. The Latvian Financial Collateral Law regulates the procedures for provision, acceptance and use of financial collateral only in such cases if the contracting parties are:
2. the Republic of Latvia and a derived public person thereof, a direct and indirect State administrative institution, a local government institution or persons of another Member State comparable thereto (also institutions which are responsible for the administration of public debt or participate in the administration thereof, and institutions which are entitled to hold money accounts or financial instruments on behalf of a client);
3. the Bank of Latvia, central banks of other Member States, the European Central Bank, the Bank for International Settlements, the International Monetary Fund and the European Investment Bank;
4. the following multilateral development banks: a) the International Bank for Reconstruction and Development, b) the International Finance Corporation, c) the American Development Bank, d) the Asian Development Bank, e) the African Development Bank, f) the Council of Europe Resettlement Fund, g) the Nordic Investment Bank, h) the Caribbean Development Bank, i) the European Bank for Reconstruction and Development, j) the European Investment Fund, and k) the North and South-American Investment Corporation;

5. the following financial institutions, the supervision of which is performed by the competent financial and capital market supervisory authorities of the Republic of Latvia or other Member States:
    a) credit institutions (Banks),
    b) investment broker companies,
    c) insurance companies,
    d) investment funds or collective investment undertakings comparable thereto,
    e) investment management companies,
    f) other financial institutions; and
    5) the central securities depository, central counterparty or settlement agent.

The Financial Collateral Law is also applicable, when one of the contracting parties is a person referred to above 1) – 5), but the other - a natural, legal or another person or an association of such persons.

Accordingly the Financial Collateral Law would be the law to govern transfer of ownership in case of financial collateral agreement, which foresees transfer of title to the collateral.

Lithuania

The EFET General Agreement and the EFET Credit Support Annex provides for Eligible Collateral in the form of Cash, which according to Lithuanian Law on Financial Collateral Arrangement is recognised as financial collateral. Meanwhile, a Letter of Credit does not fall under the scope of eligible financial collateral under the Law on Financial Collateral Arrangements. In Lithuania the Law on Financial Collateral Arrangement and the Civil Code to the extent allowed by the Law on Financial Collateral Arrangement govern transfer of ownership in case of financial collateral agreement, which foresees transfer of title to the collateral. A Letter of Credit shall be governed by the Civil Code in Lithuania.

Estonia

Under Estonian law, various forms of Eligible Credit Support deliverable under the EFET General Agreement, are governed by the Law of Property Act and Law of Obligations Act. Cash as defined in Appendix 1 to the Credit Support Annex generally constitutes a financial collateral under § 314^1 of the Estonian Law of Obligations Act (*asjaõigusseadus*), implementing directive (EU) 2002/47/EC on the financial collateral arrangements, with some exemptions further explained in the answer to question (n). The terms for the provision of financial collateral derive from the directive (EU) 2002/47/EU of the European Parliament and of the Council on financial collateral arrangements.

A Letter of Credit does not fall under the terms of financial collateral arrangement nor a pledge under the Estonian Law of Property Act and can be constituted as a title transfer under the Law of Obligations Act. The same applies to Cash, if it cannot be considered as financial collateral as explained below (i.e. if either of the Parties is an entity not permitted to enter into financial collateral arrangements).

n) ***Would the laws of the appropriate Baltic State characterise each transfer of collateral as effecting an unconditional transfer of ownership in the assets transferred? Is there any risk that any such transfer would be re-characterised as creating a security interest? If so, is there any way to minimise such risk? What would be the consequences of such a re-characterisation?***

Latvia

The Latvian Financial Collateral Law provides for the following types of financial collateral – cash, financial instruments or credit claims, which on the basis of the financial collateral agreement, are applied as security for the fulfilment of financial liabilities. The financial collateral agreement governed by the Latvian Financial Collateral Law shall be entered into by the parties listed under answer to question (m).

Further an agreement on financial collateral with transfer of title is valid and provisions of the Financial Collateral Law are applicable, if the provision on the transfer of title is unambiguously included in the financial collateral agreement and the financial collateral is transferred and issued, provided the conditions set out in law are observed. The conditions to be fulfilled are as follows:

(i) a list of credit claims - the evidence in writing of submitting which may precisely identify the sum of each provided credit claim, time of provision of the financial security, as well as it is possible to ascertain that a financial collateral agreement is entered into, on the grounds of which the financial collateral is provided;

(ii) an entry in the cash account (booking), which is opened with the receiver of the financial collateral or its authorised person - the evidence in writing of submitting which may precisely identify the time of submitting the financial collateral and it is possible to ascertain that a financial collateral agreement is entered into, on the grounds of which the financial collateral is provided. The transferee shall ensure booking of cash in the account, so that the sum of financial collateral could be unmistakably identified.

Pursuant to the EFET General Agreement, in particular, the Credit Support Annex the eligible Credit Support shall serve to collateralise outstanding obligations between the Parties from time to time pursuant to the EFET General Agreement, and further § 7 expressly states that all right, title and interest in and to any Eligible Credit Support and Interest Amount will vest in the Transferee free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferor or any third person.

Based on the above provided that the conditions in relation to provision of financial collateral set in the Latvian law are fulfilled cash and credit claims (in the form of a Letter of Credit) will be characterised as effecting an unconditional transfer of ownership in the respective cash and credit claims.

Lithuania

According to Lithuanian laws, the Credit Support Annex where the Eligible Credit Support is Cash is qualified as a title financial collateral arrangement as defined in the Financial Collateral Arrangement Directive and the Lithuanian Law on Financial Collateral Arrangement. Taking into account the preamble provision of the Credit Support Annex "*This shall serve to collateralize outstanding obligations between the Parties from time to time pursuant to the Agreement*", as well as article 4(1) of the Credit Support Annex, the aim of the Credit Support Annex is to provide security to a Transferee to secure obligations of the Transferor. According to the Lithuanian Law on Financial Collateral Arrangement and settled case-law, transfer of ownership in the assets shall be qualified as creating a security interest subject to the provisions of the respective law.

