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To: European Federation of Energy Traders (EFET)

From: Debarliev, Dameski & Kelesoska Attorneys at Law

Date: 21st of February 2022

Re: **Enforceability of Close-Out Netting and the Validity and Enforceability of the EFET General Agreement Concerning the Delivery and Acceptance of Electricity and its Collateral Arrangement for North Macedonia**

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1. EXECUTIVE SUMMARY

Close-out netting is not detailly nor sufficiently regulated in North Macedonia. There is a need for further regulating this specific arrangement in order to avoid uncertainties for creditors enforcing such arrangements and facing risk for different processing/outcome by the competent bodies acting upon such proceedings. According to the Macedonian laws, close-out netting is defined in the Law on Financial Securing and the Law on Bankruptcy. Such provisions do not offer sufficient measures for clear and successful implementation of close-out netting principles, which leaves many uncertainties for participants in the financial market, especially in regard to the insolvency proceedings.

The Law on Financial Securing recognize termination and close-out netting provisions in financial transactions with eligible counterparties (i.e. mostly sovereign and financial sector entities). The Law on Financial Securing does not recognize close-out netting in transactions between regular corporate entities. The close-out netting for those entities is left to the general contract and insolvency rules and is potentially exposed to the discretion of the insolvency administrator (i.e. cherry-picking).

However, we consider that close-out netting arrangement, in particular in case of insolvency/bankruptcy proceedings, is theoretically recognized and enforceable as an arrangement under the laws of the Republic of North Macedonia, however subject to certain level of risk of uncertainty in its enforceability. In this regard, we are ought to note that, in case of an opened bankruptcy proceeding against a debtor, having in mind that the goals of the bankruptcy proceeding is to achieve collective settling of the creditors claims by the debtor, and given the rarity of the concept of close-out netting in practice, the enforceability of the close-out netting provisions between regular corporate entities is put under risk, i.e. can render the close-out netting mechanism largely inoperable in practice.

Hence, we consider that the best approach is to familiarize the bankruptcy administrator about all relevant circumstances related to the right of netting of the creditor. Given that the Law on Bankruptcy does not provide for clear instructions for actions, for cost-effectiveness of the bankruptcy proceeding, we consider that the creditor needs to report his claim in the bankruptcy proceedings in full amount (gross) along with the sett-off notice, in order for the bankruptcy administrator to determine the circumstances/conditions related to the claim and the permissibility for it to be set-off. With the reporting of the claim, the creditor shall avoid a possible lawsuit initiated by the bankruptcy administrator and the need, to prove in a separate court proceeding, that the conditions are met for his claim towards the debtor and the claim from the debtor towards the creditor to be netted before the opening of the bankruptcy proceedings.

This shall be further emphasized, having in mind that North Macedonia is a relatively small and underdeveloped market, and such provisions or events are fairly rare or ever present in North Macedonia. Having this in mind, there is a fair share of uncertainty how this arrangement shall be conducted in practice by competent bodies in North Macedonia due to lack of experience with such concept.

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2. Enforceability of Close-out Netting

A. Winding-up, Insolvency or Attachment

As noted in the Executive Summary, close-out netting arrangement is regulated and generally enforceable as an arrangement under the laws of the Republic of North Macedonia. However, having in mind that North Macedonia is a relatively small and underdeveloped market, such provisions or events are fairly rare or ever present in North Macedonia and there is a fair share of uncertainty how this arrangement shall be conducted in practice by competent bodies in North Macedonia. The Law on Financial Securing and the Law on Bankruptcy contain specific provisions that enforce close-out netting.

According to the Macedonian laws, close-out netting is defined in the Law on Financial Securing (Official Gazette of the Republic of Macedonia no. 84/2008) and the Law on Bankruptcy (Official Gazette of the Republic of Macedonia no. 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015).

According to Article 3 paragraph 1 item 9 of the Law on Financial Securing, *close-out netting* means occurrence of conditions for enforcement of the collateral and all undue secured claims shall be considered due, transforming of non-monetary to monetary claims and possibility for netting according to their current value.

According to Article 9 of the Law on Financial Securing, the right to close-out netting does not cease to be valid in case of court or other confiscation or when a bankruptcy or liquidation proceeding is initiated or ongoing against the provider or receiver of the financial collateral, or in case of restructuring measures or when the receiver of the financial collateral has the financial collateral at his disposal.

However, the Law on Financial Securing recognize termination and close-out netting provisions in financial transactions with eligible counterparties (i.e. mostly sovereign and financial sector entities). The Law on Financial Securing does not recognize close-out netting in transactions between regular corporate entities. The close-out netting for those entities is left to the general contract and insolvency rules and is potentially exposed to the discretion of the insolvency administrator (i.e. cherry-picking). Namely, according to Article 2 of the Law on Financial Securing, the provisions of the Law on Financial Securing regarding financial collateral and close-out netting are applicable to:

1) state authority bodies, municipality bodies, bodies of the municipalities in the city of Skopje and the City of Skopje;
2) National Bank of the Republic of Macedonia;
3) European Central Bank, Bank for International Settlements, International Monetary Fund, European Investment Bank, central banks of member states of the European Union, as well as multilateral development banks;
4) banks;
5) leasing companies;
6) brokerage houses;
7) insurance companies;
8) companies for investment and pension fund management;

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9) clearing houses, securities depositories and stock exchange markets and 10) the Health Insurance Fund of the Republic of Macedonia, the Pension Insurance Fund of the Republic of Macedonia and the Depository Insurance Fund.

Other legal entities considered as large commercial entities in accordance with the Law on Trade Companies (Official Gazette of the Republic of Macedonia no. 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015, 6/2016, 30/2016, 61/2016, 64/2018 and 120/2018 and Official Gazette of the Republic of North Macedonia no.290/2020 and 215/2021), shall as well be considered as eligible entities, when they conclude financial collateral agreements with the entities listed above.

This leaves the close-out netting between regular corporate entities to be regulated by the general contract and insolvency rules given in the Law on Bankruptcy and the Law on Obligations.

According to Article 2 paragraph 1 item 30 of the Law on Bankruptcy, *close-out netting (arrangement)* means all the conditions stipulated in the financial collateral agreement or in the agreement in which the financial collateral constitutes a part of the agreement which, if they should occur, shall cause all claims to be deemed due and payable, the claims to be converted into monetary claims and for them to be able to be netted (set-off) among themselves, according to their current (present) value.

According to Article 2 paragraph 1 item 46 of the Law on Bankruptcy, *netting* refers to the claim for a certain monetary amount, owed to a certain person, being used for collecting or for reducing the claim against a claim in a monetary amount owed by the said person.

Furthermore, according to Article 129 paragraph 3 of the Law on Bankruptcy, a netting (arrangement) shall produce a legal effect, that is, remain in full force and effect, even when a bankruptcy proceeding has been initiated or the implementation of the reorganization plan has commenced over the debtor, that is, when the user of the collateral grants, encumbers or otherwise disposes of the secured claim.

