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MEMORANDUM

To	**European Federation of Energy Traders (EFET)** Amstelveenseweg 998 1081JS Amsterdam, the Netherlands
From:	**Natalia Selyakova, Nadiya Shylienkova, Artem Lukyanov and Artur Savin, LLC "Dentons Europe"**

01 February 2021

ENFORCEABILITY OF THE EFET GENERAL AGREEMENT CONCERNING THE DELIVERY AND ACCEPTANCE OF NATURAL GAS AND ITS COLLATERAL ARRANGEMENTS

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1 INTRODUCTION

At you request we have prepared this memorandum analysing the Ukrainian legal aspects in respect of enforceability of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (the "**EFET General Agreement**"), the validity and enforceability of the collateral arrangements provided under EFET Credit Support Annex to the EFET General Agreement (the "**EFET Credit Support Annex**") and other related legal issues as outlined in the instruction letter emailed to us on 21 August 2020 (the "**Instruction Letter**").

In this Memorandum we provide our high-level responses to the specific questions raised by you in the Instruction Letter and for convenience of reference marked bold italic in the text further.

In this Memorandum we provide our analysis of the Ukrainian legislation effective as at the date of this Memorandum. We also outline relevant new features introduced under the Capital Markets Law (as defined below).

As a general observation we note that the Ukrainian law requirements which may be applicable to a particular Individual Contract (as defined below) to be entered into by any of the EFET members and its counterparty in Ukraine will need to be verified on a case-by-case basis.

For the purposes of our analysis, we have examined the following documents (the "**Documents**"):

(a) EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0(a), published 11 May 2007);

(b) EFET Credit Support Annex to the General Agreement (Version 2.0, published May 2010); and

(c) Ukrainian Border Appendix (Version 1.0 published February 2020).

2 DEFINITIONS

When used in this Memorandum, terms defined in the EFET General Agreement and the EFET Credit Support Annex shall have the same meaning when used in this Memorandum.

In addition in this Memorandum, the following terms have the following meaning:

"**Capital Markets Law**" means the Law of Ukraine "On Capital Markets and Organized Commodity Markets" dated 19 June 2020.

"**Commodity**" means natural gas.

"**Commodity Forward**" means a derivative contract, entered into on organised markets or over-the-counter (OTC), in which one party agrees at a future date to sell the Commodity to the other party and the other party agrees to buy the Commodity at the price and on other terms agreed between the parties when entering into the agreement.

"**Commodity Transactions**" (in Ukrainian – '*tovarni operatsii*') means under the Capital Market Law – agreements, which provide for their performance only by way of physical transfer, delivery and/or supply of commodities and which are concluded on organised markets or over-the-counter (OTC).

"**Commodity Option**" means a derivative contract, entered into on organised markets or over-the-counter (OTC), in which one party agrees upon demand of the other party in the future to sell the Commodity to the other party (call option) or purchase the Commodity from the other party (put option) at the price and on other terms determined by the parties when entering into the agreement.

"**Derivative Securities**" (in Ukrainian – '*pohidni tsinni papery*') means securities which mechanism of issuance and circulation is related to the right to buy or to sell within certain period of time, set out in the agreement, of securities, other financial and/or commodity resources.[1]

"**Derivative Contract**" means under the Capital Markets Law – agreement which terms provide the obligation of one or each party to such agreement with respect to basic asset and/or which terms are set out depending on the basic index and may provide for cash settlement.

"**Individual Contract**" has the meaning ascribed to it in the EFET General Agreement.

"**NBU**" means the National Bank of Ukraine.

"**NSSMC**" means the National Securities and Stock Market Commission.

"**Party A**" means a private business legal entity registered in Ukraine, which does not carry out specifically regulated, licensed activity (such as banking, insurance, etc.).

"**Physical Commodity Transaction**" means a transaction which provides for the purchase of an amount of a Commodity at a fixed or floating price for actual delivery on one or more dates.

"**Transaction**" means the Commodity Forward, the Commodity Option and the Physical Commodity Transaction.

3 ASSUMPTIONS

We have prepared our Memorandum based on the following assumptions:

3.1 Two counterparties enter into the Documents and Individual Contracts and at least one of the counterparties is registered in Ukraine; counterparties have been duly incorporated and registered in the applicable jurisdictions.

3.2 All counterparties have the capacity and authority to trade the Commodity and enter into the Documents and the Individual Contracts.

3.3 Each counterparty has all requisite power and capacity to enter into, deliver and perform its obligations and exercise its rights under each of the Documents and each Individual Contract and the execution of the Documents and each Individual Contract by each Party thereto and the performance of its obligations thereunder conform with the constitutive documents of such Party.

3.4 Each counterparty has validly obtained and complies with all necessary corporate or internal authorisations or any other authorisations from any administrative authority or third party which are to be obtained pursuant to any applicable laws and its constitutive documents in order to authorise the entry into, delivery of and performance of its obligations and the exercise of its rights under each of the Documents and each Individual Contract, such authorisations being unconditional and in full force and effect.

3.5 Each signatory on behalf of each Party to the Documents and the Individual Contracts and each person entering into the Documents and the Individual Contracts has the required capacity and authority to execute the Documents or the relevant Individual Contract, as the case may be, and is duly authorised to do so.

[1] Article 3 of the Law of Ukraine "On Securities and Stock Market" dated 23 February 2006.

3.6 The relevant EFET General Agreement and other Documents are governed by the laws of Germany or England and Wales.

3.7 Each Document is legal, valid and binding and enforceable under the laws of any jurisdiction for purposes of private international law or otherwise (other than Ukraine) and each counterparty has duly authorized, executed and delivered, and has the capacity to enter into, each Document and the Individual Contract.

3.8 On the basis of the terms and conditions of the Documents 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.

3.9 For the purpose of our Memorandum we analyse the UA Border Transactions (as defined in Ukrainian Border Appendix) with the Commodity based on the EFET General Agreement and Ukrainian Border Appendix.

3.10 The Individual Contracts are not entered into on any stock exchange or organised market and are entered into over-the-counter ("**OTC**").

3.11 The Individual Contracts provide for the physical delivery of Commodity. No cash settlement is agreed under the Individual Contracts.

3.12 The Documents and the Individual Contracts are not concluded through fraud or error, or under coercion, threat, bad-faith arrangement, duress or other extraordinary circumstances.

3.13 There are no provisions of any law, other than Ukrainian law, that would affect this Memorandum.

3.14 We do not advise and analyse any tax implications under the Documents and the Individual Contracts.

3.15 Any matters of law contained in secret or unpublished Ukrainian legislation are not within the scope of this Memorandum. We assume that no relevant legislation or other public acts are susceptible of being declared invalid under administrative or constitutional law of Ukraine and there will be no laws enacted with retroactive effect which might affect our analysis in this Memorandum.

4 EXECUTIVE SUMMARY

Given the foregoing, based on legal analysis provided in this Memorandum, we note the following:

4.1 Choice of law

In principle, Ukrainian international private law recognises the choice of law made by the parties to the contract. While the Law of Ukraine "On International Private Law" generally obliges Ukrainian courts to apply foreign law, which governs particular contractual relationships, the Ukrainian court may still apply Ukrainian law, if the meaning of the foreign law provisions is not established within a reasonable time period (please see the details in Section IV below). Also, Ukrainian court may apply those provisions of Ukrainian law, which it deems as mandatory rules of Ukrainian law" (in Ukrainian – '*imperatyvni normy prava Ukrainy*') irrespective of the governing foreign law. Ukrainian law is silent on which rules of Ukrainian law should be considered as mandatory *(please refer to Section VII for more details)*.

Thus, Ukrainian law requirements should be taken into account in respect of the enforceability of the Documents (Individual Contracts thereunder) even if the governing law is not Ukrainian law.

At the same time we note that the Capital Markets Law provide that the parties may deviate in respective agreements from close-out netting procedure, provided by the Ukrainian law.

4.2 Close-out netting

On 19 June 2020, the Ukrainian Parliament passed the Law of Ukraine "On Amendments to Legislative Acts of Ukraine Regarding Simplifying of Investments Attraction and Introduction of New Financial Instruments" (the "**Amendment Law**") aimed at introduction of legal framework for financial instruments based on MIFIDII, MIFIR, EMIR, FCAD and SFD implementation. That law consists of three parts: the Capital Markets Law, the Law of Ukraine "On Commodities Exchange" and the Law of Ukraine on various amendments to other legislative acts of Ukraine). Vast majority of the provisions of the aforementioned laws will become effective as of 1 July 2021.

The legal concept of close-out netting was unknown in Ukrainian law and has been recently introduced by the Amendment Law with respective provisions being supplemented to the Ukrainian bankruptcy legislation.

Provisions on close-out netting in respect of Derivative Securities became effective as of 16 August 2020.

Close-out netting of Derivative Contracts (both exchange-traded and OTC traded) shall become effective as of 1 July 2021.

Starting from 1 July 2021, close-out netting should be applicable to the Commodity Transactions. The term "*commodity transactions*" is defined broadly and would likely cover the Transactions *(please refer to Section I below for more details).*

Accordingly, while currently close-out netting legal concept under Ukrainian law is not applicable for the Transactions, starting from 1 July 2021 it should be applicable.

At the same time, we reveal a number of Enforceability Risks (as defined in Clause 1.2 of Section I below) which might affect the enforceability of close-out netting in bankruptcy proceedings, as well as a number of Mitigators (as defined in Clause 1.2 of Section I below) introduced under the concept of close-out netting, which, presumably, should address such risks *(please refer to Clause 1.2 below for more details).* The Mitigators could be differently interpreted and it is unclear how the practice will develop. On the top of that, there are other Ukrainian currency control and company liquidation rules, which may create practical issues in the course of close-out netting enforcement *(please refer to Clause 1.6 and Section VIII of this Memorandum for more details)*. Therefore, additional regulation, formal clarifications from Ukrainian authorities or further amendments to the law (as a case may be) would provide more clarity in this respect.

4.3 Single Agreement concept

A "single agreement" concept (i.e. when all transactions under the EFET General Agreement are treated as a single transaction and not as individual transactions) is not expressly provided by Ukrainian law.

Ukrainian law allows to apply to the Ukrainian court for invalidation of a transaction (in Ukrainian – '*pravochyn'*), being any action of a person aimed at creating, variation or termination of civil rights and obligations. On this basis, each Individual Contract under the EFET General Agreement may be considered as separate transaction from Ukrainian law perspective and may be challenged by the Ukrainian court separately from each other.

5 GENERAL LEGAL BACKGROUND

Capacity and authority of a particular Ukrainian counterparty to enter into the Transactions to be determined and verified on a case-by-case basis.

The general legal framework in respect of capacity of Ukrainian counterparties to enter into the Transactions is outlined below:

(a) *Ukrainian banks*

(i) Ukrainian banks (including state-owned banks)[2] are allowed to render banking and other financial services (other than insurance services) and carry out other activities, as set out in the Law of Ukraine “On Banks and Banking Activity” dated 7 December 2000 on the basis of the banking license issued to the respective Ukrainian bank by the NBU.

(ii) Ukrainian banks are not allowed to participate in trading activity (except for the sale of memorable, commemorative and investment coins). It is likely that entering by a Ukrainian bank into the Transactions will be interpreted as performing trading activity, and thus Ukrainian banks should be deemed prohibited from entering into the Individual Contracts. For the purpose of this Memorandum we exclude Ukrainian banks from the scope of eligible party in an EFET context.

(b) *Financial institutions (which are not banks)*

(i) According to the Law of Ukraine “On financial services and state regulation of financial services markets” dated 12 July 2001 financial institutions are permitted to provide the financial services as well as other services (transactions) in connection with the provision of financial services <u>as may be expressly set out in law</u> on the basis of the financial services license.

(ii) Ukrainian law does not expressly address the possibility of financial institutions to enter into the Transactions. Therefore, an argument could be made that the financial institutions may not be allowed to enter into the Transactions. However, we recommend to verify the capacity of a particular financial institution to enter into the Documents and Individual Contracts on a case-by-case basis and apply for a clarification to the state authorities if required. For the purpose of this Memorandum we exclude financial institutions from the scope of eligible party in an EFET context.

(c) *Private business legal entities*

Joint stock companies and limited liability companies are the most common types of legal entities in Ukraine. Ukrainian legal entities have general legal capacity, i.e. they may conduct any activities not prohibited by law or company's charters (including entering into the Transactions). Entering into an Individual Contract may require specific corporate approvals.

(d) *Government bodies and state-owned entities*

(i) Ukrainian government bodies enjoy special legal capacity and are permitted to carry out only those activities which are expressly allowed by the legislation governing activities of such body. Special rules may be applicable to each particular state-owned

[2] Under Ukrainian law a state-owned bank is defined as a bank which is 100% owned by the state of Ukraine.

company[3]. The capacity of a particular government body or state-owned entity to enter into an Individual Contract should be verified on case by case basis.

(ii) Entering into an Individual Contract with a governmental body or state-owned enterprise may require additional approval from certain governmental authorities or administrations. Disposal of certain assets by such governmental body or state company may be limited by law.

(iii) Purchase of goods and services by government bodies and state-owned entities may be subject to special procurement procedures (usually, bidding process encouraging competition among the service providers). For the purpose of this Memorandum we exclude Government bodies and state owned entities from scope of eligible party in an EFET context.

(e) Investment funds

The assets of the Ukrainian investment funds can comprise certain types of derivatives backed by securities or funds.[4] However, there is no reference in law, if the assets of the Ukrainian investment funds can include the Commodity. Therefore, a separate clarification from NSSMC may be required. For the purpose of this Memorandum we exclude Investment Funds from scope of eligible party in an EFET context.

(f) Insurance Companies

(i) The Law of Ukraine "On Insurance" No. 85/96-BP dated 7 March 1996 allows insurance companies to provide insurance and reinsurance services as well as to perform other activities connected with the formation, placement and administration (management) of insurance reserves.

(ii) The assets which may be used by Ukrainian insurance companies for formation of insurance reserves are set out in law and may include foreign currency, securities (including equities and debentures), bullion, etc.[5] However, the law provides no guidance as to whether insurance reserves can include the Commodity. For the purpose of this Memorandum we exclude Insurance Companies scope of eligible party in an EFET context.

(g) Investment Firm

Starting from 1 July 2021, the Capital Markets Law introduced a concept of “investment firm”. Investment firm is allowed to provide professional activity related to trading of financial instruments on the basis of the respective license of the NSSMC. The Capital Markets Law allows investment firms to enter into Derivative Contracts which are deemed financial instruments.[6]

[3] Under Ukrainian law a state-owned company is a company which is 50% and more owned by the state of Ukraine.
[4] See Article 48 of the Law of Ukraine “On Mutual Investment Funds”.
[5] Article 31 of the Law of Ukraine “On Insurance”.
[6] See Paragraphs 6-8 of Article 44 of the Capital Markets Law.