If the Credit Support Annex is not qualified as a financial collateral arrangement under the Lithuanian Law on Financial Collateral Arrangement, such transfer of ownership in assets would not be qualified as a financial collateral agreement under Lithuanian law and consequently as a security interest. According to the Lithuanian Law on Financial Collateral Arrangement, a title transfer financial collateral arrangement is an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership to financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations. Moreover, an arrangement shall be qualified as a title transfer financial arrangement if the following conditions are met:

(1) the arrangement is entered by eligible parties. Namely, one of the counterparties to an arrangement is:
    (a) a public authority (excluding publicly guaranteed undertakings unless they fall under points (b) to (d)) including:
        (i) public sector bodies of Member States charged with or intervening in the management of public debt, and
        (ii) public sector bodies of Member States authorised to hold accounts for customers;

(b) the Bank of Lithuania (central bank), the European Central Bank, the Bank for International Settlements, the International Bank for Reconstruction and Development; the International Finance Corporation; the Inter-American Development Bank; the Asian Development Bank; the African Development Bank; the Council of Europe Development Bank; the Nordic Investment Bank; the Caribbean Development Bank; the European Bank for Reconstruction and Development; the European Investment Bank; the European Investment Fund; the Multilateral Investment Guarantee Agency; the International Finance Facility for Immunisation; or the International Monetary Fund;

(c) a credit institution; Brokerage Firm, Insurance Undertaking, CIU, Management Company, closed investment firm; or

(d) a central counterparty, settlement agent or clearing house.

(2) collateral is either cash or financial instruments.

In case collateral is a Letter of Credit, the Credit Support Annex would not be qualified as a financial collateral arrangement and would fall out of the scope of the Law on Financial Collateral Arrangement.

According to Lithuanian laws, the Credit Support Annex under which a Transferor undertakes to submit the Letter of Credit as a collateral to secure its financial obligations towards the Transferee will be qualified as an agreement to deliver a Letter of Credit and would not by itself constitute security. Legally,Party B would not be a mere transferee of the Letter of Credit but the sole and original beneficiary of the Letter of Credit.

Estonia

The laws of Estonia would characterise each transfer of the Eligible Credit Support as effecting an unconditional transfer of title in the assets transferred so long as the transfer validly takes place under the applicable laws. If the provision of Eligible Credit Support under the Credit Support Annex constitutes a financial collateral arrangement, transfer of title to the Eligible Credit Support cannot be re-characterised as creating a security interest. If the Eligible Credit Support does not constitute financial collateral arrangement, such re-characterisation cannot be fully excluded, but the risk of such re-characterisation is relatively low.

If the Eligible Credit Support constitutes a financial collateral arrangement, Estonian law does not provide for any basis for any third party to claim the re-characterisation of the arrangements as merely creating security interest. What is to be taken into account is that only certain assets can be considered to form financial collateral and financial collateral arrangement can only be established between certain persons and organisation determined in article 1 (2) of directive (EU) 2002/47/EC (the Financial Collateral Directive) as follows:

- a company under the supervision of a financial supervision authority (including Banks);
- a person or organisation specified in paragraph 2 (b) or (d) of Article 1 of the Directive (EU) 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements;
- a linked system operator;
- an operator of a securities settlement system;
- another person or organisation similar to the persons specified above provided that the person has the right to be a collateral provider or a collateral taker according to legislation of a Contracting Party to the EEA or the EU;
- any private or public corporation or partnership which meets at least two of the following criteria: (i) an average number of employees of the company during the financial year is over 250; (ii) the annual balance sheet total of the company exceeds 43 million euros; (iii) the annual turnover of the company exceeds 50 million euros.

Based on the definition of the Eligible Credit Support, Cash can be regarded as an eligible asset for the purposes of a financial collateral arrangement, if the Parties are eligible to conclude financial collateral arrangements (as explained above). In any other case, i.e. if one of the Parties does not meet the conditions described above, then the transfer of Cash as Eligible Credit Support would constitute a transfer of title as a contractual obligation. Regardless of the status of the Parties of the transaction, a Letter of Credit would as well, under the definition provided for in Appendix 1 of the Credit Support Annex, qualify as a transfer of title as a contractual obligation.

If the Eligible Credit Support cannot be considered to form financial collateral under § 314^{1} (1) of the Law of Property Act, the transfer of the Eligible Credit Support would not constitute a financial collateral arrangement but a contractual arrangement similar to the financial collateral arrangement (transfer of title). Transfer of title as a contractual arrangement as such could theoretically be challenged in case of insolvency of Party A, but the risk that a court would re-characterise it as a security interest is low as the courts would apply the laws applicable under the EFET General Agreement when determining the arrangement.

Although it is theoretical, if the title transfer was re-characterised as a mere security interest, as a consequence, in case of bankruptcy of Party A, the netting of the claims could theoretically be challenged by the trustee of Party A and any claims deriving from the Credit Support Annex would have to be submitted under the regular procedure provided for in the Estonian Bankruptcy Act described in D.1 of this opinion and accepted by the court. This could also pose a risk to the exclusion of assets from the bankruptcy estate of Party A as the question of the ownership of the transferred assets would arise. If the assets handed over to Party A as Eligible Credit Support are not excluded from the property of Party A, an application for exclusion of property is to be submitted to the trustee.

o) ***Assuming that Party B receives absolute ownership in the collateral, will it need to take any action thereafter to ensure that its title therein continues? Are there any requirements in the appropriate Baltic State necessary or advisable, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval? Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained or established, to enforce, or continue such ownership interest?***

Latvia

Except as provided above in our answer to question n), upon effecting of transfer of title in the financial collateral, the Parties do not need to take any action to ensure that its title to Eligible Credit Support delivered under the EFET General Agreement continues. There are no requirements necessary, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval.