Having this in mind, if there is a concluded financial collateral agreement or an agreement in which the financial collateral constitutes a part of, by the debtor before the opening of the bankruptcy proceedings, the rights acquired with this agreement have the same legal validity as if a bankruptcy proceeding has not be opened. The same is applicable when a netting arrangement is concluded. In this regard, we consider that Individual Contracts under the EFET General Agreement fall within the scope of provisions providing enforceability of close-out netting in insolvency proceeding, however subject to the risk of being disputed by the bankruptcy administrator or other creditors, as given bellow. For further clarification, we are on the opinion that the EFET General Agreement (including Individual Contracts) would generally be considered an “eligible agreement” under the Law on Bankruptcy and therefore the provisions of close-out netting can be recognized, however subject to certain level of risk of uncertainty in its enforceability. We consider that the signing of the Credit Support Annex next to the EFET General Agreement would not determine the eligibility of the EFET General Agreement per se, however involving a certain financial collateral (providing a financial collateral in any form, including bank guarantee or parent company guarantee) even without concluding of a Credit Support Annex would slightly "help" the implementation of the close-out netting provisions before the bankruptcy administrator. Once again, it should be emphasized that North Macedonia is a relatively small and underdeveloped market, and such provisions or events are fairly rare or ever present in North Macedonia, hence there is a fair share of uncertainty how this arrangement shall be conducted in practice by competent bodies in North Macedonia due to lack of experience with such concept.

As per Article 3 of the Law on Bankruptcy, the bankruptcy procedure is aimed at a collective settlement of the creditors of the bankruptcy debtor by monetizing the debtor's property and distributing the generated assets (revenues) to the creditors, or by concluding a separate agreement for settlement of the claims defined in the reorganization plan aimed at the further maintenance of the debtor's business venture. Reorganization may also provide a possibility for performing a settlement of the claims prior to the initiating of the bankruptcy procedure under the conditions stipulated in this Law. Reorganization represents the process in which the assets, the financial condition and the sustainability of the debtor's undertaking may be renewed, while the debtor's undertaking may continue functioning, by using several means defined in the Law, primarily debt write-off, debt deferral, transformation of the debt into a share in the company and sale of the undertaking as a whole or a part thereof. The reorganization procedure comprises the proposal of the debtor for initiating a reorganization procedure, the discussion and the position stated by the creditors regarding the proposal, the preparation of the reorganization plan, the position stated by the creditors as regards the reorganization plan and all other activities that, under the Law, are undertaken by the bankruptcy judge, the debtor and the creditors for the purposes of and with reference to the reorganization of the debtor on the basis of the reorganization plan.

Please consider that the Law on Bankruptcy (however insufficiently) regulate and differentiate the concept of close-out netting as from the concept set-off, which is generally possible directly on the basis of the Law on Obligations. However, the Law on Bankruptcy provides for certain aspects of sett-of during the bankruptcy proceedings. The provisions that provide general description of the limitations of netting (set-off) in respect to the bankruptcy procedure are contained in the Law on Bankruptcy:

Article 152 of the Law on Bankruptcy provides that if, at the time of the initiating of the bankruptcy proceeding, the bankruptcy creditor, on the basis of the law or an agreement, had the right to netting (set-off), the initiating of the bankruptcy proceeding shall not limit such right.

However, having in mind that the goals of the bankruptcy proceeding is to achieve collective settling of the creditors claims by the debtor, and given the rarity of the concept of close-out netting in practice, the enforceability of the close-out netting provisions between regular corporate entities is put under risk, i.e. can render the close-out netting mechanism largely inoperable in practice. Hence, we consider that the best approach is to familiarize the bankruptcy administrator about all relevant circumstances related to the right of netting of the creditor. Given that the Law on Bankruptcy does not provide for clear instructions for actions, for cost-effectiveness of the bankruptcy proceeding, we consider that the creditor needs to report his claim in the bankruptcy proceedings in full amount (gross) along with the sett-off notice, in order for the bankruptcy administrator to determine the circumstances/conditions related to the claim and the permissibility for it to be set-off. With the reporting of the claim in full, the creditor shall avoid a possible lawsuit initiated by the bankruptcy administrator and the need, to prove in a separate court proceeding, that the conditions are met for his claim to the debtor and the claim from the debtor to the creditor to be netted before the opening of the bankruptcy proceedings. This is further explained under point bb) below.

According to Article 153 of the Law on Bankruptcy, if at the time of the opening of the bankruptcy proceeding the claims or one of the claims should be netted, are still under a deferred term or still have not become due or the claims do not derive from identical activities, netting shall occur only after the respective requirements are met.

It shall be allowed to net claims that are expressed in different currencies or calculation units. The calculation shall be performed according to the exchange rate applicable at the place of payment at the time of the receipt of the netting statement.

On the other hand, the inadmissibility of netting is aimed towards providing of conditions for collective settlement of all creditors in the bankruptcy proceedings, and in this regard, disabling some creditor to be settled on the expense of the other creditor. In this regard, the Law on Bankruptcy provides for certain cases that are excluded from the general rule for netting. According to Article 154 of the Law on Bankruptcy, netting shall be disallowed if:
1) the bankruptcy creditor became a guarantor for the benefit of the bankruptcy estate only after the initiating of the bankruptcy proceeding;
2) the bankruptcy creditor acquired the claim thereof from another creditor only after the initiating of the bankruptcy proceeding;
3) the bankruptcy creditor acquired the claim by means of factoring for the last year prior to the initiating of the bankruptcy proceeding, while he/she knew or was obliged to know that the debtor became incapable of paying and that a proposal for initiating a bankruptcy proceeding against him/her has been filed. Netting by exception shall be allowed in the event of a claim that has been ceded with reference to the fulfillment of any unfulfilled contracts or a claim that has been revived with a successful denial of the debtor's legal action;
4) the bankruptcy creditor acquired a possibility for netting with a legal matter that may be netted; and
5) the creditor whose claim is to be settled from the property of a debtor – individual not included in the bankruptcy estate, while the debtor owes it to the bankruptcy estate.

In respect of the risk by the actions of the bankruptcy administrator, the bankruptcy administrator has to right to reject all transactions that are considered onerous to the insolvent party, while forcing the other party to perform all transactions that are for the benefit of the debtor, in accordance with the authorizations vested to the bankruptcy administrator under the Law on Bankruptcy. The bankruptcy administrator may terminate any of the contracts entered into by the debtor (i.e. cherry-picking), or to continue to perform any of the previously concluded contracts. According to Article 157 of the Law on Bankruptcy, if the debtor and the other contracting party, on the day of the initiating of the bankruptcy procedure, did not fulfill at all or did not fulfill entirely a bilateral onerous agreement, the bankruptcy administrator may fulfill the agreement in lieu of the debtor and demand fulfillment from the other contractual party. If the bankruptcy administrator rejects the fulfillment, the other contracting party may settle the claims thereof due to such non-fulfillment only in the capacity of a bankruptcy creditor. If the other contracting party is obliged to be the first one to fulfill the agreement and if it invites the bankruptcy administrator to state the position thereof in terms of the right to choose, the administrator shall be obliged, within eight days, via registered mail, to notify the respective contracting party as to whether he/she intends to demand fulfillment of the agreement. Otherwise, the bankruptcy administrator shall not be entitled to demand fulfillment.

