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RE: NETTING OPINION

You have requested our opinion as to the enforceability, as a matter of Mauritius law, of the termination, bilateral close-out netting and multi-branch netting provisions of:

(i) the 2002 ISDA Master Agreements[1];

(ii) the 1992 ISDA Master Agreement (Multicurrency – Cross Border); and

(iii) the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction),

(the agreements in (ii) and (iii) being together the "**1992 ISDA Master Agreements"**; and the 2002 ISDA Master Agreements and the 1992 ISDA Master Agreements being together the "**ISDA Master Agreements"** and each of them an "**ISDA Master Agreement"**).

We have additionally been requested to issue our opinion on:

(i) the use of Securities Financing Transactions (**SFT**) Schedule Provision;
(ii) the 2001 ISDA Cross-Agreement Bridge ("**2001 Bridge**"); and
(iii) the 2002 ISDA Energy Agreement Bridge ("**2002 Bridge**")

All statutory references are to statutes and laws of Mauritius. Please refer to Appendix C that aims to assist in the consumption and processing of information.

[1] The 2002 ISDA Master Agreements include the 2002 ISDA Master Agreement published by ISDA in January 2003, the 2002, the 2002 ISDA Master Agreement (French law) and the 2002 ISDA Master Agreement (Irish law) (collectively the "**2002 ISDA Master Agreements**").

We provide this opinion in respect of a counterparty ("**Mauritius Counterparty"**) that is either:-

(i) a company incorporated by registration under the Companies Act 2001 ("**Mauritius Company"** and the **Companies Act**, respectively);

(ii) banks authorised to receive from the general public money on current, deposit, savings or other similar account or to pay or collect in cheques drawn by or paid in by customers or to do both in the course of carrying on a banking business in accordance with the Banking Act 2004;

(iii) a Mauritius Company that is licensed to carry on insurance business ("**Mauritius Insurance Company"**), as that term is understood under the Insurance Act 2005 (as amended) and the regulations promulgated thereunder ("**Insurance Act"**);

(iv) a general partnership, limited partnership or limited liability partnership (each a "**Mauritius Partnership"**), that has been duly registered under the applicable provisions of the Limited Partnerships Act 2011 and (where relevant) the Limited Liability Partnership Act, 2016;

(v) local authority;

(vi) sovereign;

(vii) a Mauritius Company acting in its capacity as trustee ("**Mauritius Trustee"**) of a trust established in Mauritius ("**Mauritius Trust"**); or

(viii) a central bank, the Bank of Mauritius

We refer to the certain counterparty types listed in Appendix B hereto (each an "**Appendix B Counterparty"**). This opinion will also have application to a "foreign company" that has been registered in Mauritius pursuant to Part XXII of the Companies Act[2], i.e. a company incorporated outside Mauritius which seeks to "engage in or carry on any trade or business in Mauritius" (e.g. a subsidiary or branch of a company incorporated outside Mauritius).

Any of the above companies may be either public or private in nature. Some of the above companies may also be approved and licensed to operate as collective investment schemes and closed-end funds under Mauritius law. A company will usually be deemed to be a public company if it is not stated in its application that it is to be incorporated as a private company. Save and except for the unlimited companies, all other types of companies are usually set up as limited liability companies.

[2] With regard to foreign companies, the provisions of the Insolvency Act that apply to the winding up of Mauritius Companies, also apply to foreign companies.

The above companies may, if eligible, apply for a **Global Business Licence** taking into account the following:

A holder of a Global Business Licence shall, at all times:

(i) carry out its core income generating activities in, or from, Mauritius by:

(a) employing, either directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities; and

(b) having a minimum level of expenditure, which is proportionate to its level of activities;

(ii) be managed and controlled from Mauritius; and

(iii) be administered by a licensed management company.

The above companies may also, if eligible, apply for an **Authorised Company** Licence. The law regulating Authorised Companies requires as follows:

Where the majority of shares or voting rights or the legal or beneficial interest in a company, other than a bank, licensed by the Bank of Mauritius, and incorporated under the Companies Act are held or controlled, as the case may be, by a person who is not a citizen of Mauritius and such company:

(i) proposes to conduct or conducts business principally outside Mauritius or with such category of persons as may be specified in FSC Rules; and

(ii) has its place of effective management outside Mauritius,

it shall apply to the FSC for an authorisation as an Authorised Company.