6 LEGAL ANALYSIS

I. ENFORCEABILITY OF CLOSE-OUT NETTING

1. Winding-up, Insolvency or Attachment

1.1. Please provide a short overview of the relevant insolvency proceedings, laws and terminology applicable to Party A and contract types listed in Appendix B. This overview should be provided in a separate annex to your opinion.

Please refer to Annex A of this Memorandum.

1.2. When rendering you opinion on enforceability of close-out netting in the context of an insolvency proceeding, you should discuss whether the termination of the Agreement, the calculation of the Termination Amount or its payment is voidable, challengeable or in any way deletable by a liquidator, receiver or third party of the court

The legal concept of close-out netting was unknown in Ukrainian law and has been recently introduced under by the Capital Markets Law which will become effective in respect of the Transactions starting from 1 July 2021.

At the same time, Ukrainian law provides the legal concept of set-off[7], whereby due claims of similar type (e.g. monetary claims) may be terminated by set-off, unless otherwise is provided by the law or agreement between the parties. The set-off concept as well as tailored-made contractual arrangement generally allow to implement close-out netting in contractual relationships between the parties.

Under general bankruptcy rules, we note the following specifics should be observed in respect of Ukrainian debtor- Party A, such as:

- in order the creditor's claim to be satisfied in the course of bankruptcy proceedings such a claim should be recognised by the bankruptcy court and included into the creditors' claims registry; under general rule, satisfaction of creditors' claims within bankruptcy proceedings is carried out at the liquidation stage, but in certain cases, could be effected at the property administration or financial rehabilitation stages;
- priority ranking rules for satisfaction of creditors' claims in bankruptcy – according to it, the claims of creditors may be satisfied only in accordance with their priority ranking, as provided by the Bankruptcy Code;[8] the parties to the bankruptcy proceedings may not deviate from it;
- the rule, whereby set-off of claims to the debtor in bankruptcy is possible only if such set-off does not violate rights of other creditors.[9] Ukrainian bankruptcy courts elaborated approach whereby, claims set-off in bankruptcy is possible if such set-off does not violate the priority ranking rules for satisfaction of creditors' claims.[10] Accordingly, one may argue that set-off of claims against the debtor under bankruptcy ultimately lead to satisfaction of creditor's claim before other creditors with high-priority ranking claims would do (i.e., in out-of-priority order) and therefore may not be possible;

[7] See Article 6014, 602 of the Civil Code of Ukraine.
[8] See Article 64 of the Bankruptcy Code.
[9] See Article 64 of the Bankruptcy Code.
[10] See, among others, Resolution of the Supreme Court of Ukraine dated 08 February 2017 (case No. 5023/1305/12(29/442-09); Resolution of the Supreme Court dated 16 April 2019 (case No. 911/483/18); Resolution of the Supreme Court dated 24 October 2019 (case No. 916/2936/18); Resolution of the Supreme Court dated 29 May 2018 (case No. 904/10677/16).

- the debtor's transactions outlined in Annex A made 3 years before bankruptcy proceedings were started or any transactions made after the commencement of the bankruptcy proceedings may be challenged by the court per request of the insolvency manager, a creditor, claims of which were recognised by the court in the course of bankruptcy proceedings or per request of the debtor (please refer to Annex A for more details),

  (thereafter - the ¨**Enforceability Risks**¨).

With coming into effect of the Capital Markets Law, the close-out netting legal concept was introduced into Ukrainian legislation with respective provisions being introduced in the bankruptcy proceedings as outlined below. Provisions on close-out netting under Derivative Securities became effective as of 16 August 2020; close-out netting in relation to Derivative Contracts (both exchange-tradable and OTC) and the Commodity Transactions should become effective as of 1 July 2021.

According to the Capital Markets Law and the Bankruptcy Code[11], the main provisions for close-out netting are outlined as follows:[12]

- Close-out netting (in Ukrainian – '*likvidatsiynyi nettynh'*) – is a complex of the following actions as set out in an agreement, which provides for the close-out netting (the "**Agreement**"):
  - calculation of the value of obligations of the debtor under bankruptcy vis-à-vis creditor(s) under Derivative Contracts, which provide for mandatory close-out netting, concluded as of the close-out netting date[13];
  - novation, as provided by Article 604 of the Civil Code of Ukraine, of all obligations under Derivative Contracts, which provide mandatory close-out netting, into monetary claims, which are due; and
  - termination of novated obligations, as outlined above, by set-off and calculation of netto-obligations[14].
- A person responsible for close-out netting should be determined in the Agreement.
- The parties to the Agreement may deviate from close-out netting procedure, provided by the Ukrainian law.
- Close-out netting in bankruptcy is not possible in the following cases:
  - The Agreement does not provide for close-out netting;
  - The Agreement does provide for close-out netting, but is concluded after the bankruptcy proceedings were commenced;
  - Respective Derivative Contract, concluded based on the Agreement, which provides for mandatory close-out netting, was concluded after the bankruptcy proceedings were commenced;

[11] The provisions of the Bankruptcy Code are supplemented by new version of Article 94 effective as of 01 July 2021, which would basically mirror the provisions of Article 40 of the Capital Markets Law on close-out netting.
[12] See Article 94 of the Bankruptcy Code, which would come into effect as of 1 July 2021.
[13] "***close-out netting date***" is a date, determined by the Agreement, or the date, on which bankruptcy proceedings were commenced against a party to the Agreement. The date of bankruptcy proceedings commencement is considered as close-out netting date by default.
[14] "***Netto-obligations***" are defined as amount of monetary claim, determined as a difference between mutual claims of the Parties to the Agreement in accordance with the Agreement.

Close-out netting in bankruptcy proceedings as outlined above should also apply to the Commodity Transactions, provided that under such transactions mandatory close-out netting is provided under the Agreement. Close-out netting should also be applicable in respect of the agreements concluded with the aim to secure performance of undertakings under transactions, to which close-out netting applies.

Clauses 10 and 11 of the EFET General Agreement provide for the provisions for close-out netting, which are substantially in line with close-out netting rules provided in the Capital Markets Law and the Bankruptcy Code outlined above.

However, we note that, close-out netting legal concept in Ukraine is new and at this stage it is difficult to estimate how close-out netting would work in practice including in respect of the Enforceability Risks outlined above subject to the Mitigators as outlined below.

The Capital Markets Law and respective amendments to the Bankruptcy Code contain the following general provisions, which might address the Enforceability Risks:

- the rule, whereby close-out netting is carried out in out-of-court order; while the Bankruptcy Code and the Capital Markets Law are silent what that should mean, one may argue that, such wording should be interpreted in a creditor friendly manner, namely, that close-out netting is out of the scope of bankruptcy procedures and that requirements to submit creditor' claims for inclusion into creditors' claims registry, priority ranking rules and other limitations for satisfaction of creditors' claims set out by the Bankruptcy Code, do not apply;
- the rule, whereby provisions of the Bankruptcy Code[15] on close-out netting prevails over any other provisions of the Bankruptcy Code; At the same time no specific amendments\adjustments were introduced to the Enforceability Risks provisions outlined above;
- the rule, provided by Article 38 of the Capital Markets Law, whereby instructions in relation to the Derivative Contract or the Commodity Transaction served by the party before commencement of the bankruptcy proceedings, are valid, legal, irrevocable and enforceable and cannot be invalidated by the court,

  (jointly – the "**Mitigators**").

Please kindly note that, the Mitigators could be differently interpreted and it is unclear how the practice will be developed. Additional regulation, formal clarifications from Ukrainian authorities or further amendments to Ukrainian laws (as a case may be) would provide more clarity in this respect.

Matters related to the termination of the Agreement, the calculation of the Termination Amount or whether its payment is voidable, challengeable by a liquidator, receiver or third party of the court are discussed in other sections of this Memorandum below.

1.3. In particular, please clarify whether or not there is a distinction in time with respect to a creditor's right between: (a) the filing of proceedings seeking a judgment of insolvency; (b) a bankruptcy court recognising the filing of proceedings seeking a judgment of insolvency; (c) the date on which a bankruptcy court determines a party first becomes insolvent; and (d) any other stage of the proceedings where a creditor's rights may be affected

Under general approach of Ukrainian bankruptcy courts, a creditor becomes a party to the bankruptcy proceedings only if its claim is recognised by the bankruptcy court and is included to the Creditors'

[15] Article 94 of the Bankruptcy Code

Claims Registry.[16] Creditors' rights vary depending on the creditor's status. Please refer to Annex B for more details.

General procedure for commencing bankruptcy proceedings is as follows:

(1) Filing bankruptcy application with the court;

(2) Scheduling of the preparatory court hearing, where the court would decide whether to commence bankruptcy proceedings – the judge should schedule the preparatory court hearing within 5 calendar days following bankruptcy application's filing;

(3) Preparatory court hearing – should be held within the period 14-20 calendar days following the court ruling on scheduling of preparatory court hearing;

We note that, as a practical matter, preparatory court hearing may be adjourned for various reasons.

(4) Initiation of bankruptcy proceedings – documented in the form of a court ruling, which becomes effective as of the date of its issuance. All limitations in bankruptcy (e.g., the moratorium and other requirements for creditors to enforce their claims) becomes effective from the date of issuance of the court ruling. This said, the creditors may, in theory, initiate enforcement (close-out netting) under their claims until step (4) above is reached. In that case, only Termination Amount claim of the creditor to debtor under bankruptcy (if any), would be subject to general rules and limitations within bankruptcy proceedings (please refer to Annex A for more details).

1.4. We are also interested in whether the insolvency law provides for a "safe harbor" for certain contract types and/or entities and whether the contract types listed in Annex III and which of the entities listed in Assumptions 4.2(i)-(ix) would benefit from such provision

Ukrainian law does not specifically recognise the legal concept of "safe harbor".

Under general rules in bankruptcy proceedings, if the financial rehabilitation procedure is introduced vis-à-vis the debtor, the insolvency manager may waive from debtor's contracts, which were concluded prior to the commencement of bankruptcy proceedings, but which were not performed in full, if such transactions cause damages to the debtor, constrain the restoration of the debtor's financial solvency, or which would create benefits to the debtor in a long-term perspective.[17]

Also, under general rule all debtor's transactions concluded 3 years prior to commencement of bankruptcy proceedings may be invalidated by the bankruptcy court based on hardening period rules (please refer to Annex A for more details).

As mentioned in Section 1.2 above, the Mitigators were introduced which potentially might address Enforceability Risks in respect of close-out netting, including above mentioned risks of waiving or invalidation of transactions. It is unclear, however, how those Mitigators will be interpreted and used in practice.

[16] See, among others, Resolution of the Supreme Court dated 08 August 2018 (case No. 24-7/210-05-8241).
[17] See Article 50 of the Bankruptcy Code. This legal concept is similar to „cherry-picking" legal concept available in other EU jurisdictions.

1.5. We would also like to know whether there is publicly available information that would confirm any of the procedural steps or other solvency related facts (e.g., financial statements, corporate actions, etc.)

The information related to bankruptcy proceedings in Ukraine is public and could be found at the web-site of Unified State Registry of Court Judgements (www.reyestr.court.gov.ua) or at the web-site "Sudova Vlada Ukrainy" (www.court.gov.ua).

Certain information (such as, on commencement of bankruptcy proceedings or liquidation) may be found at in the Unified State Registry of Legal Entities, Individual Entrepreneurs and Public Organisations.

As regards information on financial condition of the counterparty, the Law of Ukraine "On Accounting and Financial Reporting" provide the following list of entities that shall make publicly available its yearly financial standings on their official web-pages. These include the following list of entities;

(i) Enterprises with public interest[18] (save for large enterprises – security issuers), PJSCs, entities with natural monopoly on nationwide market, and entities operating in the mining sector shall disclose on its web-page yearly financial statement (including yearly consolidated financial statements) and audit report not late than 30th day of April;

(ii) Large enterprises (at least two of the following criteria should be met: net income over EUR 40 million; book value of assets over EUR 20 million; staff over 250 persons) which are not securities issuers and medium-size entities shall disclose on its web-page yearly financial statement and audit report not later than on 1st day of June;

(iii) Financial institutions, being Micro (at least two of the following criteria should be met: net income up to EUR 700 thousand; book value of assets up to EUR 350 thousand; staff up to 10 persons) and small enterprises (at least two of the following criteria should be met: net income up to EUR 8 million; book value of assets up to EUR 4 million; staff up to 50 persons) shall disclose on their web-page annual financial report and audit report not later than on 1st day of June.

As regards information on corporate actions joint stock companies are also required to disclose regulated information (which include information on financial standing and on significant transaction, etc.) on annual (quarter) basis. Such information could be found at www.smida.gov.ua. Special information (e.g., issuance of securities for the amount of 25% exceeding charter capital of the JSC, information on availability of shareholders agreement, approval for entering into significant (self-interest) transactions, changes to the executive officers of the JSC, decrease of the charter capital of the JSC and others) should be disclosed immediately on the JSC's web-site and on www.smida.gov.ua – within 2 working days following the event, which triggers the special information disclosure requirement, occurred.[19]

1.6. In addition, please provide a general description of limitations in your jurisdiction, if any, applicable to set-off (both in an insolvency related and non-insolvency related Early Termination scenario and otherwise): (a) between Parties of claims arising under the EFET General Agreement; (b) between the Parties of claims arising outside the General Agreement if contractually provided for in an amendment to the EFET General Agreement; and (c) between

[18] „***Enterprises with public interest"*** includes: exchange-tradable security issuers, banks, insurance companies, pension funds, other financial institutions (save for micro- and small- enterprises) and large enterprises.
[19] See Decision of the NSSMC No. 2826 „On Approval of the Regulation on Disclosure of Information by Securities Issuers".

Affiliates or Creditor Support Providers of Parties if contractually provided for in an amendment to the EFET General Agreement. Please base your opinion on the following additional assumptions:

- ***The relevant EFET General Agreement is governed by any law (including English or German law or the laws of your jurisdiction);***
- ***After entering into the Individual Contracts and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary case under the insolvency laws of your jurisdiction 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***

Below please find general description of limitations applicable to set-off under Ukrainian law:

Set-off with Ukrainian counterparty, which is subject to bankruptcy proceedings in Ukraine – formally not prohibited, but subject to limitations and may not be possible (please refer to Clause 1.2 above).

General requirements for the Set-off with Ukrainian counterparty. As a general note, contractually agreed set-off is not prohibited under Ukrainian law. Ukrainian law provides the set-off[20] legal concept, whereby due claims of similar type (e.g. monetary claims) may be terminated by set-off, unless otherwise is provided by the law or agreement between the parties.