As further clarification of the above, given the rarity of the concept of close-out netting in practice in North Macedonia, the enforceability of the close-out netting provisions between regular corporate entities is put under risk, i.e. can render the close-out netting mechanism largely inoperable in practice. The scarce practice of this mechanism cannot give clear indication whether the close-out netting provisions shall have priority over the bankruptcy administrator's cherry picking right. Although the Law on Bankruptcy provides that a netting (arrangement) shall produce a legal effect, that is, remain in full force and effect, even when a bankruptcy proceeding has been initiated and theoretically the right to perform close-out netting is not subject to the bankruptcy administrator's prior approval, we stand on the position that the best approach is to familiarize the bankruptcy administrator about all relevant circumstances related to the right of netting of the creditor.

The lack of experience with the concept of close-out netting leads to uncertainty in respect to the bankruptcy administrator's actions when dealing with the EFET General Agreement/Individual Contracts. The Law on Bankruptcy does not provide for any provisions regarding bankruptcy administrator's actions in respect to netting arrangements, except for the "general" cherry-picking right provided in Article 157 of the Bankruptcy Law given above. Should the EFET General Agreement be rejected by the bankruptcy administrator, it is possible that the bankruptcy administrator may terminate some of the Individual Contracts or the entire EFET General Agreement, in line with his cherry-picking right. Furthermore, given the rarity of the concept of close-out netting in practice, we cannot estimate the manner and level of treatment of the application of the termination provisions of the EFET General Agreement. Given that the Law on Bankruptcy does not provide for clear instructions for actions, for cost-effectiveness of the bankruptcy proceeding, we consider that the creditor needs to report his claim in the bankruptcy proceedings in full amount (gross) along with the sett-off notice, in order for the bankruptcy administrator to determine the circumstances/conditions related to the claim and the permissibility for it to be set-off.

On the other hand, although the Law on Bankruptcy provides that a netting (arrangement) shall produce a legal effect, that is, remain in full force and effect, even when a bankruptcy proceeding has been initiated, if the assume that the EFET General Agreement continues to be performed after commencement of the bankruptcy proceedings and is recognized/accepted by the bankruptcy administrator, due to the scarce practice, we believe that the rights of the non-defaulting party in case of infringements of the agreement by the insolvent debtor can generally be exercised in the bankruptcy procedure only in the capacity of a bankruptcy creditor, i.e. the close-out netting provisions may face the same difficulties in their implementation as indicated above.

The Law on Bankruptcy does not provide for "safe harbor" of any contract types including the contract types listed in Appendix B. The Law on Bankruptcy only provides for a definition for a financial agreement. Namely, according to Article 2 paragraph 1 item 76 of the Law on Bankruptcy, a *financial agreement* means any spot, forward, futures, option or swop agreement which includes interest rates, goods, foreign currencies, share in capital, bonds, indexes or any other financial instrument, purchase or securities loan transaction and any other transaction similar to any of the transactions which pertain to the aforementioned, concluded on the financial markets and a combination of the aforementioned transactions.

Regarding the entities listed in Appendix A, the provisions of the Law on Bankruptcy shall not apply to bankruptcy proceedings for banks, savings houses, insurance companies and other financial organizations, except for the provisions regulating issues that are regulated under special laws.

The procedural steps and other solvency related facts (e.g. financial statements, corporate actions etc.) are publicly available information that are registered in the Central Registry of the Republic of North Macedonia and any person may review or obtain a copy of the same at any time, or obtain a certified document by the Central Registry confirming such fact upon payment of an administrative fee. The procedural steps in the bankruptcy proceedings are regularly published in the Official Gazette of the Republic of North Macedonia.

a) Automatic termination

aa) Regarding automatic termination of the EFET General Agreement, we would recommend to elect Automatic Termination to apply upon a Material Reason described in Article 10.5(c) of the EFET General Agreement.

We consider that it is not necessary to modify the scope of the Automatic Termination either by deleting/modifying the events listed in Article 10.5(c) which would trigger the termination or by adding other Material Reasons upon the occurrence of which Automatic Termination should apply, since we consider that they are well covered in the said Article.
However, we recommend that a certain grace period should be provided in Article 10.5(c)(iv) of the EFET General Agreement. Our estimation as the minimum reasonable period of time required by a party whose creditor(s) have instituted an unsubstantiable or otherwise clearly frivolous involuntary bankruptcy proceedings to have that proceeding dismissed or otherwise terminated by a competent court is 45 (forty-five) days.

In respect to the optimal timing for that Automatic Termination to take effect, we consider that the optimal timing should not be longer than 30 (thirty) days.

bb) We consider that 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 Article 10.5(c) of the EFET General Agreement are generally enforceable under the laws of the Republic of North Macedonia, however there is certain level of probability/risk that the automatic termination of the EFET General Agreement could be challenged by a liquidator, receiver or a third party.

According to Article 2 paragraph 1 item 75 of the Law on Bankruptcy, *conditions for activation (enforcement) of the financial collateral arrangement* means the occurrence of circumstances of a previously designated or a similar event such as the one that was agreed between the parties or defined by law which, once it has occurred, causes the collateral receiver to have the right to enforce the financial collateral or the close-out netting to enter into force.

However, as noted above, please consider that there is a legal possibility for the legal actions of the bankruptcy debtor to be disputed. Namely, according to Article 172 of the Law on Bankruptcy, the legal actions undertaken prior to the initiating of the bankruptcy proceeding which undermine the equitable settling of the creditors (damaging the creditors), that is, by means of which certain creditors are placed in a more favorable position, may be disputed by the bankruptcy administrator on behalf of the bankruptcy debtor and the bankruptcy creditors.

According to Article 173 of the Law on Bankruptcy, a legal action taken in the course of the three months prior to the submission of the proposal for initiating a bankruptcy proceeding, with which one bankruptcy creditor is given or enabled security or settlement in accordance with the content of the rights thereof, may be disputed if at the time when it was taken the debtor was incapable of paying and if the creditor, at that time, knew or was obliged to have known of such incapability.
A legal action may also be disputed with which one bankruptcy creditor is given or enabled security or settlement in accordance with the content of the rights thereof, if the legal action was taken after the submission of the proposal for initiating a bankruptcy proceeding and if the creditor, at the time when it was taken, knew or was obliged to know of the incapability of paying or the proposal for initiating a bankruptcy proceeding. It shall be deemed that the creditor knew of the incapability of paying or of the proposal for initiating a bankruptcy proceeding if he/she knew about the circumstances which lead to an inevitable conclusion that there is an incapability of paying or that a proposal for initiating a bankruptcy proceeding was submitted.
This permitted settlement does not harm other creditors but provides for conditions for certain creditors to be in privileged position and to be settled before the opening of the bankruptcy proceedings.

Unpermitted settlement is defined under Article 174 of the Law on Bankruptcy, as a legal action with which a bankruptcy creditor is given or enabled security or settlement, which such creditor was not entitled to request or not entitled to request it in such a manner and at that time, and such legal action may be disputed if the action was taken in the course of:
1) the last 30 days prior to the submission of the proposal for initiating the bankruptcy proceeding or thereafter; or
2) 90 days prior to the submission of the proposal for initiating the bankruptcy proceeding, while the debtor was incapable of paying at that time; or
3) 90 days prior to the submission of the proposal for initiating the bankruptcy proceeding, while the creditor, at the time when it was taken, knew that it would cause damage to the bankruptcy creditors. It shall be deemed that the creditor knew that the action shall damage the creditors, if he/she knew of the circumstances which lead to an inevitable conclusion that such action shall damage the creditors.