As set out in the preceding paragraph, the areas of activity of GBCs are restricted and unless expressly allowed by the FSC as a condition of their Global Business Licences to engage in the type of transaction contemplated by the ISDA Master Agreements, they will not be allowed to enter into the ISDA Master Agreements.

All the above companies may adopt segregated or protected cell structures. Mauritius law allows for the incorporation/registration of protected cell companies ("**PCCs**"; each a "**PCC**"). For the avoidance of doubt, such PCCs can also be used to enter into the standard ISDA Documents and our present

opinion extends to such segregated or protected cell structures incorporated or organised in Mauritius (see special considerations below).

The Bank of Mauritius

It is assumed that contracts entered into by the Bank of Mauritius or by another duly appointed government official would be treated as contracts entered into by, and binding on, the Government. Accordingly, references in this opinion to the Bank of Mauritius should be construed as references to the Government (through duly appointed government official).

There is no insolvency regime applicable to the Government.

Entry into Agreements by Bank of Mauritius as Counterparty would likely be considered to be a private commercial act as opposed to an act of a sovereign nature and , in cases where the Bank of Mauritius as Counterparty to an Agreement is, we would recommend that the following waiver be included in the annex to the relevant Master Agreements: "Any party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity from either jurisdiction or enforcement to the fullest extent permitted by the laws of any applicable jurisdiction. Each Party acknowledges that its rights and obligations subject to this Agreement are of a commercial and not a governmental nature."

Local Authority and Sovereign

It is assumed that contracts entered into by any local authority or sovereign (as defined in Appendix B) or by another duly appointed government official would be treated as contracts entered into by, and binding on, the Government. Accordingly, references in this opinion to the local authority and/or sovereign should be construed as references to the Government (through duly appointed government official).

There is no insolvency regime applicable to the Government.

Entry into Agreements by the local authority and/or sovereign as Counterparty would likely be considered to be a private commercial act and , in cases where the Bank of Mauritius as Counterparty to an Agreement is, we would recommend that the following waiver be included in the annex to the relevant Master Agreements: "Any party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity from either jurisdiction or enforcement to the fullest extent permitted by the laws of any applicable jurisdiction. Each Party acknowledges that its rights and obligations subject to this Agreement are of a commercial and not a governmental nature."

Mauritius Partnerships

Notwithstanding the recent growth in limited partnerships as investment vehicles, there is no case law on the effect of netting provisions on Mauritius general or limited partnerships in Mauritius. It should also be noted that Mauritius Partnerships may elect to have 'legal personality' under the Limited Liability Partnerships Act 2011, and under the Limited Partnerships Act 2016 and (thus becoming a "**Legal Personality Mauritius Partnership"**) and our analysis and opinion as to the enforceability of the netting and set-off provisions of the ISDA Master Agreements when entered into with a Legal Personality Mauritius Partnership immediately follows this section.

General Partnership

A General Partnership is known, under the Code de Commerce 1809 as a société en nom collectif. Partners may be individuals or companies. In a general partnership, all partners must be commercant (traders) and a partner's liability is unlimited. A partner in a general partnership is liable to the creditors for all the debts of the partnership. The dissolution of a general partnership is governed under the Civil Code of Mauritius. After the debts of the partnership have been paid and the share capital reimbursed, the distribution of the assets shall be made among the partners in the same proportion as their participation in the profits, unless otherwise agreed. The partners may also agree that certain assets shall be allotted to specific partners.

Limited Partnership

Subject to the Limited Partnership Act 2011, a Limited Partnership may be formed in Mauritius to carry on any lawful business in Mauritius or from within Mauritius with persons outside Mauritius, or both in Mauritius and from within Mauritius with persons outside Mauritius. Unless otherwise specified in the partnership agreement, a limited partnership shall have a continuous and successive existence, through its present and future partners until its dissolution. The general partner(s) of a limited partnership may elect to have or not to have legal personality. A limited partnership which has legal personality may subsequently elect not to continue as a legal person, or a limited partnership which does not have legal personality may subsequently elect to continue as a limited partnership having legal personality. However, prior notification being given to the Registrar of Limited Partnerships, the change must be entered by the Registrar in the Register and certificate of registration of the limited partnership, and the change must not affect the rights or obligations which the limited partnership had prior to the change.

