WOLF THEISS

LEGAL OPINION REGARDING THE ENFORCEABILITY OF CLOSE-OUT NETTING AND THE VALIDITY AND ENFORCEABILITY OF THE EFET GENERAL AGREEMENT CONCERNING THE DELIVERY AND ACCEPTANCE OF NATURAL GAS AND ITS COLLATERAL ARRANGEMENT

1 January 2019

European Federation of Energy Traders

Amstelveenseweg 998

1081 JS Amsterdam

The Netherlands

EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas

Dear Sirs,

We have been asked to give an opinion on the enforceability of close-out netting provisions of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas ("**EFET General Agreement**"), the validity and enforceability of collateral provided under the EFET Credit Support Annex to the EFET General Agreement ("**Credit Support Annex**") as well as other related issues outlined in your instruction letter as of 2 July 2018 ("**Instruction Letter**"). These issues include the validity and enforceability of close-out netting in Slovenia ("**Enforceability of Close-out Netting**"), as well as other opinions addressing (i) the enforceability of collateral provided under the EFET Credit Support Annex ("**Collateral**"), (ii) the validity and enforceability of other provisions of the EFET General Agreement, like the Limitation of Liability or the consequences of a Force Majeure ("General Enforceability"), (iii) in general terms the conditions that have to be met for an Individual Contract to fall within the scope of the netting provisions of the relevant EFET General Agreement and for a Confirmation to be eligible for evidencing a binding Individual Contract ("Confirmation Practices"), (iv) the validity and enforceability of EFET General Agreement that have been modified by the parties ("Core Provisions"), (v) the enforceability of the elections made with respect to governing law, arbitration and jurisdiction, especially if a foreign law has been chosen ("Governing Law, Arbitration and Jurisdiction"), and (vi) the existence of specific licensing requirement or currency or exchange control laws that might impact the enforceability of Individual Contracts entered into under the relevant EFET General Agreement ("Regulatory Regime").

This opinion (the "**Opinion**") discusses the issues outlined above in substantially the same order as shown in the Instruction Letter.

The Opinion does not relate to any Individual Contract under the General Agreement and does not give an opinion on any tax, accounting, regulatory or related matters other than to the extent we express an opinion hereunder.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

On the basis of the assumptions and subject to the limitations set out in this Opinion, and particularly in point B (page 9), this is an executive summary of the opinions expressed in this Opinion. This executive summary does not form part of this Opinion and is provided for ease of reference only, and in no circumstances may be interpreted or read as amending, affecting or having and interpretative effect on the opinions in this Opinion.

Enforceability of Close-out Netting

(a) Close-out netting in a pre-insolvency scenario is generally enforceable (please refer to points C.I and C.I.2 of this Opinion on pages 15 and 32).

(b) Close-out netting in EFET General Agreement in case of insolvency proceedings is generally enforceable, if the agreement is qualified as qualified financial agreement or other qualified agreement within the meaning of the Insolvency Act (please refer to points C.I.1.1 of this Opinion on page 17).

(c) Early termination by notice in the event of insolvency will in most cases be upheld by the Slovenian courts (please refer to point C.I.1.2(a) on page 23). Early termination with regard to automatic termination will in most cases be upheld by the Slovenian courts, but specific considerations apply in this respect (please refer to point C.I.1.4 of this Opinion on page 26).

(d) Enforceability of the netting provisions of the EFET General Agreement (the netting of all positive and negative Settlement Amounts in determining the Termination Amount) in the event of insolvency depends on the (i) categorization (legal nature) of the Individual Contract (Commodity Transaction), and specifically, if it qualifies as the (other) qualified financial agreement within the meaning of the Insolvency Act (please refer to point C.I.1.1 (a) of the Opinion on page 17) under the EFET General Agreement; and (ii) the date of delivery of the netting statement (please refer to point C.I.1.7 of the Opinion on page 27).

(e) The fact that a Slovenian Party A has conducted business under the EFET General Agreement on a multi-branch basis prior to its insolvency would not change our conclusions regarding the Enforceability of Close-out Netting (please refer to point C.II.1 of this Opinion on page 35).

(f) The fact that separate insolvency proceedings were initiated over the Slovenian Branch of an insolvent Party F should not affect the enforceability of close-out netting provisions of the EFET General Agreement concluded by Party F and partially performed through the Slovenian Branch (please refer to point C.II.2 of this Opinion on page 36).

Collateral

(a) The legal treatment of collateral to be provided in accordance with the Credit Support Annex mainly depends on whether the provision of such collateral falls within the scope of the Financial Collateral Act, i.e. whether the collateral can benefit from the preferential treatment provided by the Financial Collateral Act. In general, only cash collateral can benefit from such a preferential treatment, assuming that it is granted to financial market participants.

(b) The right to substitute collateral shall be mainly exercisable under Slovenian laws. In respect to Letters of Credit, we believe such a right should be explicitly included in the Letters of Credit.

(c) The rights of the party to whom collateral has been transferred shall be generally enforceable irrespective of the insolvency of the party who transferred the security in respect to all types of collateral. However, the transfer, substitution or withdrawal of collateral during the "suspect period" preceding insolvency proceedings may be subject to challenge.

General Enforceability and Core Provisions

Based on the assumptions and subject to the limitations and opinions set out in this Opinion, we understand that

(a) the documents listed in point A are generally enforceable under the laws of Slovenia (please refer to point C.IV.1 of this Opinion on page 50); and

(b) none of the elections as suggested in the EFET General Agreement or any of the above Annexes (including the EFET Credit Support Annex) would change the substance of our conclusions reached in respect of the Enforceability of Close-out Netting (please refer to point C.VI of this Opinion on page 56).

A. DOCUMENTS CONSIDERED

For the purpose of this Opinion the following documents were considered in accordance with the Instruction Letter:

- EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0(a), published 11 May 2007);
- EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 6 January 2003)
- EFET Credit Support Annex to the General Agreement (Version 2.0, published May 2010);
- EFET Credit Support Annex to the General Agreement (Version 1.0, published 5 April 2002);
- EFET Allowances Appendix (Gas) ("Phase IV (Gas) Appendix") to General Agreement Concerning the Delivery and Acceptance of Gas Version 2.0 (a)/May 11, 2007 (Version 4.0/February 28, 2018);
- EFET Amendment Letter to the Allowances Appendix (Version 3.0/April 3 2012);
- EFET Allowances Appendix (Gas) to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published 3 April 2012);
- EFET Allowances Appendix (Gas) to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 17 July 2008);
- EFET Amendment Letter to the Allowances Appendix Version 2.0 (Version 2.0, published 3 April 2012);
- EFET Allowances Appendix (Gas) to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published March 2006);
- EFET VAT Annex for use with the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 30 November 2006);
- 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);
- 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);
- 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);
- EFET IBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas 2.0(a) (Version 1.0/4 December 2017);

- 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);
- EFET PSV Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published January 2007);
- EFET Italian Gas Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 24 June 2004);
- 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);
- EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 4.0, published 26 May 2014);
- EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published April 2011);
- EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published on 14 July 2006);
- EFET TTF Appendix Guidance Notes (Version 2.0, published 20 September 2006);
- EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published on 1 June 2004);
- EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 4.0/October 2018);
- EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published 30 March 2015);
- EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 31 March 2008);
- EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 15 December 2004);
- EFET ZBT 2004 Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published June 2006);
- EFET ZBT 2012 Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 19 April 2013);
- EFET Zeebrugge Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0 4 December 2017);
- EFET UK 6:6 Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 2016);
- 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);

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

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

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

- 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 1 March 2012);

- 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, replacing earlier the GUD Appendix (Version 2.0, published 31 December 2008), which itself replaced the BEB Appendix (Version 1.0, published September 2007), (Version 1.1, published 19 May 2010);

- GUD Appendix (Version 2.0, published 31 December 2008), which itself replaced the outdated BEB Appendix (Version 1.0, published September 2007);

- EFET ITAB Appendix (Version 1.0, published 1 December 2009);

- EFET ITAB Appendix Guidance Notes (published 20 January 2010);

- EFET Gas Capacity Appendix (Fluxys/GRTgaz) (Version 1.0, published 31 December 2008);

- EFET Polish VP Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 1.0, published 14 December 2013);

- EFET Individual PRISMA Gas Capacity Contract (version 2.0, published 15 October 2014);

- EFET Individual PRISMA Gas Capacity Contract (version 1.0, published 7 May 2014);

- Guidance Notes for the Individual PRISMA Gas Capacity Contract (published 14 May 2014);

- 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).

For the purpose of Part C.V (Confirmation Practices) only:

- EFET Electronic Confirmation Agreement (published 28 June 2005),

- Confirmation of Allowance Transactions (including AEUA, EUA, Eligible Kyoto Unit Transactions) (Fixed Price, Third Compliance Period (Phase 3) and Fixed Price, Second Compliance Period (Phase 2) to the Allowances Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 3 April 2012),

- 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 the purpose of Part C.VI (Core Provisions) only:

- EFET Cross Product Payment Netting Agreement (Version 1, published 20 October 2005);

- EFET Master Netting Agreement (Version 1.0, published June 2010);

- 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);

- EFET Cross-Product Credit Support Annex to the CPMA Cross-Product Master Agreement (Version 1.0, published 23 June 2003); and

- EFET Credit Support Annex to the Master Netting Agreement (Version 1.0 published February 2011)

- EFET Individual PRISMA Gas Capacity Contract (version 2.0, published 15 October 2014).

B. SCOPE OF REVIEW

B.I ASSUMPTIONS

B.I.1 General Assumptions

The general assumptions on which the Opinion is based are the following, in accordance with the Instruction Letter.

- *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 Slovenia ("**Party A**").*

- *Party A is a corporation, financial institution or other entity as further described in Appendix A.*

- *The relevant EFET General Agreement is governed by the laws of Germany or England and Wales.*

- *Each EFET General Agreement and the above Annexes (including the Credit Support Annex) are enforceable under the laws of any jurisdiction for purpose of private international law (other than the laws of Slovenia) and each counterparty has duly authorised, executed and delivered, and has the capacity to enter into, each document.*

- *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.*

- *The Individual Contracts provide for the physical delivery of commodities, certificates or emission rights in exchange for cash, however, some of them may also provide for cash settlement.*

In accordance with the Instruction Letter additional assumptions are set forth in the relevant part of the Opinion in relation to the specific issue analysed.

B.I.2 Further assumptions

In addition to the assumptions given in the Instruction Letter, the opinions in this Opinion are given on the basis of the assumptions and are subject to the limitations set out under this point below in each case in their entirety. The opinions given in this Opinion are strictly limited to the matters expressly stated under point C (*Issues and Additional Assumptions*, page 15) below and do not extend to any other matters.

The opinions set out in this Opinion have been made on the assumptions:

(a) That the EFET General Agreement and the Individual Contracts are legally binding and enforceable against both Parties under the laws by which they are expressed to be governed, if not the laws of this jurisdiction and that none of the opinions expressed below will be affected by the laws (including, without limitation, the insolvency laws and the public policy) of any jurisdiction outside Slovenia.

(b) That no Material Reason for termination as outlined in § 10.5 (Definition of Material Reason) with respect to a Party has occurred and is continuing when entering into this EFET General Agreement.

(c) That the EFET General Agreement and any Individual Contracts under it are entered into prior to the formal commencement of any insolvency proceedings against either Party.

(d) That both Parties have all licenses, authorisations, consents and approvals required by any applicable laws to enter into the EFET General Agreement and any Individual Contracts and that the EFET General Agreement and any Individual Contracts comply with the natural gas and financial sector legislation and regulations in all relevant jurisdictions.

(e) That the EFET General Agreement and Individual Contracts are mutual between the Parties in the sense that each is personally and solely liable for its own account as regards obligations owing by it and is the sole beneficial owner of obligations owed to it.

(f) That the EFET General Agreement and all Individual Contracts under it were entered into, and each delivery and payment made thereunder were made at arm's-length so that no element of gift or undervalue from one Party to the other Party is involved and without any intention of a Party to prefer the other Party in the event of its insolvency.

B.II LIMITATIONS

The opinions set out in this Opinion are subject to the following limitations:

B.II.1 Limitations regarding the enforceability of claims

(a) In this Opinion "*enforceable*" means that an obligation is of a type which the Slovenian courts would usually enforce. It does not mean that those obligations will be enforced in all circumstances in accordance with the terms of the relevant Agreement. In particular:

(1) enforcement of the obligations under an Agreement may be limited by the general principle of good faith. Courts may not grant enforcement in the event they take the view that a right has not been exercised in good faith or that it has been exercised in such a manner as to constitute an abuse of rights (in Slovenian: "*zloraba pravic*");

(2) enforcement may be limited by the provisions of Slovenian law applicable to agreements held to have been frustrated by events happening after their execution;

(3) enforcement may be further refused by Slovenian courts, if the recognition of the enforceability of the obligation would manifestly be contrary to Slovenian public policy (in Slovenian: "*javni red*"), or it would be irreconcilable with an earlier judgement rendered by Slovenian courts in a dispute between the same parties on the same basis; or if the jurisdiction of the other court rendering the judgement the enforcement of which is sought in Slovenia is in conflict with Slovenian rules pertaining to special or exclusive jurisdiction; and

(4) claims may become barred under statutory limitations or may be or become subject to a defence of set-off or counterclaim;

(5) enforcement of the obligations under the Agreement may be limited due to bad faith, fraud, coercion, duress, error, mistake, change or loss of the material basis of the Agreement or undue influence on the part of any of the parties or signatories to the Agreement and their respective directors, employees, agents and advisors;

(6) enforcement may be further limited due to usury (in Slovenian: "*oderuštvo*"), laesio enormis (in Slovenian: "*čezmerno prikrajšanje*"), or infringement or violation of bonos mores (in Slovenian "*vestnost in poštenje*").

(b) A party to an agreement may be able to avoid its obligations under that agreement (and may have other remedies) where it has been induced to enter into that agreement by a misrepresentation and the Slovenian courts will generally not enforce an obligation if there has been fraud.

(c) Under the laws of this jurisdiction, where any Party is vested with discretion or may determine a matter, the laws of this jurisdiction may require that such discretion is exercised or determination made reasonably. Any provision in the EFET General Agreement providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent, incorrect, arbitrary or shown not to have been given or made in good faith and will not necessarily prevent judicial enquiry into the merits of any claim by any Party thereto. The courts of this jurisdiction may regard any calculation, determination or certification as no more than *prima facie* evidence of the matter calculated, determined or certified.

(d) Under the laws of this jurisdiction, unless the agreement stipulates otherwise, a party to an agreement is not entitled to terminate it upon default by the other party of obligations or covenants which are merely accessory or complementary to the main payment and/or delivery obligations or upon the occurrence in respect of the other party of any event other than an event which may constitute a material breach or which may adversely and materially affect the creditworthiness of such other party or its ability to comply with its obligations under the relevant agreement;

(e) Any obligation which a Slovenian court considers legally or factually impossible to be performed (in Slovenian: *nedopustna ali nemogoča obveznost*) will be held void by such Slovenian court;

(f) Slovenian courts might not give full effect to a waiver of any right to avoid or set aside an agreement. The same applies to a waiver of set-off rights;

(g) whether or not any provision of a Relevant Agreement which may be illegal, invalid or unenforceable, may be severed from the other provisions thereof in order to save those other provisions would be determined by the competent court in its discretion.

B.II.2 Other limitations

(a) We express no opinion as to matters of fact.

(b) We express no opinion as to the validity and enforceability of any provisions of any master trading agreements other than the EFET General Agreement. We express no opinion as to the validity and enforceability of any provisions of the EFET General Agreement other than those to which express reference is made in this Opinion.

(c) We express no opinion as to whether the method for settling the claims arising from the Individual Contracts under the EFET General Agreement is acceptable and recognised on the market for transactions set out in Appendix B to the Instruction Letter and this Opinion, or whether it is eligible for recognition for risk-reducing or other similar purposes.

(d) Based on the Instruction Letter we were not requested to analyse, and therefore we do not express opinion on the application of the terms of the EFET General Agreement if termination is triggered by insolvency of a Party's Credit Support Provider.

(e) If a Party to an Agreement is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is the subject of United Nations, European Community or Slovenian sanctions implemented or effective in Slovenia, or is otherwise the target of any such sanctions, then the obligations of the other Party to that Party under the EFET General Agreement may be unenforceable or void.

(f) The opinions given in this Opinion are governed by and relate only to Slovenian law as applied by the Slovenian courts as at today's date. We are unaware of any practice of Slovenian courts in the application of legal provisions governing close-out netting, qualified financial agreements and other qualified agreements within the meaning of Insolvency Act, and financial collateral agreements within the meaning of other applicable legislation mentioned hereunder. We are also unaware of any such practice of the Slovenian authorities in the application of sector-specific insolvency legislation. Consequently, our views set out hereunder cannot be viewed as established in practice, but should rather be viewed as an interpretation of Slovenian legal provisions governing the relevant matters, whereas it is always possible that the courts and other competent bodies take different view and interpret the legal provisions differently.

(g) We express no opinion on and consider the impact or application of any laws and regulations other than Slovenian law (as applicable), even where, under Slovenian law, any foreign law falls to be applied.

(h) In this Opinion Slovenian legal concepts are expressed and described in the English language rather than in their original form and such expressions and/or descriptions may not be fully identical in their meaning to the underlying Slovenian law concepts. Therefore, this Opinion is issued and may only be relied upon the express condition that any issues of interpretation or liability arising hereunder will be governed by and construed in accordance with Slovenian law and all disputes in relation to this Opinion will be brought before the courts of Slovenia.

(i) Settlement Finality Directive can be applied in scenarios where there are three or more parties (financial institutions, central counter parties etc.); an analysis of the application of this directive is not provided under this legal opinion. We strongly advise the parties to request separate external legal advice with respect to transactions of the parties where the settlement is covered by a system falling under Article 2 lit (a) of the Settlement Finality Directive or where the settlement is done in a financial market environment with respect to at least a clearing system with respect to the term "financial market" under Article 12 of EU Insolvency Regulation.

(j) The EU Insolvency Regulation is not applicable in case of Denmark. We strongly advise the parties to request separate external legal advice in case of any proceedings with a Danish counterparty.

B.III POTENTIAL PARTIES

Further to the Instruction Letter, we were required to give an opinion in respect of potential party types listed in Appendix A. Without prejudice to this, when assessing the potential parties to the Agreement, the following should be taken into account.

Trading in gas is not subject to licence in Slovenia, however trading in gas may be subject to certain requirements that need to be complied with, usual for such branch or activity.

We note that certain potential parties listed in Appendix A are defined on the basis of the specific activity pursued by the corporation (e.g. banks, financial service providers, etc.). These types of potential parties (as well as the types of transactions envisaged in Appendix B) go beyond the traditional meaning of pursuing physical trading (delivery and acceptance) of natural gas.

Finally, it is important to emphasise that further to the General Assumptions it is possible that Party A is not an entity incorporated under the laws of Slovenia but only has its main centre of interest in Slovenia. Moreover, as further detailed under point C.VIII (*Regulatory Regime*, page 59), foreign entities may engage in trading of gas in Slovenia without having any permanent establishment in Slovenia. Therefore, potential parties may also be entities incorporated under a foreign law, in which case we are not in the position to give any opinion respectively.

Based on the above, please refer to Appendix A regarding the potential parties to the Agreement.

C. ISSUES AND ADDITIONAL ASSUMPTIONS

On the basis of the assumption and subject to the limitations respectively set out in point B.I (page 9), we are of the following opinion.

C.I ENFORCEABILITY OF CLOSE-OUT NETTING

The meaning of close-out netting is of core importance, therefore prior to providing our detailed analysis it is essential to define the precise meaning of close-out netting under the laws of Slovenia.

It is to be noted that there is no general definition of netting in the Civil Code nor in other legislation of general nature. Netting is most precisely defined in the Insolvency Act, Resolution Act and Financial Collateral Act.