According to Article 175 of the Law on Bankruptcy, a legal action of the debtor which causes direct damage to the bankruptcy creditors may be disputed, if:
1) it was taken in the course of the last 90 days prior to the submission of the proposal for initiating a bankruptcy proceeding, if at the time when it was taken the debtor was incapable of paying and if the other party knew about such incapability at that time; or
2) it was taken after the submission of the proposal for initiating a bankruptcy proceeding, while the other party, at the time when the legal action was taken, knew or was obliged to know of the incapability of paying or of the proposal for initiating a bankruptcy proceeding.
A legal action that causes direct damage to the bankruptcy creditors shall be treated as equivalent to the legal action of the debtor with which the debtor loses some of the rights thereof or due to which he/she may no longer exercise such rights, or an action based upon which a particular property and legal claim against the debtor may remain in full force and effect or be settled.

Deliberate damage is defined according to Article 176 of the Law on Bankruptcy, as a legal action that the debtor took in the course of the last ten years prior to the submission of the proposal for initiating a bankruptcy proceeding or thereafter with the intention of damaging the creditors thereof may be disputed if the other party, at the time when such action was taken, knew of the debtor's intentions. The knowledge of such intention shall be presumed if the other party knew that the debtor was threatened with incapability of paying and that such action would damage the creditors.

The aforementioned legal actions of the bankruptcy debtor may be disputed by the bankruptcy creditors and the bankruptcy administrator, on behalf of the bankruptcy debtor.
The lawsuit may be filed at the latest by the conclusion of the bankruptcy proceeding. The lawsuit shall be filed against the person against whom the disputed legal action was conducted and against the debtor provided that he/she is not the plaintiff.
If the lawsuit is upheld, the disputed legal action shall produce no effect in terms of the bankruptcy estate and the adverse party shall be obliged to return to the bankruptcy estate all property benefits acquired on the basis of the disputed action.

The legal actions of the debtor may be disputed also by filing a complaint in a civil proceeding without the time limitation above.

According to Article 186 of the Law on Bankruptcy, if the person against whom the disputed legal action was conducted reinstates what he/she received, it shall be possible once again to settle the claim thereof.

b) Not electing Automatic Termination
   aa) If Automatic Termination (as defined in Article 10.4 of the EFET General Agreement) upon the occurrence of an event described in Article 10.5(c) of the EFET General Agreement is not elected, we consider that is not necessary to modify the scope of termination by deleting or modifying some of the events listed in Article 10.5(c) or by adding other Material Reasons upon the occurrence of which the Terminating Party should be entitled to terminate the EFET General Agreement.

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bb) The provisions of the EFET General Agreement permitting the Terminating Party to terminate the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in Article 10.5(c) of the EFET General Agreement are generally enforceable under the laws of the Republic of North Macedonia, however there is low probability/risk that the entering into the EFET General Agreement, the entering into Individual Contracts thereunder or the termination notice itself could be challenged by a liquidator, receiver or a third party, as provided above.

c) The provisions in Article 11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount are generally enforceable under the laws of North Macedonia, however there is a probability/risk that such determination could be challenged by a liquidator, receiver or a third party, as provided above.

As per Article 129 paragraph 3 of the Law on Bankruptcy, the netting (arrangement) shall produce a legal effect, i.e. remain in full force and effect, even when a bankruptcy procedure has been opened or the implementation of the reorganization plan has commenced over the debtor, that is, when the user of the collateral grants, encumbers or otherwise disposes of the secured claim.

In this regard, theoretically the non-defaulting party may terminate the EFET General Agreement after the commencement of the bankruptcy proceedings (due to commencement of the respective insolvency/bankruptcy proceedings, other material reasons etc.) and shall be entitled to the Termination Amount calculated in accordance with the respective provisions of the EFET General Agreement. In such case, we consider that the terminating party should register its claims for the Termination Amount and the Settlement Amount separately.
However, please consider that due to the rarity of the concept in practice, the creditor may find certain difficulties in in the implementation of the particular provisions of the EFET General Agreement, and certain actions may be disputed by the bankruptcy administrator or other creditors.

d) We consider that the laws of North Macedonia recognize that the close-out netting provisions in Articles 10 to 11 of the EFET General Agreement apply to all Individual Contracts under the EFET General Agreement. We consider that in order to preserve the enforceability of the termination right and the ability to calculate the net amount we do not need the single agreement concept because according to Article 1 of the EFET General Agreement it is clearly noted that all Individual Contracts and the EFET General Agreement form a single agreement between the parties and that the provisions of the EFET General Agreement constitute an integral part of each Individual Contract.

e) We consider that the insolvent counterparty obligation to pay the amount of any compensation claim in foreign currency (Euro, USD or GBP) as agreed between the parties is enforceable under the laws of North Macedonia and such calculation should not be challenged by a liquidator, receiver or a third party.

f) As discussed under above, the Law on Financial Securing recognize termination and close-out netting provisions in financial transactions with eligible counterparties (i.e.

mostly sovereign and financial sector entities). The Law on Financial Securing does not recognize close-out netting in transactions between regular corporate entities. The close-out netting for those entities is left to the general contract and insolvency rules and is potentially exposed to the discretion of the insolvency administrator (i.e. cherry-picking).

B. Non-insolvency related Material Reasons

g) We consider that the rights of the Terminating Party to terminate and close-out the EFET General Agreement in accordance with the terms of the EFET General Agreement irrespective of the insolvency of Party A i.e. under non-insolvency related Material Reasons are generally enforceable under the laws of North Macedonia.

3. MULTIBRANCH PARTIES

A. Macedonian Multibranch Party

h) If a Macedonian Multibranch Party entered into Individual Contracts under the EFET General Agreement through offices in North Macedonia as well as one or more branches located abroad, in case of voluntary or involuntary proceedings under the Law on Bankruptcy of the Republic of North Macedonia, our conclusions stated in 3.1. shall remain unchanged irrespective if the Macedonian Multibranch Party conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency.

In such case, the courts in North Macedonia shall have the exclusive authority to conduct the insolvency proceedings and the proceeding shall be conducted in accordance with the Law on Bankruptcy of the Republic of North Macedonia.

According to the Article 320 of the Law on Bankruptcy, the court of the Republic of North Macedonia shall be exclusively competent for the implementation of a bankruptcy proceeding against a bankruptcy debtor whose registered office is in the Republic of North Macedonia.

It shall be assumed that the center of main interest of the bankruptcy debtor is at the place of registration of the registered office thereof.

If it is proved that the center of main interest of the bankruptcy debtor is abroad, while the registered office thereof is registered in the Republic of North Macedonia, the competent court in the Republic of North Macedonia shall be exclusively competent for the implementation of the bankruptcy proceeding against such bankruptcy debtor if, according to the law of the state in which the bankruptcy debtor pursues the center of main interest, such debtor is unable to initiate a bankruptcy proceeding upon that basis.

The bankruptcy proceeding shall comprise the entire property of the debtor, regardless as to whether the property is located in the Republic of North Macedonia or abroad (main bankruptcy proceeding).