The Supreme Court elaborated the following guidance, whereby set-off is possible if the following conditions are met:[21]

- provisions of the agreements, claims under which are subject to set-off, or Ukrainian law[22] should not prohibit claims set-off;[23]
- Claims should be mutual (i.e. both parties to the set-off should have claims to each other);
- Claims should be of similar nature (i.e., the monetary claims; or claims to transfer goods of the same type (quality));
- The maturity to perform the claims had already accrued;
- Monetary claims should be denominated in the same currencies (e.g. EUR-EUR); monetary claims denominated in different currencies (e.g., EUR-USD or otherwise) may not be considered as claims of similar nature and therefore cannot be subject to set-off; and
- There should be no dispute over the claims (i.e., the amount, validity, maturity, etc.) which are subject to set-off.

Currency control issues in respect of set off. Please refer to Section VIII of this memorandum.

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[20] See Article 6014, 602 of the Civil Code of Ukraine.
[21] See, for instance, Resolution of the Great Chamber of the Supreme Court dated 30 October 2018 (case No. 914/3217/16); Resolution of the Supreme Court dated 28 January 2020 case No. 910/12738/18); Resolution of the Supreme Court dated 26 September 2019 (case No. 910/21645/17); Resolution of the Supreme Court dated 22 August 2018 (case No. 910/21652/17) and others.
[22] In certain cases, Ukrainian law explicitly prohibits claims set-off (e.g., for insolvent banks).
[23] See Article 602 of the Civil Code of Ukraine.

Voluntary liquidation of a debtor. Under Ukrainian law, a legal entity may be subject to liquidation per decision of its shareholders.[24] Once the voluntary liquidation is started, Ukrainian law provides specific rules for satisfaction of creditors' claims. In particular:

- Ukrainian law provides claims' satisfaction priority ranking rules within voluntary liquidation:

  1st priority: compensations for harm caused by disability, by death, other harm caused to health and secured creditors' claims;

  2nd priority: employees claims in respect to employment relationships, author rewards;

  3rd priority: taxes and duties; and

  4th priority: all other claims.

- creditors are required to submit their claims to the liquidation commission for review within term determined by the liquidation commission; such a term may vary from 2 to 6 months;[25] claims submitted after prescribed term's expiry (if approved by the liquidation commission or the court) would be satisfied after creditor's claims, which were submitted on time.[26]

- If liquidation commission rejects the creditor's claim, the latter may challenge it to the court within 1 month; if the creditor fails to apply to the court within 1month period (or the court dismisses the claim in full), the claims are considered as discharged in full.[27]

Ukrainian law is silent whether a creditor-party to the Agreement may deviate from the abovementioned rules and we are not aware of the court established practice on this matter. Thus it is questionable whether close-out netting provisions of the Agreement will be enforceable in Ukraine in case of voluntary liquidation of the Ukrainian counterparty.

The above limitations may be applicable to scenarios (a)-(c) above in one way or another, which is difficult to comment with sufficient level of certainty.

a) Automatic Termination:

aa) 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? If yes, would it be necessary or recommendable 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) adding other Material Reasons upon the occurrence of which Automatic Termination should also apply and/or (iii) by limiting those insolvency events specified in §10.5(c) which would trigger the 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?

- ***If you are recommending that a grace period be made applicable in respect of Section 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 against it in the insolvency courts of your jurisdiction to have that proceeding dismissed or otherwise terminated?***

[24] See Article 110 of the Civil Code of Ukraine.
[25] See article 105 of the Civil Code of Ukraine.
[26] See Article 112 of the Civil Code of Ukraine.
[27] See Article 112 of the Civil Code of Ukraine.

- ***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?***

Please supply specific language for purposes of customizing Section 10.4 of the EFET General Agreement to implement your recommendation and the optimal termination timing

Provisions on close-out netting under Derivative Securities became effective as of 16 August 2020; close-out netting under the Derivative Contracts (both exchange-traded and OTC traded) and the Commodity Transactions should become effective as of 1 July 2021.

Thus, currently close-out netting legal concept under Ukrainian law is not applicable for the Documents and Individual Contracts thereunder. It is advisable to re-consider this question in light of legislation, when close-out netting for the Commodity Transactions and the Derivative Contracts will be clarified by the responsible Ukrainian governing bodies.

bb) Assuming you recommend Automatic Termination to apply, are the provisions of the EFET General Agreement terminating the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in Section 10.5(c) of the EFET General Agreement (adjusted as necessary pursuant to the laws of your jurisdiction) enforceable under the laws of Ukraine or is there a risk that the automatic termination could be challenged by a liquidator, receiver or third party?

As a general note, the enforcement of rights and obligations under the EFET General Agreement and the Individual Contracts may be affected by prescription, period of limitation, lapse of time, limitation or laws (including, but not limited to, laws relating to bankruptcy, insolvency, administration, property administration, liquidation, receivership, official management, moratorium, reorganisation and reconstruction or analogous laws now or hereafter in effect), and similar laws and defences relating to or affecting the rights of creditors or the validity or ranking of their claims; the availability of positive or negative injunctions (or analogous remedies) and rights of acceleration in connection with the enforcement of such rights and obligations may depend upon the discretion of the competent Ukrainian or other court. Enforcement of obligations in Ukraine is subject to different interpretations by Ukrainian courts or Ukrainian state authorities deciding whether enforcement is available, which interpretation may differ from the opinions stated in this Memorandum.

The provisions of the Documents are drafted principally on a foreign model and may include terminology, formulations and approaches based on a legal style other than that traditionally employed in Ukraine. It is therefore difficult to predict with certainty the attitude of Ukrainian authorities to such formulations. Enforcing the provisions may, in practice, require that such authorities and Ukrainian courts will give proper effect to and operation of such provisions. While we do not consider such formulations invalid as a technical legal matter, it is possible that Ukrainian officials will need to have the operation of such a provision explained to them. In accordance with the Law of Ukraine “On International Private Law”, in case of applying the laws of a foreign country, a court or other authorized body of Ukraine shall establish the meaning of its provisions in accordance with official interpretation, practice of application and theory of the respective foreign country. In order to establish the meaning of the foreign law provisions, the court or other authorized body may submit (either per its own decision or per application of the party to the court proceedings) a respective request to the Ministry of Justice of Ukraine or other competent bodies in Ukraine or abroad or to involve experts. If the meaning of the foreign law provisions is not established within a reasonable term in spite of the foregoing actions, Ukrainian law shall be applicable.

Ukrainian courts, when considering interpretation of the contract, may follow the "*contra proferentem*" legal concept, whereby a person, who included a particular provision into the contract, should bear the risk of its interpretation uncertainty; that approach would apply even in a situation when parties used standard documentation templates.

Pursuant to the Law of Ukraine "On International Private Law", Ukrainian courts should recognise the choice of law by the parties to the contract. The scope of law, which Ukrainian court should apply, includes, in particular, rules concerning rights and obligations of the parties and termination of the agreement. So, given that the EFET General Agreement (Individual Contracts) are governed by either English or German law and are enforceable under their terms, then respective provisions on termination should be recognized as a matter of Ukrainian law.

While the Law of Ukraine "On International Private Law" generally obliges Ukrainian courts to apply foreign law, which governs particular contractual relationships, Ukrainian court may still apply Ukrainian law, if the meaning of the foreign law provisions is not established within a reasonable time period (please refer to section IV on the details). Also, Ukrainian court may apply those provisions of Ukrainian law, which it deems as "mandatory rules of Ukrainian law" (in Ukrainian – '*imperatyvni normy prava Ukrainy*') instead of foreign law rules. Ukrainian law is silent on which rules of Ukrainian law should be considered as mandatory.

We also note that, the EFET General Agreement and the Individual Contracts (their provisions) may be challenged in the course of bankruptcy proceedings based on hardening period rules or otherwise on general grounds.

Given the foregoing we note that, generally, Ukrainian law recognises the right of parties to the agreement to terminate it in cases agreed by the parties. Following the termination of the agreement, obligations of the parties thereunder shall be terminated from the termination date onwards; from the termination date, obligations thereunder shall be terminated as well. At the same time, there is a court practice, whereby obligations accrued before termination date should survive. We also note that from Ukrainian law perspective, termination of the agreement (unless otherwise is provided in it) would lead to its termination in full, including the close-out netting provisions. While Ukrainian law does not specifically address such option, based on the freedom of agreement concept you may wish to consider to amend the EFET General Agreement with specific provision that, provisions on close-out netting are not terminated simultaneously with the termination of the EFET General Agreement but should survive.

b) Assuming you recommend not to elect Automatic Termination (as defined in Section 10.4 of the EFET General Agreement) upon the occurrence of an event described in Section 10.5(c) of the EFET General Agreement:

aa) would it be necessary or recommendable to modify the scope of termination (e.g., by (i) deleting or **modifying** ***some of the events listed in Section 10.5(c) which would permit the Terminating Party to terminate and/or (ii) adding other Material Reasons upon the occurrence of which it should be entitled to terminate)?***

Provisions on close-out netting under the Derivative Securities became effective as of 16 August 2020; close-out netting under the Derivative Contracts (both exchange-tradable and OTC) and the Commodity Transactions should become effective as of 1 July 2021.

Thus, currently close-out netting legal concept under Ukrainian law is not applicable for the Documents and Individual Contracts thereunder. It is advisable to re-consider this question in light of legislation, when close-out netting for Commodity Transactions and Derivative Contracts will be clarified by the responsible Ukrainian governing bodies.

bb) 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 clause 10.5(c) of the EFET General Agreement (adjusted as necessary pursuant to the laws of your jurisdiction) enforceable under the laws of Ukraine or is there a risk that (i) the entering into the EFET General Agreement, (ii) the entering into Individual Contracts thereunder or (iii) the termination by notice itself could be challenged by liquidator, receiver or third party?

Provisions on close-out netting under Derivative Securities became effective as of 16 August 2020; close-out netting under Derivative Contracts (both exchange-tradable and OTC) and the Commodities Transactions should become effective as of 1 July 2021.

Thus, currently close-out netting legal concept under Ukrainian law is not applicable for the Documents and Individual Contracts thereunder. It is advisable to re-consider this question in light of legislation, when close-out netting for the Commodity Transactions and the Derivative Contracts will be clarified by the responsible Ukrainian governing bodies.

c) Are the provisions of clause 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 Ukraine or is there a risk that such determination could be challenged by a liquidator, receiver or third party?

Provisions on close-out netting under Derivative Securities became effective as of 16 August 2020; close-out netting under the Derivative Contracts (both exchange-tradable and OTC) and the Commodity Transactions should become effective as of 1 July 2021.

Thus, currently close-out netting legal concept under Ukrainian law is not applicable for the Documents and Individual Contracts thereunder. It is advisable to re-consider this question in light of legislation, when close-out netting for the Commodity Transactions and the Derivative Contracts will be clarified by the responsible Ukrainian governing bodies.

d) Do the laws of Ukraine recognize that the close-out netting provisions in Sections 10 to 11 of the EFET General Agreement apply to all Individual Contracts or could it be challenged by a liquidator, receiver or third party? Would we need the single agreement concept in order to preserve the enforceability of the termination right and the ability to calculate a net amount? If the single agreement concept is particularly important in your jurisdiction, please elaborate in a detailed and circumstantiated manner 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 Contracts under the EFET General Agreement might impact termination and close out rights generally, as well as subsequent rights to terminate Individual Contracts remaining under the EFET General Agreement following a previous Partial Close-Out

As regards recognition of close-out netting in bankruptcy, please see our comments in Clause 1.2 and clause a)aa) above.

As regards single agreement concept, we understand that the EFET General Agreement implies the "single agreement" concept, whereby all transactions entered into under the EFET General Agreement and all Individual Contracts form one single agreement between the parties.

A "single agreement" concept is not expressly provided by Ukrainian law. Nevertheless, there are no specific grounds under Ukrainian law which could be used by a Ukrainian court to disregard the single agreement concept applicable to the contract governed by foreign law if it is the parties' intention and agreement to treat all transactions under the master agreement as a single transaction and not as individual transactions.

As noted in Clause a)bb) above, there is a risk that Ukrainian court may apply Ukrainian law to foreign law-governed agreement.

Ukrainian law allows to apply to the Ukrainian court for invalidation of a transaction (in Ukrainian – '*pravochyn'*)[28]. The definition of transaction is broad and covers not only EFET General Agreement as such, but also each Individual Contract concluded thereunder. Thus, each Individual Contract may be invalidated by the Ukrainian court separately from each other.

As regards enforceability of termination right and the ability to calculate a net amount, please refer to Clause a)bb) and Clause c) above.

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

Under the Bankruptcy Code, all claims submitted in bankruptcy should be calculated in UAH. Foreign currency denominated claims should be converted into UAH at the NBU's official exchange rate as of the date of bankruptcy claim's filing.[29]

f) Please specify, if and as applicable, the degree to which termination and close-out rights in case of opening of insolvency proceedings, against a party based in your jurisdiction are dependent upon, or otherwise affected 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 categorization or regulatory or legal status?

See comments in Clause 1.2 above.

2. Non-insolvency related Material Reasons

Please discuss the issues outlined above under d), e), and f), as well as the following question:

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

Provisions on close-out netting under Derivative Securities became effective as of 16 August 2020; close-out netting under the Derivative Contracts (both exchange-tradable and OTC) and the Commodity Transactions should become effective as of 1 July 2021.

Thus, currently close-out netting legal concept under Ukrainian law is not applicable for the Documents and Individual Contracts thereunder. It is advisable to re-consider this question in light of legislation,

[28] See Article 202 of the Civil Code of Ukraine, whereby transaction (in Ukrainian – '*pravochyn'*) is defined as act of a person, aimed at acquiring, variation or termination of civil rights and obligations.
[29] See Article 45 of the Bankruptcy Code.

when close-out netting for Commodity Transactions and the Derivative Contracts will be clarified by the responsible Ukrainian governing bodies.

II. MULTIBRANCH PARTIES

(a) Overview of Ukrainian regulation on multibranch parties

Generally, current Ukrainian legislation does not require a non-resident to establish a subsidiary or representative office in Ukraine in order to conduct cross-border economic activity (including trading) with Ukrainian parties. However, corporate presence might be required if non-resident is going to conduct activities that are subject to licensing, or in some other specific cases.

Ukrainian legislation allows foreign legal entities to open its subsidiaries and representative offices in Ukraine,[30] unless specific sanction applies.[31] Opening of subsidiaries and representative offices of foreign banks in Ukraine are subject to special requirements.[32]

Non-Ukrainian resident which would like to enter into a transaction with a Ukrainian counterparty on the basis of the EFET General Agreement should not be required to establish an office or branch in Ukraine for the purpose of the contract execution.