Article 24.a of the Insolvency Act contains the following provisions:

*"**qualified financial agreement** (in Slovenian: **kvalificirana finančna pogodba**) shall mean an agreement, a subject of which is financial instrument pursuant to Financial Instruments Market Act, and derivative financial instrument for commodity or emission rights as basic instrument, which may be settled with transfer of the basic instrument";*

*"**netting agreement** (in Slovenian: **dogovor o izravnavi**) shall mean (i) the contractual arrangement of the parties, included in the individual qualified financial agreement or concluded as a framework agreement in respect to certain specific types of qualified financial agreements that will be entered into between the netting agreement parties; and (ii) which contains the following rules that shall apply in case of insolvency of the party or in case of breach of the netting agreement or qualified financial agreement: (a) rules that in case of breach the qualified financial agreement shall be avoided, or terminated by the other party or that all the obligations of the parties are accelerated; (b) rules on calculation of netting, market, liquidation or replacement monetary value of bilateral obligations of the parties in case of termination of the agreement or acceleration in line with (a); (c) rules on conversation of value in the same currency if the obligations are in different currencies; (d) rules on determination of net value of the monetary obligation of the party and monetary obligation of the other party after the netting under (b) and converted under (c)";*

Article 24.b of the Insolvency Act contains the following provisions:

*"**other qualified agreement** (in Slovenian: **druga kvalificirana pogodba**) shall mean an individual or framework agreement against payment, a subject of which is trading with electricity or other energy products, in which the netting agreement from the Article 24.a forms a usual part in such type of trading".*

For the other qualified agreements the same rules of the Insolvency Act apply as for qualified financial agreements and netting agreements pursuant to the Insolvency Act.

Article 3(10) and Article 3(12) of the Financial Collateral Act (which applies to the eligible parties; see Footnote 2), provides the following:

*"The conditions for enforcement of the financial collateral are fulfilled with default under the agreement or similar event, agreed between the parties or determined by law, with occurrence of which the financial collateral holder receives the right to repayment from sale or taking of financial collateral or banking loan or due to which the consequences of contractually agreed set-off due to premature termination occur (**close-out netting**)."*

*"The netting agreement for premature termination means that with the fulfilment of the conditions for enforcement of collateral all undue secured claims shall be deemed due, the non-monetary claims shall convert to monetary claims and may be mutually settled under their current value **(close-out netting)**."*

Considering the limited application of the Financial Collateral Act, we understand that this definition could only be relevant in respect of those potential parties in Appendix A, which fall are eligible parties under the Financial Collateral Act (for more details on eligible parties see Footnote 2).

Articles 5(7) and 5(8) of the Resolution Act provides for the following definitions

*"**netting agreement** (in Slovenian: **dogovor o izravnavi**) shall mean an agreement that forms part of the basic agreement or is concluded as a framework agreement for more individual agreements between the parties, including early termination agreement under the Financial Collateral Act, and includes the following rules: (i) with the occurrence of insolvency or other default of the party by the agreement, the agreement is deemed terminated, or in the event of default the non defaulting party is entitled to termination, or acceleration comes into effect; (ii) rules on calculation of netting, market, liquidation or replacement monetary value of bilateral obligations of the parties in case of termination of the agreement or acceleration; (iii) rules on conversion of value in the same currency if the obligations are in different currencies; (d) rules on conversion of mutual obligations in one single net claim";*

*"**set-off agreement** (in Slovenian: **dogovor o pobotu**) shall mean an agreement that provides for a set-off of one or more obligations between the parties".*

Considering the limited application of the Financial Collateral Act, we understand that this definition could only be relevant in respect of those potential parties in Appendix A, which fall under the scope of the Resolution Act (e.g. banks, financial institution, financial holdings, etc.).

As a general concept and with a view of achieving the same end effect, netting may be viewed as a set-off action from a civil law perspective, by which mutually consenting parties agree on settling their mutual obligations.

According to Articles 312 to 318 of the Civil Code, a party is entitled to set-off its due and payable claim of the same type (monetary or other type) against its debt by a statement addressed to its counterparty. Obligations cease to exist up to the value of the set-off. Certain types of claims cannot be set-off pursuant to the Civil Code. The statue-barred claims may be set-off, if the conditions for set-off has been fulfilled before the elapse of limitation period; in case the conditions were fulfilled after elapse of limitation period the claims may be set-off, unless the debtor exercise its rights of statue-barred claim.

In addition, there are some general rules in the Insolvency Act regarding the ordinary set-off. In case of bankruptcy proceedings (and *inter alia* compulsory settlement proceedings), the claims of the creditor and counter claims of the bankruptcy debtor are deemed to be set-off by law (even in case of the conditional claims, whereas the creditor needs to request the set-off and the insolvency court must give its consent).

However, it is prohibited to set-off claims against the bankruptcy debtor established before the bankruptcy proceedings and obtained by the creditor on the basis of assignment after the initiation of the bankruptcy proceedings with a counter claim of the bankruptcy debtor established before the bankruptcy proceedings. It is also prohibited to set-off claims of creditors established before the bankruptcy proceedings with a counter claim of the bankruptcy debtor established after the bankruptcy proceedings.

The primary legislation governing the effects of netting in an insolvency scenario is the Insolvency Act. However, if products/transactions under a framework agreement do not fall within the categories specified in the Insolvency Act, the framework agreement as well as the transactions entered into under it may still benefit from the preferential regimes set out under the Financial Collateral Act.

Furthermore, transactions under the framework agreement as well as the transactions entered into under it may also be impacted by industry specific legislation (please see Appendix A for details).

C.I.1 Winding-up, Insolvency or Attachment

C.I.1.1 *Insolvency law interpretation of close-out netting and application of the insolvency laws to the Commodity Transactions*

As discussed under point C.I (page 15) above, irrespective of the specific nature of the Commodity Transactions entered into under the Agreement, the general rules governing set-off under the Insolvency Act apply.

In addition, the Insolvency Act also includes specific rules in close-out / netting of qualified financial agreements and other qualified agreements as defined above under point C.I (page 15).

As provided in point C.I on page 15, close-out / netting is specifically governed in the case of insolvency proceedings by the Insolvency Act. However, to qualify for the safe harbour protection under the Insolvency Act, the agreement must be either deemed qualified financial agreement or other qualified agreement (see page 15) (see below, point (a)).

If the agreement is not the qualified financial agreement or the other qualified agreement, it may be afforded safe harbour protection under the Financial Collateral Act, but only in the case of eligible parties and eligible financial collaterals (see point (b) on page 19).

In the case of entities falling under the Resolution Act, certain specific rules may also apply (see point (c) on page 21).

In all other cases, the rules of the Insolvency Act will apply, e.g. rules on simple set-off (see point (d) on page (d)).

(a) Specific rules for qualified financial agreements, other qualified agreements and netting agreements

Following the commencement date of the insolvency proceedings only netting agreements, qualified financial agreements and other qualified agreements complying with the definition of the Insolvency Act (please refer to point C.I of this Opinion on page 15) qualify for the "safe harbour" protection of the Insolvency Act.

According to the Article 264.a of the Insolvency Act the commencement of the insolvency proceedings namely does not have an impact on the close-out netting agreements, qualified financial agreements and other qualified agreements, to which the rules determined in the netting agreement apply. Hence, the commencement of compulsory settlement proceedings or bankruptcy proceedings does not have a legal effect on such agreements.

This means that the rules on conversion of non-monetary claims to monetary claims, rules on conversion of occasional claims to one-time claim, rules on the conversion of claims expressed in foreign currency to euro expressed claims, and the rules on the ordinary set-off of claims do not apply to qualified financial agreements, other qualified agreements and netting agreements.

In addition, the special rules on the performance of mutual non-performed bilateral agreements do not apply to qualified financial agreements, other qualified agreements and netting agreements. Hence, only the autonomous rules of the qualified financial agreement, other qualified agreements and netting agreement apply to the parties of such agreement, and only the final net monetary claim after the close-out netting is performed is subject to insolvency rules, must be reported by the creditor in the insolvency proceedings and is subject to the settlement from the bankruptcy estate or to the compulsory settlement conditions.

However, it should be noted that the provisions of the Insolvency Act on the treatment of the netting agreements, qualified financial agreements and other qualified agreements apply only from the initiation of the insolvency proceedings, i.e. from (i) the date of publication of the court decision on the initiation of the compulsory settlement proceedings; or (ii) the date of publication of the court decision on the initiation of the bankruptcy proceedings.

Slovenian law differentiates between the preliminary and main phase of insolvency proceedings. The preliminary proceedings commence with the submission of proposal for initiation of insolvency proceedings, in which the court decides whether conditions for the initiation of insolvency proceedings are fulfilled (insolvency of the debtor and other conditions as determined in the Insolvency Act). The main phase of insolvency proceedings commences with the decision of the court on initiation of the insolvency proceedings and its publication.

In case of compulsory settlement proceedings (in Slovenian: *prisilna poravnava*), already in the preliminary phase certain specific rules apply: (i) the insolvent debtor may only perform regular business transactions and settle obligations arisen out of such transaction and the obligations that were established before the insolvency proceedings but in connection with the proposal for the insolvency proceedings; (ii) the insolvency debtor however cannot dispose of its assets or take loans or credits or give surety or perform any actions that would result in unequal treatment of creditors.

Considering the definition of the other qualified agreement as *an individual or framework agreement, a subject of which is trading with electricity or other energy products, in which the netting arrangement is ordinary for such trading* under the Insolvency Act, the EFET General Agreement falls under the definition of the other qualified agreements.[1] As the other qualified agreements benefit from the same protection under the Insolvency Act as the qualified financial agreements, the opening of the insolvency proceedings generally does not affect the enforceability of the netting and close-out netting provisions under the EFET General Agreement.

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1 This is furthermore supported by the explanations included in the legislative proposal of the amendment to the Insolvency Act enacting the respective provision of Article 24.b of the Insolvency Act, according to which it was necessary to abolish the differentiation between the transaction with financial instruments and commodities in the framework of standardized agreements, such as ISDA and EFET agreements, which are customary for sale and purchase transaction in the respective fields.

(b) Specific regime for financial collateral agreements

The Financial Collateral Act sets out special rules for securing financial obligations with financial collateral instruments included in the agreements between the participants of the financial market.

Pursuant to Article 11 of the Financial Collateral Act, a settlement of obligations arising out of the financial collateral agreements, including enforcement of collateral shall be performed according to provisions of such agreement despite the fact that either insolvency proceedings or liquidation proceedings are imposed against either the collateral provider or the collateral receiver.

Pursuant to Article 12 of the Financial Collateral Act, a netting agreement remains valid in case of judicial or other enforcement, or if insolvency proceedings or liquidation proceedings are imposed against either the collateral provider or the collateral receiver, or when the receiver of the collateral assigns, encumbers or otherwise dispose the secured claim.

For the parties to benefit from the preferential treatment of close-out netting set out by the Financial Collateral Agreement, two primary conditions would have to be fulfilled:

a. their agreement would have to qualify as a financial collateral agreement; and

b. the parties themselves would have to be eligible for protection under the Financial Collateral Act.

Financial Collateral Agreements

Financial collateral agreement is an agreement under which a collateral provider, agrees to establish a pledge on a financial instrument, cash or a loan (whereas the object of the pledge remains with the collateral provider) or assign collateral on a financial instrument, cash or a loan to the collateral taker (whereas the object of the collateral is transferred to the collateral taker).

With respect to the collateral provided under the EFET Credit Support Annex, we believe that only cash would qualify as financial collateral within the meaning of the Financial Collateral Act. Consequently, the arrangements concluded among qualified parties and including cash as collateral would benefit from the "safe harbour" regime under the Financial Collateral Act. On the other hand, Letters of Credit and Parent Company Guarantees do not grant the same benefit and those arrangements would fall outside the scope of the Financial Collateral Act.

Parties eligible for protection under the Financial Collateral Act

The Financial Collateral Act enumerates in detail the entities/participants of the financial market[2] eligible for protection when entering into so called "financial

2 Parties eligible for protection under the Financial Collateral Act are EU Member States public authorities entrusted with public debt management or the management of business accounts, EU Member States central banks, European Central Bank, International Monetary Fund, European Investment Bank, Bank for International Settlements (BIS), International Bank for Reconstruction and Development, International Finance Corporation, Inter-American Development Bank, Asian Development Bank, African Development Bank, Council of the European Fund for

collateral agreements" within the meaning of the Financial Collateral Act. Furthermore, any individual or entity entering into a financial collateral agreement with such eligible party is also eligible for protection under the scope of the Financial Collateral Act.

Consequently, if any of the parties set out in the Appendix A enters into a Credit Support Annex which qualifies as a financial collateral agreement as defined by the Financial Collateral Act, according to the Article 12 of the Financial Collateral Act, the close-out netting agreement under such Credit Support Annex would not be affected by the opening of an insolvency proceedings over either party of such Credit Support Annex.

Furthermore, since we understand that the Credit Support Annex is to form part of the EFET General Agreement (i.e. the EFET General Agreement and the Credit Support Annex form an integral agreement), we believe that if a Credit Support Annex is entered into alongside the EFET General Agreement, the EFET General Agreement and the Credit Support Annex shall both benefit from the "safe harbour" under the Financial Collateral Act as one single agreement.

Close-out netting

According to The Financial Collateral Act *"**close-out netting**" shall mean set-off agreement in case of early termination of a contract.*

Article 3(10) and Article 3(12) of the Financial Collateral Act (which applies to the eligible parties; see Footnote **Error! Bookmark not defined.**), provides the following:

*"The conditions for enforcement of the financial collateral are fulfilled with default under the agreement or similar event, agreed between the parties or determined by law, with occurrence of which the financial collateral holder receives the right to repayment from sale or taking of financial collateral or banking loan or due to which the consequences of contractually agreed set-off due to premature termination occur (**close-out netting**)."*

"The netting agreement for premature termination means that with the fulfilment of the conditions for enforcement of collateral all undue secured claims shall be

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Redistribution, Nordic Investment Bank, Caribbean Development Bank, European Bank for Reconstruction and Development, European Investment Fund, Inter-American Investment Corporation.

Also eligible are (i) credit institutions whose business is to receive deposits or other repayable funds from individuals and legal entities and to grant credits for its own account; (ii) investment firms, as legal entities that are not credit institutions, 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; (iii) financial institutions, except credit institutions, whose exclusive or prevailing business is to gain share in capital or perform one or several basic financial services; (iv) insurance companies; (v) companies for collective investment in transferable securities; and (vi) settlement agents or clearing houses.

In Slovenia, parties eligible for protection under the Financial Collateral Act are the Republic of Slovenia, Slovenian National Bank, credit institutions, insurance companies, investment funds, investment funds management companies, Central Clearing Company, Slovenian Institute for Health Insurance, Slovenian Pension Institute, Kapitalska Družba, Slovenian export and development bank and other companies and funds, which were established by the State, other supervised financial organizations.

In addition, the eligible parties are also legal entities fulfilling criteria for big, medium or small company under the Companies Act, when concluding transactions with above mentioned eligible parties.

*deemed due, the non-monetary claims shall convert to monetary claims and may be mutually settled under their current value (**close-out netting**)."*

Considering the limited application of the Financial Collateral Act, we understand that this definition could only be relevant in respect of those potential parties in Appendix A, which fall are eligible parties under the Financial Collateral Act (for more details on eligible parties see Footnote **Error! Bookmark not defined.**).

We believe that these provisions of netting are adequate to safeguard the interests of parties entering into a General EFET Agreement secured by a financial collateral agreement and that it permits the enforceability of close-out netting provisions of the General EFET Agreement in an insolvency scenario, subject to the terms set out in this opinion.

However, it should be noted that the relationship between the Financial Collateral Act and the Insolvency Act is unclear. Namely, the Financial Collateral Act provides that the close-out netting provisions in case of financial collateral remains valid, even in case of the insolvency proceedings, however the Insolvency Act on the other hand does not afford any special protection of the close-out netting provisions for financial collateral. In our view, the Financial Collateral Act is a specific law derogating from the general provisions of the Insolvency Act, and would therefore be upheld on the basis of the principle of *lex specialis*.

(c) Special regime under the Resolution Act

The Resolution Act provides for certain specific provisions for close-out netting agreements and settlement agreements within the meaning of the Resolution Act when the insolvency proceedings or liquidation proceedings are initiated against banks and other institutions to which the Resolution Act applies.

The Resolution Act provides that the specific rules on set-off (or prohibition of the set-off) generally does not apply to the close-out netting agreements and settlement agreements within the meaning of the Resolution Act.

Consequently, if any of the parties set out in the Appendix A, and are eligible under the Resolution Act, enters into an EFET Agreement, the close-out netting provisions thereunder should generally not be affected by the opening of an insolvency proceedings. For more information see under C.I.1.8 (b) on page 30.

(d) Simple set-off rules under the Insolvency Act

Set-off rules applicable in the event of a non-insolvency scenario are discussed under point C.I.2 (page 32) of this Opinion.

The Insolvency Act provides for specific rules on *de lege* set-off in case of insolvency proceedings (bankruptcy and compulsory settlement proceedings) in case the claims of the creditor and counter claim of the insolvency debtor has both been established before the initiation of the insolvency proceedings. The claims of the creditor and counter claims of the bankruptcy debtor are deemed to be set-off by law, even in case of the conditional claims, whereas the creditor needs to request the set-off and the insolvency court must give its consent.

However, setting-off the following claims during the bankruptcy proceedings is prohibited:

a. claims established before the initiation of the bankruptcy proceedings and acquired by the creditor on the basis of assignment after the initiation of the bankruptcy proceedings with a counter claim of the bankruptcy debtor established before the bankruptcy proceedings;

b. claims of the creditor established before the bankruptcy proceedings with a counter claim of the bankruptcy debtor established after the bankruptcy proceedings.

It should be noted that the Insolvency Act does not provide for the scenario in which the claim of the creditor and the counter claim of the bankruptcy debtor were established after the initiation of the bankruptcy proceedings. It is a predominant position in the legal theory and practice that in this case, the simple set-off rules under the Civil Code shall apply.

Contractually agreed set-off of claims between the parties might not be enforceable in an insolvency scenario, but the claims could nevertheless be set-off by law. However, this would not apply to the netting under the EFET General Agreement, as the latter would benefit from the safe harbour provisions afforded by the Insolvency Act.

However, where the EU Insolvency Regulation is applicable, set-off may be enforceable if such set-off is permitted by the law applicable to the insolvent debtor's claim. This is because according to Article 6 of the EU Insolvency Regulation, the opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim (which means, in the event of a contractual set-off agreement, the law governing the agreement from which the claims concerned arise).

(e) Conclusion

Considering the definition of the other qualified agreement under the Insolvency Act, the EFET General Agreement falls within such definition and therefore enjoys the protection under the Insolvency Act. This means that the opening of the insolvency proceedings generally does not affect the enforceability of close-out / netting provisions under the EFET General Agreement.

If the EFET General Agreement is concluded by a party eligible for "safe harbour" protection under the Financial Collateral Act and the performance of obligations thereunder is secured by a financial collateral within the meaning of the Financial Collateral Act, we believe that the opening of the insolvency proceedings should not affect the enforceability of close-out / netting provisions under such EFET General Agreement.

Finally, if the EFET General Agreement is concluded by a party eligible for "safe harbour" protection under the Resolution Act, we believe that the opening of the insolvency proceedings should not affect the enforceability of close-out netting provisions under such EFET General Agreement

SPECIFIC QUESTIONS

For the purpose of this section we have made the following additional assumptions in accordance with the Instruction Letter:

- The relevant EFET General Agreement is governed by any law (including English or German law or the laws of Slovenia).
- 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 Slovenia and, subsequent to the commencement of the insolvency, either Party A or an insolvency official seeks to assume the confirmations representing profitable Individual Contracts for the insolvent counterparty.

Since Party A is a party incorporated, organised or having its centre of main interest in Slovenia, the courts of Slovenia will have jurisdiction to open insolvency proceedings and will proceed in accordance with the Slovenian insolvency laws. Provisions of the EU Insolvency Regulation or of a foreign law will have any relevance if the proceedings involve a "foreign element" (e.g. a foreign creditor).

C.I.1.2 ***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 Slovenia or is there a risk that (i) the entering into the EFET General Agreement, (ii) the entering into Individual Contracts thereunder or (iii) the early termination by notice itself could be challenged by a liquidator, administrator, receiver or third party?***

(a) Enforceability of termination rights

The provisions of the EFET General Agreement permitting the Terminating Party to terminate the Agreement upon an insolvency-based Material Reason in most cases will be enforceable under the laws of Slovenia. This is because pursuant to the Civil Code, the Parties to an agreement are free to determine the content of their agreement, including those events which trigger the right to terminate the agreement, unless their agreement breaches a mandatory legal requirement.