It is the responsibility of the general partners to wind up the affairs of the partnership unless a liquidator is appointed for this purpose by the Bankruptcy Division of the Supreme Court. A limited

partnership will be dissolved on the occurrence of certain events as set out in the Limited Partnership Act 2011.

Upon the dissolution of a limited partnership, its affairs shall, unless a liquidator has been appointed by the Court or otherwise, be wound up by the partners. Distribution of the assets is firstly made to creditors, limited partners who are creditors and finally, subject to the partnership agreement, to the partners.

Every partner will be entitled, as against the other partners and all persons claiming through them in respect of their interests as partners to have the property of the partnership applied in payment of the partnership's debts; and thereafter, to have the surplus assets applied in payment of what is respectively due to the partners after deducting what is respectively owed to the limited partnership.

The basic problem in applying the insolvency set off principles set out above to limited partnership is the requirement for mutuality in relation to debits and credits sought to be set off. Only claims owed by and against each general partner (or in the case of joint rights and obligations, group of the same) may be set off if the mutuality requirement is satisfied in respect of each partner (or group of the same). This mutuality requirement will be affected by changes in respect of partners of the partnership, brought about either by agreement amongst the partners (e.g. admissions or withdrawals), or by operation of law as a result of the dissolution, bankruptcy or death of a partner. The effect of such a change in the partnership can only be analysed in the light of the agreement between the partners and the nature of the interests the relevant partners have in the partnership. Appropriate mechanisms can, however, be built into the partnership agreement whereby assets and liabilities of the partnership prior to any change are assigned and novated, respectively, to the partnership as constituted after the change, so that mutuality between the parties is involved.

Limited Liability Partnership

A limited liability partnership can be established under the Limited Liability Partnership Act 2016. In a limited liability partnership, any partner cannot be held liable for debts exceeding the amount of his contribution whether it be money, loan, any other property or services, or other non-cash contribution, in the said limited liability partnership. While a partner will not be personally liable for the acts and/or omissions of other partners, he does however have unlimited liability for his own acts and/or omissions.

Mauritius Partnerships without legal personality

Unless the Mauritius Partnership is a Legal Personality Mauritius Partnership, as defined above, a Mauritius Partnership is not regarded as a separate legal entity under Mauritius law. As a matter of Mauritius law, there is no procedure as such for winding up a Mauritius Partnership (without legal personality); however, partners of a Mauritius Partnership may be the subject of bankruptcy, winding up or equivalent proceedings. Where the partners of the Mauritius Partnership are individuals present in Mauritius, or companies incorporated in Mauritius, they may be the subject of bankruptcy or

insolvent winding up proceedings under Mauritius law. In such cases, partnership assets under such proceedings would be available, first, for creditors of the Mauritius Partnership, partner creditors, and then for distribution amongst the partners thus being available to discharge the separate liabilities of the partners. Similarly, non-partnership assets of a partner would be available first to that partner's creditors, with the surplus being available for unsatisfied partnership creditors.

Legal Personality Mauritius Partnerships

It is possible for Mauritius Partnerships to register a declaration upon formation to elect 'legal personality' under the Limited Liability Partnerships Act 2016 or under Limited Partnership Act 2011. A Mauritius Partnership (general or limited) that registers as legal personality is a legal person separate from its partners with power to own and deal with its separate property in accordance with the partnership agreement and has unlimited capacity at law. Once made the 'legal personality' election is irrevocable. In addition, and subject to any agreement between the partners, a Legal Personality Mauritius Partnership is not dissolved by a change in the constitution of the partnership. Thus, for Legal Personality Mauritius Partnerships, the complications set out above in relation to Transactions with Mauritius limited partnerships regarding mutuality are obviated.

The bank can confirm whether a 'Limited Partnership' is a 'Limited Partnership with Legal Personality' or a "Limited Partnership without Legal Personality' by conducting a search at the Registrar of Limited Partnerships (ROLP) in Mauritius. Where the general partners elect that the limited partnership shall have a legal personality, they must file a signed declaration with the ROLP stating this fact. The Register of the Registrar of Limited Partnerships and the certificate of registration shall reveal whether a limited Partnership has Legal Personality or not.