When the registered office of the bankruptcy debtor is located abroad, while the center of main interest thereof is in the Republic of North Macedonia, the court in whose jurisdiction the center of main interest of the bankruptcy debtor is located shall have exclusive local competence.

i) We consider that the EFET General Agreement would be treated as a single unified agreement by the North Macedonia receiver under the laws of North Macedonia, 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.

B. Foreign Multibranch Party

j) In case of a voluntary or involuntary proceedings under the insolvency laws of a foreign country other than North Macedonia, in respect to the assets and liabilities of the Macedonian Branch upon the start of the insolvency proceeding of Party F in country different than North Macedonia, a separate insolvency proceeding may be conducted in North Macedonia.

According to Article 321 of the Law on Bankruptcy, a North Macedonia court shall be competent for the implementation of a bankruptcy proceeding against the bankruptcy debtor if such debtor has a branch office without the capacity of a legal entity in the Republic of North Macedonia.

If neither the center of main interest nor a branch office of the bankruptcy debtor are located in the Republic of North Macedonia, but only property thereof, the bankruptcy proceeding in the Republic of North Macedonia may be initiated in the following cases:
1) when in the country of the bankruptcy debtor's center of main interest the bankruptcy proceeding against such debtor may not be initiated due to the requirements set forth in the bankruptcy law of such country, despite the existence of a reason for bankruptcy;
2) if according to the law of the country of the bankruptcy debtor's center of main interest the bankruptcy proceeding comprises solely the property of the bankruptcy debtor located in such country;
3) if the initiating of a bankruptcy proceeding in the Republic of North Macedonia is proposed on the basis of Article 315 of the Law on Bankruptcy (bankruptcy of a heir); and
4) if the initiating of a special bankruptcy proceeding in the Republic of North Macedonia is proposed within the proceeding for upholding a foreign decision for initiating a bankruptcy proceeding.

As regards the implementation of the proceeding, the court in whose jurisdiction the bankruptcy debtor's branch office is located shall be competent, whereas, if the bankruptcy debtor does not have a branch office in the Republic of North Macedonia, then the court in whose jurisdiction the bankruptcy debtor's property is located shall be competent.

The proceeding shall comprise only the property of the bankruptcy debtor located in the Republic of North Macedonia (special bankruptcy proceeding).
If the bankruptcy proceeding has already been initiated in the country of the bankruptcy debtor's center of main interest, during the initiating of a domestic bankruptcy proceeding, the court shall not examine the condition for the initiating of the bankruptcy proceeding.

The local creditors can initiate bankruptcy proceeding even if the relevant authorities in North Macedonia did not do so, if the Macedonian Branch is incapable of payment, that is, the payment incapability thereof is imminent.

k) If there is a separate proceeding in North Macedonia with respect to the assets and liabilities of the Macedonian Branch, based on the facts above, we consider that the receiver/liquidator or the North Macedonia courts shall include the Party F's position under the EFET General Agreement and generally they shall recognize the close-out netting provisions of the EFET General Agreement in accordance with their terms, particularly if it is an eligible party according to the Law on Financial Securing.

According to Article 9 of the Law on Financial Securing, the right to close-out netting does not cease to be valid in case of court or other confiscation or when a bankruptcy or liquidation proceeding is initiated or ongoing against the provider or receiver of the financial collateral, or in case of restructuring measures or when the receiver of the financial collateral has the financial securing at his disposal.

According to Article 129 paragraph 3 of the Law on Bankruptcy, a netting (arrangement) shall produce a legal effect, that is, remain in full force and effect, even when a bankruptcy proceeding has been initiated or the implementation of the reorganization plan has commenced over the debtor, that is, when the user of the collateral grants, encumbers or otherwise disposes of the secured claim.

l) If Party F has no branch located in North Macedonia, but only has assets in North Macedonia, as discussed under point j) above, the bankruptcy proceeding in the Republic of North Macedonia may be initiated in the following cases:
1) when in the country of the bankruptcy debtor's center of main interest the bankruptcy proceeding against such debtor may not be initiated due to the requirements set forth in the bankruptcy law of such country, despite the existence of a reason for bankruptcy;
2) if according to the law of the country of the bankruptcy debtor's center of main interest the bankruptcy proceeding comprises solely the property of the bankruptcy debtor located in such country;
3) if the initiating of a bankruptcy proceeding in the Republic of North Macedonia is proposed on the basis of Article 315 of the Law on Bankruptcy (bankruptcy of a heir); and
4) if the initiating of a special bankruptcy proceeding in the Republic of North Macedonia is proposed within the proceeding for upholding a foreign decision for initiating a bankruptcy proceeding.

The proceeding shall comprise only the property of the bankruptcy debtor located in the Republic of North Macedonia.

4. COLLATERAL

m) The transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Credit Support Annex are regulated with the Law on Obligations (Official Gazette of the Republic of Macedonia no. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 and 123/2013), the Law on Securing Claims (Official Gazette of the Republic of Macedonia no. 87/2007 and 31/2016), the Law on Financial Securing (Official Gazette of the Republic of Macedonia no.84/2008) and the Law on Bankruptcy (Official Gazette of the Republic of Macedonia no. 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015).

n) According to the Law on Financial Securing, the Law on Securing Claims and the Law on Bankruptcy, the transfer of collateral can be done by a financial collateral agreement, that can be a financial collateral agreement with transfer of ownership or a financial collateral agreement with the right to pledge.

   As indicated above, the provisions of the Law on Financial Securing are only applicable in financial transactions with eligible counterparties (i.e. mostly sovereign and financial sector entities), i.e. the Law does not recognize close-out netting in transactions between regular corporate entities.

   The Law on Bankruptcy provides for general definitions of the respective terms:
   According to Article 2 paragraph 1 item 1 of the Law on Bankruptcy, a financial collateral arrangement means an arrangement according to which the collateral provider undertakes to establish the right to a security over financial instruments or cash or to assign the rights thereof over the financial instruments or cash as collateral on the behalf of the collateral receiver.

   Financial collateral agreement with transfer of ownership means a financial collateral agreement on the basis of which the collateral provider transfers the ownership of the financial collateral to the collateral receiver.

   Financial collateral agreement with right to pledge means a financial collateral agreement on the basis of which the collateral provider provides the collateral as a security (pledge) for the benefit of the collateral receiver, while the collateral provider retains the ownership over the collateral and the collateral receiver acquires the right to a security.

   In case of a transfer of a collateral made under a financial collateral agreement with transfer of ownership we consider that there is no risk that such transfer shall be re-characterized as transfer of a collateral under a financial collateral agreement with right to pledge.

   As per the Law on Bankruptcy, financial collateral is money or financial instruments. As financial instruments are considered shares or other securities in a trade company; securities equivalent to shares; bonds and other debt instruments intended for selling on the capital market; other securities issued in series which provide the owner with the right to purchase, sell or exchange them for other securities issued by the same issuer, while for the purposes of exercising such right an agreement is signed between the owner and the issuer, which agreement enables the sales, purchase or exchange of such securities (excluding therein any payment instruments), transferable coupons from joint funds, money market instruments, debt instruments issued by the National Bank of the Republic of Macedonia, and all other rights and claims pertaining to the afore-stated financial instruments.