In addition, the termination rights under § 10.3 (Termination for Material Reason) in conjunction with § 10.5(c) (Winding-up / Insolvency / Attachment) of the EFET General Agreement are afforded a safe harbour under the Insolvency Act and would generally be enforced in case of insolvency proceedings. According to the second paragraph of the Article 24.a of the Insolvency Act the Party's right to terminate the agreement even forms a part of a definition of a netting agreement referred to in the Article 24.b (Other Qualified Agreement).

Notwithstanding the above, we note that in some cases the insolvency related events listed in § 10.5 (c) of the EFET General Agreement are difficult to interpret in the light of the definition of the commencement date of the insolvency proceedings under the Insolvency Act. This is because none of the listed events expressly match the Slovenian insolvency law meaning of the commencement date of the insolvency proceedings.

a. The event specified in § 10.5 (c) (i) occurs definitely much later, in fact, when the insolvent party is dissolved (in Slovenian law interpretation this means that the party ceases to exist) in principal no claims can be enforced at all against such (non-existing) party.

b. The event specified in § 10.5 (c) (ii) would generally mean under the Insolvency Act a reason for filing a petition for initiation of insolvency proceedings (assessment of the assumptions of the insolvency of a debtor) and therefore constitute the preliminary phase of the insolvency proceedings – see also under C.I.1.1 (a) on page 17. This reason would generally give rise to insolvency proceedings, if the petition is filed by the debtor itself (as in this case the insolvency is assumed).

c. The events specified in § 10.5 (c) (iii) and (vii) of the EFET General Agreement are rather vague and do not necessarily mean the occurrence of insolvency proceedings under the laws of Slovenia. Moreover, those appear to be rather enforcement or closer related events.

d. The events set out in § 10.5 (c) (iv) are not in themselves indicative of the occurrence of insolvency. Namely, a petition seeking judgement of insolvency may under the Slovenian insolvency law be initiated at any time without any immediate adverse effect on the parties. However, this would constitute the preliminary phase of the insolvency proceedings – see also under C.I.1.1 (a) on page 17. However, the filing of a petition for insolvency will have relevance only if the court orders the opening of the insolvency proceedings and such judicial order is published.

e. Additional events specified in § 10.5 (c) (v) of the EFET General Agreement reflect situations that could be matched to Slovenian bankruptcy proceedings (in Slovenian: "*stečajni postopek*"), compulsory settlement proceedings (in Slovenian: "*prisilna poravnava*") and liquidation proceedings (in Slovenian: "*likvidacija*"). We note however that these provisions to some extend overlap each other, whereas in other cases those refer to consecutive events in the same insolvency proceeding. This may give rise to disputes or even to different termination dates depending on which provision or which part thereof is referred to by the terminating party.

f. The events specified in § 10.5 (c) (vi) describe occurrences that are not necessarily insolvency related matters (e.g. the court may also appoint an officer if the shareholders fail to do so).

In order to avoid uncertainties we propose the following wording of the § 10.4. and the § 10.5. (c)(iv):

"§10.4 shall apply to Party A and Party B. The termination shall be effective (Early Termination Date) at the time the Material Reason under §10.5 (c) occurred. With respect to §10.5 (c)(iv) the time the termination shall be deemed to have effect is at 11:59 p.m. on the day immediately preceding the day on which the proceedings have commenced under the relevant applicable law; and with respect to other Material Reasons under §10.5 (c) the time the termination shall be deemed to

have effect is at the time of the occurrence of the Material Reason under the relevant applicable law."

"§ 10.5.(c)(iv) institutes or has instituted against it, based on a published final court's decision, a proceeding seeking a judgement of insolvency, bankruptcy, compulsory settlement proceeding, including simplified compulsory settlement proceeding, or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights or a petition is presented for its winding-up or liquidation, verified by a final court's decision on the commencement of such a proceeding."

(b) Right to challenge contracts

As a general rule, the Insolvency Act grants the bankruptcy administrator and the debtor a right to terminate the non-performed reciprocal agreements as described above in Point C.I.1.1(b) on page 19.

The Insolvency Act does not grant any other additional rights to the administrator or debtor to challenge the debtor's contracts which have been entered into prior to the commencement of the bankruptcy proceedings.

However, the conclusion or performance of the contracts in the last 12 months before the initiation of the bankruptcy proceedings may be subject to claw-back provisions, if the conditions under the Insolvency Act are fulfilled, namely:

a. As a consequence of the transaction the net value of the debtor's assets has decreased and hence the creditors' claims would be repaid in a lower percentage; or the person for whose benefit the transaction was performed received more favourable conditions for repayment of its claim. The first condition is assumed, if (i) the performance have been made on the basis of a bilateral agreement for the benefit of the creditor, who performed his counter obligation before the insolvent debtor; (ii) the creditor acquired a right to separate settlement of a claim that was established before the action of a debtor; or (iii) the transaction was performed in the period of the compulsory settlement proceedings.

b. The person for whose benefit the transaction was performed knew or should have known of the insolvency of the debtor (this condition does not need to be fulfilled, if the person obtained the benefit free of charge or for consideration of small value). This condition is assumed if the creditor's claim was settled before it was due or in a way that is not in accordance with business practice or usual practice between the parties, or if the transaction was performed in the last three months before the initiation of the bankruptcy proceedings.

C.I.1.3 ***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 Slovenia or is there a risk that the automatic termination could be challenged by a liquidator, administrator, receiver or third party?***

According to the Civil Code, parties to an agreement are free to determine conditions upon which their agreement terminates. We are of the opinion that the insolvency-based

Material Reasons as set out in § 10.5 (c) of the EFET General Agreement do not qualify as illegal.

The qualified financial agreements and the other qualified agreements, including the netting agreements, in particular, are afforded a safe harbour under the Insolvency Act, and therefore (i) the insolvency proceedings do not have any effect on them and are enforceable in their entirety; and (ii) the insolvency administrator, the creditors and the debtor generally would not have a possibility to challenge them subject to the comments above.

Besides, according to the second paragraph of the Article 24.a of the Insolvency Act automatic termination (in case of insolvency) even forms a part of a definition of a netting agreement referred to in the Article 24.b (Other Qualified Agreement).

C.I.1.4 ***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 advisable to modify the scope of Automatic Termination (e.g. by (i) deleting or modifying some of the events listed in § 10.5(c) which would trigger the termination and/or (ii) by adding other Material Reasons upon the occurrence of which Automatic Termination should also apply and/or (ii) by limiting those insolvency events specified in § 10.5(c) which would trigger Automatic Termination) or to specify, or to refrain from specifying, a certain grace period as contemplated in § 10.5(c)(iv) of the EFET General Agreement to provide for optimal timing of such termination under local law?***

We would recommend electing Automatic Termination to apply upon a Material Reason described in § 10.5(c) of the EFET General Agreement.

However, should the parties wish to elect Automatic Termination to apply, we are of the view that the Material Reasons upon which Automatic Termination is triggered need to be further specified in order to cover those events which are relevant from a Slovenian insolvency law viewpoint. Thus, the Automatic Termination should apply at the time when the court's decision on the initiation of insolvency proceedings becomes final and is published. See proposed wording in C.I.1.2(a).

C.I.1.5 ***If you are recommending that a grace period be made applicable in respect of § 10.5(c)(iv), what, in your best estimation is the minimum reasonable period of time required by a party whose creditor(s) have instituted an unsubstantiable or otherwise clearly frivolous involuntary bankruptcy proceeding dismissed or otherwise terminated?***

Considering the particularities of the Slovenian insolvency law, the current wording of the § 10.5(c)(iv) would be clearer, if the termination is tied to publication of the final decision of the court on initiation of the insolvency proceedings, with the option of the grace period not being elected as it is not reasonable considering the specifics of the arrangement. Namely, with the finality of the court's decision and its publication of the reason for termination would occur, which would be aligned with the applicability of the safe harbour provisions regarding close-out netting arrangements under the Insolvency Act.

C.I.1.6 ***If you are recommending that Automatic Termination be made applicable in respect of parties subject to the insolvency laws of your jurisdiction, what is the optimal timing for that Automatic Termination to take effect? In this event, please supply specific recommended language for purposes of customizing § 10.4 of the General Agreement to implement such optimal termination timing.***

Please refer to the first part of this point C.I.1.4 (page 26) above.

C.I.1.7 ***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 Slovenia or is there a risk that such determination could be challenged by a liquidator, administrator, receiver or third party?***

In order to analyse the enforceability of close-out netting provisions, one would have to primarily observe the legal nature of the transaction and the type of the contracting party in case of insolvency proceedings.

In that regard, it is important to determine whether the transactions under the Agreement qualify as (i) qualified financial agreements or other qualified agreements within the scope of the Insolvency Act; (ii) financial collateral agreements within the scope of the Financial Collateral Act or (iii) close-out netting agreements or settlement agreements under the Resolution Act. If the answer to either of those questions is affirmative, the opening of the insolvency proceedings will not affect the netting provisions under the Agreement.

The Insolvency Act provides a safe harbour for qualified financial agreements and other qualified agreements that include close-out/ netting arrangement in case of occurrence of the Material Reason, including *rules on calculation of netting, market, liquidation or replacement monetary value of bilateral obligations of the parties*, *rules on conversation of value in the same currency if the obligations are in different currencies* and *rules on determination of net value of the monetary obligation of the party and monetary obligation of the other party after the netting.*

Although the terms in § 11 of the EFET General Agreement are rather general, in our view they are specifiable to the extent that they determine the termination amount, costs, gains and losses. Hence, it seems that the respective clause of the EFET General Agreement meets the criteria of the Insolvency Act as a qualifying element of netting agreement included in the other qualified agreement.

Before the insolvency proceedings are opened (even in the preliminary phase of the insolvency proceedings, for which the Insolvency Act does not expressly govern set-off), the contractual terms in most cases will be enforceable under the laws of Slovenia, because under the Civil Code the Parties to an agreement are free to determine the content of their agreement, unless such provisions would be contrary to mandatory provisions of the Slovenian law, Constitution of the Republic of Slovenia or rules of morality.

In our view, the risk that such determination could be challenged by a liquidator, administrator, receiver or third party is rather remote, subject to comments in C.I.1.2b on page 25.

C.I.1.8 ***Do the laws of Slovenia recognize that the close-out netting provisions in section §§ 10 to 11 of the EFET General Agreement apply to all Individual Contracts? Would we need the single agreement concept in order to preserve the enforceability of the termination right and the ability to calculate the net amount? If the single agreement concept is particularly important in your jurisdiction, please give us your opinion on whether or not, and if so, the degree to which, provisions allowing or providing for the termination of some Individual Contracts but not all Individual Contract under the General Agreement might impact termination and close out rights generally, as***

well as subsequent rights to terminate Individual Contracts remaining under the General Agreement following a previous Partial Close-Out.

Pursuant to the legal order in Slovenia, the EFET General Agreement and Individual Contracts concluded on its basis at any relevant time would form a single agreement. Hence the close-out netting provisions in section §§ 10 to 11 of the EFET General Agreement apply to all Individual Contracts, unless they would be explicitly excluded by the specific Individual Contract (in which case such exclusion would apply only to that specific Individual Contract).

However, if the EFET General Agreement itself would provide that certain Individual Contracts are subject to close-out netting arrangements and others are not, this may weaken the enforceability of netting under an EFET General Agreement in an insolvency scenario, and we cannot exclude a possibility that such close-out netting would not satisfy the requirements under the Insolvency Act and would therefore not be afforded safe harbour.

C.I.1.9 ***Is the insolvent counterparty's obligation to pay the amount of any compensation claim in Euro, USD, GBP (as agreed between the parties in the Election Sheet) enforceable under the laws of Slovenia or could the calculation or demand of such amount in a foreign currency be challenged by a liquidator, administrator, receiver or third party?***

If an agreement qualifies as (i) qualified financial agreement or other qualified agreement within the scope of the Insolvency Act or (ii) financial collateral agreements within the scope of the Financial Collateral Act or (iii) close-out netting agreement or settlement agreement under the Resolution Act, the opening of the insolvency proceedings will not affect the insolvent counterparty's obligation to pay the amount of any compensation claim in Euro, USD, GBP (as agreed between the parties in the Election Sheet).

According to the general rules of the Insolvency Act, with the initiation of the insolvency proceedings the claims expressed in foreign currency are converted in claims expressed in Euro. However, the respective rules do not apply to the qualified financial agreements and other qualified agreements including netting agreements that enjoy the safe harbour treatment under the Insolvency Act.

In our view, the risk that such determination could be challenged by a liquidator, administrator, receiver or third party is remote.

C.I.1.10 ***Please specify, if and as applicable, the degree to which termination and close-out netting rights in insolvency in your jurisdiction are dependent upon, or otherwise effected by, the status of one or more of the concerned parties falling within a particular category of classification of entity. Specifically, do these rights differ as the result of a party being a financial institution, ordinary corporate entity or any other categorisation or regulatory or legal status?***

(a) General provisions

The Insolvency Act regulates the insolvency proceedings against the corporate entities (as defined under the Companies Act) and natural persons.

Based on Appendix A, the following entities would generally not be subject to insolvency proceedings:

a. State;[3]

b. municipalities;[4]

c. investment firms.

Based on Appendix A, the following entities are not subject to compulsory settlement proceedings:

a. banks;

b. financial institutions and financial holdings;

c. insurance and re-insurance companies;

d. investment funds management companies;

e. brokerage firms.

However, all such institutions may be subject to special recovery and resolution proceedings to remove grounds or illiquidity or insolvency, as further detailed in Point 2 of Appendix C.

Generally, the industry specific legislation does not include any special provisions on the netting arrangements and qualified financial agreements or other qualified agreements, hence in our view the general safe harbour treatment under the Insolvency Act would not be effected by the status of one or more of the concerned parties falling within a particular category of classification of entity. Beneficial treatment of netting agreements in insolvency proceedings in cases of qualified financial agreements or other qualified agreements are further detailed in Point C.I.1.1(a) on page of 17 of this Opinion.

However, the industry specific legislation could apply to net amount of a claim that is outstanding after performed close-out netting and reported in the insolvency proceedings.

Below we outline special rules applicable to the close-out netting of eligible transactions under industry specific legislation. Special rules applicable to the insolvency under industry specific legislation in general are outlined in point 2 of Appendix C.

As regards the special rules applicable in relation to the branches of credit institutions and insurance companies seated in another EU Member State, please also refer to point C.II.2.1(b) (page 38).

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3 Note that there are no specific rules regarding insolvency proceedings against the Republic of Slovenia. As the Republic of Slovenia is a legal entity, and it would be theoretically possible to apply provision of the Insolvency Act (especially in the absence of any specific provision exempting the Republic of Slovenia from the application of the Insolvency Act), one could nevertheless argue that this should not be the case. One reason for such argumentation would be that the Insolvency Act does not include any tailored provisions that would apply to the specific of the state, and the other that the result of bankruptcy proceedings is an eventual dissolution of the legal entity being subject to bankruptcy. It should also be considered that in case the insolvency proceedings would be initiated against the Republic of Slovenia, it is highly possible that specific law would be adopted in that case, and such could differently regulate the rights and obligations of the Republic of Slovenia as insolvent debtor.

4 The same as above would likely also apply in case of municipalities. However, the scenario of insolvency proceedings in case of municipalities is rather more likely than in case of the Republic of Slovenia.

(b) Specific rules under the Resolution Act

The Resolution Act has introduced a special regime for the recovery and compulsory liquidation of the banks and the bankruptcy proceedings initiated after the compulsory liquidation of the banks, if the assets of the banks would not be sufficient to entirely cover all of the creditor's claims.

Further to the Resolution Act, resolution is a restructuring procedure of an institution or group aiming at ensuring the continuity of the fundamental functions of the institution, safeguarding the stability of the financial system and the recovery of the viability of the institution or the ground.

In accordance with the provisions of the Resolution Directive, the Resolution Act is applicable to banks, credit institutions, financial holding companies, mixed financial holding companies established in Slovenia, to financial institutions established in Slovenia if covered by consolidated supervision, and to the Slovenian branches of institutions that are established in third countries; thus, based on Appendix A, the provisions thereof may be of relevance in respect of credit institutions and investment firms.

The Resolution Act grants certain powers to BSI when acting within its resolution functions. BSI has the power, among others, to

a. lodge the proposal for the initiation of the bankruptcy proceedings with the competent court, which shall decide in one business day and there is no appeal against the decision of the court;

b. propose the bankruptcy administrator and appoint a business administrator in the bankruptcy proceedings;

c. adopt the decision on the compulsory liquidation of the bank;

d. appoint one or more liquidation administrators that are authorised to represent and manage the bank.

The Resolution Act expressly excludes *de lege* set-off provided by the Insolvency Act in case of the bankruptcy proceedings against the bank, unless the bankruptcy administrator enforces the set-off. However, the respective exclusion does not apply to the close-out netting agreements and settlement agreements as defined under the Resolution Act.

With the commencement of the liquidation proceedings, the bank has the right to:

a. terminate offers given by the bank before the initiation of the liquidation, if the offers have not been accepted by the counter party;

b. terminate the lease agreements;

c. set-off the mutual obligations, if the conditions for set-off has been fulfilled before the initiation of the liquidation proceedings; set-off is possible even if the conditions have not been fulfilled beforehand, however the bank consents to the set-off; these provisions does not impact the close-out netting agreements or settlement agreements as defined under the Resolution Act;

d. terminate the agreements on performance of the banking services with the consent of the BSI.

The Resolution Act expressly excludes the impact of the initiation of the compulsory liquidation on the close-out netting agreements and settlement agreements as defined under the Resolution Act and on the rights of the other party to treat the initiation of the compulsory liquidation as a Material Reason and on that basis to enforce the financial collateral or close-out netting provisions under the Financial Collateral Act or to terminate, put in moratorium, settle or set-off.

In case of adoption of the measures for restructuring of banks, the BSI may also cancel and convert qualified obligations of the banks. If such qualified obligations derive from derivative financial instruments, certain specific provisions in connection with the close-out netting agreements apply: the BSI may cancel and convert qualified obligations of the banks deriving from derivative financial instruments only if the underlying agreement is terminated before or at the same time and if the close-out netting provisions are respected and enforced by the BSI and the net claim or obligation after the close-out netting is calculated pursuant to the close-out netting agreement. In addition, the BSI may adopt measures to secure the close-out netting agreements in case of transfer of assets, rights and obligations from the entity subject to restructuring to another entity.

(c) Specific rules under the Investment Funds Act

Insolvency proceedings cannot be initiated against investment firms.

It is only possible to lodge bankruptcy proceedings (and not compulsory settlement proceedings) against investment fund management companies.

Otherwise, the Investment Funds Act does not contain any specific provisions on close-out netting or qualified financial agreements or other qualified agreements, hence in our view, the general provisions of the Insolvency Act apply.

(d) Specific rules under the Insurance Act

Under the Insurance Act, the compulsory settlement proceedings are not permitted to be initiated against an insurance company. Hence insurance companies may only be subject to the bankruptcy proceedings and liquidation. The Insolvency Act applies to insurance companies insofar the Insurance Act does not regulate certain matters differently.

According to the Insurance Act, in the preliminary phase ISA adopts a decision on fulfilment of conditions for initiation of the bankruptcy proceedings. After the ISA adopts the decision, it must lodge the proposal with the competent court. The competent court shall issue a decision on the initiation of the bankruptcy proceedings in three business days at the latest. Since there is no appeal, the court's decision becomes final immediately and the consequences of the initiation of the bankruptcy proceedings come into effect, including safe harbour treatment of qualified financial agreements, other qualified agreements and netting agreements under the Insolvency Act.

C.I.2 Non-insolvency related Material Reasons

The opinions expressed under this section C.I.2 regarding the specific questions below relate to termination for non-insolvency related Material Reason in a non-insolvency scenario. In case of termination for non-insolvency related Material Reason in an insolvency scenario, unless otherwise provided in relation to a specific question, the same shall apply as expressed under point C.I.1 (page 17).

As introduced under C.I and subject to the limitations set out in the Opinion and as further detailed below, the civil law interpretation of close-out netting enables the Parties to the EFET General Agreement to enforce the netting provisions of the EFET General Agreement against each other under the laws of Slovenia.

Generally, the parties may freely regulate their relationships pursuant to the Civil Code, unless the Civil Code expressly prohibits derogation from its provisions or if differently derives from the purpose of its provisions.