As a general note, Ukrainian legislation does not contain the definition of "branch" as such, but has its close equivalent - representative office (in Ukrainian – '*predstavnytstvo*') and also subsidiary (in Ukrainian – '*filiia*').

A subsidiary is determined by Ukrainian law as a separate division of a legal entity located outside of its location which provides all or a part of its functions.[33]

A representative office is determined by Ukrainian law as a separate division of a legal entity located outside of its location which provides representation and protection of interests of such entity.[34]

In contrast to limited liability company, joint-stock company or other type of legal entity, both representative office and subsidiary (the "**Branch**") do not enjoy the status of a separate legal entity.[35] The Branches act on the basis of regulations adopted by the respective governing body of its founding entity and operate property of the legal entity (the "**Parent company**") which incorporates such Branches.[36] As a rule, the Branches may not enter into any commercial agreement as an independent party but may execute such agreements on behalf of their Parent company, if respectively authorized by that Parent company.[37]

[30] See Article 5 of the Law of Ukraine "On Foreign Economic Activity".
[31] Please refer to Clause IX (a) of this Opinion.
[32] The requirements set out in the Law of Ukraine "On Banks and Banking Activity" and the Resolution of the National Bank of Ukraine No. 149 "On Approval of Regulation on Bank Licensing" dated 22 December 2018.
[33] See Paragraph 1 of Article 95 of the Civil Code of Ukraine.
[34] See Paragraph 2 of Article 95 of the Civil Code of Ukraine.
[35] For the purposes of this Memorandum, we assume that, a separate legal entity established in Ukraine by a foreign Parent company (in form of a limited liability company, joint stock company, etc.) shall not be considered as a "Branch" for the purposes of the EFET Documents.
[36] See Article 95 of the Civil Code of Ukraine.
[37] See Article 238 and Article 95 of the Civil Code of Ukraine.

Generally, Ukrainian legislation does not prohibit for Ukrainian legal entities opening of Branches in other jurisdiction, however, certain specific requirements and authorizations in respect of some types of legal entities may apply (i.e. in respect of banks,[38] state-owned enterprises[39]).

(b) *Bankruptcy proceedings in relation to a Ukrainian branch*

As regards bankruptcy proceedings in relation to a Ukrainian branch, Ukrainian bankruptcy law provides that bankruptcy proceedings may be initiated in respect of the following: (i) legal entities; (ii) individuals; and (iii) private entrepreneurs, which unable to satisfy its due monetary claims.[40]

Thus, while separate legal entities (in the form of limited liability company, joint-stock company etc.) set up by the foreign Parent company may be subject to bankruptcy proceedings in Ukraine[41], Branches opened in Ukraine by the foreign Parent company may not be subject to bankruptcy proceedings in Ukraine. At the same time, Ukrainian Branches may be liquidated by their Parental company.

Also to note, bankruptcy proceedings in Ukraine may be initiated by the first instance commercial court, which has jurisdiction over the territory, where the legal entity is registered.[42] Ukrainian court may not commence bankruptcy proceedings against a non-resident debtor nor against its Ukrainian Branch. At the same time general enforcement procedure against assets of the non-resident (allocated to its Ukrainian branch or otherwise) is available in Ukraine.

We also note that, while Ukrainian bankruptcy law generally provides for possibility to recognise bankruptcy proceeding opened outside of Ukraine,[43] however, the regulation on this is vague, practice is pure and we are not aware of any successful precedents of such recognition in Ukraine.

1. Ukrainian Multibranch Party

Please base your opinion on the assumptions outlined under Part C.I and the following additional assumptions:

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

Please discuss the following issues:

h) Would there be any change in your conclusions reached under I.1 above based upon the fact that Party A has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency?

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[38] According to Article 25 of the Law of Ukraine “On Banks and Banking Activity” banks shall obtain preliminary approval of the National Bank of Ukraine for opening of subsidiary or representative office abroad. Additionally in order to open its branch abroad, Ukrainian bank shall meet the requirements stipulated in the acts of the National Bank of Ukraine.
[39] According to Ukrainian legislation, alienation/transfer and other actions with state owned assets/property may require preliminary approval from certain governmental authorities or administrations.
[40] See Article 1 of the Bankruptcy Code.
[41] Please refer to Annex A for general overview of bankruptcy proceedings in Ukraine.
[42] See Article 8 of the Bankruptcy Code.
[43] Under Ukrainian legislation such Foreign bankruptcy proceedings could be recognised in Ukraine irrespectively from the fact if such proceeding is a main or a secondary bankruptcy proceeding.

No changes to our findings in Clause I.1 above, from Ukrainian law perspective. Issues related to bankruptcy of Branches of Party A located abroad should also be addressed by local counsel of jurisdiction of such Branch.

i) ***Would the EFET General Agreement be treated as a unified agreement by the Ukrainian receiver under the laws of Ukraine, 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?***

Please refer to our comments in Clause 1.6 (d) of Section I of this Opinion.

2. Foreign Multibranch Party

Please base your opinion on the following additional assumptions:

- ***A corporation, a bank, an investment services provider, an insurance company, an investment fund management company or any other similar financial institution ("Party F") incorporated, organized or having its centre of main interest in a country ("Country H") other than Ukraine has entered under the EFET General Agreement into Individual Contracts both through its home office and through one or more branches located in other countries including in each case a branch of Party F located in and subject to the laws of Ukraine (the "Ukrainian 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.***

Please discuss the following issues:

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

Under Ukrainian legislation, bankruptcy proceeding could be opened only against a legal entity, an individual entrepreneur and an individual. As Ukrainian law provides that a branch does not enjoy the status of legal entity, consequently bankruptcy proceeding against such branch cannot be opened. Said to the aforementioned, neither foreign nor Ukrainian creditors could initiate bankruptcy proceeding against Ukrainian Branch in Ukraine.

For more information, please refer to Clause II.1. of this Opinion.

k) ***If there were separate proceedings in Ukraine with respect to the assets and liabilities of the Ukrainian Branch, would the receiver or liquidator in Ukraine and the Ukrainian courts, based on the facts above, include Party F's position under the EFET General Agreement, in whole or in part, among the assets of Ukraine and, if so, would the receiver or liquidator and the Ukrainian 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 Ukrainian receiver, liquidator or court considering a single EFET General Agreement were to require a counterparty of the Ukrainian Branch of Party F to pay the mark-to-market value of Individual Contracts entered into with the Ukrainian Branch to the liquidator or receiver of the Ukrainian***

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.

Please refer to Clause II.1 of this Opinion.

l) Please consider your answer to your question assuming instead that Party F has no branch located in Ukraine, but has assets in Ukraine.

Please refer to Clause II. 1 of this Opinion.

III. COLLATERAL

Our analysis in this section is based on the following additional assumptions:

- ***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 authorized and empowered to transfer ownership in the collateral.***

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

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

As a matter of practice, if the collateral is located in Ukraine, in order to facilitate its further enforcement in Ukraine, the collateral arrangements are governed by Ukrainian law. Notwithstanding the above, governing collateral arrangements such as contemplated under the EFET Credit Support Annex under foreign law is generally not prohibited.

The principal legislative acts regulating creation of security arrangements under Ukrainian law are the Civil Code of Ukraine, the Law of Ukraine “On Securing the Creditors’ Claims and Registration of Encumbrances” (the “**Encumbrances Law**”), etc.

(a) Cash

Although not prohibited by Ukrainian law, "transfer of ownership" as contemplated under the EFET Credit Support Annex is not familiar to Ukrainian law.

On the other hand, Article 546 of the Civil Code of Ukraine as well as Encumbrances Law allow the parties to set out other than specifically prescribed by law types of security for performance of obligations (i.e., security encumbrances) as well as “contractual encumbrances”[44] In view of the above discretion it appears that the parties can designate the arrangement under the EFET Credit Support Annex as either ***“security encumbrance” or “contractual encumbrance”*** which is not expressly set

[44] Contractual encumbrances are defined by Ukrainian law as private encumbrances, which are not security encumbrances and arise as a result of transfer of movable property, owned by the chargee to possession of the debtor, or on other grounds which limit the right of the chargee or the debtor to dispose of the movable property.

out in law. We note, however, that there is no sufficient practice on enforcement of such arrangements in Ukraine and Ukrainian court may take adverse approach when interpreting the nature of such security interests (by recharacterizing such transactions or otherwise).

Instead in Ukraine a wide variety of security arrangements (regulated in details) may be used, including a pledge over movable assets, a pledge over contractual rights including receivables, pledge over rights to funds on bank accounts, etc., guarantee, suretyship, trust ownership, etc.

We note that ***the pledge of rights to funds on bank accounts*** is the most common instrument to establish security over cash in Ukraine. Such security can either be taken over a deposit account or current account of the security provider. The enforcement is carried out by way of contractual debiting of funds.

(b) Guarantees and suretyships

Under Ukrainian law only banks and financial institutions may grant guarantees. Other corporate entities may grant suretyships. The principal difference between such security instruments is that the guarantee remains in place in the event that the underlying debt obligation guaranteed is later held to be invalid or unenforceable while the suretyship will fall away once the underlying obligation if terminated.

Suretyships by Ukrainian legal entities in favor of non-residents can be governed by either Ukrainian or foreign law. We normally recommend to govern such suretyships under foreign law which is more investor-friendly and opt for an international arbitration option.

(c) Letters of credit

Letters of credit are issued by a Ukrainian bank to evidence its obligation to pay to the beneficiary against certain documents to be submitted to the issuing bank[45]. Letters of credit can be revocable (i.e. it can be revoked or amended by the issuing bank without consent of the beneficiary) and irrevocable (i.e. cannot be amended or revoked without consent of the beneficiary). Letters of credit are independent obligations and survive if the principal obligation falls away. Letters of credit are generally enforceable and are widely used in Ukraine. However, Ukrainian law provides that the letters of credit may be issued to secure the obligations under contracts with respect to commodities, works and/or services. It is not entirely clear, if the letters of credit may be issued to secure the obligations under the Individual Contracts.

Ukrainian banks normally issue the letters of credit under Ukrainian law.

n) Would the laws of Ukraine 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 a re-characterization?

As the concept of "transfer of collateral" as contemplated under the EFET Credit Support Annex is not practiced in Ukraine, the collateral arrangement under the EFET Credit Support Annex potentially may be re-characterised by Ukrainian courts as loan, deposit, prepayment, etc., subject to general rules for perfection and enforcement of the relevant instrument in Ukraine. For example, an amount of a loan by a Ukrainian resident to a foreign company or amount of a deposit to be placed on a foreign account would be limited to EUR 2,000,000 (or equivalent) per calendar year. The risk of re-characterisation

[45] Resolution of the National Bank of Ukraine „On Approval of Regulation on Procedure for Execution by Banks of Transactions with Letters of Credit" No. 514 dated 03 December 2003

as a loan or a deposit is increased due to paragraph 9 of the EFET Credit Support Annex requiring the Transferee to pay interest on cash.

On the other hand, the arrangement under the EFET Credit Support Annex may be viewed as a transaction contemplating to establish a security interest and may be re-characterised as an advance, pledge or any other security interest which will result in application of the rules for establishment and perfection of security interests. Although part 3 of paragraph 7 of the EFET Credit Support Annex expressly specifies that no security interest is intended to be created under the provisions of the EFET Credit Support Annex, given that the nature of the title transfer collateral arrangement is primarily to create security rather than unconditionally transfer the relevant asset to the security holder, we may not exclude that Ukrainian court may treat the transaction as creating a security interest in the asset. While in principle such re-characterisation is possible we, however, are not in the position to assess this risk due to the absence of any court precedents addressing this issue.

In view of the above, the collateral under the EFET Credit Support Annex may be potentially re-characterised as granting ***an advance ('zavdatok')***. According to Article 570 of the Civil Code of Ukraine, an advance represents the amount of cash or movable assets which is transferred by the debtor to the creditor on account of due payments and to confirm the obligations and secure their performance.

In case of the debtors default the creditor can retain the advance. However, if the creditor fails to perform its obligations secured by the advance, such creditor would need to return to the debtor the advance and pay an extra fee in the amount of the advance. It is not entirely clear, if such provision of Ukrainian law can be ruled out contractually. In case of termination of the obligations, the advance will need to be returned to the debtor.

If a written agreement between the parties would not specify the payment as an advance, then, such payment will be treated as ***prepayment***. This said, as the EFET Credit Support Annex does not refer to the Eligible Credit Support as an advance, the risk of such re-characterisation is remote however, the Eligible Credit Support may be re-characterised as prepayment.

The arrangement under the EFET Credit Support Annex may also be viewed as ***trust ownership*** being one of the types of security interest. We note, however, that such instrument in rather new for Ukrainian law (introduced at the end of 2019) and there is no sufficient practice in its implementation. The trust ownership provides that one party (the debtor) transfers title to the assets to the other party (the creditor) to secure the obligations of the debtor under the loan agreement. It is not entirely clear, if any other underlying obligation (other than under the loan agreement) can be secured by the trust ownership. In case of trust ownership the creditor is not allowed to alienate the collateral other than in case of enforcement.

Re-characterization of the arrangement under the EFET Credit Support Annex as any other instrument under Ukrainian law will result in application of Ukrainian law requirements applicable to the relevant instrument. Consequently, failure to comply with such requirements may result in challenging/invalidation of the transaction or its unenforceability, application of currency control and other limitations under Ukrainian law.

Further, the Capital Markets Law envisages the possibility of close-out netting of the security interest as well as other instruments established to secure the obligations of the Transferor under the Derivative Contracts, the Commodity Transactions. This said, if the arrangement under the EFET Credit Support Annex is interpreted as an arrangement aimed at securing the obligations of the parties under the EFET General Agreement the parties may benefit from the close-out netting. We note, however, that there is no legal practice with respect to close-out netting of collateral in Ukraine.

In addition, the moratorium on enforcement of creditors' claims in insolvency proceedings against Party A will not cover the enforcement against the collateral by a third party being security interest securing the obligations under the Derivative Contracts, the Commodity Transactions[46].

Under the applicable conflict of law rules, the validity and enforceability of collateral under the EFET Credit Support Annex shall be governed by the laws of the jurisdiction in which the collateral is situated or is deemed to be situated. Therefore, we believe that if the collateral is outside of Ukraine, a risk of re-characterisation of transfer of title to the collateral located offshore is remote.