For the avoidance of doubt, reference to partnerships in this opinion is limited to those partnerships having legal personality under Mauritius law.

This opinion is provided as at the date of the opinion set out above, and each of the opinions expressed herein extends to and includes each of the Transaction types described in Appendix A.

Trusts

Introduction

The principal statute governing trusts and their administration in Mauritius is the Trusts Act 2001 (**Trusts Act**). Mauritius Trusts are constituted by a trust deed. A trust has no separate legal capacity; it is a fiduciary relationship whereby a fund is held by the trustee that is subject to equitable obligations to deal with the fund under the terms of the trust instrument and in equity for the benefit of the beneficiaries who may enforce such equitable obligations. The Trusts Act is clear in that the assets of a Mauritius Trust constitute a separate fund and are not part of the trustee's own assets.

A Mauritius Trust therefore acts through its trustee, who is personally liable for the obligations it incurs; although, when obligations are incurred in that capacity, the trustee will have a right to discharge those obligations out of the funds of the Mauritius Trust (such indemnity may be excluded or limited in the trust deed). Assuming the trustee's right has not been excluded, where the Mauritius Trust's funds are insufficient to meet the liability in full, the trustee will be personally liable to the relevant creditor for the balance. It is possible, however, for the trustee to enter into limited recourse provisions so as to limit liability contractually.

The trust deed will provide for the manner in which the Mauritius Trust is to be administered e.g. the appointment and removal of the trustee, investment and borrowing powers and restrictions, and the termination and winding up of the affairs of the Mauritius Trust.

There is no governmental consent or approval required to form a Mauritius Trust. All that is required is settlement of the terms of the trust deed and execution of the deed by the trustee. A Mauritius Trust may be designated as non-resident in Mauritius even where the trustee itself is resident of Mauritius.

Capacity

In order to determine whether there is capacity or the power for a Mauritius Trustee to enter into derivative transactions to bind itself in relation to the Mauritius Trust, such capacity or power must be within the provisions or purposes of the Mauritius Trust, as set out in the terms of the Trust deed and settlements etc. and any actions taken by the Mauritius Trustee must be within its power/capacity.

Where a Mauritius Company enters into an ISDA Master Agreement on behalf of a Mauritius Trust (and assuming the Mauritius Trustee is duly licensed or exempted as aforesaid), the power to enter the ISDA Master Agreement must also be within the corporate capacity of the Mauritius Company.

Authority

The formation and operation of trusts are governed by the trust deed by which they are established. The Mauritius Trustee's (and any manager's) authority to carry out the terms and provisions of the specific trust will therefore very much depend on the drafting of the trust deed.

Where the terms of the trust deed related to, and all relevant legislation applicable to, a Mauritius Trust permit the entry into derivative transactions to bind the assets of a Mauritius Trust, it is necessary to then determine whether the person/entity that executes the derivative transactions and performs the obligations to bind the Mauritius Trust has the authority to do so as regards both the terms of the trust deed of the Mauritius Trust and in terms of the corporate governance issues that are applicable to the party that purports to act in relation to the Mauritius Trust, in this case a Mauritius Company. This will generally be the Mauritius Trustee of the trust and, in the case of investment funds established as unit trusts, may also be the manager.

The question of authority of a Mauritius Trustee (or manager) to bind itself as trustee of a Mauritius Trust therefore requires an analysis of the constitutional and other arrangements relevant to the Mauritius Trustee (or manager) itself to establish whether there is authority at that level to bind the Mauritius Trustee (or manager) and whether the proposed transactions are within the terms of the trust deed applicable to the Mauritius Trust so as to bind the assets of the Mauritius Trust.