Close-out netting as such is not regulated, but is in principle similar to set-off under the Civil Code. The provisions of the Civil Code relating to set-off do not expressly prohibit the parties from regulating set-off differently (or completely exclude the set-off), therefore we are of view that the derogation from the Civil Code provisions is possible and the principle of the freedom of the parties would apply.

Based on the principle of freedom of the parties, we are of the view that in a non-insolvency scenario the parties may agree on contractual provisions that provide for the termination of their relationship and acceleration of their mutual claims. With respect to this and the above, we are of the view that the provisions of the EFET General Agreement providing for set-off of claims between the Parties arising out of such EFET General Agreement will be enforceable in a non-insolvency scenario.

However, if the court would take different position, the rules on set-off under the Civil Code could apply. According to the Civil Code, an obligor is entitled to set-off its due and payable claim of the same type and quality against its debt by a statement addressed to the obligee. Obligations cease to exist up to the value of the set-offs.

No set-offs can be made against claims that cannot be subject to enforcement proceedings, claims on assets or their value that has been given to the debtor for safe-keeping or leased or have been retained by the debtor unlawfully, damages for intentionally incurred harm, damages arising from damaged health or death or claims for support. The obligees shall not be entitled to include claims that cannot be enforced due to elapse of limitation of period, if the obligee exercise its right to claim that the claim is statue barred; they may, however, set off their lapsed claims if the conditions for the set-off were fulfilled before the claim was statue barred.

Notwithstanding the above restrictions, the general requirements for two claims to be set off against each other are that both claims must be of the same type and quality (in Slovenian: *"iste vrste in iste kakovosti"*) and must be matured, due and payable (in Slovenian: *"zapadla"*). Furthermore, set-off occurs by delivering the set-off (netting) statement to the other party. No set-off can occur without such statement being delivered; this is a precondition to the effectiveness of the set-off.

Similarly, the set-off of claims between the Parties arising outside the EFET General Agreement contractually provided for in an amendment to the EFET General Agreement will be enforceable under the laws of Slovenia in a non-insolvency scenario. However, in our view, the set-off of claims between Affiliates or Credit Support Providers of Parties contractually provided for in an amendment to the EFET General Agreement will not be enforceable, and courts will render largely unenforceable bilateral triangular (cross-affiliate) set-off provisions that provide for set-off among different entities in corporate groups. This is because set-off generally requires the mutuality of the claims (i.e. that they are due to and from the same person). Set-off may be used only in respect of counterclaims between the same parties (i.e. the Parties to the Agreement) and third party claims (i.e. claims of Affiliates) could be included in the set-off only with the prior consent of the third party (which practically means the assignment of the claim of the Party's Affiliate to the Party concerned). Contracting Parties could resort instead to multilateral agreements, which may provide the necessary mutuality.

C.I.2.1 *Please discuss and advise on the issue outlined under point C.I.1.7 in the context of non-insolvency related Material Reason.*

Based on the principle of freedom of contract, we are of the opinion that 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 Slovenia in the context of non-insolvency related Material Reason on a civil law basis.

C.I.2.2 *Please discuss and advise on the issue outlined under point C.I.1.8 in the context of non-insolvency related Material Reason.*

The laws of Slovenia recognise that the netting provisions in sections §§ 10 to 11 of the EFET General Agreement apply to all Individual Contracts subject to the single agreement concept as described in § 1 of the EFET General Agreement. The single agreement concept is necessary in order to preserve the enforceability of the termination right and of the ability to calculate the net amount under the Agreement. In the absence of any express provision to this end, any default under (or other event in respect of) an individual transaction entered into under a framework agreement would not result in the termination of the framework agreement as well as of all other individual transactions under thereof.

On a contractual civil law basis the Parties may agree on exceptions from the single agreement concept by precisely specifying those transactions and/or events which break through the veil of uniformity. Nevertheless, in our view this goes against the general single agreement concept.

Finally, in our view the exact wording of provisions allowing partial close-out is of high importance. From a legal drafting viewpoint we believe that it would be more appropriate if the possibility (if any) of partial close-out was regulated together with the single agreement concept (and not in an annex in which way possible inconsistencies could be better avoided) for instance with an additional wording in § 1.1 of the EFET General Agreement as follows:

"*All Individual Contracts and this General Agreement shall form a single agreement between the Parties (collectively referred to as the "Agreement". Notwithstanding the aforesaid, the Parties shall have the right, without prejudice to the force and validity of the remaining Individual Contracts and of the General Agreement to terminate solely [type of individual contract] for those special material reasons that are set out as ground for partial close-out in the [type of individual contract]*."

C.I.2.3 *Please discuss and advise on the issue outlined under point C.I.1.9 in the context of non-insolvency related Material Reason.*

The parties are free to determine the currency they wish to apply in their contractual relationship. Therefore, we believe that in the context of non-insolvency related Material Reasons under the laws of Slovenia nothing prevents the Parties to the EFET General Agreement to pay the amount of any compensation claim in Euro, USD, GBP (or as agreed between the Parties in the Agreement) and further to seek enforcement of such provision.

C.I.2.4 ***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?***

The rights of the Terminating Party in the context of non-insolvency related Material Reason are principally enforceable, based on the principle of freedom of contract under the Civil Code.

However, if a party is insolvent (and the insolvency proceedings has been initiated against the party), the effects of insolvency, as outlined in Section C.I.1.1 of this Opinion, would apply equally irrespective of whether the Agreement is terminated on grounds of insolvency or any other Material Reason.

C.II MULTIBRANCH PARTIES

According to the Instruction Letter, under this section we make a distinction between (1) a Multibranch Party incorporated, organised or having its centre of main interest in Slovenia (*Slovenian Multibranch Party*) and (2) a Multibranch Party incorporated, organised or having its centre of main interest outside Slovenia, but operating through one or more branches in Slovenia (*Foreign Multibranch Party*).

C.II.1 Slovenian Multibranch Party

For the purpose of this section (*Slovenian Multibranch Party*) our opinion is based, in accordance with the Instruction Letter, on the following additional assumption:

- Party A has entered into Individual Contracts under the EFET General Agreement through offices in Slovenia 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 Slovenia.

C.II.1.1 *Would there be any change in your conclusions reached under C.I.1 or C.I.2 above based upon the fact that Party A has conducted business under the EFET General Agreement on a multilateral branch basis prior to its insolvency?*

We are of the view that the fact that Party A has conducted business under the EFET General Agreement on a multilateral branch basis prior to its insolvency would not change our conclusions under points C.I.1 and C.I.2 above.

A company may establish branches that are separate from the company's registered office. Under Slovenian law, branch office is not a separate legal entity, but forms part of the company and performs legal transactions on behalf and for account of the parent company, hence the holder of rights and obligations is a parent company.

The same applies to the branch offices of foreign company established in Slovenia, these branches also act on behalf and for account of the foreign parent company and are not considered separate legal entities pursuant to the Companies Act.

In view of the above, if the company concludes the EFET General Agreement on a multilateral branch basis, all the transactions performed by branch offices will be deemed to be performed for the parent company.

The Insolvency Act applies to the insolvency proceedings of the debtors established in Republic of Slovenia as corporations in one of forms envisaged by the Companies Act. The Slovenian court's competence is determined on the basis of the seat of the insolvent debtor. The "home" insolvency proceedings are proceedings conducted pursuant to the Insolvency Act.

In such cases, the insolvency proceedings conducted in Slovenia comprise all of the debtor's assets in Slovenia and abroad.

According to the Insolvency Act all assets of the insolvent debtor are subject to the insolvency proceedings (unless the assets are subject to rights of separate settlement of claim). In our view this includes assets held by the branch of Party A outside Slovenia, since Slovenian law treats branches of Slovenian business entities as part of that business entity. Accordingly, we believe that the Slovenian liquidator will seek to collect, as far as possible and practicable, all assets of Party A worldwide. There will of course be limitations arising under either the EU Insolvency Regulation or the principles of private international law (including international treaties or state of reciprocity) on the ability of the Slovenian liquidator to recover assets located outside Slovenia. If the branch(es) is (are) located within the territory of the EU (other than Denmark), territorial insolvency proceedings may be initiated further to the EU Insolvency Regulation, whose effects will be restricted to the assets of the debtor situated in the territory of the Member State where the branch is located.

C.II.1.2 ***Would the EFET General Agreement be treated as a single unified agreement by the Slovenian receiver under the laws of Slovenia, 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?***

Based on our conclusion under point C.II.1.1 (page 35), we are of the view that the EFET General Agreement will be likely treated as a single unified agreement by the Slovenian administrator under the laws of Slovenia.

C.II.2 Foreign Multibranch Party

For the purpose of this section (*Foreign Multibranch Party*) our opinion is based, in accordance with the Instruction Letter, on the following additional assumptions.

- A corporation, a bank, an investment service provider, an insurance company, an investment fund management company or any other similar financial institution ("**Party F**") incorporated, organised or having its centre of interest in a country ("**Country H**") other than Slovenia has entered under the EFET General Agreement into Individual Contracts both through its home offices 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 Slovenia ("**Slovenian Branch**").
- 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.

C.II.2.1 ***Would there be separate proceedings in Slovenia with respect to the assets and liabilities of the Slovenian Branch upon the start of the insolvency proceeding for Party F in Country H? Or would the relevant authorities in Slovenia defer to the proceedings in Country H, so that the assets and liabilities of the Slovenian Branch would be handled as part of the proceedings for Party F in Country H? Could local creditors of the Slovenian Branch initiate separate proceedings in Slovenia even if the relevant authorities in Slovenia did not do so?***

(a) Party F being an ordinary corporation

The insolvency proceedings initiated over Party F in Country H shall primarily be governed by the EU Insolvency Regulation, if the relevant requirements are met (please see below). If the relevant requirements are not met and absent an international agreement applicable to the insolvency of Party F, the Insolvency Act will apply.

<u>Applicable regime under the EU Insolvency Regulation</u>

If the EU insolvency regulation applies, the courts of Country H shall have jurisdiction to open insolvency proceedings ('main insolvency proceedings'). That being said, the law of Country H will generally be applicable to the proceedings and the effects of the insolvency proceedings under the law of Country H would take effect in Slovenia in the same manner as in Country H at that moment as specified in the law of Country H.

Applicable regime under the Insolvency Act

When a foreign company has a branch registered in the Republic of Slovenia and insolvency proceedings are initiated against the foreign company as the parent company (debtor) in its home country, the foreign insolvency administrator may request recognition of foreign insolvency proceedings in Slovenia. Foreign insolvency proceedings include any court or administrative proceedings conducted in the foreign country for the joint benefit of the creditors of a debtor for the purpose of financial restructuring or winding-up of the debtor and where a foreign court and administrator oversee the liquidation of the debtor's assets and the management of its operations.

Once the foreign administrator files the petition for the recognition of the foreign insolvency proceedings, the court issues a decision on recognition if the conditions under the Insolvency Act are fulfilled. The court may recognise the foreign insolvency proceedings as main proceedings (if the debtor has its main place of interest in foreign country) or ancillary proceedings (the debtor does not have his main place of interest in the country in which the foreign insolvency proceedings are conducted and the debtor has a business unit in that country). Once the court adopts the decision on recognition, such decision is published on the AJPES webpage.

Once the foreign insolvency proceedings are recognised, consequences of the insolvency proceedings come into effect:

a. if the foreign insolvency proceedings are recognised as main insolvency proceedings (which would likely be the case in case Party F has a main centre of interest in country H): (i) it is not possible to commence the enforcement proceedings against the debtor; if such proceedings are already running, they should be interrupted; and (ii) the authorizations of the insolvent debtor's representatives and authorised persons to manage the assets of the insolvent debtor and perform other transactions are transferred to the foreign administrator;

b. if the foreign insolvency proceedings are recognised as ancillary insolvency proceedings the court determines which effects come into effect: (i) the effects under a. above; (ii) the court may authorise foreign administrator to manage or sell the entire or part of the assets of the debtor that is in Slovenia, if the interest of the home creditors are appropriately safeguarded; (iii) determines an obligation to handover the business documentation to the foreign administrator.

Once the foreign insolvency proceedings are recognised in Slovenia, it is possible to initiate domestic insolvency proceedings only as ancillary insolvency proceedings, whereas the legal effects of such domestic insolvency proceedings are limited to the assets of foreign debtor in Slovenia and in the scope this is necessary due to cooperation between the judicial bodies to other assets of the insolvency debtor that forms its estate.

(b) **Party F being a financial institution or other specific type of entity**

In respect of credit institutions and insurance companies having their seat in an EU Member State, the Insolvency Act provides that the same provisions apply as for the corporate entities, i.e. that the legal effects of the bankruptcy, liquidation or voluntary dissolution proceedings conducted in relation to them will be governed by the laws of the Member State in which the credit institution or insurance company has its seat. Resolutions made in such proceedings must be recognised without any further procedure.

C.II.2.2 ***If there were separate proceedings in Slovenia with respect to the assets and liabilities of the Slovenian Branch, would the receiver or liquidator in Slovenia and the Slovenian courts, based on the facts above, include Party F's position under the EFET Agreement, in whole or in part, among the assets of Slovenia and, if so, would the receiver or liquidator and the Slovenian courts recognize the close-out netting provisions of the EFET General Agreement in accordance with their terms? The most significant problem arising would be if a Slovenian receiver, liquidator or court considering a single EFET General Agreement were to require a counterparty of the Slovenian Branch of Part F to pay the mark-to-market value of Individual Contracts entered into with the Slovenian Branch to the liquidator or receiver of the Slovenian Branch, while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from 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.***

Under the Companies Act, the branch is an organisational unit of the foreign company registered as such with the Slovenian Commercial Register. Although the branch does not have own legal personality and assumes rights and obligations for the name and the account of its founder, the business books of the branch and the foreign business must be clearly segregated.

Consequently, it is possible that the Slovenian Branch enters into Individual Contracts under the umbrella of the EFET General Agreement concluded by Party F. In such case, the rights and obligations of the Slovenian Branch should be deemed as undertaken for the name and for the account of Party F.

In our view a Slovenian Branch of Party F would not be considered as a separate legal entity, but the assets of the Slovenian Branch would be considered as assets of the Party F (and as business unit of Party F within the meaning of Article 446(f) of the Insolvency Act), and therefore most likely the Slovenian proceedings would run as ancillary insolvency proceedings to the main foreign insolvency proceedings.

Note also that the Insolvency Act includes specific rules on the place of the assets: (i) in case of the rights involving the real property, the assets are considered to be placed in the country where the real property rights are registered; (ii) in case of movable property, where the movable property is situated; and (iii) in case of receivables, where the debtor has its main place of interest.

As the receivables deriving from EFET General Agreement, even if entered into by the Slovenian Branch, would be considered as being entered into on behalf of Party F, the Slovenian insolvency court would likely consider such receivables being part of the assets in the Party F's place of main interest.

However, in absence of any particular court practice, we could not exclude possibility that the court takes the view that EFET General Agreement entered into by the Slovenian Branch is an asset having its place in Slovenia. In this case the Slovenian court would apply the consequences of domestic insolvency proceedings to such assets in Slovenia, meaning that if the EFET General Agreement would be considered among the assets of Slovenia the close-out netting provisions would be afforded safe harbour treatment under the Slovenian Insolvency Act and be enforced pursuant to the EFET General Agreement as set out in Point C.I.1.1. above would apply.

However, the Insolvency Act does not specify how the single agreement concept would be preserved if there would be separate insolvency proceedings opened over the Slovenian Branch.

Although different interpretations of the Insolvency Act are possible, we believe that the principles of equal satisfaction of creditors and preservation of a single agreement concept would be paramount in evaluation of both the Party F's and the Slovenian Branch's position under the Individual Contracts. If a different viewpoint was taken, it would allow Party F to seriously manipulate its counterparts by cherry-picking locations for operation where its assets would be insulated from claims under the single agreement concept which Party F's counterparts relied in when concluding the EFET General Agreement.

C.II.2.3 ***Please consider your answer to the question assuming instead that Party F has no branch located in Slovenia but has assets in Slovenia.***

We are of the view that our conclusions set out in Point C.II.2.2 with respect to application of the Insolvency Act would apply equally.

C.III COLLATERAL

For the purpose of this section (*Collateral*), we based our opinion on the following additional assumptions provided in the Instruction Letter:

- Although it is a bilateral form in 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.

- The counterparties agree that Eligible Credit Support will include cash, Letters of Credit or Parent Company Guarantee. 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.

Furthermore, in order to be able to provide more explicit answers and eliminate ambiguity to the extent possible, we further assumed the following:

- Letters of Credit may be a standby letter of credit (in Slovenian: "*akreditív*") as regulated in Section XXXVII of the Obligations Act and pursuant to the Uniform Customs and Practice for Documentary Credits (UCP 600).

- Parent Company Guarantee means the undertaking of the parent company of Party A to pay to Party B any amounts due pursuant to the terms of the EFET General Agreement upon the request of Party B preceded by the default of payment of those amounts by party A.

- We understand that among under the laws of Slovenia a distinctions should be made between various Eligible Credit Support (i.e. Cash, Letters of Credit and Parent Company Guarantee). Therefore, the answers to the questions of the present point are, where necessary or practicable, split accordingly.

C.III.1 *Under the laws of Slovenia, what law governs the transfer of ownership in various forms of Eligible Credit Support deliverable under the EFET Credit Support Annex?*

The law chosen by the Parties in the Credit Support Document (or later) shall govern the transfer of the ownership over the Eligible Credit Support under the EFET Credit Support Annex. Further to Rome I, the parties are free to choose the governing law applicable to their contractual agreements. However, if at the time of the choice all other elements relevant to the situation are located in Slovenia (i.e. in a country other than the country whose law has been chosen), then according to Article 3 (3) of the Rome I, the choice of the parties shall not prejudice the application of provisions of the law of Slovenia which cannot be derogated from by agreement. Beyond the scope of the Rome I, the Parties choice of law will be upheld in Slovenia on the basis of the Private Law Act, unless the Private Law Act or other treaty stipulates otherwise.

We understand that both under the Rome I and the Private Law Act, the law applicable to the EFET General Agreement will also govern the EFET Credit Support Annex in the absence of an explicit and clear choice of law in the Credit Support Documents (or later) by the Parties. The reason for this is the accessory nature of the EFET Credit Support Annex to the EFET General Agreement. If the Parties have not either chosen the law applicable to the EFET General Agreement, the international private law rules of the court investigating the EFET General Agreement and the EFET Credit Support Annex will determine which law the EFET General Agreement and thus, the EFET Credit Support Annex is governed by.

C.III.2 ***Would the laws of Slovenia characterize 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-characterized as creating a security interest? If so, is there any way to minimize such risk? What would be the consequences of such re-characterization?***

(a) Cash

If cash is granted as collateral by Party A to Party B and either of the parties is eligible for protection under the Financial Collateral Act (please see Point C.I.1.1(b) above), such transfer of cash would constitute an unconditional transfer of ownership over the transferred cash, unless parties agree otherwise, and Party B acquires the full right of usage and disposal regarding the cash by virtue of such transfer. Party B may also keep the cash once the conditions for enforcement of the collateral are fulfilled, or perform a set-off with a secured claim. The excess amount must be transferred back to the provider of the financial collateral. However, at the time the secured claim becomes due, Party B would need to have such cash available, unless the agreement on financial collateral provides differently. For the avoidance of any doubt, we would recommend that the parties expressly provide that the cash may be used and it does not need to be replaced, but the used amount of cash is set-off with the claim after it becomes payable.

The Financial Collateral Act also provides for the possibility to establish a financial collateral by way of a security interest in favour of Party B, where the full ownership of the financial collateral would remain with Party A. However, as long as the Parties clearly express their will to establish an unconditional transfer of ownership, there should be no risk of any other characterisation of the security right. However, even in such case the Party B may use and dispose of cash, if the provider of financial collateral would expressly authorise the Party B. For the avoidance of any doubt, we would recommend that the parties expressly confirm that their intent is to establish a financial collateral through an unconditional transfer of ownership, all within the meaning of the Financial Collateral Act.

The above applies irrespective of the Section 7 para 3 of the EFET Credit Support Annex which states that the Credit Support Annex is not intended to create security interest in any cash or other property transferred by the Parties. Namely, notwithstanding this provision, the transfer of cash for security purposes is seen as a security interest.

Outside of the scope of the Financial Collateral Act (i.e. whereby neither Party A nor Party B is eligible for protection under the Financial Collateral Act) a transfer of cash from a bank account of Party A to the bank account of Party B for purpose of security could be interpreted in two ways, as advanced payment to secure the performance of obligations or as pledge on the movable assets.