In case of transfer of ownership in the financial collaterals Party A may be required to adopt certain internal corporate decisions by the management bodies of Party A, if needed pursuant to the constitutional documents of Party A.

Otherwise it would be advisable to record transfer of title in the financial collateral in writing so as to ensure evidence of such a transfer.

Lithuania

If the Credit Support Annex is qualified as a title transfer financial collateral arrangement, according to the Law on Financial Collateral Arrangements, no formalities to a form of a financial collateral arrangement apply. Following provisions of the respective law, a financial collateral arrangement comes into effect when financial collateral is transferred to a transferee. Transfer of the financial collateral may be proven by written documents only.

In all cases, transfer of ownership in assets of Party A or delivery of a Letter of Credit by Party A may be subject to certain internal corporate decisions of the management bodies of Party A, if such decisions are needed under constitutional documents of Party A.

Estonia

After receiving absolute ownership in the Eligible Credit Support, Party B does not need to take any action to ensure its title therein continues. Still, under § 314^2 (1) of the Estonian Law of Property Act, it is necessary that the entry into the Credit Support Annex can be evidenced so that it is recommended to conclude the agreement in writing or in any other form which enables the information to be reproduced (such as record of a call, e-mails etc).

There are no requirements to file or register or perform any other actions for approval in relation to the Eligible Credit Support as defined in the Credit Support Annex. What cannot be ruled out is that to enter into a Credit Support Annex, Party A may need to obtain a prior consent from its management or supervisory bodies or shareholders, depending on the competence of the respective bodies. There are no other relevant procedures.

p) ***What is the effect, if any, under the laws of the appropriate Baltic State of the right to substitute collateral pursuant to § 6 of the EFET Credit Support Annex? Does the presence or absence of consent to substitution by Party B have any bearing on this question?***

Latvia

Pursuant to Article 5 of the Latvian Financial Collateral Law the transferor of financial collateral has rights to replace or substitute the financial collateral with other equal financial collateral, and exercise of these rights does not affect legal relationship arising out of the financial collateral agreement. Therefore there is no effect under Latvian law of the right to substitute collateral pursuant to § 6 of the EFET Credit Support Annex. However, in accordance with the EFET Credit Support Annex approval is required from the Transferee for the Transferor to do the substitution of the Eligible Credit Support, so it is not a unilateral act on the part of the Transferor. Henceforth such substitution may be done only with mutual consent.

Lithuania

According to the Lithuanian Law on Financial Collateral Arrangement, the parties are allowed to agree in the arrangement, amongst others, to replace the financial collateral with a new collateral of equivalent value. The replaced financial collateral is subject to the terms and conditions of the same financial collateral arrangement and is deemed to be transferred at the same moment when the substituted collateral has been transferred to a transferee.

Based on the above statutory regulation, the right to substitute collateral pursuant to § 6 of the EFET Credit Support Annex has no effect under Lithuanian law if such replacement has been made in line with the terms and conditions of the Credit Support Annex.

Estonia

Under § 314^{3} (1) of the Estonian Law of Property Act, a Transferor has the right to substitute financial collateral under the terms set forth in § 6 of the EFET Credit Support Annex, provided that the original financial collateral is replaced with an equivalent object not later than when the claim secured by the financial collateral becomes collectable, whereas money shall be replaced by money in the same currency and a security shall be replaced by a security of the same issuer, forming part of the same issue or class and of the same nominal amount, currency and description, unless the parties have agreed otherwise.

Even if the Eligible Credit Support does not constitute financial collateral arrangement but a contractual title transfer arrangement, the Parties are allowed to agree upon the right to substitute the collateral.

q) ***Party B's right in relation to the transferred collateral upon termination of the relevant master agreement will be governed by § 11 of the EFET General Agreement together with §11 of the EFET Credit Support Annex. Assuming that § 11 of the EFET General Agreement is valid and enforceable in the appropriate Baltic State insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, is § 11 of the EFET Credit Support Annex also valid to the extent that it provides for the value of the collateral provided and not yet transferred to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as "other amounts payable"?***

Latvia

Pursuant to Article 6 of the Latvian Financial Collateral Law on the day of fulfilment of the liabilities the transferee transfers back the financial collateral to the transferor or, if it has been foreseen in the mutual agreement, the transferee exercises the rights set out in the agreement or other transaction document to decrease the liabilities of the transferor for the sum of the financial collateral or fully discharge the liabilities with the financial collateral. Further under Article 8 of the Latvian Financial Collateral Law if the due date occurs on the day when the transferee has not fully fulfilled the obligations foreseen in the financial collateral agreement with the title transfer to provide financial collateral of equal value, such liability may be fulfilled by applying close – out netting.

Based on the above, and assuming that § 11 of the EFET General Agreement is valid and enforceable in Latvia, § 11 of the EFET Credit Support Annex (to the extent it provides for the value of the collateral provided and not yet transferred to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as “other amounts payable”) is valid under Latvian law.

Lithuania

Provisions stipulated in § 11 of the Credit Support Annex which provides for Cash as Eligible Credit Support is enforceable under the Lithuanian Law on Financial Collateral Arrangement. Moreover, the amounts drawn under a Letter of Credit should be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as “other amounts payable” irrespectively of the fact that a Letter of Credit is not qualified as a financial collateral under the Law on Financial Collateral Arrangements.