We note that when transferring funds or other currency values outside of Ukraine, a Ukrainian counterparty will be subject to Ukrainian regulatory and currency control requirements applicable to such operations. Please refer to Section VIII of this Memorandum.

o) ***Assuming that Party B receives absolute ownership in the collateral, will it need to take any action thereafter to ensure that its title therein continues? Are there any requirements in Ukraine 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?***

If the collateral is owned by Party B (and is not subject to security interest and is not re-characterised in any other way) Party B will not need to take any action in Ukraine to establish, enforce or maintain its title to the collateral.

Subject to our analysis above re potential re-characterisation, should the Eligible Credit Support be considered as arrangement creating the security interest, registration of encumbrance with the State Register of Encumbrances over Movable Property may be recommended. Such registration is not mandatory and does not affect the validity of the security interest. However, such registration is required to establish the priority of secured claims vis-à-vis third party creditors.

Collateral provided by way of a security interest may be enforced by the secured party either by 1) a judicial foreclosure, or 2) out-of-court mechanisms such as: (a) selling the collateral to a third party purchaser through a separate sale-purchase agreement; or (b) acquiring title to the collateral. However, in cases where the collateral provider is unwilling to cooperate, the creditor will most likely need to turn to judicial foreclosure. The use of a notarial writ to enforce the secured party's claims is possible only if the relevant agreement specifies the notarial writ as one of the possible enforcement mechanisms. Initiation of the enforcement of the collateral being characterised as security interest is subject to certain procedural requirements, such as submission of the default notice, registration of the commencement of the enforcement proceedings in the registry, notification of other secured creditors, etc.

p) ***What is the effect, if any, under the laws of Ukraine 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?***

Under Ukrainian the parties, normally, are allowed to introduce any amendments to the agreement between themselves subject to all parties' consent. As such, in order to substitute the collateral the parties would need to enter into an amendment agreement to the underlying existing agreement or execute a new agreement in order to substitute the collateral. Any such agreement should be in writing.

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[46] Article 41 of the Bankruptcy Code (to become effective from July 2021).

We note that if the arrangement under the EFET Credit Support Annex is regarded as security interest, registration of amendments/new security would be advisable.

The Letter of Credit may need to be amended, revoked or terminated, if substitution of the letter of credit is thought. As noted above, the revocable letter of credit can be revoked or amended by the issuing bank without consent of the beneficiary and irrevocable letter of credit cannot be amended or revoked without consent of the beneficiary. In any event, consent of the party which requested a letter of credit would likely be required.

The corporate suretyship may be substituted, provided respective parties enter into a new suretyship.

q) Party B's right in relation to the transferred collateral upon termination of the relevant master agreement will be governed by § 11 of the EFET General Agreement together with §11 of the EFET Credit Support Annex. Assuming that § 11 of the EFET General Agreement is valid and enforceable in Ukraine 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"?

Provisions on close-out netting under the Derivative Securities became effective as of 16 August 2020; close-out netting under the Derivative Contracts (both exchange-tradable and OTC), the Commodity Transactions and agreements aimed at securing obligations under the above transactions should become effective as of 1 July 2021. Thus, currently close-out netting legal concept is not applicable to the Documents (Individual Contracts thereunder). It is advisable to re-consider this question in light of legislation when close-out netting for the Commodity Transactions, the Derivative Contracts and the security arrangements thereunder will be clarified by the responsible Ukrainian governing bodies.

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

Please refer to paragraph (q) below and Section I of this Memorandum.

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

Following commencement of insolvency proceedings, the court-appointed insolvency manager and/or any creditor will be entitled to challenge transactions of the debtor entered into within three years before commencement of the insolvency proceedings ("***hardening period***"), provided such transactions resulted in losses to the debtor or the creditors. Please also refer to Annex A of this Memorandum.

Any replacement of the collateral or transferring additional collateral made by way of amendments to the existing agreement or entering into a new agreement during the hardening period may result in challenging the relevant amendments or a new agreement by the insolvency manager or a creditor.

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

Although based on freedom of contract principal Ukrainian court should generally recognise the arrangement as contemplated by the EFET Credit Support Annex with respect to Ukrainian collateral, given that the "transfer of title" for security purposes as contemplated under the EFET Credit Support Annex is not familiar to Ukrainian law and due to lack of practice and gaps in Ukrainian legislation the position of Ukrainian courts in this regard is unclear. It is difficult to predict how Ukrainian courts would interpret the arrangement under the EFET Credit Support Annex and in which way such arrangement can be re-characterised by Ukrainian courts. This said, the arrangement contemplated under the EFET Credit Support Annex as well as certain rights and obligations of the parties thereunder may be challenged and would not be enforceable under Ukrainian law.

On the other hand, instruments creating security interest against cash, such as pledge of rights to funds on the accounts, are well-regulated and widely practiced in Ukraine. In addition, in case the security interest is established to secure the obligations under the Derivative Contracts, the Commodity Transactions the parties may benefit from the close-out netting under the collateral.

Save as provided in paragraph (o) above, Ukrainian law does not require that any filing be made and approvals be obtained to perfect security interests in Ukraine.

This question is not applicable to letters of credit and suretyships as no transfer of ownership in the collateral will occur under such instruments.

u) ***Do you have other specific recommendations on the subject of collateral that EFET and its members need to be aware of? If yes, please provide detailed answer.***

Please note that a Ukrainian counterparty providing the Eligible Credit Support (even under a foreign law) would be subject to mandatory rules of Ukrainian legislation, including for determining the capacity and authority of such Ukrainian counterparty, regulatory and currency control requirements in respect of funds transfer, provision guarantees/suretyships and issue the letters of credits for the purpose of creating offshore collateral.

In view of the above, due to ambiguity of Ukrainian legislation we would recommend to establish the collateral offshore, receive foreign law governed guarantees from a foreign guarantor and/or the letter of credit from a foreign financial institution.

IV. GENERAL ENFORCEABILITY

v) ***Is the EFET General Agreement and the EFET Credit Support Annex enforceable under the laws of Ukraine in accordance with its own terms? We would like you to specifically discuss, in a detailed and circumstantiated manner the provisions on (i) non-performance due to Force Majeure (§ 7 of the EFET General Agreement), (ii) remedies for non-performance (§ 8 of the EFET General Agreement) and (iii) limitation of liability (§ 12 of the EFET General Agreement) and any other provisions which in your opinion need to be commented on according to the law of Ukraine, including whether these provisions could and/or need to be further 'expanded' and/or 'strengthened' under the laws of your jurisdiction. We are especially interested in provisions that you may believe, for example infringe upon the***

ordre public in Ukraine and that may be challenged by the courts in Ukraine irrespective of the laws that governs the EFET General Agreement.

Subject to our analysis, assumptions and observations in this Memorandum we note that a number of provisions under the EFET General Agreement and the EFET Credit Support Annex, including in respect of close-out netting may be unenforceable in Ukraine.

(i) Non-performance due to Force Majeure

The provisions of paragraph 7 of the EFET General Agreement should be generally enforceable in Ukraine. Ukrainian law[47] provides that a party is not liable for a failure to perform its obligations under the agreement, if such failure to perform is caused by force majeure.

The parties are entitled to set out certain extraordinary circumstances[48] which are the basis for release from liability in case of breach of undertakings by any party as well as the order of evidencing such circumstances.[49]

Under Ukrainian law, the Ukrainian Chamber of Commerce and Trade (its authorised regional Chambers of Commerce and Trade) are authorised to certify the occurrence of force majeure event and to issue respective force-majeure certificates[50]. The parties may consider adding such evidence in paragraph 7.

(ii) *Remedies for non-performance*

Subject to our analysis, assumptions and observations provided in this Memorandum, the provisions of paragraph 8 of the EFET General Agreement should be generally enforceable in Ukraine. Ukrainian law allows parties to the contract to set out the remedies for non-performance contractually, unless specific sanctions are set out in law. For example, the fines for breach of obligations under the contracts with state-owned companies are expressly set out in law. General civil law principals of fair and reasonable attitude shall be complied with. Also currency control limitations may be applicable (please see details in Section VIII below).

(iii) Limitation of liability

Subject to our analysis, assumptions and observations provided in this Memorandum, the provisions of paragraph 12 of the EFET General Agreement should be generally enforceable in Ukraine. Under Ukrainian law[51] damages include losses and lost profit and should be compensated in full, unless bigger or lower amount is set out contractually. The burden of proof of such damages is borne by the creditor. General civil law principals of fair and reasonable attitude shall be complied with. In particular, under general rule, the party, who breached an obligation (the defaulting party), should promptly notify the other party (the affected party) about such a breach and undertake all necessary actions to prevent causing damages to the affected party or to reduce damages' amount. The affected party should likewise undertake actions aimed at reducing (preventing) damages

[47] Article 617 of the Civil Code of Ukraine.
[48] Article 14-1 of the Law of Ukraine "On Chambers of Commerce and Trade in Ukraine".
[49] Articles 218 and 219 of the Commercial Code of Ukraine.
[50] See Article 14-1 of the Law of Ukraine "On Chambers of Commerce and Trade in Ukraine".
[51] Article 22 of the Civil Code of Ukraine.

amount.[52] If the amount of contractual penalties (if any) significantly exceeds the amount of damages, the court may reduce penalties amount.[53] Also currency control limitations may be applicable (please see details in Section VIII below).

Any instrument aimed at restriction or exclusion of liability for willful misconduct shall be void.

In addition to the above please also note the following with respect to our analysis in this Memorandum:

(i) We note that the provisions of Ukraine legislation are sometimes vague, incomplete or contradictory and thereby raise difficulties when implemented. Ukrainian courts are not bound by earlier decisions, including by higher courts, taken under the same or similar circumstances which results in the inconsistent application of the legislation to resolve similar disputes. These and other factors make judicial decisions in Ukraine difficult to predict and effective redress uncertain. Authority or guidance for interpreting provisions of Ukrainian legislation remains rare.

(ii) When we use the word "enforceable", we are stating our belief that an obligation is capable of being enforced as not contrary to Ukrainian law; however, we express no opinion regarding the actual outcome of any proceedings brought to enforce a particular obligation or the availability of a specific right or remedy as specified in such agreement, which will depend on the facts and circumstances in each case.

(iii) The rights and obligations of the parties to the Documents may be held to have been frustrated by events happening after their execution.

(iv) To the extent that the Documents provide that any matter is expressly to be determined by future agreement or negotiation, the relevant provision may be unenforceable or void for uncertainty.

(v) The enforcement of rights and obligations may be affected by prescription, lapse of time, limitation or laws (including, but not limited to, laws relating to bankruptcy, insolvency, administration, liquidation, receivership, official management, moratoria, reorganisation and reconstruction or analogous laws now or hereafter in effect), and defences relating to or affecting creditors' rights; claims may become subject to set-off or counter-claim; the availability of positive or negative injunctions (or analogous remedies) and rights of acceleration in connection with the enforcement of such rights and obligations may depend upon the discretion of the competent Ukrainian or other court. Enforcement of obligations in Ukraine may differ from region to region within Ukraine and such enforcement is subject to the interpretation placed upon such obligation by the Ukraine court or Ukraine state body deciding whether enforcement is available, which interpretation may differ from the views expressed in this Memorandum. Hence, we express no opinion as to how the Documents would be enforced in practice.

(vi) Ukrainian state bodies and Ukrainian courts have the power in the event of certain emergency situations to interfere by regulation, governmental act or otherwise, with the performance of, or to nullify, contracts, involving foreign transactions.

[52] See Article 226 of the Commercial Code of Ukraine.
[53] See Article 551 of the Civil Code of Ukraine, Article 233 of the Commercial Code of Ukraine.

(vii) A Ukrainian court may invalidate or nullify a contract if in the view of the court such contract contradicts public order. The term ‘public order’ is not explicitly defined in legislative acts and its meaning remains unclear. In our view, the Documents do not contradict public order; however, a Ukrainian court may take a different approach.

(viii) We express no opinion as to whether in the event that any provision of any of the Documents and/or the Individual Contracts is or becomes invalid, ineffective, unenforceable or illegal for any reason, the validity or unenforceability of any or all of the remaining provisions of such Document will be affected.

(ix) A court in Ukraine and/or state authorities involved in an enforcement proceeding may not treat as conclusive and binding those certificates, judgements, determinations, appointments, authorisations, records and opinions which the Documents state or deem to be so treated.

(x) The statutory limitations period in Ukraine to bring an action for protection of rights of a person, including those arising from a breach of contract is generally 3 (three) years from the moment an interested party knew or should have known of a violation of such rights, although this may be extended in certain cases, generally for good cause. The statutory submission period in Ukraine to apply to the State Executive Service of Ukraine seeking the enforcement is generally 3 (three) years from the date when respective judgement becomes effective.

(xi) A judicial award issued by a foreign court (a state court of a foreign country; other bodies of a foreign state which are competent to settle civil or commercial cases) may be recognised and enforced in Ukraine only on the basis of a respective international treaty ratified by the Ukrainian parliament or, in absence of such treaty, on the grounds of a reciprocity principle. A Ukrainian court is required to presume that such a principle exists, unless proved otherwise.

(xii) Ukraine is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**Convention**”). Article 5 of the Convention provides five grounds on which the party against whom the enforcement is brought can oppose enforcement, and two grounds on which the court can on its own initiative, refuse enforcement. The Law of Ukraine, on International Commercial Arbitration (the “Arbitration Law”) envisages essentially similar grounds for non-enforcement, and in any event defers to the rules of international treaties should the treaties differ from its own.

(xiii) In addition enforcement of an arbitral award may be refused due to the expiry of any applicable limitation periods for the award recognition and enforcement in Ukraine. Generally, the limitation period applicable to awards of international commercial arbitration is three years from the entry of an award into force, while an award providing for periodic payments could be enforced without such time limitations but only with respect to the indebtedness for the last three years.

An application should be submitted to a Ukrainian court for recognition and enforcement of an arbitration award in Ukraine.

(xiv) A Ukrainian court, irrespective of the governing law of the respective agreements, may apply those mandatory provisions of the laws of Ukraine which have a strong connection to the respective legal relationships. A Ukrainian court shall take into account the purposes and character of such mandatory provisions and consequences of their application or non-application.

(xv) The Documents are drafted principally on a foreign model and may include terminology, formulations and approaches based on a legal style other than that traditionally employed in Ukraine. It is therefore difficult to predict with certainty the attitude of Ukrainian authorities to such formulations. Enforcing the provisions may, in practice, require that such authorities and Ukrainian courts will give proper effect to and operation of such provisions. While we do not consider such formulations invalid as a technical legal matter, it is possible that Ukrainian officials will need to have the operation of such a provision explained to them. In accordance with the Law of Ukraine “On International Private Law”, in case of applying the laws of a foreign country, a court or other authorized body of Ukraine shall establish the meaning of its provisions in accordance with official interpretation, practice of application and theory of the respective foreign country. In order to establish the meaning of the foreign law provisions, the court or other authorized body may submit a respective request to the Ministry of Justice of Ukraine or other competent bodies in Ukraine or abroad or to involve experts. If the meaning of the foreign law provisions is not established within a reasonable term in spite of the foregoing actions, Ukrainian law shall be applicable.