If the transfer of cash is considered as advanced payment to secure the performance of obligations, please note that Slovenian law does not include any specific provisions in this respect. Therefore the parties are free to regulate their contractual relationship and provide for unconditional transfer of ownership in the transferred assets.

If the transfer of cash is considered as pledge on the movable asset, then rules of the Property Code applies. The pledge on movables can be either established by the transfer of the movable asset to the pledgee (in Slovenian: "*ročna zastava*") or in a way that pledged movable assets are retained by the pledgor (in Slovenian: "*neposestna zastava*"). However, in both cases the ownership on the pledged assets would not be deemed as being transferred in an unconditional ownership of the Party B. Moreover, any agreement between the parties on the transfer of ownership of the pledged asset at the time when the claim becomes due that is made between the parties before the claim becomes due is null and void (however, such agreement made after the claim becomes due would be lawful).

However, we understand pursuant to §7(3) of the Credit Support Annex that the provisions of the Credit Support Annex are not intended to create mortgage, lien, charge, pledge, encumbrances and other security interest in cash. Hence, in our view the Credit Support would be interpreted as transfer of cash, i.e. payment.

(b) Letters of Credit

Our analysis below is based on the assumptions that

- Letters of Credit under the EFET Credit Support Annex are without exception issued for the benefit of the Transferee with respect to the uncovered exposure of Party B, and

- the provision of a Letters of Credit is not effected by way of an assignment of an Letters of Credit already issued in favour of the Transferor.

Based on §3(2)(b) of the EFET Credit Support Annex, the Letters of Credit are provided for the benefit of Party B.

By issuing the Letter of Credit in favour of Party B, Party B shall become the sole beneficiary of the relevant Credit Support Document. As a principle, the creditor may not transfer the right of enforcement of the Letter of Credit without consent of the guarantor, however, the creditor may be entitled to designate several persons to whom the payment is to be made when the conditions under the Letter of Credit are fulfilled.

(c) Parent Company Guarantee

Our analysis below is based on the assumptions that

- Parent Company Guarantee are without exception issued for the benefit of the Transferee with respect to the uncovered exposure of Party B, and

- the provision of a Parent Company Guarantee is not effected by way of an assignment of a Parent Company Guarantee already issued in favour of the Transferor.

As an initial note, generally the non-banking guarantees are not regulated by the Slovenian law. Hence, there is a discussion in the Slovenian legal theory, whether the non-banking guarantee as an abstract, non-accessory legal act is enforceable as such in Slovenia. However, it seems that the predominant theory is leaning in favor of the enforceability of the non-banking guarantees and mutatis mutandis application of the provisions of the Obligations Act regulating bank guarantees.

The enforceability and application of the provisions of Obligations Act also to non-banking guarantees has also been confirmed by (at least) one case. In the respective case, the Higher Court held that the non-banking guarantee is an independent guarantee within the meaning of Article 1087 of the Obligations Act, and that the fact that the guarantor is not a bank shall not preclude the applicability of the respective provision. The court further held that use of wording "on first demand" and "without protest" indicate that the guarantee was independent from the foundation legal transaction, and therefore represents an independent and abstract obligation of the guarantor. The guarantor was therefore independently bound to pay the guaranteed amount under the conditions of the guarantee, if the debtor will not fulfill its contractual obligation under the main agreement. However, the guarantor may refuse to pay in case of unfair calling (this is in line with prohibition of abuse of rights).

If the Parent Company Guarantee is an independent guarantee, as a principle, the creditor may not transfer the right of enforcement of the Parent Company Guarantee, unless it also assigns its claim secured by the Parent Company Guarantee, and transfer obligations in relation to the secured claim.

If the Parent Company Guarantee would not be considered as an abstract independent guarantee, it could be deemed as a surety under Slovenian law, according to which the Parent Company would undertake to settle a claim of Party B against Party A, in case Party A does not settle the claim. Depending on the modality of the surety, Party B may request the settlement of the Claim from the Parent Company if the Party A does not settle the claim (subsidiary surety) or at the same time, if the Parent Company undertook the obligation as surety debtor and payer (joint and several surety). In such case, the Parent Company Guarantee cannot be transferred without consent of the

If the Parent Company Guarantee is deemed surety, the surety is always a creation of a security interest that depends on the existence of the main claim and is only transferrable together with the main claim.

C.III.3 ***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 Slovenia 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?***

Once the ownership title is established, no further steps are required under the laws of Slovenia to ensure that the ownership title of Party B continues. Yet, the ownership is only transferred to the Party B when cash serves as the collateral.

C.III.4 ***What is the effect, if any, under the laws of Slovenia 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?***

(a) Cash

Although the Financial Collateral Act does not specifically regulate the right to substitute collateral, it derives from the provisions of the Financial Collateral Act that such substitution is available / possible. Namely the Financial Collateral Act provides that if the agreement on financial collateral includes provisions giving rights to substitute the collateral in case of decrease of the collateral's value or increase of the obligations of the secured claims, such substitution should not be contestable only because it was made just before the initiation of insolvency proceedings (e.g. in the claw-back period) or the claim was established before the collateral has been established / substituted.

Otherwise, Slovenian law generally does not regulate the substitution of the collateral, therefore in our view the parties may freely regulate the substitution in the agreement, and may freely regulate also the absence or presence of consent to substitution by Party B.

Under § 6 of the EFET Credit Support Annex, the execution of the substitution right of Party A is subject to Party B's consent. Pursuant to this provision, Party A would not generally be entitled to arbitrarily substitute the cash. Furthermore, as the transfer of cash (both within the scope of the Financial Collateral Act and outside of its scope) would constitute an unconditional transfer of ownership rights, Party A would not be able to execute its substitution right without the consent of Party B.

(b) Letters of Credit

The Parties may generally agree on a right of Party A to substitute the Letter of Credit. However, Letters of Credit create the abstract obligation of the assigned bank to pay out to Party B the amount determined in the Letter of Credit. In this way, a bank has a genuine obligation towards Party B independent from the underlying obligation between the two Parties. Therefore, the obligation of the assigned bank may only be amended or terminated by the agreement between all parties, i.e. Party A, Party B and the bank.

Under § 6 of the EFET Credit Support Annex, the execution of the substitution right of Party A is subject to Party B's consent. Pursuant to this provision, Party A would not generally be entitled to arbitrarily substitute the Letter of Credit. Furthermore, because of the independent nature of Letters of Credit with regard to the General Agreement, Party A would not be able to substitute the Letter of Credit without the consent of Party B.

(c) Parent Company Guarantee

The Parties may generally agree on a right of Party A to substitute the Parent Company Guarantee. Under a Parent Company Guarantee, the parent company's obligation to pay the secured amount to Party B is limited to the amounts arising from the EFET General Agreement and the Individual Contracts arising thereunder.

If the Parent Company Guarantee would be considered as abstract and independent guarantee similar to banking guarantee, the Parties may generally agree on a right of Party A to substitute the Parent Company Guarantee. However, Parent Company Guarantee creates the abstract obligation of the parent company to pay out to Party B; parent company therefore has a genuine obligation towards Party B. Therefore, the obligation of the parent company may only be amended or terminated by the agreement between Party A and the parent company (and considering § 6 of the EFET Credit Support Annex, Party B's consent would also be required).

C.III.5 ***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 Slovenia 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"?***

We understand that assuming that § 11 of the EFET General Agreement is valid and enforceable in Slovenia insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, § 11 of the EFET Credit Support Annex will also be valid and enforceable to the extent that it provides for the value of the collateral provided (and received as further detailed in point C.III.2 above on page 41, i.e. the title transfer has occurred) to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as "other amounts payable". As such amounts are already provided and transferred by Party A, we understand that those will be deemed as a negative item of Party B in the netting process, and as such will decrease the claim of Party B. Without prejudice to the above, please also consider our conclusions under point C.III.2 (page 41) regarding Letters of Credit above.

We understand that the term *"collateral provided and not yet transferred"* in this question refers to *"Eligible Credit Support demanded but not received"* as set out in § 3.1 of the EFET Credit Support Annex. Further to § 3.1 of the EFET Credit Support Annex this collateral shall be deemed to be held by the demanding Party. We are of the view that although these assumptions appear to support the title transfer nature of the collateral, such a collateral which does not exist (because it has not been transferred) cannot be included in the calculation of the net amount payable under § 11 of the EFET General Agreement as "other amounts payable".

As to the detailed analysis of close out netting, please refer to point C.I.1.7 (page 27) of this Opinion.

C.III.6 ***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?***

(a) Cash

If the outright transfer of ownership over Cash is per se recognised by the laws of Slovenia, and the Eligible Collateral has already been provided (i.e. creation of title and handover has occurred prior to the commencement date of the bankruptcy proceedings), then the insolvency of Party A shall have no effect on the rights of Party B.

If the Cash has not been transferred yet, but only demanded by Party B or if the transfer of Cash is characterised by a Slovenian court as a pledge, Party B, could seek a right to separate satisfaction (in Slovenian: *"ločitvena pravica"*, see also point 1.1.5 (a) of Annex C). In this case it should be noted that the practice of Slovenian courts in respect of monetary proceeds is currently rather scarce, and it is not entirely clear whether monetary proceeds could be subject to a separation right or not. There are few judgements supporting the argument that monetary proceeds could be subject to a separation right. One court in this respect held that the Insolvency Act does not specifically provide that only individual things can be subject to separation rights (as contrary to generic things, such as cash), and thus cash as such could be subject to separation right. The only difference between both in the opinion of the court was that that particular individual thing needs to be submitted to the creditor, while in case of generic things, the same amount of generic things need to be submitted to the creditor.

If the collateral granted falls within the scope of the Financial Collateral Act (see above under point C.I.1(b)), the rights of Party B in respect to cash transferred to it as Eligible Credit Support shall generally be enforceable irrespective of Party A's insolvency in accordance with the Financial Collateral Act. However, please note that the Financial Collateral Act provides that if the agreement on financial collateral includes provisions giving rights to substitute the collateral in case of decrease of the collateral's value or increase of the obligations of the secured claims, such substitution should not be contestable *only* because it was made just before the initiation of insolvency proceedings (e.g. in the claw-back period) or the claim was established before the collateral has been established / substituted. Therefore, we cannot entirely exclude that the insolvency administrator could contest the substitution of the collateral made in accordance with the EFET General Agreement and the EFET Credit Support Annex.

(b) Letter of Credit

We understand that this question is partially redundant in light of the amended wording of § 11 of the EFET Credit Support Annex, Version 2.0, where the primary intention is rather not to include those Eligible Credit Supports that were provided in the form of Letters of Credit for the purpose of determining the Termination Amount under § 11 of the EFET General Agreement by the Valuation Agent. Still, we cannot exclude that Party A will draw against a Letter of Credit which it was provided with, in which case Party B should be discharged in an amount equal to such drawings pursuant to § 11 of the EFET Credit Support Annex.

Notwithstanding the generality of the foregoing we are of the view that if a Letter of Credit is issued directly and expressly for the benefit of Party B as beneficiary (under the EFET Credit Support Annex), then under Slovenian law this will constitute a direct legal relationship between the issuing party and Party B. Accordingly, we understand that such Letter of Credit will be valid and enforceable according to its terms and conditions regardless of the commencement of any bankruptcy proceeding concerning Party A.

(c) Parent Company Guarantee

If a Parent Company Guarantee is issued directly and expressly for the benefit of Party B as beneficiary, then under Slovenian law this will constitute a direct legal relationship between the issuing party and Party B. Accordingly, we understand that such Parent Company Guarantee will be valid and enforceable according to its terms and conditions regardless of the insolvency of Party A (see also above under C.III.2(c)).

C.III.7 *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?*

(a) Cash

The Financial Collateral Act provides that the financial collateral agreement and provision of the collateral should not be treated as void or contestable only because it was concluded in certain period before the submission of the petition for insolvency proceedings. In addition, the financial collateral agreement should not be considered void or contestable only for the reason that it was concluded or performed on the day the submission of the petition for insolvency proceedings or commencement of insolvency proceedings was made. This is the case so long as the recipient of collateral evidences that at the time of the conclusion of the agreement or provision of collateral he did not know or was not able to know that the insolvency proceedings have been initiated or commenced.

The Financial Collateral Act also provides that if the agreement on financial collateral includes provisions giving rights to substitute the collateral in case of decrease of the collateral's value or increase of the obligations of the secured claims, such substitution should not be contestable *only* because it was made just before the initiation of insolvency proceedings (e.g. in the claw-back period) or the claim was established before the collateral has been established / substituted.

If the EFET General Agreement would be deemed as financial collateral agreement within the meaning of Financial Collateral Act, the possibility to contest the substitution (or transfer) of collateral would be met and demonstrated only, if there was a substitution (or transfer) of collateral outside the scope of conditions laid down in the collateral agreement and without a basis in the contracts for which the collateral agreement was concluded. In our view, it would only in such event be possible to consider that the debtor's legal (economic) position was interfered with in a manner that was not contractually customary for this type of transaction whereby the rights of other creditors in bankruptcy proceedings were prejudiced.

However, substitution of Letters of Credit/Parent Company Guarantees with cash may be problematic even in case the Financial Collateral Act applies. This is due to the fact that Letters of Credit/Parent Company Guarantees represent an obligation of the bank/parent company (and not directly Party A) towards Party B while cash as a security is provided directly from Party A. The substitution of Letters of Credit/Parent Company Guarantees with cash would represent the establishment of a new obligation of Party A and, as such, there is an increased risk that such substitution may be subject to challenge during the "suspect period".

If the Financial Collateral Act does not apply and cash is transferred as collateral between parties that are not eligible for protection under the Financial Collateral Act, the transfer of cash to Party B could be challenged even if Party B obtained its security in accordance with an existing contractual arrangement. However, the success of such challenge would also depend on the circumstances of each individual case, and whether the general rules on claw-back are fulfilled.

Under the general rules of the claw-back under the Insolvency Act, the conclusion or performance of the contracts in the previous 12 months before the initiation of the bankruptcy proceedings may be subject to claw-back, if the following conditions under the Insolvency Act are fulfilled:

a. As a consequence of the transaction the net value of the debtor's assets has decreased and hence the creditors' claims would be repaid in a lower percentage; or the person for whose benefit the transaction was performed received more favourable conditions for repayment of its claim. The first condition is assumed, if (i) the performance have been made on the basis of a bilateral agreement for the benefit of the creditor, who performed his counter obligation before the insolvent debtor; (ii) the creditor acquired a right to separate settlement of a claim that was established before the action of a debtor; or (iii) the transaction was performed in the period of the compulsory settlement proceedings.

b. The person for whose benefit the transaction was performed knew or should have known of the insolvency of the debtor (this condition does not need to be fulfilled, if the person obtained the benefit free of charge or for consideration of small value). This condition is assumed if the creditor's claim was settled before it was due or in way that is not in accordance with business practice or usual practice between the parties or if the transaction was performed in the last three months before the initiation of the bankruptcy proceedings.

The act of legal significance performed by the bankrupt party by which the other party (creditor), received something from without reciprocal obligation or for a reciprocal obligation of little significance, may be challenged even if the subjective element is missing. Such act can be challenged if it was performed within 36 months prior to filing a petition.

Under Slovenian law there are no special regulations that would prohibit a transfer of additional collateral pursuant to the mark-to-market provisions. Nevertheless, please note that despite the fact that the transfer of additional collateral is *valid per se*, conducting such collateral arrangement for an antecedent or pre-existing obligation in the "suspect period" is likely to be regarded as "suspicious" and therefore contested in the insolvency procedure.

(b) Letter of Credit / Parent Company Guarantee

The issuance of Letters of Credit/Parent Company Guarantee in favour of Party B may not be challenged directly within the insolvency procedure of Party A. This is due to the fact that a Letter of Credit and the Parent Company Guarantee represent obligations of third parties who issued such collateral, and not an obligation of Party A. This is without prejudice to the possibility of the bank/parent company to claim the funds paid to Party B on the basis of the guarantee in Party A's insolvency.

C.III.8 ***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 Slovenia 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 point C.III.2 above?

To the extent permitted by the provisions of the Civil Code, we understand that the EFET Credit Support Annex is an appropriate form to create the intended outright transfer of ownership in the collateral to Party B. Apart from those expressly referred to above, there are no further requirements to ensure the validity and effect of the transfer.

C.III.9 ***Do you have other specific recommendations on the subject of collateral that you would like the EFET members to consider?***

As above.

C.IV GENERAL ENFORCEABILITY

Is the EFET General Agreement and any of the Annexes (including the EFET Credit Support Annex) defined in point A enforceable under the laws of Slovenia in accordance with its own terms?

Based on the assumptions and subject to the limitations and opinions set out in this Opinion, the documents listed in point A are generally enforceable under the laws of Slovenia.

C.IV.1 Non-performance due to Force Majeure (§ 7 of the EFET General Agreement)

Even though the Civil Code does not define force majeure, it is widely used in contractual relations. Under the Slovenian law the Parties are free to agree on the terms of their agreement, and may depart from the provisions relating to their rights and obligations with mutual consent, unless expressly prohibited by the Civil Code. Thus, the Parties may agree that a *force majeure* occurrence will result in release from certain obligations and therefore we are of the opinion that § 7 of the General Agreement is valid and enforceable under Slovenian law.

We note that Article 116 of the Civil Code regulates the *"impossibility of performance"*, a concept similar to force majeure: *"[I]f the performance of the agreement of one party becomes impossible due to the occurrence outside of the liability of any of the parties, the obligation of the other party also terminates; in case the other party already performed its obligation, the other party may demand repayment under the rules of unjust enrichment."* In case of partial impossibility of the performance of the obligation of one party, the other party may only terminate the agreement, if partial performance does not satisfy the other party's expectations / needs, otherwise the agreement remains in force, however, the obligation of the other party is proportionally decreased.

In addition, Article 112 of the Civil Code regulates the termination or amendment of an agreement due to changed circumstances: *"[I]f after the conclusion of the agreement circumstances arise that hinder the performance of the obligations of one party, or due to them the purpose of the agreement cannot be reached, in both cases in such way that the agreement clearly does not meet the expectations of the parties and it would be according to the general conviction unjust to keep such agreement in force, the party, whose performance is hindered or may not achieve the purpose of the agreement, may request termination of the agreement."* Please note however, that the party may not terminate the agreement, if such circumstances should be taken into account when entering into agreement, or if the party could avoid the respective circumstances. In addition, the party may not claim the changed circumstances which occur after its obligation becomes due. The agreement may not be terminated if the other party offers or consents to fair amendment of the contractual terms. The court may also award appropriate damages to the other party for damage incurred by the termination of the agreement.

We are of the view that Force Majeure provisions in § 7 of the EFET General Agreement are deviations from the referred provision of the Civil Code based on the Parties' freedom of contract.

C.IV.2 Remedies for non-performance (§ 8 of the EFET General Agreement)

Considering the fact that § 8 of the EFET General Agreement regulates the contractually agreed consequences of delivery and acceptance failures on mutual grounds for the benefit of both parties with the same remedy and compensation method, we are of the view that § 8 of the EFET General Agreement, and claims based thereon, will be most likely enforceable and upheld by Slovenian courts.

In addition to the above, the parties are generally free to determine the terms of their agreement, and may depart from the provisions relating to their rights and obligations with mutual consent, unless prohibited by the Civil Code.

In this respect it should be noted that the Civil Code in principle provides for similar provisions as provided under that § 8 of the EFET General Agreement. Please do note that since the Civil Code does not expressly provide that parties are prohibited to agree otherwise, these provisions are likely dispositive, and may be derogated from by the parties.

Article 504 of the Civil Code provides that in case of early termination of the Agreement due to breach of one party, and the object of sale has a daily price, the other party may demand the difference between the price included in the agreement and daily price on the day, when the agreement has been terminated. The daily price taken into consideration is the market price of the place where the transaction has been performed. If such place does not have a daily price, the calculation is made on the basis of the daily price in the market in another place plus difference in the transportation costs. In addition, Article 505 provides that in case of purchase and sale of certain quantity of assets, where one party does not perform its obligation in time, the other party may sell or purchase the respective quantity for the purpose of covering its loss and consequently request the difference in purchase price from the other party. Article 606 of the Civil Code provides that the party that did not breach the agreement has a right to request damages, which exceeds the damages as provided above.