Financial collateral enforcement as per the Law on Bankruptcy, means an automatic or a similar enforcement, as per the agreement achieved between the parties, wherein in accordance with the conditions of the financial collateral agreement or by the force of law, the person to whom the collateral belongs is entitled to enforce the respective financial collateral, otherwise the netting provision shall become effective.

Conditions for activation (enforcement) of the financial collateral arrangement means the occurrence of circumstances of a previously designated or a similar event such as the one that was agreed between the parties or defined by law which, once it has occurred, causes the collateral taker to have the right to enforce the financial collateral or the close-out netting to enter into force.

o) The Law on Bankruptcy also provides for certain general provisions regarding financial collateral security and security for fulfillment of obligations. Financial collateral security means performing activities that are indispensable for establishing the right to a security over a financial instrument or cash or for transferring the financial instruments or cash as a collateral in the name of the collateral taker. Security for fulfillment of obligations means the collateral provided on the basis of an agreement or any other collateral arrangement in accordance with the law, which may pertain to present, future, conditional, unconditional, due and payable or deferred liabilities, regardless as to whether they arise from one or more agreed arrangements, from the liabilities of third parties, from the liabilities that have been defined (specified) or are likely to be defined in a similar manner and from the liabilities occurring occasionally. However the law does not provide for any provisions regarding requirements or special form for such transfer.

We consider that a bank guarantee (BG) or a parent company guarantee (PCG) would fall under the definition for security for fulfillment of obligations as provided in the Law on Bankruptcy, only in provided in the valid form provided with law (written form). Having in the mind the said presumption, we consider that an agreement under which such security is provided can generally be considered as an agreement eligible for application of close-out netting provisions as per the Law on Bankruptcy. However, it should be once again emphasized that North Macedonia is a relatively small and underdeveloped market, and such provisions or events are fairly rare or ever present, so the practice is very scarce. This leads to a fair share of uncertainty how this arrangement shall be conducted in practice due to lack of experience with such concept.

On the other hand, according to the Law on Securing Claims, for the purpose of securing on basis of a transfer of ownership of movable properties, the interested parties shall conclude an agreement for transfer of ownership of any object or right of the debtor to the creditor, which is mandatorily solemnized at a notary (solemnization) or is prepared in a form of a notary act. The agreement shall have legal effect as of the moment of entering into the Register of Securing on the Basis of Transfer of Ownership of Objects and Transfer of Rights - (Fiduciary Register) which is kept in the Central Registry of the Republic of North Macedonia. The law also provides for certain mandatory elements/provisions.

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Additionally, the provisions of the Law that refer to securing on basis of a transfer of ownership of objects and transfer of rights shall be applied as well in an appropriate manner to the prohibition on disposal with stocks, other securities and shares in a trade company. In this regard, the notarial act or solemnized private document with appropriate content shall specify those activities only that prohibit disposal with stocks, other securities and shares the parties agree on. The court shall without any delay notify the trade company for each prohibition, and for conducting the prohibition for the purpose of securing in the appropriate books it shall notify the Central Registry of the Republic of North Macedonia and the Central Securities Depositary for the prohibition on having at disposal stocks, and the manager of the company for the shares.

p) In relation with the right to substitute collateral pursuant to Article 6 of the EFET Credit Support Annex, according to Article 129 of the Law on Bankruptcy the obligation for transferring an additional financial collateral in the event of a decrease in the value of the financial collateral or an increase of the secured claim, as well as the existence of a provision with which the existence of the right to a substitute of the financial collateral, shall produce a legal effect, that is, they may not be disputed, if they occurred on the day when the proposal for initiating a bankruptcy procedure was submitted or on the day when the proposal for conducting the reorganization plan was submitted, however, prior to the initiating of the bankruptcy procedure, not having any regard to the fact that the secured claim has become due.
Having this in mind, the right to substitute collateral pursuant to Article 6 of the EFET Credit Support Annex is permissible under Macedonian law. The Law on Bankruptcy, however, does not regulate if the presence or absence of consent for substitution by Party B will have any bearing to the right to substitute collateral.

q) Having in mind that we consider that Article 11 of the EFET General Agreement is valid and enforceable in North Macedonia, we also consider that Article 11 of the EFET Credit Support Annex should be valid as well. We consider that the collateral provided and not yet transferred may be included in the calculation of the net amount payable under Article 11 of the EFET General Agreement as "other amounts payable" in accordance with Article 11 of the EFET General Agreement.

r) We consider that the rights of Party B in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex are enforceable irrespective of the insolvency of Party A.

According to Article 129 paragraph 1 of the Law on Bankruptcy, financial collateral agreements and the rights acquired based upon them shall produce a legal effect (remain in full force and effect) also after the initiating of the bankruptcy proceeding or the implementation of the reorganization plan.

s) According to Article 129 paragraph 2 of the Law on Bankruptcy, the rights acquired on the basis of a financial collateral agreement or any financial collateral arrangement shall produce a legal effect, that is, remain in full force and effect in terms of the collateral which has not become due with the initiating of the bankruptcy proceeding or with the implementation of the reorganization plan.

According to Article 129 paragraph 6 of the Law on Bankruptcy, the obligation for transferring an additional financial collateral in the event of a decrease in the value of

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the financial collateral or an increase of the secured claim, as well as the existence of a provision with which the existence of the right to a substitute of the financial collateral, shall produce a legal effect, that is, they may not be disputed, if they occurred on the day when the proposal for initiating a bankruptcy proceeding was submitted or on the day when the proposal for conducting the reorganization plan was submitted, however, prior to the opening of the bankruptcy proceeding, not having any regard to the fact that the secured claim has become due.

However, as noted above, according to Article 172 of the Law on Bankruptcy, the legal actions undertaken prior to the initiating of the bankruptcy proceeding which undermine the equitable settling of the creditors (damaging the creditors), that is, by means of which certain creditors are placed in a more favorable position, may be disputed by the bankruptcy administrator on behalf of the bankruptcy debtor and the bankruptcy creditors.

According to Article 173 of the Law on Bankruptcy, a legal action taken in the course of the three months prior to the submission of the proposal for initiating a bankruptcy proceeding, with which one bankruptcy creditor is given or enabled security or settlement in accordance with the content of the rights thereof, may be disputed if at the time when it was taken the debtor was incapable of paying and if the creditor, at that time, knew or was obliged to have known of such incapability.
A legal action may also be disputed with which one bankruptcy creditor is given or enabled security or settlement in accordance with the content of the rights thereof, if the legal action was taken after the submission of the proposal for initiating a bankruptcy proceeding and if the creditor, at the time when it was taken, knew or was obliged to know of the incapability of paying or the proposal for initiating a bankruptcy proceeding. It shall be deemed that the creditor knew of the incapability of paying or of the proposal for initiating a bankruptcy proceeding if he/she knew about the circumstances which lead to an inevitable conclusion that there is an incapability of paying or that a proposal for initiating a bankruptcy proceeding was submitted.
This permitted settlement does not harm other creditors but provides for conditions for certain creditors to be in privileged position and to be settled before the opening of the bankruptcy proceedings.