(xvi) Any notices or communication delivered pursuant to provisions of the Documents and Individual Contracts may be not sufficient for the purposes of court proceedings and/or enforcement in Ukraine, notwithstanding any agreement of the parties to the Documents to the contrary.

(xvii) The concept of indemnity is not expressly recognised under Ukrainian law and respective provisions may be ineffective or unenforceable in Ukraine. At the same time, the parties may fix the obligations/terms in the contract which breach would result in compensation of damages and or penalties.

(xviii) Any provision of the Documents which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by Party A or a waiver (in Ukrainian – ‘*vidmova vid prava*’) of any statutory right by Party A and respective remedies for their breach may be ineffective and unenforceable in Ukraine.

(xix) Further, enforcement against a particular company may be affected by decisions of Ukrainian courts or other Ukrainian state bodies.

(xx) Foreclosure over certain types of property (including, but not limited to, agricultural land, residential property where under-aged is/are residing, objects of cultural heritage) owned by Party A or otherwise located in Ukraine may generally be prohibited, restricted or subject to special authorization. Although taking security over certain property may potentially be possible, its enforcement may be limited or subject to special authorisation. The possibility to use any specific asset as security and any potential restrictions on its enforcement should be checked on case-by-case basis. We note that generally taking security over energy products is not restricted. However, in case of a crisis situation in the natural gas market in 2021 the suppliers of natural gas are obliged to form a security stock in the amount of 10% of planned monthly volumes of supply to consumers. We believe pledge/enforcement of such security stock may be prohibited or at least complicated in practice due to the special status of the security stock.

w) Please indicate any recommendations you have and which you are of the opinion EFET and its members need to be made aware of regarding the general enforceability, from a legal stand point, of the EFET General Agreement and its Credit Support Annex.

Apart from including relevant representations, warranties and undertakings, we recommend verifying the capacity and authority of a Ukrainian counterparty to enter into the Documents and Individual Contracts in each particular case because a lack of capacity may be a ground for invalidation of the transaction.

Please ensure that corporate resolutions authorising entering into the Documents and Individual Contracts at the time these documents are entered into and all powers of attorney (if required) are in place.

You may not rely on close-out netting concept in Ukrainian law unless and until such concept becomes effective and properly implemented in Ukrainian law.

Set-off may not be available in course of Ukrainian insolvency proceedings.

V. CONFIRMATION PRACTICES

We would like you to distinguish between (1) the formal requirements and procedure in the formation of a legally binding and enforceable Individual Contract and its inclusion in the EFET General Agreement and (2) the formal requirements a Confirmation should comply with under the laws of Ukraine in order to be sufficient for all purposes to evidence a binding Individual Contract and its inclusion in the EFET General Agreement. When doing so, please base your opinion on the following additional assumptions:

- ***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 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 the EFET Electronic Confirmation Agreement***

1. Binding Individual Contract

Please discuss in detail the following issues:

x) Does the formation of a legally binding and enforceable Individual Contract require any formal act (e.g., execution in writing, signature, registration or notarization) under the laws of your jurisdiction?

1.1. *<u>Form of agreement</u>*

Under the Law of Ukraine "On International Private Law", form of the agreement shall be in compliance with the law applicable to such agreement, unless otherwise prescribed by the law[54]. However, if a party to the foreign economic agreement[55] is an entity registered in Ukraine or Ukrainian resident, such agreement shall be executed in the form prescribed by the Ukrainian legislation.[56] Thus, Ukrainian law requirements in respect of the Documents execution with Ukrainian counterparty should be taken into account.

Under the Law of Ukraine "On Foreign Economic Activity", foreign economic agreement shall be executed in written or electronic form.[57]

The agreement is deemed to be executed in writing form if it is entered into by execution of one or several documents (including in electronic form) and signed by authorized representatives of the parties.[58]

Documents in electronic form should be signed by electronic signature[59]. Electronic signature or any other analogue of a personal handwritten signature could be used in cases provided by law or upon written agreement by the parties, where such agreement should, inter alia, contain specimen of the parties` analogues of personal handwritten signatures.[60]

At the same time, the Law of Ukraine "On Electronic Trust Services" provides that qualified digital signature[61] which complies with certain requirements established by the law and is issued by one of Ukrainian qualified trust service provider[62] has the status of a personal handwritten signature. Thus, above requirements concerning using of analogue of a personal handwritten signature should not be applicable if parties use qualified digital signatures for signing agreements.

In addition to the foresaid and general provisions of the Ukrainian Civil Code, the execution of agreement in electronic form is also provided by the Law of Ukraine "On e-commerce", which establishes, inter alia, a possibility to sign agreements by one-time authentication signature[63]. However, the Law of Ukraine "On e-commerce" does not apply to the transactions, where the transfer of title of the transaction subject is regulated by specific regulations or such transactions are secured by security documents (e.g., pledge, mortgage or other types of security).[64]

Considering that the Transactions under EFET General Agreement concern natural gas, trading of which is regulated by specific Ukrainian regulations, as well as that obligations under EFET General Agreement may be secured by Credit Support Annex or otherwise, an argument can be made that the

[54] See Clause 1 of Article 31 of the Law of Ukraine "On International Private Law".
[55] ***Foreign economic agreement*** – agreement between two or more subjects of foreign economic activity and their foreign counterparties, aimed at establishment, variation or termination of mutual rights and undertakings in foreign economic activity.
[56] See Clause 3 of Article 31 of the Law of Ukraine "On International Private Law".
[57] See para 2 of Article 6 of the Law of Ukraine "On Foreign Economic Activity".
[58] See Article 207 of the Civil Code of Ukraine
[59] ***Electronic signature –*** data in electronic form which is attached or logically associated with other data in electronic form and which is used by the signatory to sign a document.
[60] See Clause 3 of Article 207 of the Civil Code of Ukraine
[61] ***Qualified digital signature -*** an advanced electronic signature, which is created using a qualified electronic signature and is based on a qualified public key certificate
[62] See Article 18 of the Law of Ukraine "On Electronic Trust Services"
[63] ***One-time authentication signature*** - the electronic data in the form of a set of letters and numbers, which are added to the other electronic data by a person, who accepted the offer to conclude electronic agreement and are transferred to the other party to the electronic agreement.
[64] See Article 1 of the Law of Ukraine "On e-commerce".

Law of Ukraine “On e-commerce" may not apply to the Transactions.

As regards usage of qualified digital signatures by non-residents in Ukraine: under general rule, Ukrainian law prohibits to issue qualified digital signature to a person without proper identification.[65] While the law provides clear guidance how such identification should be carried out in respect of individuals and Ukrainian legal entities, it is silent how such identification should be made in respect of foreign legal entities.

As far as we are aware, Ukrainian qualified trust service providers, who issue qualified digital signatures, do not issue electronic digital signatures for non-residents.

At the same time, Ukrainian law provides the opportunity to use electronic digital signatures issued in foreign states. Therefor, such electronic digital signature should met any of the following requirements:

- The foreign qualified trust service provider should met the requirements of the Law of Ukraine “On Electronic Trust Services", which should be confirmed by Ukrainian authorities; or
- The foreign qualified trust service provider should be included on the list of qualified trust service providers in their home state, and there is respective international treaty between Ukraine and such home state on mutual recognition of electronic signatures.

According to the letter of the Ministry of Digital Transformation of Ukraine No. 1/04-3-6238 dated 26 November 2020[66], currently there is no international treaty of Ukraine on mutual recognition of electronic signatures and none of foreign electronic trust service providers expressed their intention to confirm their compliance with the Law of Ukraine “On Electronic Trust Services”.

In practice, however, there is a risk that courts may not be satisfied with electronic documents as admissible and sufficient evidence.

As a matter of practice, it is advisable (if feasible) to execute agreements in paper wet-ink originals signed by representatives of the parties, affixed with seal (if available while not mandatory).

Same requirements and issues apply when submitting agreements (as the case may be) to the state (customs, tax) authorities in Ukraine or Ukrainian banks.

Pursuant to Ukrainian law, notarization and/or registration of such agreements as Individual Contracts is not mandatory.

Amendment Law provides for execution of the agreements via exchange of documents within the information and telecommunication system used by the parties. The term "information and telecommunication system" is broadly defined in Ukrainian law and further guidance from the regulator is expected in respect of the Amendment Law implementation regulations.

1.2. Essential terms (in Ukrainian – ‘istotni umovy’)

Under Ukrainian law[67], an agreement is deemed concluded starting from the moment, when parties agreed all essential terms and conditions of it in due form[68]. Such essential terms include:

subject matter of the agreement;

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[65] See Article 22 of the Law of Ukraine "On Electronic Trust Services”.

[66] Full text is available at: https://infobox.prozorro.org/news-mert/list-ministerstva-cifrovoji-transformaciji-ukrajini-z-privodu-vikoristannya-kep-uep-nerezidentami (in Ukrainian).

[67] See Article 220 of the Civil Code of Ukraine

[68] See Article 638 of the Civil Code of Ukraine

price;

term of agreement; and

conditions which are defined by law as substantial or necessary for the agreements of this type, as well as all conditions which shall be agreed upon request of either party;

1.3. <u>Language requirements</u>

A mandatory requirement to execute any agreement with Ukrainian legal entities and individuals in the Ukrainian language was recently lifted. However, for the same reasons outlined in preceding paragraph 1.1 above, it is advisable to execute agreements in both Ukrainian and foreign languages where a foreign language version could prevail or at least prepare the Ukrainian translation of the relevant agreement.

Under the Law of Ukraine "On Ensuring the Functioning of Ukrainian as the State Language" dated 25 April 2019 (the "**Language Law**"), the Ukrainian language should be used in all dealings by public authorities.[69] It is not entirely clear, if such rule will extend to entering into an agreement by such authorities on commercial basis.

Breach of language requirements may result in imposition of fines on state officials. Potentially, an agreement executed in breach of language requirements may be challenged in Ukrainian court. However, we are not aware of any such practice under the Language Law.

1.4. <u>Signing authority</u>

As a general rule, a contract may be signed by Ukrainian counterparty represented by: (a) an authorised signatory of a counterparty vested with the signatory powers under the counterparty's charter (i.e., the constituent document) or the legislation (in case of public authorities and state-owned companies); or (b) a person authorised by virtue of a power of attorney/agency. Respective information on authorised signatory of legal entity could be requested from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (the "**USR**")[70]. Documents and information recorded in the USR are considered true and accurate and may be used in a dispute with a third party[71].

We note that subject to certain exceptions, any powers of attorney/agency can be revoked by the Ukrainian grantor of such powers of attorney/agency at any time.

It is therefore advisable, as a matter of practice, to check capacity of counterparty's signatory on case-to-case basis. Such capacity and authority check normally includes checking Ukrainian legislation applicable to a particular counterparty, its charter, relevant internal regulations (if applicable) and authority of the signatories (powers of attorney, due corporate appointment, etc.), checking the USR and other public registries (e.g. registry on bankruptcies, encumbrances over moveables, etc.).

y) At what point in time does an Individual Contract agreed upon orally become legally binding or enforceable under the laws of your jurisdiction?

[69] See Article 13 of the Law of Ukraine "On Ensuring the Functioning of Ukrainian as the State Language".
[70] https://usr.minjust.gov.ua/content/home
[71] See Article 10 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations"

In view of the section 1.1. of this Memorandum, agreements between legal entities should be executed in written form.

In certain cases, the failure to comply with form of the agreement provided by the law leads to invalidation of such agreement.[72] Also agreements (e.g. Individual Contract) concluded orally may be considered as non-concluded and, therefore, unenforceable in the courts of Ukraine[73].

Ukrainian courts had elaborated approach[74], whereby an agreement, which does not contain all essential terms and/or has agreement form defects, but was performed (in full or in part) by the parties to it, may not be qualified as non-concluded. At the same time, the parties to such agreement would face with issue to prove to the court the terms of agreement as well as the moment in time, when such terms were agreed. This could be burdensome task because of the rules of evidence provided by Ukrainian procedural codes (please refer to our comments in Section 2 below for more details) and we are not aware of successful cases on the market.

z) Does failure to object to incorrect terms in a received Confirmation constitute "acceptance" of those terms per the laws of your jurisdiction? If so, is there a relevant time period per the laws of your jurisdiction that could potentially override the governing law of the EFET General Agreement, and permit the parties to object still?

Pursuant to Ukrainian law, agreement is considered to be concluded if the parties agreed all essential terms[75] in due form and since the moment, when a person who sent an offer to conclude the agreement (offeror) received acceptance of this offer from the other party (offeree).[76] Such acceptance shall be complete and unconditional.

Each party to the future agreement could make an offer. An offer shall contain essential terms of the agreement. Offer could be revoked before or in the moment when offeree receives an offer.[77] Generally, offeree accepts the offer by written acceptance, however, there is a concept that the offeree is deemed to accept the offer if within the term for the response, determined in that offer, made an action pursuant to the contractual terms specified in the agreement (dispatched goods, rendered services, fulfilled jobs, paid a respective sum of money etc.), that testified his/her intention to conclude an agreement, this action is considered as an offer acceptance.[78] Under Ukrainian law the term for the response on acceptance shall be established in the offer, however, if such term is not specified, offeree shall response within normally required period of time.[79] A person who accepted an offer may recall his/her response on its acceptance notifying a person who made offer before the moment or at the moment of receiving the response on the offer's acceptance.

Another concept under Ukrainian law is that intention of the party to conclude an agreement may be expressed by its silence, in cases provided by the agreement or the law. [80] However, we note that such concept would likely not be applicable to the EFET Documents.

[72] See Article 218 of the Civil Code of Ukraine; Articles 13, 14 of the Law of Ukraine "On Pledge" dated 02 October 1992.
[73] See Letter of the Highest Specialised Court of Ukraine on Civil and Criminal Matters No. 9 dated 01.01.2017; Resolution of the Supreme Court dated 05 September 2018 (case No. 205/5292/15); Resolution of the Supreme Court dated 04 September 2019 (case No. 359/409/17).
[74] See, for example, Resolution of the Great Chamber of the Supreme Court dated 05 June 2018 (case No. 338/180/17); Resolution of the Supreme Court dated 16 July 2020 (case No. 923/831/18).
[75] See Articles 638, 639 of the Civil Code of Ukraine; Article 180 of the Commercial Code of Ukraine.
[76] See Article 640 of the Civil Code of Ukraine
[77] See Article 641 of the Civil Code of Ukraine
[78] See Article 642 of the Civil Code of Ukraine
[79] See Article 644 of the Civil Code of Ukraine
[80] See Article 205 of the Civil Code of Ukraine

However, it is advisable to receive written confirmation signed by the parties as provided under Clause 1.1. of paragraph (y) above.

aa) ***Is the reference to the relevant EFET General Agreement made in the relevant written confirmation exchanged (post trade) between the parties sufficient for the inclusion of the Individual Contract in the EFET General Agreement?***

Written reference to the EFET General Agreement in the relevant written confirmation would be sufficient provided that the EFET General Agreement has been executed by the parties in writing.