C.IV.3 Limitation of liability (§ 12 of the EFET General Agreement)

According to the Civil Code, the limitation or exclusion of liability for damages cannot be contractually agreed in advance for any harm that is caused intentionally or by gross negligence. The court may avoid a contractual limitation or exclusion of liability for damage incurred by slight negligence, if the agreement is a result of the monopoly of one party or otherwise unequal position of the parties. The Civil Code further provides that the parties may provide for capped damages, but only if the capped damages are not obviously disproportionate to damage or if law does not provide something else for individual cases. Even in case of the capped damages, the creditor has a right to full recovery of damages in case the harm is caused intentionally or by gross negligence.

The existing wording of § 12.3 of the EFET General Agreement does not fully correspond to the relevant provisions of the Civil Code, as it excludes the liability for loss of profit (which is a type of damage covered by the Civil Code). Irrespective of the provision of § 12.4 of the EFET General Agreement the damaged party could also request the damages in case of slight negligence under conditions described above. The capped fee could also be challenged if it would be disproportionate to harm.

C.IV.4 Other comments relating to provisions of the EFET General Agreement

§ 13.3 of the EFET General Agreement

The respective provision provides for the payment netting in normal circumstances i.e. during validity of the contract. Netting is not governed by the Civil Code, but by the Resolution Act, the Financial Collateral Act and the Insolvency Act (under the latter a netting agreement forms part of definition of the qualified financial agreement according to the Article 24.a and consequently the other qualified agreement according to the Article 24.b). For more details please refer to C.I.

On the other hand set-off is governed by the Civil Code. Under the Civil Code, set-off is not automatic, since it is subject to notification of one party to the other.

§ 19 of the EFET General Agreement

Note that according to the mandatory rule of the Civil Code (paragraph four of the Article 417) in case of commercial agreements (agreements between commercial entities), the prohibition of the assignment of a particular claim under the agreement does not effect the validity of the assignment of that claim. This means that the rights and obligations under the EFET General Agreement could be validly assigned, but the party breaching such prohibition would be liable for damage to the other party (if any).

C.V CONFIRMATION PRACTICES

For the purpose of this point, the following additional assumptions were given in the Instruction Letter:

- As far as the Confirmation practice is concerned, when entering into an Individual Contract, the counterparties in each case (i) make oral reference to the EFET General Agreement when concluding the relevant Individual Contract over the phone or (ii) refer to the EFET General Agreement when subsequently exchanging confirmations or similar electronic, written or non-verbal means of entering into or confirming Individual Contracts (in whichever form, including telex, fax, SWIFT, electronic confirmation or posting matching service or other means of electronic transmission).

- 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 EFET Electronic Confirmation Agreement.

C.V.1 Binding Individual Contract

C.V.1.1 *Does the formation of a legally binding and enforceable Individual Contract require any formal act (e.g., execution in writing, signature, registration or notarization)?*

As a general rule, Slovenian law does not require any specific form for entering into an agreement, unless a specific form is prescribed by law. Therefore, agreements can be concluded either orally or in writing. Moreover, the intent to conclude a contract may also be expressed by conduct that implies such intent. Nevertheless, irrespectively of the form of the agreement, the Parties are obliged to agree on all essential terms of the relevant transaction.

Following the general principle that there are no formality requirements regarding the conclusion of Individual Contracts, the signature is also not necessary.

As there are no mandatory formality requirements under Slovenian law, the Individual Contract shall be deemed concluded at the time when the Parties reached the agreement on the essential terms, thus a written Confirmation is not necessary for its conclusion. This rule is in accordance with § 3.2 of the EFET General Agreement which provides that a written Confirmation shall not constitute a requirement for a legally valid Individual Contract.

Putting the Individual Contract / Confirmation in writing is, in any case, advisable in order to avoid later disputes regarding the content of the agreement. Similarly, a signature (electronic or otherwise) may help to demonstrate the authenticity and integrity of the agreement and could serve as evidence in case of a dispute. This is also in line with Article 54 of the Civil Code which provides that the parties may agree on a specific form to ensure proof of conclusion or terms of the agreement. In this case the agreement may be also concluded in other form and is valid, but the parties have an obligation to enter into agreed specific form for the agreed purpose.

Note that above applies to the Individual Contracts as parts of the EFET General Agreement, whereas certain type of transactions (e.g. letters of credit, bank guarantees and other collateral) would need to be entered into in a prescribed form to ensure validity. If not, such transactions could be null and void pursuant to Article 55 of the Civil Code.

Finally we note that, although in our view the following goes beyond the original scope of the EFET General Agreement, industry specific regulations may also prescribe formality requirements. For example, the Securities Market Act provides that all contracts between investment firms and their clients must be entered into in writing.

C.V.1.2 ***At what point in time does an Individual Contract agreed upon orally become legally binding or enforceable?***

An Individual Contract agreed orally becomes legally binding and enforceable as from the time the essential terms of the agreement have been agreed upon (either over telephone or face-to-face or through any other verbal communication).

C.V.1.3 ***Does failure to object to incorrect terms in a received Confirmation constitute "acceptance" of those terms? If so, is there a relevant time period?***

In our view, § 3.1 of the EFET General Agreement governs conclusion of the Individual Contract which may be done orally or otherwise. The Individual Agreement would be deemed concluded when parties agree on essential terms of the agreement orally or otherwise, whereas the Confirmation serves only as evidence of the conclusion and does not affect the validity of the Individual Contract. Hence, the failure to object to the incorrect terms of the Confirmation should not be deemed as acceptance of those terms, but it may hinder the position of the party failing to object to incorrect terms of the Confirmation in case of dispute concerning the incorrect terms due to a disagreement (*in Slovenian: "nesporazum"*) between the parties, due to mistake of a Party and similar.

Therefore, we would strongly recommend reviewing the received Confirmations and communicating any discrepancies thereunder to the delivering party immediately in case there had been a disagreement (in Slovenian: "*nesporazum*") between the parties about the terms of the agreement.

C.V.1.4 ***Is the reference to the relevant EFET General Agreement sufficient for the inclusion of the Individual Contract in the Agreement?***

We are of the opinion that a reference to the relevant EFET General Agreement entered into between the Parties is sufficient for the inclusion of the Individual Contract in the Agreement.

Notwithstanding the above, we recommend including / keeping explicit references to the applicability of the EFET General Agreement in all Individual Contracts and Confirmations, where applicable.

C.V.2 Means of Evidence

Assuming there is a dispute with respect to the existence or the terms or conditions of an Individual Contract, would any or all of the following be eligible for rendering or otherwise properly introducing evidence of the agreed terms of the Individual Contract in court: (i) taped recording; (ii) witness' statement; (ii) e-mail or other electronic message or transaction entry system; and/or (iv) facsimile? Are there any local requirements or other considerations that are relevant to each form of evidence?

Under the general rules of Slovenian civil procedures, on the one hand, there is no restriction on admissible means of evidence, and the Parties may use any means of evidence which they deem suitable for proving their claim. On the other hand, none of the means of evidence has a pre-determined value or decisive importance in the evidentiary procedure since the court is obliged to evaluate the evidence as whole. Consequently, any of the listed means of evidence may be eligible for rendering evidence of the agreed terms of the Individual Contract. We further note that the above rules of evidence cannot be modified by agreement of the Parties.

Certain types of documentary evidence have increased probative value. Public documents (both paper form and electronic documents) issued by the court, public notary or other authority within their scope of competence in a standard form have direct and primary evidentiary status and probative value. As such, a public document is a true record of the measures, resolutions, facts or declarations asserted or recorded within. Presenting evidence against public documents is limited to the extent permitted by law. Public documents are presumed valid until evidence to the contrary is presented. We would also like to point out that hard-copy original documents are likely to have a better evidentiary value than an exchange of electronic documents, due to a more difficult challenge of their authenticity.

We further note that recording telephone conversations is deemed a collection of personal data for the purpose of the data protection law, which requires the prior permission of the person concerned and/or notice that the conversation is being recorded.

C.VI CORE PROVISIONS

C.VI.1 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 C.I or C.II (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.

Based on the assumptions and subject to the limitations and opinions set out in this Opinion, we understand that none of the elections as suggested in the EFET General Agreement or any of the above Annexes (including the EFET Credit Support Annex) would change the substance of our conclusions reached under parts C.I or C.II (Enforceability of Close-out Netting). As far as the EFET Credit Support Annex is concerned, the potential effect of electing to allow substitution with or without consent of Party is indicated in point C.III.4 (page 43) above.

C.VI.2 Considering your conclusions reached under Part C.I or C.II (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 C.I or C.II (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 in Annex 1 to the EFET General Agreement.

We agree that § 1, § 10 and § 11 of the EFET General Agreement are so essential that a material alteration thereof could affect our conclusions reached in respect of the Enforceability of Close-out netting. Beyond this, we believe that § 4 and § 5 determining the subject of the Agreement and the primary rights and obligations of the Parties to the Agreement are also essential, and material alteration thereof could affect our conclusions reached in this Opinion.

Furthermore, elections made with respect to eligible credit support may result in the provision of collateral (cash) that should be classified as financial collateral within the meaning of the Financial Collateral Act. In such cases, the parties may also benefit from preferential treatment contemplated for close-out netting by the Financial Collateral Act. On the other hand, such elections may result in provision of collateral (Letters of Credit/Parent Company Guarantee) outside the scope of the Financial Collateral Act whereby, as a consequence, the parties will not be able to benefit from a preferential treatment set out by for the close-out netting provisions.

C.VI.3 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) (the "CPMA") or in the EFET Master Netting Agreement change the substance of your conclusions reached under Part C.I or C.II such as, but without limitation, by invalidating the netting provisions in the EFET General Agreement due to its inclusion under the broader netting provisions of the CPMA?

If we assume that the master netting agreement meets the requirements set out in this legal opinion in Parts C.I and C.II for close-out netting agreements, then our conclusions reached in Parts C.I and C.II will apply appropriately.

Due to the lack of any relevant court precedent relating to close-out netting agreements we are not in the position to opine whether or not the referred master netting agreements would qualify for the protection of the Insolvency Act. However, based on the wording of the master netting agreement (which suggest that it intends to operate as an umbrella agreement over other master trading agreements), it is likely that the master netting agreement would qualify as a close-out netting agreement defined by the Insolvency Act and would be afforded safe harbour treatment under the Insolvency Act.

C.VII GOVERNING LAW, ARBITRATION AND JURISDICTION

For the purpose of the opinions under this point, we have made the following assumption further to the Instruction Letter.

- The relevant EFET General Agreement is governed by the laws of a jurisdiction other than Slovenia (including English or German law).

C.VII.1 Would the Parties' agreement on the governing law, submission to arbitration or jurisdiction (§ 22 of the EFET General Agreement) be upheld in Slovenia, and what would be the consequence if it were not?

Further to Rome I the parties are free to choose the governing law applicable to their agreements. If the choice is made expressly or is clearly demonstrated by the terms of the contract or the circumstances of the case, we are of the opinion that the choice of law will be upheld in Slovenia, with the following limitation.

Upholding the Parties' choice of law does not restrict the application of the overriding mandatory provisions of the law of the forum. Overriding mandatory provisions are defined by the Rome I as provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisations, to such extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract.

Furthermore, if at the time of the choice all other elements relevant to the situation are located in Slovenia (i.e. in a country other than the country whose law has been chosen), then according to Article 3 (3) of the Rome I, the choice of the parties shall not prejudice the application of provisions of the law of Slovenia which cannot be derogated from by agreement.

Beyond the scope of the Rome I, the Parties choice of law will be upheld in Slovenia on the basis of the Private Law Act, with the exclusion of the legal rules that would contravene Slovenian public order.

The Parties' agreement on the submission to arbitration or jurisdiction will be upheld in Slovenia, unless the dispute falls within the exclusive jurisdiction of the Slovenian courts.

Recognition and enforcement of foreign judgements has to be in line with: (i) in case of judgements rendered in EU member states in accordance with the terms of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and/or Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims; (ii) in case of judgments rendered by non-EU member states to which nevertheless another multilateral or bilateral agreements on the mutual recognition and enforcement of foreign judgements applies, in accordance with such applicable agreement; and (iii) in respect of any other judgments, in accordance with the rules set out in the Private Law Act, which require the condition of reciprocity for the acknowledgement of judgments of other jurisdictions. The resolutions of arbitration tribunals are executed on the basis of and to the extent provided by law, international convention or reciprocity, including the provisions of Judicial Enforcement Act, the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

C.VIII REGULATORY REGIME

Are there any exchange control laws or licence 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?

Regarding the uncertainties of the applicable regulatory regime please also refer to point B.III (page 14) of this Opinion.

C.VIII.1 Energy law requirements

Trading natural gas is not subject to licence in Slovenia, however trading natural gas is subject to certain requirements that need to be complied with, usual for such branch or activity.

Natural gas is traded on the organised, opened or balancing markets while transfer capacity may be traded on the primary or secondary market.

On the open market participants may directly conclude agreements on the supply of natural gas and the supplier and customer may freely determine the price and quantity of the supplied natural gas. The balancing market is intended for trading with quantities of natural gas, necessary for the balance of differences between the committed quantity at one or more takeover points and committed quantity at one or more delivery points. The transfer capacities market is intended for acquiring the highest possible usage of transferred capacities of natural gas network.

The operation of the market is directed towards balancing the contractual and physical currents in the natural gas network. On the primary market, the transfer system operator sells the rights to transfer capacities to the end users connected to the transmission network and to the operators of the distribution systems. Other participants may trade on the market in the name and for the account of the end user. The prices on the primary market are subject to regulation. On the secondary market, the participants with the rights of transfer capacities directly trade on the basis of bilateral contracts and the prices are freely determined by the conditions of the market.

A balancing scheme is provided on the market. A balancing scheme includes the market players that concluded a balance agreement with the operator of the transmission system or compensation agreement with the carrier of the balancing group. The membership is terminated with the termination of such agreements.

The suppliers of natural gas form the balance groups with one or more participants as members. The holder of the balance group is the supplier. The group is created for the purpose of tracking discrepancies in the acceptance and delivery of the natural gas for all members within the group which forms one transfer capacity. The balance group must enter into a contract with the transmission system operator, while the holder is obliged to pay the outstanding payments to the operator.

C.VIII.2 Financial regulatory requirements

Investment and financial services may only be provided in Slovenia by certain types of entities, such as investment firms and financial institutions operating in the form of a joint stock company (in Slovenian: "*delniška družba*") that obtained an appropriate licence from the competent authority (e.g. BSI, SMA) or Slovenian branches of licenced foreign entities which are duly licenced by the competent authority (e.g. BSI, SMA). In addition, EU and

EEA investment firms and financial institutions, which obtained licence from their competent authorities may, under certain conditions, provide the investment and financial services on the basis of a passport. The foreign entity must notify its own competent supervisory authority in advance in order to be authorised to provide its services in Slovenia.

In certain cases entities do not have to apply for a licence to enter into derivative transactions, because they are explicitly excluded from the Financial Instruments Market Act, i.e. *persons dealing on own account with derivative financial instruments regarding commodities, emission coupons or derivative financial instruments on emission coupons, unless they deal on own account when executing the clients' orders; or persons, performing investment services and transactions, except dealing on own accounts, in relation to derivative financial instruments on commodities, emission coupons or derivative financial instruments on emission coupons for clients from their regular business activities, if the performance of these services after assessment of the entire group means ancillary service to their main activity and if the main activity of these persons or group, in which they are part of, is not performance of the investment services, and they do not use the technique of high frequency algorithmic trading and annually inform the competent regulatory body on use of the exemption and on the request of the competent regulatory body inform it, why their activity, taking into consideration the above conditions, is ancillary to their main business activity.* In addition, exceptions apply also to:

a. insurance and re-insurance companies;

b. person providing investment services exclusively for its parent company, subsidiaries or other subsidiaries of its parent company;

c. persons performing investment services and transactions from time to time in framework of their regular activity or profession, under the conditions that the performance of their activity is subject to rules determined by law, other regulation or code of ethics and such rules do not prohibit performance of investment services and transactions;

d. persons dealing on their own account with financial instruments, which are not derivative financial instruments on commodities, emission coupons or derivative financial instruments on emission coupons, unless they act as market maintainers or participate in the OTF or OTC and have direct electronic access to trading, unless these are non-financial entities performing trade at the trading spot, which objectively reduce risks directly connected with business activity or activity of financing a treasury of these non-financial entities or their groups; use the technique of high frequency algorithmic trading or dealing on their own account when executing clients' orders;

e. managers fulfilling conditions from Chapter 6 of the Environmental Protection Act, which do not execute orders of the clients when trading with the emissions coupons and do not perform other investment services or transaction except dealing for its own account, whereby they do not use the technique of high frequency algorithmic trading

f. persons performing investment services and transaction including only management of employees participation schemes;

g. persons performing investment services and transaction including only management of employees participation schemes and assurance of investment services and transactions exclusively for parent companies, own subsidiaries or other subsidiaries of their parent companies;

h. members of the European system of central banks (ESCB) and other national bodies performing similar tasks, other public entities that are responsible for management of public debt, international financial institutions established by two or more member states and the purpose of which is assurance of financing or financial support for its members that have or are at risk of having serious financial troubles;

i. investment funds under the Investment Funds Act and pension funds under the Pension Act, or other collective funds and pension funds, irrespective whether they are harmonized on the EU level or not, and managers of such funds;

j. persons performing investment advisory services in connection with performing other services in the framework of their business activities or profession, if such other services are not subject to the Financial Instruments Market Act and do not charge a separate compensation for such investment advisiory services;

k. transmission system operators (TSOs) from the Energy Act or persons acting as TSOs pursuant to applicable legislation, operators or managers of the energy balancing mechanisms, gas network or supply and consumption energy balancing system, if they perform investment services and transactions in relation to derivative financial instruments on commodities for the purpose of performance of their own activity, whereas such exemption does not apply to secondary market, including platform for secondary trading with financially evaluated rights of transmitting electricity;

l. central depot company.

C.IX OTHER PROVISIONS

If you have other recommendations that you would like EFET member companies to consider (for example to fully optimize the EFET General Agreement for a specific purpose such as to support limited trading between two entities both organized and doing business solely in your jurisdiction), then these types of suggestions may, but need not, be appended as an Annex to the end of your final opinion letter.

We do not have other recommendations.

D. ADDRESSEES, FORM AND TENOR, EXECUTIVE SUMMARY AND OTHER ISSUES

D.I ADDRESSEES

This Opinion is addressed exclusively to EFET and is for the sole benefit of EFET and its Legal Committee members and any other subscribing entities, and may not be relied upon by, or disclosed to, any other person or legal entity without the prior written approval of EFET or Wolf Theiss – Slovenian Branch, and may be made available by EFET members to the appropriate regulatory authorities. Furthermore, this Opinion be made available by each EFET member to the professional chartered auditor engaged by that EFET member, but exclusively on a non-reliance basis, hence this Opinion may not be relied upon by any such auditor.

D.II EXECUTIVE SUMMARY

Please refer to page 3 of this Opinion.

* * *

Yours faithfully,

Attorneys-at-law Wolf Theiss – Slovenian Branch

DEFINED TERMS AND INTERPRETATION

Unless otherwise specified in the Opinion, terms defined in the General Agreement and in the Instruction Letter have the same meaning in this Opinion and for the purpose of this Opinion:

"**Banking Act**" means Slovenian Banking Act (*Zakon o bančništvu, ZBAN-2*), Official Gazette RS No.

"**BSI**" means Bank of Slovenia.

"**Capital Requirements Directive**" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

"**Civil Code**" means Slovenian Code of Obligations (*Obligacijski zakonik, OZ*), Official Gazette RS No. 83/01, as subsequently amended.

"**Collateral Directive**" means Directive 2002/47/EC of the European Parliament and of the Council on financial collateral agreements.

"**Companies Act**" means Slovenian Companies Act (*Zakon o gospodarskih družbah, ZGD-1*), Official Gazette RS No. 42/06, as subsequently amended.

"**Energy Act**" means Slovenian Energy Act (*Energetski zakon, EZ-1*), Official Gazette RS No. 17/14, as subsequently amended.

"**EMIR**" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

"**Enforcement Act**" means Slovenian Claim Enforcement and Security Act (*Zakon o izvršbi in zavarovanju, ZIZ*), Official Gazette RS No. 51/98, as subsequently amended.