It is our view that the Parties may, as a matter of Lithuanian law, subject a Letter of Credit that has been provided as Eligible Credit Support to the provision of close-out-netting as provided for under the EFET General Agreement in connection with § 11 of the 2002 Version of the EFET Credit Support Annex, i.e. that Party B (as Valuation Agent) as part of such close-out-netting and in terms of realising the Letter of Credit for the purposes of the General Agreement and the 2002 Version of the EFET Credit Support Annex shall account for the full undrawn nominal amount of the Letter of Credit as part of "other amounts payable" owed by the Transferee, and that Party B then draws such amount under the Letter of Credit on its own, subject only to such Letter of Credit's terms and conditions, prior to and following the occurrence of an Insolvency Event.

It is our view, that the Parties may, as a matter of Lithuanian law, agree to disregard the value of the undrawn amount of a Letter of Credit that has been provided as Eligible Credit Support when applying the provision of close-out-netting as provided for under the EFET General Agreement in connection with § 11 of the 2010 Version of the EFET Credit Support Annex. Instead they may apply any amount drawn by Party B under such Letter of Credit to any balance of the Termination Amount owed to the Transferee as a result of such close-out-netting and in reduction of such amount owed by the Transferor on account of such Termination Amount to the Transferee as permitted by the Letter of Credit's terms and conditions, prior to and following the occurrence of an Insolvency.

A bankruptcy administrator or a third-party creditor of the Party A could challenge the terms and conditions of the Credit Support Annex on general legal grounds such as *actio Pauliana*. In case of the Credit Support Annex which provides for Cash as Eligible Credit Support, such claim is unlikely to succeed as the Law on Financial Collateral Arrangements clearly permits such type of security. Meanwhile, when the Letter of Credit is chosen as Eligible Credit Support, the Lithuanian Law on Financial Collateral Arrangements does not apply and allows a claimant to rely on general Lithuanian law provisions such as an *actio Pauliana*.

Estonia

Assuming that § 11 of the Agreement is valid and enforceable in Estonia insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, EFET § 11 of the Credit Support Annex is also valid to the extent that it provides for the value of the Credit Support provided but not yet transferred to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as “other amounts payable”.

r) ***Are the rights of Party B enforceable in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party A?***

Latvia

The rights of Party B are enforceable in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party A. It is expressly stated in the Latvian Financial Collateral Law that validity or enforcement of the financial collateral agreement or its separate terms and conditions is not amended or terminated by the liquidation or insolvency process of the transferor or transferee.

Lithuania

Rights of Party B in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party A, are enforceable under Lithuanian laws.

Estonia

The rights of Party B are generally enforceable in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party A.

As prescribed in § 36 of the Estonian Bankruptcy Act, the declaration of bankruptcy of Party A does not affect the right granted to Party B to dispose of the Eligible Credit Support or to satisfy the claim secured by the financial collateral on account of the financial collateral in the manner agreed upon in the EFET General Agreement and the EFET Credit Support Annex (please see also answer to question (a)). There is no claw-back risk regarding the Eligible Credit Support provided under the EFET General Agreement and the EFET Credit Support Annex. Under § 114 (4) of the Estonian Bankruptcy Act, transactions concluded to exercise the rights or perform the obligations arising from the Eligible Credit Support are not to be recovered by court during the bankruptcy proceedings.

In terms of reorganisation proceedings, Party B (assuming that at least one of the parties of the transaction is an eligible person as described under question (a)) will not be deprived of its right to terminate the agreement. It is not permitted to reorganise derivative transactions during reorganisation proceedings.

s) ***Will Party A (or its receiver or other similar official) be able to recover any transfer of collateral provided to Party B during a certain "suspect period" preceding the date of the insolvency? If so, how long before the insolvency does the suspect period begin? If such a period exists, does the substitution of collateral by a counterparty during this period invalidate an otherwise valid transfer, assuming the substitute assets are of no greater value than the assets they are replacing? Is the transfer of additional collateral pursuant to the mark-to-market provisions of the EFET Credit Support Annex during the suspect period subject to avoidance, either because it was considered to relate to an antecedent or pre-existing obligation or for some other reason?***

Latvia

The Latvian Financial Collateral Law provides that the validity and fulfilment of financial collateral arrangements is not affected by initiation or continuation of measures of liquidation or insolvency proceedings of any the counterparties. Moreover, pursuant to Article 4 of the Financial Collateral Law the insolvency administrator has the duty to ensure timely and complete fulfilment of all and any obligations under the respective financial collateral arrangement.

Article 94 of the Latvian Insolvency Law provides that the rule of third party property, which is not part of the debtor's possession or ownership, and accordingly against which claims of creditors cannot be turned, is applicable also in relation to cash (financial means) or financial instruments, which on the grounds of financial collateral agreements are used as security for fulfilment of financial liabilities. It must be noted that the provision of the law does not include credit claims, which have been included in the Financial Collateral Law with amendments in 2011, but the Latvian Insolvency Law has not been amended accordingly. Therefore we assume that the omission of credit claims in the Latvian Insolvency Law may be argued as unintentional gap in law permitted by the legislator, which may be remedied by application of analogy.

Therefore there is no "suspect period" preceding the date of the insolvency of Party A during which any transfer of collateral provided to Party B could be recovered.

Lithuania

As noted above, the Credit Support Annex could be challenged by a bankruptcy administrator or third-party creditor of Party A as detrimental to other creditors under general Lithuanian law provisions (i.e. *actio Pauliana* claim).

The Lithuanian Law on Bankruptcy obliges a bankruptcy administrator to perform due diligence of all the transactions of Party A in bankruptcy concluded within a period of at least 36 months before the bankruptcy proceedings have been initiated. If, after performance of the legal due diligence, the bankruptcy administrator is of the opinion that certain contracts were detrimental to Party A and/or its creditors, the bankruptcy administrator may claim in court to declare such transactions void. In general, transactions can be challenged by a bankruptcy administrator on general legal grounds.