Unpermitted settlement is defined under Article 174 of the Law on Bankruptcy, as a legal action with which a bankruptcy creditor is given or enabled security or settlement, which such creditor was not entitled to request or not entitled to request it in such a manner and at that time, and such legal action may be disputed if the action was taken in the course of:
1) the last 30 days prior to the submission of the proposal for initiating the bankruptcy proceeding or thereafter; or
2) 90 days prior to the submission of the proposal for initiating the bankruptcy proceeding, while the debtor was incapable of paying at that time; or
3) 90 days prior to the submission of the proposal for initiating the bankruptcy proceeding, while the creditor, at the time when it was taken, knew that it would cause damage to the bankruptcy creditors. It shall be deemed that the creditor knew that the action shall damage the creditors, if he/she knew of the circumstances which lead to an inevitable conclusion that such action shall damage the creditors.

According to Article 175 of the Law on Bankruptcy, a legal action of the debtor which causes direct damage to the bankruptcy creditors may be disputed, if:
1) it was taken in the course of the last 90 days prior to the submission of the proposal for initiating a bankruptcy proceeding, if at the time when it was taken the debtor was incapable of paying and if the other party knew about such incapability at that time; or
2) it was taken after the submission of the proposal for initiating a bankruptcy proceeding, while the other party, at the time when the legal action was taken, knew or was obliged to know of the incapability of paying or of the proposal for initiating a bankruptcy proceeding.
A legal action that causes direct damage to the bankruptcy creditors shall be treated as equivalent to the legal action of the debtor with which the debtor loses some of the rights thereof or due to which he/she may no longer exercise such rights, or an action based upon which a particular property and legal claim against the debtor may remain in full force and effect or be settled.

The aforementioned legal actions of the bankruptcy debtor may be disputed by the bankruptcy creditors and the bankruptcy administrator, on behalf of the bankruptcy debtor.
The lawsuit may be filed at the latest by the conclusion of the bankruptcy proceeding. The lawsuit shall be filed against the person against whom the disputed legal action was conducted and against the debtor provided that he/she is not the plaintiff.
If the lawsuit is upheld, the disputed legal action shall produce no effect in terms of the bankruptcy estate and the adverse party shall be obliged to return to the bankruptcy estate all property benefits acquired on the basis of the disputed action.

The legal actions of the debtor may be disputed also by filing a complaint in a civil proceeding without the time limitation above.

According to Article 186 of the Law on Bankruptcy, if the person against whom the disputed legal action was conducted reinstates what he/she received, it shall be possible once again to settle the claim thereof.

t) As stated under point o) above, in order to transfer the ownership of the collateral, the financial collateral agreement has to be composed in writing and solemnized at a notary (solemnization) or prepared in a form of a notary act. The agreement shall have legal effect as of the moment of entering into the Register of Securing on the Basis of Transfer of Ownership of Objects and Transfer of Rights - (Fiduciary Register) which is kept in the Central Registry of the Republic of North Macedonia. The law also provides for certain mandatory elements/provisions.

   Additionally, the provisions of the Law that refer to securing on basis of a transfer of ownership of objects and transfer of rights shall be applied as well in an appropriate manner to the prohibition on disposal with stocks, other securities and shares in a trade company, hence the notarial act or solemnized private document with appropriate content shall specify those activities only that prohibit disposal with stocks, other securities and shares the parties agree on. The court shall without any delay notify the trade company for each prohibition, and for conducting the prohibition for the purpose of securing in the appropriate books it shall notify the Central Registry of the Republic of North Macedonia and the Central Securities Depositary for the prohibition on having at disposal stocks, and the manager of the company for the shares.

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u) We do not have any additional specific recommendations related to the subject of collateral other that those specified in points o) and t) above.

5. General Enforceability

v) The EFET General Agreement and its Annexes (including the EFET Credit Support Annex) are generally enforceable under the laws of the Republic of North Macedonia with its own terms. As discussed above, the Law on Financial Securing only applies to eligible parties, hence the close-out netting between non-eligible parties (such as general corporations) only rely on the general rules of set-off.

Regarding Article 7 of the EFET General Agreement – Non-Performance Due to Force Majeure, in our opinion the Definition of Force Majeure should include more types of events that are considered as Force Majeure events, beside the two already provided in item (a) and (b) of the said Article. This will cover more events that naturally can be considered as Force Majeure events where a Party may be unable to perform its obligations arising of the EFET General Agreement.

Regarding Article 8 of the EFET General Agreement – Remedies for Failure to Deliver and Accept, we consider that the remedies for non-performance are well covered in the EFET General Agreement and are enforceable in accordance with Macedonian law.

Regarding Article 12 of the EFET General Agreement – Limitation of Liability, we consider that the scope of the stated limitations of liability are pretty standard and are enforceable in our jurisdiction, and there is no need for them to be further strengthened.

We consider that the remaining provisions of the EFET General Agreement and any of the mentioned Annexes are in line with the jurisdiction of the Republic of North Macedonia and generally should not be challenged by the courts in North Macedonia.

w) Please have in mind that the legal and judicial practice in the Republic of North Macedonia is not as developed as the legal and judicial practice in European Union member states and a Party may still encounter certain difficulties in enforcing the provisions of the EFET General Agreement and any of the Annexes before competent courts or can be challenged by the competent authorities in North Macedonia.

6. CONFIRMATION PRACTICES

A. Binding Individual Contract

x) According to Article 59 of the Law on Obligations, the agreement can be concluded in any form, unless a certain form of an agreement is prescribed as mandatory according to law. An agreement not concluded in the prescribed form shall not be binding, unless the purpose of the regulations determining the form indicates otherwise.

Additionally, the parties may agree for a certain form of their agreement in order for their agreement to be considered valid and in force. An agreement not concluded in the stipulated form has no legal effect where the parties have conditioned the validity of the agreement on the use of that particular form.

Having in mind the above, the formation of a legally binding and enforceable Individual Contract does not require any formal act.

y) According to Article 18 of the Law on Obligations, the agreement is concluded when the contracting parties have agreed on the essential elements of the agreement.

z) According to Article 59-a of the Law on Obligations, each of the parties may request from the other party a written confirmation for the oral agreement until the other party meets their obligation arising from the agreement. The contractual party that requests the confirmation shall submit to the other one two signed identical copies, requesting that one of them be returned after it has been signed**.** If the called party fails to provide other party the confirmation, within eight days from the receipt of the call, the other party may request from the court to determine the existence of the agreement and its content. The court shall refuse the determination of the agreement and its contents if the party that requests for such confirmation fails to make probable the existence of a legal interest for the determination request. The agreement shall be deemed valid even though the written confirmation has not been issued. These rules shall apply in case the parties have agreed to provide their orally concluded agreement with a written confirmation.

However, the Law on Obligations does not define if the failure to object to incorrect terms in a received Confirmation constitute acceptance of those terms, nor prescribes for a time period when the parties are permitted to object such Confirmation. According to the general provisions of the Law on Obligations, we consider that failure to object to incorrect terms in a received Confirmation may be considered as acceptance of those terms.

aa) According to the general provisions of the Law on Obligations, we consider that reference to the EFET General Agreement made in the relevant written confirmation exchanged (post trade) between the parties is sufficient for the inclusion of such Individual Contract in the EFET General Agreement.