"**EU Insolvency Regulation**" means Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

"**Financial Instruments Market Act**" means Slovenian Code of Obligations (*Zakon o trgu finančnih instrumentov, ZTFI*), Official Gazette RS No. 67/07, as subsequently amended.

"**Financial Collateral Act**" means Slovenian Financial Collateral Act (*Zakon o finančnih zavarovanjih, ZFZ*), Official Gazette RS No. 47/04, as subsequently amended.

"**Investment Funds Act**" means Slovenian Investment Funds and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje, ZISDU-3*), Official Gazette RS No. 31/15, as subsequently amended.

"**Insolvency Act**" means Slovenian Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju, ZFPPIPP*), Official Gazette RS No. 126/07, as subsequently amended.

"**Insurance Act**" means Slovenian Insurance Act (*Zakon o zavarovalništvu, ZZavar-3*), Official Gazette RS No. 93/15, as subsequently amended.

"**ISA**" means Insurance Supervision Agency.

"**MiFID**" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

"**MiFID II**" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

"**Mulibranch Party**" means a Party which operates for the purpose of the General Agreement with two or more branches and in two or more jurisdictions.

"**Obligations Act**" means Obligations Act of the SFRY (*Zakon o obligacijskih razmerjih, ZOR*), Official Gazette of SFRY No. 29/78, as subsequently amended.

"**Party**" means a party to the Agreement.

"**Private Law Act**" means Slovenian Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku, ZMZPP*), Official Gazette RS No. 56/99, as subsequently amended.

"**Resolution Act**" means Slovenian Resolution and Compulsory Dissolution of Credit Institutions Act (*Zakon o reševanju in prisilnem prenehanju bank, ZRPPB*), Official Gazette RS No. 44/16, as subsequently amended.

"**Resolution Directive**" means 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.

"**Rome I**" means EC Regulation No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

"**SMA**" means Slovenian Securities Market Agency.

"**Winding-up Directive**" means Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on reorganisation and winding up of credit institutions.

APPENDIX A

Types of Counterparties

The Instruction Letter required us to base our opinion on the assumption that Party A is an entity of the following types:

- Corporations (*e.g.*, a limited liability company, stock corporation or *Societas Europea*)
- Partnerships (*e.g.*, a general or limited partnership)
- Banks/Credit Institutions
- Investment Service Providers/Investment Firms
- Insurance Companies
- Investment Fund Management Companies[5]
- Other Financial Institutions
- Municipalities or Counties
- Associations of Local Government
- Publicly-owned Corporations
- Quasi Governmental Entities

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[5] We understand that the Investment Fund Management Companies are collective investment undertakings under Article 2 para 2 of the EU Insolvency Regulation.

APPENDIX B

Transactions under the EFET General Agreement

Commodity Forward

A transaction in which one party agrees to purchase from or sell to the other party a specific quantity of a Commodity at a future date in exchange for payment of an agreed price to be set on a specified date in the future. The transaction may either be settled by physical delivery of the quantity of Commodity in exchange for the specified price or it may provide for cash settlement with the payment calculation based on the quantity of the Commodity and settled based, among other things, on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Spot

Some jurisdictions recognise a subset of Commodity Forward transactions with an extremely short tenor (i.e. the period of time between entry into the transaction and its settlement) which can be as short as the same day or as long as one or more days (in accordance with the local definition of the term, if any). Such a "Commodity Spot" transaction typically contemplates settlement by only physical delivery of the quantity of Commodity.

Commodity Option

A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of call) or sell (in the case of put) a specified quantity of a Commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the Commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the Commodity on the exercise date and the strike price.

Commodity Swap

A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a Commodity or an exchange-traded futures contract on a Commodity (e.g., the EEX EU Carbon Futures); all calculations are based on a notional quantity of the commodity. The swap may either be settled by physical delivery of the quantity of Commodity or it may provide for cash settlement.

Commodity means gas or emission allowances.

APPENDIX C

INSOLVENCY PROCEEDINGS OVERVIEW

Unless otherwise specified, this Section describes the relevant insolvency proceedings, laws and terminology applicable to Party A, which is incorporated or organised or has its main centre of interest in Slovenia.

1. PROCEEDINGS IN ACCORDANCE WITH THE INSOLVENCY ACT

Under the Insolvency Act, insolvency proceedings may be conducted as:

(a) **bankruptcy proceedings** (in Slovenian: "*stečajni postopek*"), resulting in the sale of the debtor's assets and dissolution of the debtor; or

(b) **compulsory settlement proceedings** which aims at preserving a debtor's business and allows the debtor to discharge its liabilities within a certain period of time as prescribed under the relevant reorganization plan (in Slovenian: "*prisilna poravnava*");

(c) **simplified compulsory settlement proceedings** which is type of compulsory settlement proceedings against micro companies and sole entrepreneur (in Slovenian: "*poenostavljena prisilna poravnava*").

Additionally, the Insolvency Act provides for the (d) **preventive restructuring** (in Slovenian: "*preventivno prestrukturiranje*") as an option to enable the distressed company, for which it is probable that it will become insolvent in a year, to carry out appropriate measures to restructure its financial obligations and other financial restructuring measures on the basis of a master creditor restructuring agreement.

1.1 Bankruptcy proceedings (in Slovenian: "*stečajni postopki*")

1.1.1 <u>Grounds for bankruptcy proceedings – common provisions</u>

Under the Insolvency Act, the ground for bankruptcy proceedings is the insolvency of the debtor. The insolvency of the debtor is a position of:

- a long-term illiquidity (in Slovenian: "*trajnejša nelikvidnost*"), which is an inability of the debtor to fulfil all of its obligations that become due in a longer term; or
- a long-term inability to pay (in Slovenian: "*dolgoročna plačilna nesposobnost*") of the debtor.

Long-term illiquidity is presumed in the following cases:

- a debtor is more than two months late with payments which in total exceed 20 per cent of the debtor's financial obligations as stated in the last published annual report; or
- the funds in the debtor's bank accounts are not sufficient to comply with any enforcement orders for at least 60 consecutive days, or any 60 days out of a 90-day period, and such status is continuing on the day before the bankruptcy filing; or
- the debtor has no bank account in Slovenia and has not fulfilled its obligations under an enforcement order for more than 60 days

- the debtor is subject to a confirmed compulsory settlement or simplified compulsory settlement and is in default with its obligations under that settlement for more than two months.

The presumption cannot be rebutted if a debtor is more than two months late in the payment of employees' salaries up to the amount of the minimum wage, or with the payment of taxes and contributions which must be paid together with those wages, and such status is continuing on the day before the filing of application for commencement of bankruptcy proceedings.

The long-term inability to pay is presumed in the following cases:

- a debtor's due and payable obligations exceed its assets (over-indebtedness, in Slovenian: "*prezadolženost*"); or

- the debtor's loss for the current financial year, together with the loss brought forward, exceeds half of the registered capital of the debtor and this loss cannot be covered from net profit reserves from previous years.

Where a debtor is insolvent and the debtor's solvency cannot be secured by adopting special measures (e.g. a capital increase, debt to equity swap or other financial restructuring measures), the debtor's management is required to file a bankruptcy petition. Within one month after the debtor has become insolvent, the management of the debtor is under a statutory obligation to prepare a report on its proposed financial restructuring. If the management board establishes that there is at least a 50 per cent possibility that the debtor will become solvent after the financial restructuring and proposes necessary measures, the financial restructuring can be conducted outside bankruptcy proceedings and there will be no need to file an application to open bankruptcy proceedings.

1.1.2 *Opening of the bankruptcy proceedings*

A request for initiating insolvency proceedings may be filed by (i) the debtor; (ii) a personally liable shareholder of the debtor; (iii) a creditor who is able to show that a debt is due with reasonable certainty and show that the debtor is more than two months late with its payment of that debt; or the Public Guarantee and Maintenance Fund of the Republic of Slovenia (In Slovenian: "*Javni jamstveni, preživninski in invalidski sklad Republike Slovenije*").

There are two phases to the bankruptcy proceedings. The first phase (the preliminary proceedings) starts with the filing of a bankruptcy petition with the competent court (in Slovenian: "*predlog za začetek stečajnega postopka*") by an entitled applicant. The bankruptcy court will then decide whether the conditions for the institution of the bankruptcy proceedings (such as establishing the existence of a state of insolvency) are met. If they are and, where applicable, the advanced payment for the costs of the proceedings has been paid by the applicant, the bankruptcy court will order the commencement of bankruptcy proceedings (in Slovenian: "*začetek stečajnega postopka*"), which represents the beginning of the second phase (the main bankruptcy proceedings).

The bankruptcy order (in Slovenian: "*sklep o začetku stečajnega postopka*") is published on the AJPES website on the day that it is issued by the court. The court informs the creditors on the commencement of the bankruptcy proceedings with the publication order (In Slovenian: "*oklic o začetku stečajnega postopka*"). The legal consequences of the bankruptcy proceedings come into effect at the beginning of the same day:

- the (management and other) rights of the debtor's corporate bodies are assumed by the bankruptcy administrator;

- all orders for performance of the legal transaction or other legal acts on behalf of the debtor, which have been ordered before the commencement of the bankruptcy proceedings, cease to be valid (unless something else is determined by law);

- all offers submitted by the debtor before the commencement of the bankruptcy proceedings cease to be valid;

- the limitation period of the claims the debtor has against its debtors does not run for the first year from the commencement of the bankruptcy proceedings;

- the creditors' claims are transferred into monetary claims on the market value, all time-to-time claims are transferred in one time claim, claims expressed in foreign currency are transferred in claims expressed in Euros, the contractually agreed interest rates are no longer applicable (the prescribed interest rate is applicable as from the commencement of the bankruptcy proceedings);

- creditors may pay their claims only in the insolvency proceedings and no enforcement proceedings or proceedings for protection of assets over the estate may be initiated, already initiated proceedings are stayed;

- If there is an outstanding bilateral contract at the opening of the insolvency proceedings, the bankruptcy administrator may decide to fulfill the obligation arising out of that contract on behalf of the debtor and request the other party to do the same. If, on the other hand, the bankruptcy administrator may also terminate the agreement in case of mutually non-fulfilled obligations.

1.1.3 *Bodies in the bankruptcy proceedings*

The Insolvency Act requires the formation and/or appointment and participation of the following insolvency-related bodies in the insolvency proceedings:

Insolvency court (in Slovenian: "*sodišče*")

The bankruptcy petition must be filed with the competent circuit court which is competent to oversee the bankruptcy proceedings in relation to the debtor, being the court where the debtor has its registered seat. An individual judge presides over the insolvency proceedings.

Bankruptcy administrator (in Slovenian: "*stečajni upravitelj*")

The bankruptcy administrator is the body appointed in the bankruptcy proceedings to safeguard and enforce interest of the creditors. The bankruptcy administrator assumes the business of insolvent debtor and represents the debtor when assessing the claims of creditors having rights to separate repayment and exclusion rights, acts in the proceedings relating to claw-back claims, in legal transactions, in exercise of termination and other rights and similar. Only persons having appropriate license and are on the list of administrators administered by the competent authority are eligible to act as bankruptcy administrators.

The Creditors' Committee (in Slovenian: "*upniški odbor*")

The Creditors' Committee is a body of all creditors that in framework of bankruptcy proceedings perform acts for which is authorised by the Insolvency Act on behalf of all creditors. Any creditor may be elected as member of the Creditors' Committee, except certain creditors (e.g. creditor which is at the same time the debtor's debtor and his obligation towards debtor exceeds 1 per cent of the debtor's assets, creditor which was a member of the governance body of the debtor in last two years, connected entities, creditors with exclusion rights and creditors with a right to separate repayment, etc.). The number of members is determined by the bankruptcy court, whereas there must be at least three members and the number must always be odd (but not exceeding 11).

The members of the Creditors' Committee are either nominated by the court or elected by the creditors and can be appointed from within the creditors who registered their claims within a prescribed period and who have the highest value of claims against the debtor.

If a creditors' committee is formed it will have, among other rights, the power to (i) demand reports from the receiver on the progress of the bankruptcy proceedings and the state of the insolvent estate and provide comments on these reports; (ii) conduct an audit of the debtor's accounts and documentation held by the receiver; (iii) propose that the current bankruptcy administrator be dismissed; (iv) make submissions to the bankruptcy judge on the steps taken by the bankruptcy administrator to realise the insolvent estate; (v) provide comments on the proposed bankruptcy plan; and (vi) consent to any proposal that the debtor continues to operate.

The Creditors' Committee's meetings may be attended by its members, bankruptcy administrator and bankruptcy judge. The Creditors' Committee's meetings are conducted after the convocation, The Creditors' Committee's meeting is mandatory in certain instances provided by the Insolvency Act.

1.1.4 *Reporting of claims*

A decision on opening the insolvency proceedings is published as the publication order. The creditors shall report their claims in the bankruptcy proceedings in three months as from the publication order. In the decision on opening the insolvency proceedings. The report of the claim shall include the claim for recognition and description of facts that indicate the existence of the claim. The claim shall be composed of the principal amount, capitalised amount of interest until the commencement of the bankruptcy proceedings, possible costs, claim for priority repayment (if exists) and in case of conditional claims the facts that justifies fulfilment of the condition.

The bankruptcy judge will disregard any claims that are filed after the legally set three-months deadline. Accordingly, creditors who fail to file a claim within the deadline are unable to participate in the distribution of the debtor's estate. One exception to this rule is a failure to register a right of exclusion. Also creditors with right of separate satisfaction entitling them to an out-of-court sale of the secured property, also continue to retain such right after the commencement of bankruptcy proceedings, even if the right is not registered within the three-month period. The same applies also to creditors who are beneficiaries of a mortgage or a maximum mortgage, which has been registered in the real property register before the initiation of the bankruptcy proceedings also do no not need to register their claim within the three-month period.

After the claims are reported the bankruptcy administrator has one month to test the claims and decide whether to recognise or dispute the claims. The bankruptcy administrator prepares an initial list of the tested claims, which may be contested by any creditor in 15 days, if its claim is not included in the list or if there are inconsistencies in the principal amount, interest or identification data in the list.

Reported claims may also be contested by any insolvency creditor in one month from publication of the initial list of tested claims. In eight days as from the elapse of all deadlines the bankruptcy administrator prepares updated initial list of tested claims, which may be again contested by insolvency creditors for reasons provided by the Insolvency Act.

After the lists of claims are prepared, the bankruptcy court decides on the appeals and which claims are finally recognised or disputed and who shall file a lawsuit in case of disputed claims. After the court's decision, the bankruptcy administrator prepares final list of tested claims.

1.1.5 *Types and ranking of claims*

The Insolvency Act differentiates between secured and unsecured claims. Secured claims are claims deriving from the right to separate satisfaction and are payable out of the separate estate which consists of property subject to the rights of separate satisfaction, after the costs incurred in realizing the respective property. Unsecured claims are defined as claims which are not secured by a right to separate satisfaction.

Unsecured claims

The Insolvency Act distinguishes between three categories of unsecured claims: (i) preferential claims; (ii) ordinary claims; and (iii) subordinated claims.

Unsecured claims are all payable out of the general bankruptcy estate in the order given above once the costs of the bankruptcy proceedings and the costs of the bankruptcy administrator have been paid in full. Lower priority claims may only be satisfied once the claims of a higher priority have been paid in full. The costs of the bankruptcy proceedings include the payment of the bankruptcy administrator for his/her services and any costs he/she incurred, all costs incurred during the insolvency proceedings which were necessary for the conduct of the debtor's business during the insolvency proceedings, the costs of both administering and maintaining the bankruptcy estate, taxes incurred during the bankruptcy proceedings, and other claims that arise after the opening of the bankruptcy proceedings.

Preferential claims include the following:

- employees' salaries for the last six months prior to the commencement of the bankruptcy proceedings;
- claims for damages incurred by employees for personal injury/occupational diseases in connection with their work;
- unpaid severance payments for the termination of employment contracts prior to the commencement of bankruptcy proceedings (subject to a cap);
- where employees contracts are terminated due to the bankruptcy proceedings, those employees' salaries for the period from the opening of the bankruptcy proceedings until the end of the notice period, and those employees' severance payments;
- taxes, social security and pensions contributions that must be paid together with the salaries/severance payments described above (except for claims for damages incurred by employees for personal injury/occupational diseases in connection with their work);
- compensation for unused annual leave for the current calendar year;
- claims arising out of loans granted under the law, which regulates the aid for rescuing and restructuring of companies and co-operatives in difficulty, and guarantees issued for these loans; and
- social security and pensions contributions arising prior to the commencement of the insolvency proceedings.

There is no order of priority payment of preferential claims and so if there is a shortfall of assets to pay the preferential claims in full, they are paid on a pari passu basis.

Subordinated claims are unsecured claims which are grounded in a legal relationship between the debtor and creditor whereby it is agreed that the claim shall be subordinated behind all other unsecured claims. The claims of shareholders in their capacity as shareholders, including any equity which may replace any loans made by the shareholders to the debtor, are also subordinated.

Ordinary claims are unsecured claims that are neither preferential nor subordinated.

Secured claims

The commencement of the bankruptcy proceedings generally does not have an impact on the rights to separate payment and exclusion rights.

(a) Creditors with a right to separate satisfaction (in Slovenian: *"ločitvena pravica" and "ločitveni upnik"*) – a right of separate payment is a right of the creditor to satisfaction of its claims from certain assets of the debtor before other creditors' claims are satisfied from those assets (e.g. assets subject to security interest).

(b) Creditors with exclusion right (in Slovenian: *"izločitvena pravica" and "izločitveni upnik"*) – an exclusion right is a right of the creditor who can successfully prove that certain assets should not form part of the debtor's estate on the basis of their proprietary rights (e.g. owners of the machinery leased to the debtor or vendors holding title retention rights). The exemption right is enforced outside of insolvency proceedings.

1.1.6 *Claw-back*

The bankruptcy administrator and the creditors are entitled to challenge any transaction entered into by the insolvency debtor within the last twelve months (or within the last thirty six months in cases where a creditor acquired any assets of the debtor free of charge or for very low consideration) prior to the application to open bankruptcy proceedings being filed with the court, provided that the objective and subjective elements are fulfilled.

Objective elements are:

- the consequence of the transaction resulted in reduction of the value of the assets available to meet the creditors' claims in the bankruptcy (i.e. the act was damaging to the creditors); and/or

- as a consequence of the transaction an individual creditor gained a more favourable position than other creditors for the payment of his/her claim (i.e. a preference given to that creditor).

The Insolvency Act provides for legal presumptions on the existence of the objective element (such legal presumption can be rebutted) in the following cases:

- a transaction was entered into for the benefit of an individual creditor whose debt existed before the transaction was entered into;

- a creditor obtained a right to separate satisfaction (see para.24.8.175 for details on the right to separate satisfaction) with respect to an existing claim; or

- an act has taken place during any prior compulsory settlement proceedings contrary to the limitations of the debtor's operational capability imposed by the Insolvency Act.

In addition to the objective elements, the subjective element must also exist, i.e. the person contesting the claim must prove that the favoured creditor knew or should have known that the debtor was insolvent at the time the transaction was entered into. Such subjective element does not need to be fulfilled if a third party received debtor's assets free of charge or for very low consideration.

There is a rebuttable presumption that the subjective element is satisfied if:

- the creditor's *undue* claim was satisfied before due date, or the creditor received a payment in form that is not common under business customs, customary practice or practice between the contracting parties; or

- the challenged legal transaction was entered into within three months before the filing of an application to commence bankruptcy proceedings, or before the filing of an application to commence compulsory settlement proceedings (if such an application is filed before the application to commence bankruptcy proceedings).

The bankruptcy administrator and creditors may challenge the transaction before the court in 12 months from the commencement of the bankruptcy proceedings in order to recover the assets transferred or the value of such assets from the favoured creditor for the benefit of the bankrupt estate.

1.1.7 *Continuance of operations of the insolvent debtor*

The insolvent debtor may continue with production and performance of business after commencement of the bankruptcy proceedings, if that is allowed by the bankruptcy court on the proposal of the bankruptcy administrator and with consent of the Creditors' Committee. The court would generally allow that, if the continuance of operations will allow for more favourable satisfaction of the creditors and if the principle of limiting the risks is not infringed.

1.1.8 *Management and liquidation of the bankrupt estate*

During the bankruptcy proceedings the bankruptcy administrator manages the bankrupt estate. For this purpose, the bankruptcy administrator may rent or lease the assets, invest the funds and conclude court or out-of-court settlements and perform any other legal transaction. The bankruptcy administrator must obtain a court's approval for each transaction that falls within the management of the bankrupt estate.