A limitation period for *actio Pauliana* claims is one year from the moment an aggrieved party becomes aware of the transaction (negative effects caused by the transaction). Thus, in case of bankruptcy of a Party A, limitation period for *actio Pauliana* claims starts as of the moment a bankruptcy administrator receives documents of the entity in bankruptcy.

Statutory obligation to inspect transactions within at least 36 months before the bankruptcy does not limit the administrator's right to challenge transactions concluded within a longer period before the bankruptcy. An administrator can contest transactions that are older than 36 months. However, it is very unlikely that older transactions would fit the criteria for an *actio Pauliana* claim. Administrator shall file a claim within one year from the receipt of documents.

Neither substitution, nor transfer of additional collateral itself has any impact to validity of the Credit Support Annex. Only if a bankruptcy administrator or a third-party creditor proves to court's satisfaction that the respective actions (i.e. substitution or transfer of additional collateral) were detrimental to other creditors or resulted in insolvency of the Party A or contradicted mandatory law provisions, then such substitution or transfer of additional collateral could be declared invalid or even invalidate the Credit Support Annex *ab initio*.

Estonia

Under § 114 (4) of the Estonian Bankruptcy Act, any collateral (not only financial collateral) established to secure a derivative transaction specified in § 48 (1) of the Estonian Bankruptcy Act cannot be recovered. This means that the possibility of recovery of the transfer of Eligible Credit Support made to the Collateral Taker is prohibited to the trustee and thus the claw-back provisions shall not be applicable. Claw-back risk only exists if the only purpose of the derivative transaction was to injure other creditors, Party B was aware thereof, and the derivative transaction was made within one year prior to the appointment of an interim trustee.

Substitution of Eligible Credit Support by a counterparty during the suspect period, assuming that the substitute assets are of no greater value than the assets they are replacing, would not invalidate an otherwise valid transfer. As set forth in § 36 (4) of the Estonian Bankruptcy Act, the Transferor is allowed to dispose of the objects of the financial collateral (the Eligible Credit Support) as well as satisfy the claim secured by the financial collateral on account of the financial collateral in the manner agreed upon in the financial collateral agreement. The same applies, if the transfer of Eligible Credit Support does not constitute financial collateral and the right of substitution has been agreed upon between the Parties,

t) ***Is the EFET Credit Support Annex in an appropriate form to create the intended outright transfer of ownership in the collateral to Party B? Are there any other requirements to be observed in the appropriate Baltic State in order to ensure validity of such transfer in each type of Eligible Credit Support created by Party A under the EFET Credit Support Annex? For example, are there any other requirements such as those mentioned under o) above?***

Latvia

The EFET Credit Support Annex is in an appropriate form to create the intended outright transfer of ownership in the collateral pursuant to Latvian law and there are no additional requirements except for those provided above.

Lithuania

As noted above, Lithuanian law does not provide any specific requirements applicable to such type of arrangement as the Credit Support Annex.

Estonia

The EFET Credit Support Annex is in an appropriate form to create the intended outright transfer under Estonian law.

III. General Enforceability

u) ***Is the EFET General Agreement and any of the above Annexes (including the EFET Credit Support Annex) enforceable under the laws of the Baltic States in accordance with its own***

terms? We would like you to specifically discuss the provisions on (i) non-performance due to Force Majeure (§ 7 of the EFET General Agreement) and (ii) limitation of liability (§ 12 of the EFET General Agreement) and any other provisions which need to be commented on according to the law of the appropriate Baltic State. We are especially interested in provisions that you may believe infringe upon the ordre public in the appropriate Baltic State and that may be challenged by the courts in the appropriate Baltic State irrespective of the laws that governs the Agreement.

Latvia

The provisions of the EFET General Agreement and the above Annexes (including the EFET Credit Support Annex) are generally enforceable under Latvian laws.

Non-performance due to Force Majeure

Latvian Civil Law does not define *force majeure* or provide conditions for its application. The provisions of § 7 of the EFET General Agreement will be enforceable according to its terms and it is not contrary to good morals or public order as accepted in Latvia.

Limitation of Liability

The provisions of § 12 of the EFET General Agreement are in line with the accepted practice according to Latvian law. Hence these provisions on limitation of liability will be enforceable according to their terms and are not contrary to goods morals or public order as accepted in Latvia.

Lithuania

Non-performance due to Force Majeure

The Force Majeure provision contained in the EFET General Agreement is, as a matter of Lithuanian substantive law enforceable in accordance with its own terms and does not violate the Lithuanian *ordre public*.

Limitation of liability

Provisions on limitation of liability (§ 12 of the EFET General Agreement) shall be recognised and enforceable under Lithuanian law and does not violate the Lithuanian *ordre public*.

Estonia

The provisions are generally enforceable under Estonian laws.

Non-performance due to Force Majeure

As per § 103 (2) of the Law of Obligations Act, force majeure under Estonian law is defined as circumstances which are beyond the control of the obligor and which, at the time the contract was entered into or the non-contractual obligation arose, the obligor could not reasonably have been expected to take into account, avoid or overcome the impediment or the consequences thereof which the obligor could not reasonably have been expected to overcome. The Force Majeure provisions in the EFET General Agreement could be void should they violate the public order or good morals as set forth in § 86 (1) of the General Part of Civil Code Act (*tsiviilseadustiku üldosa seadus*).

Under § 86 (2) of the General Part of Civil Code Act, a transaction is contrary to good morals, for example, if a party knows or must know at the time of entry into the transaction that the other party enters into the transaction arising from his or her exceptional need, relationship of dependency, inexperience or other similar circumstances, and if:

(i) the transaction has been entered into under conditions which are extremely unfavourable for the other party; or
(ii) the value of mutual obligations arising for the parties is out of proportion contrary to good morals.