2. ***Means of Evidence***

Please discuss in detail the following issues:

bb) ***Assumed there is a dispute with respect to the existence or the terms and 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 front of a court in your jurisdiction: a (i) taped recording, (ii) witness' statement, (iii) 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 general rule, unless otherwise provided under contract, commercial disputes between legal entities in Ukraine are subject to jurisdiction of Commercial Courts under the rules of Commercial Procedural Code.

Commercial Procedural Code prescribes the following means of evidences admissible in commercial litigation: (i) written, physical and electronic evidence; (ii) expert opinions; and (iii) testimony of witnesses. Please note that testimony of witnesses may be considered as inadmissible in certain cases provided by law (e.g., bankruptcy, disputes over oral agreements[81], etc.)

As a condition for admissibility in evidence of any documents in an enforcement proceeding, Ukrainian courts may require the submission of such documents either (i) as originally executed counterparts, or (ii) as duly certified copies[82]. In the case of documents issued outside Ukraine, such as but not limited to, corporate documentation or any power-of-attorney to attorneys in Ukraine for enforcement purposes, unless a valid international agreement of Ukraine provides otherwise, such foreign document will be admissible in evidence by a Ukrainian court if (i) such foreign document is legalized by a Ukrainian consul in the country of its issuance and a duly certified Ukrainian language translation of such document is notarised by a Ukrainian notary or (ii) an Apostille is affixed to such document by the competent authority of the country of its issuance subject to the Convention Abolishing the Requirement of Legalisation For Foreign Public Documents.

If a party submits evidence in copies, the court may request to provide wet-ink originals for review. If the requested party fails to provide wet-ink originals, the court may find submitted evidence in copies as inadmissible.[83]

Generally, the concept of electronic documents (including agreement) exists under Ukrainian law. Pursuant to Ukrainian law, electronic document is a document in which the information is recorded in the form of electronic data, including mandatory details of the document[84]. Starting from 2017 electronic documents could be submitted to the commercial court as evidence. However, the

[81] See Article 218 of the Civil Code of Ukraine
[82] See Article 91 of the Commercial Procedural Code of Ukraine
[83] See Article 91 of the Commercial Procedural Code of Ukraine.
[84] See Article 5 of the Law of Ukraine "On electronic documents and electronic documents flow"

requirements for submitting such documents as evidences are not explicitly defined in Ukrainian law and practice on this issue is not well developed. Thus, courts, following rather formalistic approach, could require the submission of agreements (other documents) in a paper form.

VI. CORE PROVISIONS

cc) ***Would any of the selections contemplated by the EFET General Agreement or any of the mentioned 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) above? As far as the EFET Credit Support Annex is concerned, you should in particular discuss the effect of electing to allow substitutions with or without consent.***

Close-out netting under the Derivative Contracts (both exchange-tradable and OTC) and Commodity Transactions should become effective as of 1 July 2021. Thus, currently close-out netting legal concept is not applicable for the Documents (Individual Contracts thereunder). It is advisable to re-consider this question in light of legislation, when close-out netting for the Commodity Transactions and the Derivative Contracts will be clarified by the responsible Ukrainian governing bodies.

dd) ***Considering your conclusions reached under Part C.I or C.II (enforceability of Close-out Netting) above, 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: Sections 1, 10.3(a), the second sentence of Section 10.3(b), 10.3(d), 10.5(c)(iv), 11 and the related definition contained Annex 1 to the EFET General Agreement.***

Close-out netting under Derivative Contracts (both exchange-tradable and OTC) and Commodity Transactions should become effective as of 1 July 2021. Thus, currently close-out netting legal concept is not applicable for the Documents (Individual Contracts thereunder). It is advisable to re-consider this question in light of legislation, when close-out netting for Commodity Transactions and Derivative Contracts will be clarified by the responsible Ukrainian governing bodies.

ee) ***Would the inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement, the Master Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) change the Substance of your conclusions reached under Part C.I or C.II?***

We understand the EFET Cross Product Payment Netting Agreement, the Master Netting Agreement or in the CPMA Cross-Product Master Agreement are not used in transactions with Ukrainian counterparties. Therefore, this questions is out-of-scope of our analysis.

VII. GOVERNING LAW, ARBITRATION AND JURISDICTION

Please base your opinion on the following additional assumptions:

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

Please discuss in detail and advise on the following:

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

(a) Governing law

(i) Ukrainian law permits the parties to a contract with a foreign counterparty[85] to choose the law applicable to such contract, therefore, the choice of foreign law (for example, English law or German law) to govern the contract will be a valid choice of law and should be upheld by Ukrainian courts.

(ii) We note that choice of foreign law as a governing law does not limit the effect of any mandatory rules of Ukrainian law.[86] Ukrainian law does not provide which specific provisions of the Ukrainian law constitute "mandatory rules" and should apply regardless of choose of law by the parties. At the same time, Ukrainian International Private Law provides that, the scope of foreign law applicable to the agreement comprises of the following provisions: the validity of the agreement, its interpretation and the legal consequences of the invalidity, rights and obligations of the parties, termination, performance of the agreement, consequences for non-performance (undue performance) and assignment of rights and obligations thereunder.[87]

(b) Arbitration

(i) Ukrainian legislation allows counterparties of a contract with a foreign counterparty to choose a forum of dispute different from Ukrainian courts (including international commercial arbitration court), save for the cases of exclusive jurisdiction of Ukrainian courts (for example, in case of insolvency of a Ukrainian counterparty, disputes relating to issuance of securities in Ukraine, etc.).[88]

(ii) Please note that agreement of the parties to arbitrate their disputes does not exclude the possibility of a party to submit a claim to Ukrainian court, however, if another party raise an objection to jurisdiction, Ukrainian court shall dismiss proceeding in Ukraine and recourse the dispute to arbitration.

(iii) An arbitral award obtained either in the United Kingdom or Germany will be enforceable in Ukraine in accordance with the terms of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which Ukraine, the United Kingdom and Germany are the parties, without re-examination or re-litigation of the matters which have been arbitrated. Enforcement of an arbitral award may be refused due to the expiry of any applicable limitation periods. Generally, the limitation period applicable to recognize awards of international commercial arbitration in Ukraine is three years from the entry of an award into force. An application should be submitted to a Ukrainian court for recognition and enforcement of any arbitration award in Ukraine.

(iv) A Ukrainian court may also decline to recognise and enforce an arbitration award if the court decides that enforcement of such an award would not comply with the fundamental principles of Ukrainian law (public policy), or on other grounds stipulated by the law.[89]

[85] See Article 5 of the Law of Ukraine "On Private International Law".
[86] See Article 14 of the Law of Ukraine "On Private International Law".
[87] See Article 47 of the Law of Ukraine "On Private International Law".
[88] See Article 77 of the Law of Ukraine "On Private International Law".
[89] See Article 36 of the Law of Ukraine "On International Commercial Arbitration"

VIII. REGULATORY REGIME

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

On 7 February 2019 the Law of Ukraine “On Currency and Currency Transactions” (the “**Currency Law**”) came into force. The Currency Law sets out the fundamental principle of freedom of currency transactions, unless expressly prohibited by law. Notwithstanding the above, there are still a number of restrictions related to currency transactions.

(a) *Settlement under export-import transactions*

(i) Ukrainian law does not expressly restrict foreign currency payments under the Transactions. However, pursuant to Resolution of the NBU No. 5 dated 02 January 2019 "On Approval of Regulation On Anti-Crisis Measures and Procedure for Carrying Out of Certain Foreign Currency Transactions" (the “**Resolution No. 5**”), under general rule, a Ukrainian counterparty shall receive payment (if a Ukrainian counterparty is a seller of commodity) or receive delivery of commodities (if a Ukrainian counterparty is the buyer of commodities) within 365 days as of the moment of custom declaration of export commodities or as of the moment of payment of the purchase price for the commodities, unless the amount of the transaction is less than UAH 400,000 (approx. EUR 16,000).

(ii) The 365 day period starts/stops running:[90]

For export transactions –

a. starts from the day when exported goods were put into export customs regime (execution of a document, confirming title transfer to the non-resident); and

b. stops from the day, when payment for exported goods was received at a Ukrainian resident (exporter’s bank account in a Ukrainian bank);

For import transactions –

a. starts from the day when a Ukrainian resident-importer transferred a prepayment for imported goods to the seller; and

b. stops when imported goods were custom cleared in Ukraine (for goods imported to Ukraine) or

c. when funds, received due to re-sale of such imported goods outside the territory of Ukraine were credited to bank account of a Ukrainian resident in Ukrainian bank (for goods which were not imported to Ukraine).

(iii) While Ukrainian regulations generally allow the Ukrainian residents to comply with import-export control requirements by claims set-off under import/export transactions with non-residents, subject to certain terms and procedure the NBU is entitled to introduce anti-crisis measures prohibiting that practice. We note that in the past the NBU has already introduced such measures and for certain period cross-border set-off was prohibited.

In case of set-off of cross-border payments, Ukrainian banks performing the currency supervision role over the cross-border transactions may need to check the underlying contract,

[90] See Clause 7 and Clause 9 of Resolution of the NBU No. 7 dated 02 January 2019.

information on settlements/set-off; documents evidencing economic purpose of such transaction and other documents as provided in Ukrainian regulations and documents which might be required at the bank's discretion to confirm general compliance with Ukrainian currency control regulations and, in particular, with 365 days rule. It is advisable to verify with the Ukrainian account bank which documents may be required for such purpose in advance.

(b) *Limitation amount*

(i) In addition, pursuant to Resolution of No. 5, subject to a number of exemptions, any cross-border transfer of funds by a Ukrainian resident is limited to the aggregate amount of EUR 2,000,000 per year (or in equivalent in other currencies) (the "**Limitation Amount**"). Such exceptions include, among others, payments under export-import contracts, payments for import and export of services, fulfilment of debt obligations under loan agreements, guarantees, security documents, etc. The compliance with the Limit is monitored by the NBU by means of an electronic information system and Ukrainian servicing banks are obliged to check with the NBU whether the Limit is complied before effecting the payment, to which the Limit applies.

(ii) Please note that the Limitation Amount will not apply to transactions of Ukrainian residents made via their offshore account at the expense of funds accumulated on such offshore account. Transfer of funds by Ukrainian residents from Ukraine to such foreign account is subject to Limitation Amount.

(c) *Other currency control requirements*

Although Ukrainian currency control regulations have been liberalised recently, any purchase of foreign currency and transfer of foreign currency outside Ukraine (with some exceptions) should still be made on the basis of certain documents, evidencing the need for such payment, for example, a contract, invoice, etc., for the purpose of making cross-border payments under the contract. This should normally be discussed with a bank servicing cross-border payments.

In order for the Party A to make certain payments under the Documents (including, costs and expenses reimbursements and similar payments or indemnities) execution of certain additional documents or amendments to the relevant Document may be required.

(d) *Financial monitoring*

(i) According to Ukrainian legislation, Ukrainian servicing banks is required to carry out financial monitoring in respect of any currency transaction which exceeds UAH 400,000 (approx. EUR 16,000).[91]

(ii) In addition, Ukrainian currency regulations require Ukrainian banks servicing cross-border payments to carry out additional inspection of their clients and request additional documents (information) on financial transactions demonstrating indicators of suspicious transactions set out in Resolution of the NBU No. 8 dated 02 January 2019, as well as in other cases which may be determined by a Ukrainian bank at its discretion.

[91] See Article 20 of the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime or Terrorism Financing, as well as Financing Proliferation of Weapons of Mass Destruction".

(iii) In particular, Ukrainian servicing banks will be allowed to request documents evidencing the nature and economic purpose of the transaction and the parties involved. Based on the results of such inspection the Ukrainian bank may decline to transfer funds outside Ukraine.

(e) Natural gas market requirements

(i) As a general note, the natural gas market of Ukraine has been subject to various reforms starting with 2015. Most of the reforms have been implemented and brought the Ukrainian regulations in this respect in general compliance with EU laws, in particular, unbundling of the Ukrainian gas transmission system operator and gas distribution operators, new system of contractual relations in the market and nominations, procedure on transfer of title in gas in the gas system, etc. As a result, the structure of the gas market and key regulatory provisions are generally in line with EU laws. Nonetheless, certain regulatory changes have not yet been in place, such as use of MWh instead of cubic meters, REMIT Regulation, etc. Furthermore, there are certain specifics of the Ukrainian market which are different from EU regulations and practice, such as public service obligations of certain market players as well as certain other mechanisms discussed below.

(ii) *Licensing requirements*. Law on Natural Gas Market No. 329-VIII dated 9 April 2015 (the "**Gas Market Law**"), supply of gas to consumers (individuals or legal entities which accept gas for further use for own needs, not for resale, or to use as raw materials) is subject to licensing (special gas supply license). Wholesale trading of natural gas (not for own consumption by a buyer) is not subject to licensing. The relevant provisions of the Gas Market Law and relevant secondary are tailored and interpreted by state authorities in a way which do not allow consumers to import gas directly, including under the EFET General Agreement and the Individual Contracts. Thus, we assume that gas under the EFET General Agreement and the Individual Contracts will be imported only by gas wholesalers or already licensed Ukrainian gas suppliers. As a result, the foreign counterparty will not be required to obtain a gas supply license even if it were possible for foreign companies to obtain such licenses.

(iii) Mandatory gas security stock. The Gas Market Law requires gas suppliers to establish a security stock in the amount no more than 10 % of planned monthly volume of gas supply to consumers for the following month. The level of the security stock is established annually by the Cabinet of Ministers of Ukraine (the "**CMU**"). In accordance with Resolution of the CMU dated 23 December 2021 No. 1310, in case of a crisis situation in the natural gas market in 2021 as determined by the National Plan of Actions approved by the Order of the Ministry of Energy on 2 November 2015 No. 687, the suppliers of natural gas are obliged to form a security stock in the amount of 10% of planned monthly volumes of supply to consumers. Gas security stock requirement applies only to supply of gas to consumers and do not apply to wholesale trading.