The bankrupt estate is established through the sale of the debtor's assets, enforcement of its claims and any other business transaction performed for enforcement of the debtor's rights. The liquidation is performed in line with the liquidation plan prepared by the bankruptcy administrator and opinion of the Creditors' Committee.

Special rules on the sale of assets apply.

The payments from the bankruptcy estate and distribution of the bankruptcy estate may be performed on the basis of the decision of the court. The distribution of the bankruptcy estate may be performed in several rounds.

1.1.9 *Conclusion of the insolvency proceedings*

Upon completion of the liquidation of the bankruptcy estate, the bankruptcy administrator submits the final report to the court. On the basis of the final report and after receiving the opinion from the Creditors' Committee, the court issues an order on final payment of the bankruptcy administrator's fees and decision on conclusion of the bankruptcy proceedings. Following the decision (provided there is no appeal), the debtor will be deleted from the company's register ex officio.

1.2 Compulsory settlement proceedings

1.2.1 *Grounds for compulsory settlement proceedings*

The compulsory settlement proceedings are initiated on the proposal of the debtor or personally liable shareholder of the debtor, if the debtor is insolvent (see above under 1.1.1).

1.2.2 *Purpose of the compulsory settlement proceedings*

The compulsory settlement proceedings may be conducted for the financial restructuring purposes ensuring that (i) current shareholders of the insolvent debtor keep only that share in the share capital of the insolvent debtor that corresponds to the value of the remaining assets that would be received by them in case of bankruptcy proceedings; (ii) the creditors will obtain more favourable satisfaction of their claims than in bankruptcy proceedings; (iii) the operations of the debtor continue.

In the compulsory settlement proceedings the debtor is obliged to disclose to the creditors its financial position and business performance and give them all necessary information in order to enable the creditors to assess whether (i) the debtor is insolvent; (ii) the financial restructuring will enable the debtor will assume short-term and long-term ability to pay; and (iii) the compulsory settlement proceedings will ensure more favourable satisfaction of the creditors' claims than in bankruptcy proceedings.

1.2.3 *Preliminary procedure and settlement proposal*

In the preliminary procedure, the court decides whether the debtor is eligible to undergo the compulsory settlement proceedings.

The compulsory settlement proceedings are not possible, if the application has been filed before elapse of three years after the debtor fulfilled all of its obligations under the previous compulsory settlement proceedings or two years from interrupted compulsory settlement proceedings. If the bankruptcy proceedings have been commenced against the debtor, it is no longer possible to commence the compulsory settlement proceedings.

The application for compulsory settlement proceedings must be accompanied with the report on financial and business position of the debtor, auditors report without any reservations, restructuring plan, affirmative report on the value of the debtor's assets and certificate on advance payment of costs.

The report on financial and business position of the debtor must include financial reports, list of ordinary claims and identification data of the creditors, subordinated claims, creditors with right to separate satisfaction, monthly costs of operations and value of the assets.

The application must also include the proposal of the debtor to creditors to decrease of their ordinary claims and deferral of payment (must be the same for all creditors) with reference that the confirmed compulsory settlement does not effect the secured claims. Alternatively, the debtor with the share capital divided in shares or stocks, may also propose to the creditors that the ordinary claims are subject to debt-to-equity swap (such proposal may also be addressed to creditors with secured claims or subordinated claims).

The restructuring plan must include the reasons why the debtor is insolvent, settlement proposal, assessment what part of ordinary claims would be satisfied in bankruptcy proceedings, description of other measures for financial restructuring with time, costs and effects analysis, and description of the circumstances indicating ability of the debtor to satisfy the obligations from the settlement proposal.

With the submission of proposal certain consequences apply:

- the debtor may only perform transactions in ordinary course of business;
- the debtor may not dispose or encumber its assets, undertake loans, give surety or perform other transactions that would result in unequal treatment of creditors;
- the supervisory board and the shareholders' assembly has only limited powers (e.g. recall or appoint members of the management and/or supervisory board, change of share capital to carry out restructuring plan, and other decisions to effectuate the restructuring plan);
- in case any creditor filed application for bankruptcy proceedings and the court did not yet decide on the application, the court interrupts that proceedings.

1.2.4 Opening of the compulsory settlement proceedings and restructuring plan

The court decides on the commencement of compulsory settlement proceedings outside of hearing and adopts a decision on the commencement, if all the prerequisites are fulfilled. The decision (in Slovenian: "*sklep o začetku postopka prisilne poravnave*") must be adopted in eight days from the complete application.

The creditors are notified on the commencement of compulsory settlement proceedings with the publication of the court's decision on AJPES (in Slovenian: "*oklic začetka postopka prisilne poravnave*"). The legal effects of the opening of the compulsory settlement proceedings come into effect on the date of publication:

- the creditors' claims are transferred into monetary claims on the market value, all time-to-time claims are transferred in one time claim, claims expressed in foreign currency are transferred in claims expressed in Euros, the contractually agreed interest rates are no longer applicable (the prescribed interest rate is applicable as from the commencement of the bankruptcy proceedings);
- legal set-off applies;
- if there is an outstanding bilateral contract at the opening of the insolvency proceedings, the bankruptcy administrator may decide to terminate the agreement in case of mutually non-fulfilled obligations.

1.2.5 Bodies in the pre-insolvency proceedings

The main body of the pre-insolvency proceedings is the court, the administrator, which supervises the performance of business by the debtor, the creditors' committee and the debtor. For more information see above under point 1.1.3 on page 70.

1.2.6 Reporting of claims and determining claims

The claims of the creditors must be reported in one month from the publication of the decision on the opening of the compulsory settlement proceedings.

1.2.7 *Voting on the restructuring plan*

Only the creditors whose claims have been recognised or determined with certain probability will have the voting rights. Additionally, secured creditors who transfer the claim to the debtor in the framework of debt-to-equity swap and creditors with priority claims will not be able to vote on the restructuring plan.

Each creditor voting rights are calculated in accordance with specific formula taking into consideration the recognised claim multiplied by the special factor.

The court publishes the notice to the creditors to vote on the compulsory settlement proceedings. The compulsory settlement is accepted if the majority of 6/10 of the basic claims determined in line with the rules under the Insolvency Act votes in favour of the compulsory settlement.

1.2.8 *Conclusion of the pre-insolvency proceedings*

If the compulsory settlement was voted for by the required majority of the creditors, the court will confirm the compulsory settlement by issuing the decision. If the required majority is not reached, the court will issue a decision on commencement of the bankruptcy proceedings.

Confirmed compulsory settlement has an effect on all claims that were established before the opening of the compulsory settlement proceedings, irrespective whether the creditor reported the claim or not. Confirmed compulsory settlement does not effect the secured claims, priority claims and exclusion rights.

Any creditor may request the repeal of the confirmed compulsory settlement, if the debtor is able to pay the full amount of claims. The request must be filed in six months from elapse of deadline determined in the compulsory settlement for repayment of claims.

1.3 Preventive Restructuring

1.3.1 *Grounds for preventive restructuring*

The preventive restructuring is possible in case of company whose share capital is divided in shares or stocks and if the company could be subject to compulsory settlement proceedings.

1.3.2 *Purpose of the preventive restructuring proceedings*

The preventive restructuring proceedings are established to enable the distressed company, for which it is probable that it will become insolvent in a year, to carry out appropriate measures to restructure its financial obligations and other financial restructuring measures by entering into the agreement with creditors.

The agreement includes description of measures of financial restructuring, the timeframe and conditions for the enforcement of measures, and other rights and obligations regarding financial restructuring.

The creditors and the debtor enter into negotiations that must be in compliance with customary business practice.

1.3.3 *Preliminary procedure of the preventive restructuring*

The decision on the preventive restructuring is adopted by the court on the proposal of the debtor. In certain cases it is not possible to file such proposal.

The proposal must include the list of financial claims, auditors' report, and certified consents of certain percentage of financial creditors.

1.3.4 *Opening of the preventive restructuring proceedings*

The court decides on the commencement of preventive restructuring proceedings in eight days from the complete application.

The creditors are notified on the commencement of the preventive restructuring proceedings with the publication of the court's decision on AJPES. The legal effects of the opening of the compulsory settlement proceedings come into effect on the date of publication and are limited to the financial obligations of the debtor:

- no enforcement or security order may be adopted in the enforcement or security proceedings;
- the limitation period does not run during the preventive restructuring proceedings.

The preventive restructuring proceedings (and confirmed preventive restructuring) has no effect on the financial collateral under the Financial Collaterals Act.

1.3.5 *Conclusion of the preventive restructuring proceedings*

The preventive restructuring ends, once the agreement on the financial restructuring is confirmed by the debtor, 75 per cent majority of ordinary creditors and 75 per cent majority of secured creditors.

The creditors and debtor enter into the agreement that is kept by the notary public. Once concluded, the debtor must request confirmation of the preventive restructuring from the court. The court must decide on confirmation in eight days.

1.4 Forced liquidation (in Slovenian: "*prisilna likvidacija*")

1.4.1 *Grounds for forced liquidation*

The court may commence forced liquidation proceedings ex officio or on proposal of the eligible applicant.

2. INSOLVENCY UNDER SPECIAL REGIMES

2.1 Regime under the Resolution Act (recovery)

While financial institutions are still subject to insolvency proceedings, the Resolution Act has introduced a special regime for the reorganisation and recovery of certain financial institutions, in accordance with the Resolution Directive.

Recovery means all measures for recovery of institutions, if the following purposes may be reached:

- ensuring the continuity of the fundamental functions of the institution;
- safeguarding the stability of the financial system;
- protection of public funds so that the reliance on external public financial support is minimised;

- protection of secured deposits and secured investments;

- protection of the assets and funds of the clients.

In accordance with the provisions of the Resolution Directive, the Resolution Act is applicable to banks established in Slovenia , financial institutions established in Slovenia which are subsidiaries of the credit institutions or financial holding, mixed financial holdings or mixed business holding with a seat in member state, financial holding companies, mixed financial holding companies established in Slovenia and subsidiary of the credit institution established in member state, financial holding companies, mixed financial holding companies established in Slovenia and parent company of the credit institution established in member state, EU branches in Slovenia.

The Resolution Act also provides for recovery tools:

- write off and conversion of capital instruments (bail-in tool);

- sale of business;

- establishment of the bridge bank;

- exclusion of assets (only in combination with another recovery tool) ;

- write off and conversion of qualified obligations.

2.1.1 *Bail-in tool*

The bail-in tool seems to be particularly important in the context of the close-out netting provisions. Pursuant to the Resolution Act (reflecting Article 43 of the Resolution Directive), the resolution via a bail-in tool may be carried out through as:

- an increase of a share capital of an institution under resolution, to the extent sufficient to restore its ability to comply with the conditions for authorisation, to continue to carry out the activities for which it is authorised and to sustain sufficient market confidence; or

- conversion of claims and debt instruments into shares and other instruments of ownership or reduction of the principal amount of claims or debt instruments that are transferred (i) to a bridge institution with a view to providing capital for that bridge institution; or (ii) under the sale of business tool or the asset separation tool.

The bail-in tool shall apply to all liabilities of an institution under resolution, except for the following:

- deposit guarantees;

- a secured liability, including covered bonds and liabilities in form of financial instruments used for hedging purposes which form an integral part of the cover pool and which are secured in a way similar to covered bonds;

- any obligations established on the basis of deposit of cash or other returnable funds;

- obligations being consequence of the escrow relationship;

- obligations towards institutions that are not part of the same group, if the original due date is less than seven days;

- obligations toward payment systems,

- obligations toward employees, creditors supplying critical products or services for performance of day-to-day activities, tax authorities and guarantee schemes.

Additionally, the Resolution Act provides that BSI may use its authorisations for write-down and conversion in relation to qualified liabilities arising from a derivative transaction only when the agreement on derivative instrument is terminated at the same time or prior to the use of tool, and possible close-out netting, if the agreement on derivative financial instrument includes close-out netting agreement.

2.1.2 *Other resolving measures*

Additionally, the Resolution Act grants wide powers that may be exercised by the competent authority.

Exclusion of certain contractual terms in early intervention and resolution

Provided that the substantive obligations under the contract, including payment and delivery obligations and provision of collateral, continue to be performed, a resolution measure, including the occurrence of any event directly linked to the application of such a measure, 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 a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent company or another group entity;

- obtain possession, exercise control or enforce any security over any property of the institution;

- affect any contractual rights of the institution.

This shall not affect the right of a person to take an action referred to above where that right arises by virtue of an event other than the restoration measure, or the occurrence of any event directly linked to the application of such a measure.

A suspension or restriction under sections 0 to 0 below shall not constitute non-performance of a contractual obligation for the purposes of the above.

Suspension of certain obligations

BSI may adopt a decision on suspension of any payment or delivery of any obligations pursuant to any contracts to which an institution under resolution is a party.

Suspension of the enforcement

BSI may suspend the conduct of enforcement proceedings over the assets of the institution under resolution by creditors of that institution.

Suspension of termination rights

BSI may suspend the right of the counterparty to terminate the contract with the institution under resolution.

2.1.3 *Protection in case of partial transfer*

When BSI partially transfers the assets, rights or liabilities of an institution under resolution to another entity or exercises powers of cancellation or modification of contractual terms, certain arrangements are protected.

Protection for financial collateral, set-off and netting arrangement

BSI may not partially transfer the rights and liabilities or partially modify or terminate the rights and liabilities protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person (exceptions may apply for purposes of making available the secured deposits)).

Protection for guarantee agreements

BSI may not: (i) transfer the assets against which the liability is secured unless that liability and benefit of the security are also transferred; (ii) transfer the secured liability unless the benefit of the security is also transferred; (iii) transfer the benefit of the security unless the secured liability is also transferred; and (iv) modify or terminate a security arrangement through the use of ancillary resolution powers, if the effect of that modification or termination is that the liability ceases to be secured.

2.2 Regime under the Resolution Act (forced resolution and bankruptcy proceedings)

Forced resolution of the institution may be conducted through bankruptcy proceedings (in Slovenian: "*stečajni postopek*") or forced liquidation (in Slovenian: "*prisilna likvidacija*").

The Resolution Act specifically provides that the insolvency proceedings and forced liquidation against banks cannot be commenced on the basis of the Insolvency Act (however, the provisions of the Insolvency Act apply insofar the Resolution Act does not provide differently).

2.2.1 *Forced liquidation*

The forced liquidation is a procedure carried out by Bank of Slovenia to dissolve the bank as legal entity, and prior to that to terminate the transactions of the bank and repay the obligations of the bank towards creditors deriving from the banking services, financial services and other financial services within the meaning of the Banking Act.

The forced liquidation includes the following tools:

- sale of assets of the bank;
- exclusion of assets;
- sale of business.

BSI adopts a decision on the initiation of the forced liquidation *ex officio*, if the ECB repealed the banking license or if the banking license was terminated pursuant to the Banking Act (but not, if the bank fulfilled all of its obligations towards creditor until the termination). The decision of the BSI includes reasons for initiation of the forced liquidation, appointment of bankruptcy administrator and limitations of bank's operations.

With the initiation of the forced liquidation, the following consequences apply:

- enforcement or securities orders can no longer be issued and all enforcement and security proceedings are stopped;

- the bank may avoid all given offers and terminate all rent and lease agreements;
- the limitation period starts running for the claims of bank against its debtors for one year;
- mandatory set-off rules apply (but not for netting agreements under the specific provision of the Resolution Act);
- bank must perform all obligations under the financial services agreements, unless it exercise termination rights.

The bankruptcy administrator(s) appointed by BSI must prepare a liquidation plan, which includes tools for liquidation, list of recognised claims, forecast of costs, and similar.

Following the commencement of forced liquidation, the bank may only perform transactions in ordinary course of business, which are necessary to maintain the value of the assets of the bank or decrease of value or that ensure more favourable conditions for liquidation of the bank.

BSI issues a decision on conclusion of the forced liquidation, when the bank's obligations deriving from performance of its services are wholly or partially closed, if the bank has no assets that would be available for repayment of obligations.

On the basis of the decision on conclusion of the forced liquidation, BSI proposes to the insolvency court to initiate the bankruptcy proceedings.

2.2.2 *Bankruptcy proceedings*

The court decides on the bankruptcy proceedings in case of bank on the proposal of BSI, which must be filed on the day the BSI adopts a decision on the ending of the forced liquidation proceedings. No appeal against the decision of the court is possible.

The bankruptcy administrator is appointed by the court on the basis of the proposal of BSI (one or more). BSI may also appoint business administrators that have experience in running the banking operations.

The Resolution Act expressly excludes *de lege* set-off provided by the Insolvency Act in case of the bankruptcy proceedings against the bank, unless the bankruptcy administrator enforces the set-off. However, the respective exclusion does not apply to the close-out netting agreements and settlement agreements as defined under the Resolution Act.

From the bankruptcy estate the following claims are covered (in this priority order):

- costs of forced liquidation and bankruptcy proceedings;
- guaranteed deposits;
- claims with original due period less than seven days, if the holder of the claim is institution or payment or settlement system;
- justified deposits of the investors;
- other justified deposits;
- deposits that are not justified deposits;
- other unsecured claims;

- unsecured and non-subordinated claims from debt financial instruments;
- subordinated claims (further classified in sub-classes).

For all other questions that are not explicitly regulated by the Resolution Act, the Insolvency Act shall apply.

2.3 Regime applicable to insurance companies

Under the Insurance Act, the compulsory settlement proceedings are not permitted to be initiated against the insurance company. Hence the insurance companies may only be subject to the bankruptcy proceedings and liquidation. The Insolvency Act applies to the insurance companies insofar the Insurance Act does not regulate certain matter in different way.

2.3.1 *Forced liquidation*

ISA adopts a decision on the forced liquidation pursuant to the Insurance Act if conditions thereunder are fulfilled, e.g. if the insurance company does not fulfil minimum capital requirements, if the insurance company's license is terminated, if the financial status of the insurance company was not improved under the appointed extraordinary management, etc.

ISA also appoints liquidation administrator.

With the initiation of the forced liquidation, the following consequences apply:

- all authorization of the insurance company's body are suspended;
- insurance company can no longer enter into new transactions;

If the liquidation administrator assesses that assets of the insurance company are not sufficient to cover claims of all creditors, it informs the ISA thereof.

2.3.2 *Bankruptcy proceedings*

ISA issues a decision on the fulfilment of conditions to open the bankruptcy proceedings and lodges the application with the competent court without testing the bankruptcy reasons. The court decides on the bankruptcy proceedings and no appeal against the decision of the court is possible.

The bankruptcy administrator is appointed by the court on the basis of the proposal of ISA.

All insurance contracts are terminated 30th day from the publication of the decision on the commencement of bankruptcy proceedings.

To protect the interest of the insured persons, the court may appoint the curator on the proposal of ISA. Curator may report the claims of the insured persons, or the insured persons may report their own claims.

2.4 Regime applicable to investment funds

Insolvency proceedings cannot be initiated against investment firms.

Against the investment funds management companies it is only possible to lodge bankruptcy proceedings (and not compulsory settlement proceedings).

2.5 Regime applicable to the clearing and settlement system and entities performing transactions on or outside the multilateral trading facility (MTF)

For the bankruptcy of the brokerage firms the provisions applicable to banks apply *mutatis mutandis*.

3. VOLUNTARY DISSOLUTION PROCEEDINGS (IN SLOVENIAN: "LIKVIDACIJA")

Voluntary dissolution proceedings of a solvent entity are regulated in the Companies Act. The purpose of such proceedings is to satisfy the creditors before dissolving the solvent entity upon the voluntary decision and request of the members of the entity. Since voluntary dissolution proceedings do not qualify as insolvency proceedings within the meaning of the EU Insolvency Regulation, we do not further discuss this procedure in the context of this Opinion.

Although the initiation or institution of voluntary dissolution proceedings does not have direct adverse effect on creditors' rights, for practical reasons we are of the view that it is advisable to link early termination right also to the occurrence of voluntary dissolution proceedings. In this way creditors can better ensure the satisfaction of their claim without risking that the voluntary proceedings turn into insolvency proceedings. This happens if in the course of the voluntary dissolution proceedings it turns out that the company's assets are insufficient to cover creditors' claims, and the members fail to supply the necessary funds. In this case the receiver must submit a request for insolvency without delay, and thus the voluntary dissolution proceedings turn into insolvency.