B. Means of Evidence

bb) Assuming there is a dispute with respect to the existence of the terms and conditions of an Individual Contract before a court in North Macedonia:

According to Article 205 of the Law on Litigation Procedure, each party is obliged to present the facts and to propose evidence on which it bases its claim or with which it refutes the allegations and evidence of the opponent.

According to Article 206 of the Law on Litigation Procedure, evidence covers all the facts that are important for making a decision. The court decides on which of the proposed evidence will be presented in order to establish the decisive facts.

Having in mind the nature of the Individual Contracts, the following evidence shall be eligible for rendering or otherwise properly introduced before a competent court in North Macedonia in case of a dispute with respect to the existence of the terms and conditions of an Individual Contract:

- Document/s - A document is a written record, image, drawing, data or information of any kind stored on paper or recorded in electronic, audio, visual or other form. A document in the sense shall also mean a group of documents of the same category or class with a specific narrow scope and specific content. A certified translation shall be submitted to the document compiled in a foreign language. We consider that this shall include taped recoding conducted in voluntary manner (with knowledge and agreed with the other Party), e-mail or other electronic message or transaction entry system and facsimile;
- Witness – It is mandatory that the witness is present at the court. A witness's statement cannot be given outside of the court unless in cases provided by law (old age, illness or severe physical disabilities of the witness);
- Expert opinion – Conducted in written form by an independent expert in the relevant field based on the evidence and facts provided by the parties. The expert may be summoned before the court to provide oral explanation of the expert opinion and may be further questioned by the court and the involved Parties;
- Hearing of the Parties – Present at the court, subject to questions by the court and the other party.

7. CORE PROVISIONS

cc) We consider that any of the selections contemplated by the EFET General Agreement or any of the mentioned Annexes (including the EFET Credit Support Annex) would not change our conclusions reached under part 1 (Enforceability of Close-Out Netting).

dd) We agree on the scope of the Core Provisions as defined in the EFET Close-Out Netting Legal Opinions – Instruction Letter (Article 1, Article 10.3(a), the second sentence of Article 10.3(b), Article 10.3(d), Article 10.5(c)(iv), Article 11 of the EFET General Agreement and the related definitions contained in Annex 1 to the EFET General Agreement) and we consider that a material alteration thereof could affect our conclusions reached under part 1 (Enforceability of Close-Out Netting).

ee) We consider that the inclusion of the EFET General Agreement in the EFET Cross Product Payment Netting Agreement, the Master Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) would not change the substance of our conclusion reached under part 1 (Enforceability of Close-Out Netting).

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8. Governing Law, Arbitration and Jurisdiction

ff) We consider that the Parties Agreement on the governing law, submission to arbitration or jurisdiction (Article 22 of the EFET General Agreement) would be upheld in North Macedonia, since the parties may elect the applicable law for their agreement according to the Law on the International Private Law of the Republic of North Macedonia (Official Gazette of the Republic of North Macedonia no. 32/2020). The election of the applicable law must be made clearly or to clearly derive of the provisions of the agreement or from other circumstances.
If all other elements of the factual situation at the time of the choice of the applicable law are related to the country whose law has not been chosen, such choice shall not affect the application of the provisions of the law of that country which may not be waived by agreement.

If the governing law, submission to arbitration or jurisdiction are not upheld in North Macedonia, then the applicable law on the EFET General Agreement shall be law of the country of the usual residence of the Seller. It is considered that the usual residence of companies, foundations and associations, whether legal entities or organizational forms without the status of a legal entity, is in the place where their head office is located.

When the agreement is concluded within the operation of a branch office, representative office or other business unit of a certain legal entity, or if according to the agreement a branch office, representative office or other business unit of the legal entity is considered responsible for fulfillment of the obligations, the usual residence of the legal entity is in the place where the branch office, representative office or other business unit is located.

For the determination of the usual residence, the time of concluding the agreement is relevant.

9. REGULATORY REGIME

gg) We consider that there are specific laws in the Republic of North Macedonia that regulate and may affect the enforceability of relevant provisions of the EFET General Agreement or the Individual Contracts.

The trading of securities is regulated with the Law on Securities (Official Gazette of the Republic of Macedonia no. 95/2005, 25/2007, 7/2008, 57/2010, 135/2011, 13/2013, 188/2013, 43/2014, 15/2015, 154/2015, 192/2015, 23/2016, 83/2018 and 83/2018 and Official Gazette of the Republic of North Macedonia no.31/2020).

The financial activity is regulated with the Law on Banks (Official Gazette of the Republic of Macedonia no.67/2007, 90/2009, 67/2010, 26/2013, 15/2015, 153/2015 and 190/2016 and Official Gazette of the Republic of North Macedonia no.7/2019, 101/2019 and 122/2021) and the Law on Financial Companies (Official Gazette of the Republic of Macedonia no.158/2010, 169/2010, 53/2011, 112/2014, 153/2015 and 23/2016).

The trade with energy (electricity, gas etc.) is regulated with the Law on Energy (Official Gazette of the Republic of Macedonia no.96/2018 and Official Gazette of the Republic of North Macedonia no.96/2019).

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10. DISCLAIMER

This Legal Opinion is provided for the sole benefit of EFET and its members. The Legal Opinion may not be relied upon by, or disclosed to, any other person or legal entity without EFET's or DDK's prior written approval but may be available by EFET members to the appropriate regulatory authorities.

The legal views expressed in this Legal Opinion are views and interpretations of the laws of the Republic of North Macedonia by DDK. The stated views and opinions contained in this analysis should not be taken as absolute views of certain state bodies and institutions. This legal opinion is written in accordance with the applicable legal regulations at the time of its preparation and DDK is not obliged to make changes in the legal opinion if there is a change in the laws and bylaws.

We would also like to emphasize the fact that the legal and judicial system of the Republic of North Macedonia is not developed at the level of the European Union member states. Lack of case law and legal certainty can result in unexpected and unpredictable interpretations and application of laws by the competent state authorities.

Although we are convinced that the views contained in this Legal Opinion are legally grounded and correct, we cannot take any responsibility for possible omissions and irregularities that may occur as a result of unexpected and unpredictable interpretations and application of laws by the competent state authorities.

This Legal Opinion is made in accordance with the laws of the Republic of North Macedonia. In case of a dispute that will arise from this Legal Opinion or in relation to it, the competent court for resolving the disputed issues will be the competent court in Skopje.

For any additional questions or clarifications in regard to the above, please do not hesitate to contact us.

Kind regards,

Dragan Dameski, Attorney at Law & Managing Partner

Vladimir Kostoski, Senior Associate

Debarliev, Dameski & Kelesoska

Attorneys at Law

ANNEX NO.1 – OVERVIEW OF INSOLVENCY PROCEEDINGS, LAWS AND TERMINOLOGY

Law on Bankruptcy (Official Gazette of the Republic of Macedonia no. 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015)

Law on Securing Claims (Official Gazette of the Republic of Macedonia no. 87/2007 and 31/2016)

Law on Financial Securing (Official Gazette of the Republic of Macedonia no.84/2008)

Law on Litigation Procedure (Official Gazette of the Republic of Macedonia no. 79/2005, 110/2008, 83/2009, 116/2010 and 124/2015)

Law on Obligations (Official Gazette of the Republic of Macedonia no. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 and 123/2013)