(iv) Financial guarantees, neutrality fees and other relevant obligations. In accordance with the Gas Transportation Code transportation services are rendered by the Ukrainian transmission system operator (the "**TSO**") only subject to 100% advance payment for respective. The customer of the TSO shall also provide a financial guarantee (either in a form of a bank guarantee or funds) for settling imbalances based on the rules established by the Code. The customers of the TSO are also obliged to pay/receive neutrality fees due to results of balancing services rendered by the TSO within each year to ensure that the TSO does not incur losses or recognizes gains due to balancing services (will apply starting with 2021/2022 gas years). In cross-border transactions under the EFET General Agreement and the Ukrainian Cross Border Appendix only the Ukrainian counterparty will act as a customer of the TSO and will

provide relevant financial guarantees and pay/obtain neutrality fees and comply with other relevant obligations. Transactions in gas by foreign companies within customs warehouse regime or in the customs territory of Ukraine where such companies receive services from the TSO are outside of the scope of our analysis.

(v) *Import/Export restrictions on natural gas.* Even though there were certain restrictions on export of natural gas from Ukraine in the past, these restrictions were cancelled and free movement of gas with EU countries is available subject to available capacity and technical operation of the gas system as well as compliance with relevant regulations.

(f) Customs clearance requirements

In order to comply with requirements of the Customs Code of Ukraine and Order of Ministry of Finance of Ukraine No. 629 dated 30 May 2012 "On Customs Formalities on Pipeline Transport and Power Lines", the parties to the EFET General Agreement shall execute commercial reports reflecting volume of gas delivered within a month the Ukrainian Cross-Border Appendix. In the absence of the originals of executed commercial reports the Ukrainian counterparty will not be able to arrange customs clearance of imported gas.

IX. OTHER PROVISIONS

hh) If you have other recommendations that you would like EFET members 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.

When entering into the Documents and the Individual Contracts, the following should be considered:

(a) Sanctions

(i) On 12 September 2014 the Law of Ukraine "On Sanctions" (the "**Sanctions Law**") dated 14 August 2014 became effective. The Sanctions Law introduced the grounds and mechanisms for applying sanctions against foreign states, foreign individuals and foreign legal entities, legal entities controlled by a foreign entity, as well as other persons.

(ii) The Sanctions law, *inter alia*, prohibits or restricts transactions subject to sanctions.[92] Prior to entering into an Individual Contract, it is advisable to check applicability of the respective sanctions to a Ukrainian counterparty.

(iii) The list of sanctioned legal entities and individuals is adopted and amended from time to time by the Decision of the National Security and Defence Council of Ukraine.

(iv) We suggest to include relevant representations into the Documents that the parties are not subject to sanctions in any relevant jurisdiction (including Ukraine) and comply with applicable legislation on sanctions.

(b) Dealings with restricted jurisdictions

(i) Ukrainian residents are prohibited to carry out certain transactions in the Restricted Jurisdiction (for example, transfer funds to its accounts located in the Restricted Jurisdiction, grant loans to or purchase securities issued by non-residents registered in the Restricted

[92] See Item 12 of Paragraph 1 of Article 4 of the Sanctions Law.

Jurisdiction). Although there is no express general prohibition to enter into Derivative Contracts with non-residents registered in the Restricted Jurisdiction or carry out any transactions under such contracts, however, we recommend to check this on case-by-case basis.

(ii) A Restricted Jurisdiction is defined as a jurisdiction which meets any of the following criteria:

1. The jurisdiction is included on the "offshores" list (Guernsey Island, Jersey Island, Island of Man, Alderney Island, Bahrain, Belize, Andorra, Gibraltar, Monaco, Anguilla, Antigua and Barbuda, Aruba, Bahamas Islands, Barbados, Bermuda Islands, British Virgin Islands, US Virgin Islands, Grenada, Cayman Islands, Montserrat, Netherlands Antilles, Puerto-Rico, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia, Commonwealth of Dominica, the Turks and Caicos Islands, Republic of Trinidad and Tobago, Liberia, Namibia, Seychelles, Vanuatu, Guam, the Marshall Islands, Nauru, Niue, Palau, Cook Islands, American Samoa, Samoa, Republic of Maldives); or

2. The jurisdiction is considered as an Aggressor-State under Ukrainian law; or

3. The jurisdiction fails to comply or unduly complies with recommendations of international, intergovernmental organisations in the sphere of anti-money laundering and combating the financing of terrorism (AML/CFT) (Iran, the Democratic People's Republic of Korea); or

4. The jurisdiction has AML/CFT strategic deficiencies according to FATF (currently: the Bahamas, Botswana, Cambodia, Ethiopia, Ghana, Pakistan, Serbia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia and Yemen).

(c) Data protection

Under the Law of Ukraine "On Personal Data Protection" dated 1 June 2010 (the "**Data Protection Law**") the personal data about individual includes the information on individual, sufficient for identification (e.g., full name, date of birth, place of living etc.). A legal entity must obtain a written consent from Ukrainian individuals in respect of any collection, keeping, use, transfer, disclosure, other use ("processing") or sharing their personal data. Such consent may be incorporated in any agreement entered into with such individual as well as in any written document signed by such individual. An individual must be notified on transfer of his/her personal data to a third person within 10 business days of the date of such transfer, unless such third person is mentioned in the consent. In practice, we recommend to include into an agreement the representation by a counterparty that it complied with all Ukrainian data protection laws and has received all necessary consents in respect of collection, processing and sharing personal data.

The Ukrainian law also provides general requirements to cross-border transfer of personal data. Personal data of Ukrainian residents may be transferred from Ukraine to persons in foreign jurisdictions in the following cases:

1. express consent of the respective person for the personal data transfer;

2. necessity to protect vital interests of the personal data subjects;

3. necessity to protect public interest;

4. other cases.

Provided that the transfer of personal data to a person in foreign jurisdiction shall, at all times, be subject to adequate protection. The Data Protection Law assumes that the countries acceded to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ensure proper level of protection, as well as: (i) members states of the European Economic Area (EEA), and (ii) other states defined as such by the Cabinet of the Ministers of Ukraine.

(d) *Other*

For the purposes of custom clearance, Incoterms applicable to transactions under EFET General Agreement and the relevant expiry date should be specified in the Individual Contact (please note that the term of the contract will be considered as one of the essential terms of the contract – please refer to Section V of this Memorandum). Although specification of the maximal quantities or maximal contract value is no more legally required, from a practical perspective, we still recommend to check the need for the relevant provisions and references in the Individual Contracts with the customs broker.

* * *

Yours faithfully,

DENTONS EUROPE LLC

Natalia Selyakova, Partner

ANNEX A

Overview of insolvency proceedings

Please provide a short overview of the relevant insolvency proceedings, laws and terminology applicable to Party A and the contract types listed in Annex III

In Ukraine, bankruptcy proceedings are considered as a specific type of court proceedings, held by Commercial courts in Ukraine, aimed at restoration of financial solvency of debtors or their liquidation in order to satisfy creditors' claims in a most efficient way.

Bankruptcy proceedings are regulated by the Code of Ukraine on Bankruptcy Procedures dd. 18 October 2018 as further amended (the "**Bankruptcy Code**"). Bankruptcy Code provides general bankruptcy procedure in Ukraine as well as some specific procedures. Certain types of entities, such as, banks, financial companies, insurance companies, entities that have public importance in the state, or bankruptcy of individuals have specific bankruptcy rules to apply. Bankruptcy of certain legal entities of Fuel and Energy Sector of Ukraine and strategic state-owned entities may be forbidden or limited.

Here we provide the outline of the general bankruptcy proceeding.

Bankruptcy proceedings may be started per court application either the creditor or the debtor.

In order for the creditor to start bankruptcy proceedings, it should justify in court that (a) the debtor is unable to satisfy the due claim of whatever amount in full, and (b) there is no dispute over the claim between the debtor and the creditor that should be resolved in court.

In order for the debtor to start bankruptcy proceedings, it should justify in court that satisfaction of claims of one creditor would lead to his inability to satisfy claims other creditors.

The Bankruptcy Code provides the following stages of bankruptcy proceedings:

(1) property administration: This stage of insolvency proceedings serves to analyse the debtor's financial standing, prevent the debtor's assets from unreasonable disposal and establish control over such assets and to determine the best option for satisfaction of the creditors' claims (i.e., by means of rehabilitation, amicable agreement or liquidation of the debtor). The main features of this bankruptcy stage are briefly outlined below:

a. Introduction of moratorium. The moratorium entails that (i) unsecured creditors, claims of which have become due before the date of the initiation of insolvency proceedings (the so known "scheduled creditors"), and (ii) secured creditors (i.e., claims of which are secured by the pledge/mortgage over debtor's assets), are prohibited to satisfy their claims against the debtor. No default interest or any other penalties or sanctions for breaching the monetary obligations may accrue and be applied. The moratorium does not apply for claims, which become due after the date of the bankruptcy proceedings initiation (the so known "current creditors") as well as for some other claims (e.g., salary, alimony, author's rewards and compensation for injuries to the health or life of individuals).

The moratorium does not apply for simultaneous satisfaction of all creditors' claims at the property administration stage and satisfaction of creditors' claims in accordance with financial rehabilitation plan at the financial rehabilitation stage.

b. Appointment of property administrator. The property administrator is appointed by the court. The role of the property administrator is to preserve the debtor's assets, to identify the debtor's creditors for the purposes of compiling the register of creditors' claims and to convene the first creditors' meeting. Also, the property administrator is granted with certain powers limiting debtor’s management capacity to conclude certain transactions.

c. Preparation of the Registry of Creditors’ Claims (“Registry”). All scheduled creditors must submit their claims to the court and the property administrator for their including to the Registry within 30 calendar days following the publication about initiation of the bankruptcy proceedings on the official web-site of web-portal *Sudova Vlada Ukrainy*. It is advisable (and a good practice on the market) that secured creditors should also submit their claims within 30 days period. A failure to submit a claim within 30 days period will cause inability of the creditor to vote on all-creditors meetings. The court considers each claim and decides whether to include it to the Registry. If approved, the amount of claim would be included to the Registry in UAH. If a creditor’s claim is denominated in a foreign currency, such claim would be converted into UAH at the official exchange rate of the National Bank of Ukraine as of the date of claim’s submission to the court.

d. All-Creditors meeting/formation of the Creditors Committee. Once the Registry is approved by the court, property administrator shall arrange the creditors’ meeting. Scheduled (unsecured) creditors, included to the Registry can participate in the creditors meeting with the right of vote, while the secured creditors, would have the right to participate in the creditors meeting but with the right of advisory vote only. The quantity of votes depends on the amount of creditor’s claim included to the Registry.

As a result of the all-creditors meeting, the creditors committee should be elected by majority vote. The creditors committee may be formed from the scheduled (unsecured) creditors and include up to 7 members. A scheduled (unsecured) creditor, which holds at least 25% of all votes becomes the member of the creditors’ committee automatically. The Creditors’ Committee represents the creditors’ interest in the bankruptcy proceedings and has a number of rights, such as, to decide whether to proceed with liquidation or rehabilitation and others.

(2) Rehabilitation: this is the optional stage of bankruptcy proceedings aimed at the financial recovery of the debtor which could be introduced by the court per respective creditors’ decision and rehabilitation plan approved by all-creditors meeting. Upon the commencement of rehabilitation the court appoints the rehabilitation manager who steps into the shoes of the debtor’s CEO. If rehabilitation plan is not performed or the debtor fails to satisfy claims of current debtors, the court would declare the debtor bankrupt and start the liquidation procedure.

(3) Liquidation**:** this is the last stage of the bankruptcy proceedings, which entails the sale of debtor’s assets, repayment of creditors’ claims (to the extent possible) and debtor’s liquidation. At this stage, current creditors can submit their claims for including to the Registry. All proceeds from the sale of debtor’s asset are distributed among creditors in accordance with their priorities. Claims of secured creditors are satisfied out –of-priority via sale of their collaterals. Upon liquidation, all creditors’ claims, which were not repaid, shall be terminated.

The Bankruptcy Code provides the following priority ranking for all creditors’ claims:

1st priority: salaries and some other payments to employees, costs related to bankruptcy;

2nd priority: indemnification to private persons on different ground;

3rd priority: taxes;

4th priority: claims of scheduled and current creditors;

5th priority: employees contributions to the charter capital of the debtor; and

6th priority: all other claims.

For certain types of debtors (e.g., banks, insurance companies, individual entrepreneurs, etc.) the creditors' priority order may be different.

Hardening Period. Under Ukrainian law the following transactions entered into by a Ukrainian debtor within three years prior to commencement of insolvency proceedings can be challenged (invalidated) by the court:

(a) alienating assets, incurring liability or waiving proprietary claim(s) without consideration;

(b) performing obligations before they became due;

(c) assuming the obligations which resulted in insolvency of the debtor;

(d) alienating or acquiring assets not on the market terms and as a result of which it became insolvent;

(e) making any payments or receiving payments in kind, if the amount of creditors' claims to the debtor exceeds the value of the debtor's assets;

(f) granting security; or

(g) related parties transactions

As a result of the invalidation of a transaction, a relevant counterparty under invalidated transaction must return assets / funds received from the debtor in such transaction into the pool of liquidation assets.]

ANNEX B

Creditors Status in Bankruptcy Proceedings

Scheduled creditor	Current creditor	Secured creditor
claims against the debtor **became due before** the initiation of bankruptcy proceedings, and such claims are not secured by the debtor's assets	claims against the debtor **became due after** the initiation of bankruptcy proceedings	Claims **are secured** by the assets of debtor / security provider under bankruptcy
May initiate the debtor's bankruptcy	n/a	**May** initiate the debtor's bankruptcy
Obliged to apply to the bankruptcy court with the claims to the debtor (30 days from the date of commencement of bankruptcy proceedings)	**Not obliged** to apply to the bankruptcy court with the claims to the debtor at the liquidation stage	**Not obliged** to apply to the bankruptcy court with the claims to the debtor
The claims are satisfied **in the 4th priority order**; If the claims are submitted after 30 days period expiry, they would likewise be satisfied in the 4th order, but the creditor has **no voting rights**	The claims are satisfied **in the 4th priority order**	The claims are satisfied **out of priority order** from the collateral's sale proceeds If money from the sale of the collateral is not enough, the remaining claims potentially could be satisfied in 4th priority order (if the security is provided by the debtor)
May participate at the creditors' meeting/creditors' committee with **voting rights** If claims are submitted after 30 days period expiry, the creditor would have **no voting rights**	**May not** participate at the creditors' meeting/creditors' committee	May participate at the creditors' meeting/creditors' committee with **an advisory vote**