The Force Majeure clause in the EFET General Agreement is enforceable under the laws of Estonia and does not violate the public order or good morals.

Limitation of Liability

Under § 106 (2) of the Law of Obligations Act, agreements under which liability is precluded or restricted in the case of intentional non-performance or which allow the obligor to perform an obligation in a manner materially different from that which could be reasonably expected by the obligee or which unreasonably exclude or restrict liability in some other manner are void. As § 12.4 of the EFET General Agreement states that the liability of a Party is not limited in the case of intentional non-performance, limitation of liability set up in § 12 of EFET General Agreement does not infringe public order.

V. Confirmation Practices

Our opinion on the following additional assumptions:

(i) As far as the Confirmation Practice is concerned, when entering into an Individual Contract, the counterparties in each case refer to the EFET General Agreement when subsequently exchanging confirmations (in whichever form, including telex, fax, SWIFT or other means of electronic transmission).

(ii) Parties may or may not (i) use the EFET Electronic Confirmation Matching System (EFET eCM) to electronically match and exchange Confirmations or (ii) enter into the EFET Electronic Confirmation Agreement.

1. Binding Individual Contract

v) Does the formation of a legally binding and enforceable Individual Contract require any formal act (e.g., execution in writing, signature, registration or notarisation)?

Latvia

Oral contracts are permitted under Latvian law. Formation of a legally binding and enforceable Individual Contract does not require any formal act (e.g., execution in writing, signature, registration or notarisation). Latvian courts will recognise an oral contract as legal, valid and binding and enforceable as against Party A regardless of the law applicable to this contract. However, supporting evidence might be required to prove existence of such an oral contract.

Lithuania

According to the Lithuanian Law on Financial Institutions, financial institution's transactions related to potential risk must be concluded in writing. Financial institutions acting in capital markets are entitled to conclude transactions orally, provided later on information about the concluded transaction is provided in writing or in other form capable to disclose the transaction. Thus, if the Individual Contract is concluded by the Party A which is a financial institution, written form is a must. No other formalities with respect to form of the Individual Contract concluded by the Party A which is a financial institution shall apply.

Derivative transactions entered into by and between non-financial institutions are not specifically regulated by Lithuanian law. Therefore, the Individual Contracts concluded by non-financial institutions is subject to general law requirements concerning the form. General Lithuanian law provides for no specific form requirements applicable to the Individual Contract concluded by non-financial institutions. Therefore, if the

Party A is a non-financial institution no formalities such as written form, registration or notarisation apply to the Individual Contract under Lithuanian law.

Estonia

Formation of a legally binding and enforceable Individual Contract does not require any formal acts and does not have to be in writing.

w) At what point in time does an Individual Contract agreed upon orally become legally binding or enforceable?

Latvia

The general rule provided in the Latvian Civil Law is that a contract shall be regarded as finally concluded, only when full agreement has been reached by the parties on the principal terms of the transaction, with an aim to be bound. If a contract is entered into between absent parties, it shall be regarded as entered into from the moment the offerer has received unconditional consent of the party to whom the offer was made.

Specifically in relation to commercial transactions the Latvian Commercial Law provides that in interpreting the intent expressed by a business person, as well as the meaning and consequences of an action, the practices existing in the scope of commercial rights in the relevant sector shall be taken into account in the mutual legal relations of merchants.

Therefore, based on the above, an Individual Contract becomes legally binding and enforceable when the parties have exchanged the requisite unconditional offer and consent.

Lithuania

According to the Lithuanian Civil Code and the Law on Financial Institutions an Individual Contract concluded by the Party A which is a financial institution, shall become legally binding upon oral agreement if all terms material to the Individual Contract have been agreed by the parties. As noted, the Individual Contract must in all cases be later on confirmed in writing or in other form which allows to identify material terms needed to perform the Individual Contract. However, failure to confirm in writing the Individual Contract which was agreed orally does not invalidate the Individual Contract, but the parties will be deprived from a right to use witness to prove existence or certain terms of the Individual Contract.

If Party A is a non-financial institution, the Individual Contract shall be become effective upon the material terms and conditions have been agreed by the parties orally.

Estonia

An oral contract becomes legally binding and enforceable after mutual exchange of declarations of intent, i.e. one of the Parties has made an offer and the other Party has accepted such offer. Under § 16 (1) of the Estonian Law of Obligations Act, an offer is a proposal to enter into a contract in a manner which is sufficiently defined and which indicates the intention of the offeror to be legally bound by the contract to be entered into if the proposal is accepted. Under § 20 (1) of the Estonian Law of Obligations Act, an acceptance is the agreement to enter into a contract indicated by a direct declaration of intent or by an act.

x) Does failure to object to incorrect terms in a received Confirmation constitute "acceptance" of those terms? If so, is there a relevant time period?

Latvia

The Latvian Civil Law is based on the principle of *pacta sunt servanda*, which means that a contract legally entered into shall impose on a contracting party a duty to perform that which was promised, and neither the exceptional difficulty of the transaction, nor difficulties in performance arising later, shall give the right to one party to withdraw from the contract, even if the other party is compensated for losses.

In addition to what has been outlined in our answer to question w) above, pursuant to the Latvian Civil Law an offer and acceptance shall form a contract, if the offer and acceptance contain the same principal elements of the agreement. If the acceptance is given with differing elements than the offer, then it is regarded as conditional consent to which additional consent from the party giving the initial offer is required. Such consent may be given both in words (in writing or orally) or by performing certain actions, i.e. commencement of fulfilment of the contract.

There is no such principle of objection to certain terms under Latvian Civil Law, and accordingly there is no time limit for that. However, in commercial transactions previous practices between the parties will be taken into account.