Netting

Mauritius Trusts cannot become insolvent nor can they commit "acts of bankruptcy"; however, the Mauritius Trustee or the beneficiaries of a Mauritius Trust may become insolvent and commit "acts of bankruptcy". It is to be noted that the Trust Act 2001 provides for protective or spendthrift trusts whereby the terms of that trust may make the interest of a beneficiary subject to termination, restriction on alienation of or dealing in that interest or any part of that interest, or diminution, suspension or termination, in the event of the beneficiary becoming insolvent or any of his property becoming liable to seizure or sequestration for the benefit of his creditors. Whereas there is no concept of insolvency or bankruptcy for a Mauritius Trust, and therefore no rules in Mauritius regarding the distribution of a Mauritius Trust's assets in the "insolvency" scenario of a Mauritius Trust, which is to say that the liabilities of the Mauritius Trust exceed its assets, we recommend that an additional trigger for termination be included in the Schedule to the ISDA Master Agreement by reference to the financial position of the Mauritius Trust, e.g. a provision that permits the Non-defaulting Party to terminate all transactions in the event that the liabilities of the Mauritius Trust exceed its realisable assets (an "insolvent Mauritius Trust"). A provision of this kind would, in principle, be enforceable.

Whilst we are of the general opinion that the provisions of the ISDA Master Agreements providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty, being a Mauritius Trustee, are enforceable under the laws of Mauritius, we draw your attention to the following discussion and issues that may arise in practice.

Capacity in which a Trustee Contracts

Where the Trustees of the Mauritius Trust is itself a Mauritius Company, the following issues may arise in practice in determining liability to the defaulting counterparty, and the application of statutory set-off under the Insolvency Act.

Relevant to the following discussion is the capacity in which the Mauritius Trustee executes the ISDA Master Agreement on behalf of the Mauritius Trust. For each ISDA Master Agreement to be executed between a Mauritius Company acting as Mauritius Trustee for a Mauritius Trust, a determination should be made as to the capacity in which the Mauritius Company will execute the ISDA Master Agreement. There are essentially four scenarios:

(i) The Mauritius Company executes as trustee so as to become personally liable because it is acting for its own account or profit and the non-defaulting party has recourse to the Mauritius Company's separate assets for its claim(s).

(ii) The Mauritius Company executes as trustee acting for and on behalf of the Mauritius Trust so as to undertake personal liability for the non-Mauritius counterparty's claims, on the basis that the Mauritius Company acquires a right of indemnity against the Mauritius Trust's assets (to the extent of these) that is equal to the amount of any claim(s) paid to the non-Mauritius counterparty's claim, with the result that (as in (i) above) the non-Mauritius counterparty's claim has recourse against the Mauritius Company's separate assets for any balance of its claim(s) that exceed the Mauritius Trust's assets.

(iii) The Mauritius Company executes as trustee as in (ii) but has contracted out of its residual personal liability, i.e. for any amount of the non-Mauritius counterparty's claim(s) that exceed the Mauritius Trust's assets available for the Mauritius Company's indemnity.

(iv) The Mauritius Company executes as trustee so as to limit its liability whether acting for its own account or as trustee, so the non-Mauritius counterparty has recourse for its claims only as against the Mauritius Trust's assets.

In the situations detailed in (i) and (ii) the Mauritius Trustee (the Mauritius Company) has personal liability for the non-Mauritius counterparty's claim, and therefore where there are insufficient assets in the Mauritius Trust to discharge the non-Mauritius counterparty's claim under the relevant ISDA Master Agreement, the Mauritius Trustee will be contractually liable for the shortfall (the situations described in (i) and (ii) being the "**Personal Capacity Situations"**). On the other hand, in the situations described in (iii) and (iv), the Mauritius Trustee has contracted out of its personal liability with regard to the Mauritius Trust's assets, so that once the funds of the Mauritius Trust have been exhausted, there will be no further recourse available to the counterparty under the ISDA Master Agreement (the situations described in (iii) and (iv) being the "**Limited Recourse Situations"**).