Provided the principal elements of the contract are the same both in the offer and acceptance, failure to object to incorrect terms does not change the essence of the contract and it shall be regarded that the parties have agreed to the incorrect terms.

If the principal elements of the contract are not the same in the offer and acceptance (due to provision of incorrect terms), no contract shall be considered to be entered into and hence the incorrect terms will need to be confirmed by the party initially making the offer.

Lithuania

According to the Lithuanian Civil Code, if a written Confirmation sent within reasonable time after the transaction has been concluded contains additional terms or changes agreed terms, such new terms compose a part of the agreement unless such new terms change the essence of the agreement or the recipient of the Confirmation immediately objects to such new terms. The law does not define “reasonable time” or “immediately”, therefore, court would apply the objective test of reasonable.

Estonia

If a person, whose economic or professional activities include performance of certain transactions or supply of certain services, receives an offer for the performance of such transactions or supply of such services from a person with whom the person has continuing business relations (and acceptance by inactivity is common between the Parties), the person must respond to the offer within a reasonable time to express its objections. If acceptance without active expression thereof is common between the Parties, silence is deemed to be acceptance. In any other case, acceptance must be expressed in an active manner.

y) Is the reference to the relevant EFET General Agreement sufficient for the inclusion of the Individual Contract in the Agreement?

Latvia

The reference to the relevant EFET General Agreement sufficient for the inclusion of the Individual Contract in the Agreement.

Lithuania

The reference to the relevant EFET General Agreement is sufficient for the inclusion of the Individual Contract in the Agreement.

Estonia

The reference to the relevant EFET General Agreement is sufficient for the inclusion of the Individual Contract in the Agreement.

2. Means of evidence

z) If there is a dispute with respect to the existence or the terms or conditions of an Individual Contract, would a (i) taped recording, (ii) witness' statement, (iii) e-mail or other electronic message, (iv) facsimile be eligible for rendering evidence in court?

Latvia

Pursuant to the Latvian Civil Procedure Law explanations by parties and third persons which include information about facts, on which their claims or objections are based, shall be admitted as evidence, if supported by other evidence verified and assessed at a court hearing.

The court shall admit only such means of evidence as are laid down in law. The following has been recognised as permissible: witness statements, written evidence, material evidence and expert opinions.

In relation to written evidence, it is information on facts relevant to the case, which is recorded by letters, figures or other characters or use of technical means in documents, other written or printed matter, or in other relevant recording media: audio and video tapes, computer discs and others. Hence these would be eligible evidence for rendering evidence in court.

Lithuania

Eligibility of means of evidence depends on the law requirements applicable to a contract. As noted above, if the contract must be made in writing (as in case of the Individual Contract entered by the Party A, financial institution), witness' statements may not be used to prove the terms of the contract or existence of the contract.

Whereas taped recording made with a prior consent of the party or facsimile or e-mail letter may be used as a mean of evidence to prove existence or the terms of conditions of an Individual Contract. If the law stipulates no form requirements, the parties are free to use any means of evidence which may be legally obtained.

Estonia

Taped recordings, witness' statements, e-mail or other electronic messages as well as facsimile would be generally considered as eligible evidence. Under § 229 (1) of the Estonian Code of Civil Procedure (*tsiviilkohtumenetluse seadustik*), a testimony of a witness, statements of participants in a proceeding given under oath, documentary evidence, physical evidence, inspection or an expert opinion may be used as evidence.

A taped recording and an e-mail are considered documentary evidence in terms of § 272 (1) of the Estonian Code of Civil Procedure. Facsimile is considered documentary evidence but under § 273 (5) of the Estonian Code of Civil Procedure, the court has the right to request the submission of the original document or substantiation of the circumstances which prevent the submission of the original document. If the demand of the court is not complied with, the court decides on the probative value of the facsimile.

Witness' statement will generally be given in court as set forth in § 252 (1) of the Estonian Code of Civil Procedure but under § 253 (1) of the Estonian Code of Civil Procedure the court may allow a written testimony if appearing before the court is unreasonably cumbersome to the witness and, taking account of the contents of the questions and the personal characteristics of the witness, giving written testimony is in the court's opinion sufficient for providing proof.

VI. Core Provisions

The following section of our Opinion is based on the additional assumptions outlined under Part C.I.1 and C.II.

aa) Would any of the elections contemplated by the EFET General Agreement or any of the above Annexes (including the EFET Credit Support Annex) change the substance of your conclusions reached under Part D.I (Enforceability of Close-out Netting)? As far as the EFET Credit Support Annex is concerned, you should in particular discuss the effect of electing to allow substitution with or without consent.

Latvia

As long as the elections contemplated by the EFET General Agreement and any of the above Annexes (including the EFET Credit Support Annex) are made in line with applicable English or German law, our conclusions made in Part D.I (Enforceability of Close-out Netting) do not change.

As explained above the transferor of the financial collateral has rights to replace the financial collateral with another equal financial collateral, receive the excess of the financial collateral or – in case of credit claims – receive payments from the credit claims. Exercise of these rights does not influence the legal relationship, which follows from the financial collateral agreement. So this is a right to replace the financial collateral on the grounds of law, and no separate consent is required.

Lithuania

As long as the elections contemplated by the EFET General Agreement and any of the above Annexes (including the EFET Credit Support Annex) are made in line with applicable English or German law, our conclusions made in Part D.I (Enforceability of Close-out Netting) do not change.
As noted above, the Lithuanian Law on Financial Collateral Arrangements specifically allow replacement of the financial collateral with a new one of the equivalent value if such a possibility is agreed by the parties in the arrangement. Thus, if no such possibility is established in a financial collateral arrangement or separately by the parties in writing, unilateral replacement of financial collateral would not be permissible and enforceable under Lithuanian law. Please note that the latter consequences apply if a financial collateral arrangement is governed by Lithuanian law. Meanwhile, the Credit Support Annex is governed by English or German law. Therefore, English or German law would apply to the effect of electing to allow substitution in the Credit Support Annex.

If collateral under the Credit Support Annex is a Letter of Credit, the Credit Support Annex would not be qualified as a security agreement in general but rather as an agreement to deliver a Letter of Credit. In the respective case, the Credit Support Annex would be subject to applicable law, i.e. English or German law.

Estonia

Any alterations of the Core Provisions of the EFET General Agreement (together with its Annexes, Schedules and the Allowance Appendixes) could affect the conclusion reached in our opinion regarding such clauses (especially in connection with the insolvency proceedings). This concerns netting provisions, definition of Eligible Credit Support under the EFET Credit Support Annex, as well as electing to allow substitution of the Eligible Credit Support without consent.

As explained above, substitution is only permitted if it has been agreed upon between the Parties beforehand.

bb) Considering your conclusions reached under Part D.I (Enforceability of Close-out Netting), what are the provisions of the EFET General Agreement that you regard as so essential that a material alteration thereof could affect the conclusions reached in that Part D.I (each such provision a "Core Provision")? We believe that the following provisions are Core Provisions: § 1, § 10.3(a), the second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv), § 11 and the related definitions contained Annex 1 to the EFET General Agreement.

Latvia

Material alteration of any provisions of the EFET General Agreement could affect the conclusions reached in that Part C.I or C.II including the provisions § 1, § 10.3(a), the second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv), § 11 and the related definitions contained Annex 1 to the EFET General Agreement.

Lithuania

As noted above, Material Reason stipulated in § 10.5(c)(iv) of the EFET General Agreement is material from the Lithuanian overriding mandatory law perspective. Namely, as noted above, after court adopts a decision to initiate bankruptcy proceedings against Party A which is a regulated financial institution provided in article 1(2) of the Insolvency Regulation, close out netting and further performance of financial obligations by the Party A in bankruptcy is not allowed.

Estonia

We can confirm that the alteration of § 1, § 10.3(a), the second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv), § 11 and the definitions contained in Annex 1 to the Agreement as well as in anywhere else in the Documents could affect the conclusions reached in Part C.I and C.II should they be materially altered.

cc) Would the inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) or the EFET Master Netting Agreement change the substance of your conclusions reached under Part D.I?

Latvia

The inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) or the EFET Master Netting Agreement does not change the substance of our conclusions made in responses to questions (a)-(t).

Lithuania

The inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) or the EFET Master Netting Agreement does not change the substance of our conclusions made in responses to questions (a)-(t).

Estonia

Inclusion of the Agreement in the EFET Cross Product Payment Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) or the EFET Master Netting Agreement does not change the substance of our conclusion made regarding questions (a)-(t).

VII. Governing Law, Arbitration and Jurisdiction

Our opinion is based on the following additional assumptions:

(iii) The relevant EFET General Agreement is governed by the laws of a jurisdiction other than the appropriate Baltic State's law (including English or German law).

dd) Would the Parties' agreement on the governing law, submission to arbitration or jurisdiction (§ 22 of the EFET General Agreement) be upheld in the Baltic states, and what would be the consequence if it were not?

Latvia

The Parties' agreement on the governing law, submission to arbitration or jurisdiction (§ 22 of the EFET General Agreement) will be upheld in Latvia, considering the mandatory provisions of Latvian law. The choice regarding submission to arbitration shall be enforced against Party A in accordance with the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), to which Latvia is a contracting state.

Lithuania

The choice of German law or the law of England and Wales to govern the EFET General Agreement is recognised under Lithuanian law and is valid and binding on the Party A incorporated in Lithuania under Lithuanian law. The submission of any disputes arising from the EFET General Agreement to an arbitration court having its seat in London, England, if Option A is chosen, or in Germany if Option B is chosen is valid and binding under Lithuanian law. An award of an English or a German arbitration court, as the case may be, against Party A would be enforced in Lithuania in accordance with the 1958 New York (United Nations) Convention, which provides for acknowledgement and enforcement in the absence of a cause for refusal pursuant to Art. V of said Convention.

Estonia

The Parties' agreement on the governing law, submission to arbitration or jurisdiction would generally be upheld in Estonia, considering the mandatory provisions of the Estonian legislation (as explained above). Agreements of both submission to arbitration and conferring jurisdiction in the EFET General Agreement would likely be upheld. The choice regarding submission to arbitration shall be enforced against Party A in accordance with the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), to which Estonia is a contracting state.

VIII. Regulatory Regime

ee) Are there any exchange control laws or license requirements (under, e.g., any banking, securities trading or energy law) that may affect the enforceability of the relevant EFET General Agreement or of the Individual Contracts?

Latvia

There are no any exchange control laws or license requirements (under, e.g., any banking, securities trading or energy law) that may affect the enforceability of the relevant EFET General Agreement or of the Individual Contracts.

Lithuania

There are no exchange or currency control rules in force under the present Lithuanian law which would today affect the EFET General Agreement in Lithuania.

According to the Lithuanian Law on Natural Gas, the activity of natural gas supply (except trading on natural gas exchange) is subject to permits. Therefore, in case the Party A is a seller of a physically settled derivative, physical delivery of natural gas within the territory of Lithuania under an Individual Contract would be qualified as natural gas supply under Lithuanian law and will be subject to a permit.

Meanwhile, trading in natural gas on exchange is not regulated by permissions or licenses under Lithuanian laws. Moreover, the Party A does not require a natural gas supply license, or any other permission issued by Lithuanian authorities to enable the Party A to transport natural gas by the transmission system through the territory of Lithuania (without physical trade within the territory of Lithuania).

Estonia

There are no exchange laws or licence requirements which could affect the enforceability of the relevant EFET General Agreement or Individual Contract.