The analysis below reviews how contractual and insolvency set-off principles might operate in relation to some of scenarios outlined above. However, the general position is that, if insolvency set off applies at all, the mutuality requirement that it entails will be satisfied in any case where the claims sought to be set off arise uniformly under contracts entered into by the Mauritius Trustee in precisely the same capacity. If there is only one ISDA Master Agreement between the Mauritius Trustee and the non-Mauritius counterparty, then the Mauritius Trustee must be acting throughout in only one of the four capacities described above and no issues should arise. Even if there are several ISDA Master Agreements between the parties, no issues arise provided that in each case the contract is structured so that the Mauritius Trustee acts in the same capacity (i.e. in the same scenario outlined above) for each. Difficulties may arise, then, only where (a) there are several ISDA Master Agreements between the non-Mauritius counterparty and the Mauritius Trustee acting in respect of that particular Mauritius

Trust and (b) they are structured in such a way that the Mauritius Trustee acts in different capacities in respect of different contracts. Rather than addressing this scenario at length for present purposes, we recommend that specific advice be sought in the event that this scenario should present itself.

Also pertinent is that generally a Mauritius Trustee will enter into contracts only in a Limited Recourse Situation. For present purposes we generally assume, therefore, that the ISDA Master Agreements are entered into only in a Limited Recourse Situation and recommend that you obtain specific further advice in the event that any ISDA Master Agreement is entered into by a Mauritius Trustee in a Personal Capacity Situation.

Solvent Mauritius Trust, Insolvent Trustee

Where the Mauritius Trustee is insolvent but the Mauritius Trust is solvent, which is to say that the assets of the Mauritius Trust exceed its liabilities, then we are of the opinion that the close-out netting provisions of Section 6(e) of the ISDA Master Agreement should be effective, either as a matter of contract or by operation of insolvency set-off. As indicated above, the result is substantially the same in either case.

In practice, the insolvency of the Mauritius Trustee would not typically affect the substantive rights of the parties under an ISDA Master Agreement where the Mauritius Trust is itself "solvent": either a liquidator would be appointed and would (by court order) obtain the authority to (a) administer the ISDA Master Agreement or (b) transfer the obligations of the Mauritius Trustee to a third party; or, a new trustee may be appointed by the Mauritius Court pursuant to its powers under Section 63 of the Trust Act 2001. In each case, the rights of the underlying parties (the beneficiaries) would survive.

Further, in these circumstances the assets of a Mauritius Trust constitute a separate fund and are not part of the Mauritius Trustee's own estate. Accordingly, Mauritius insolvency rules that apply to the general assets and liabilities of the Mauritius Trustee should apply (if at all) separately to the Mauritius Trust's assets and liabilities[3]. Any liquidator appointed (under the terms of a court order of the kind described above) to administer both the general assets of the Mauritius Trustee and the assets of the Mauritius Trust would draw up one set of insolvency set off accounts between the Mauritius Trustee and each of its creditors at the general account level and another set of insolvency set off accounts between the Mauritius Trustee acting in respect of the Mauritius Trust and each of its creditors at the Mauritius Trust account level. The non-Mauritius counterparty would be entitled to exercise set-off rights and net its claims under any ISDA Master Agreement because the claims in either direction (i.e. by or against the Mauritius Trustee and the non-Mauritius counterparty) satisfy the mutuality requirement in the insolvent liquidation of the Mauritius Trustee provided that (and as we assume is the case for the purposes of this advice) they all come into being while the Mauritius Trustee is acting in the same capacity vis-à-vis the non-Mauritius counterparty. Insolvency set-off under Mauritius law

[3] We note, however, that there may be potential issues where the Trustee has a contractual right under the trust deed or other agreement against the Mauritius Trust's assets, e.g. an indemnity for expenses. Whilst this should not create significant difficulties, we recommend that specific advice be obtained in such event.

involves disregarding or looking through agencies and trusts and will only apply as between parties having the requisite beneficial entitlements under the relevant agreements. Accordingly, the insolvency analysis as set out in Part I above ('Questions relating to Close-Out Netting under the ISDA Master Agreements') will apply.

Apart from, and in addition to, set off rights, the remaining net balance owing by the insolvent Mauritius Trustee to the creditors of the Mauritius Trust would be satisfied out of the funds in the Mauritius Trust (even if the general creditors of the Mauritius Trustee cannot be paid in full). These assets would remain available to meet the claims as against the Mauritius Trustee acting in respect of the Mauritius Trust, notwithstanding the insolvency of the Mauritius Trustee.

If instead of being administered by a liquidator, the assets of the Mauritius Trust are transferred to a third party trustee, then insolvency set off would not apply and netting would operate according to the contractual provisions of the ISDA Master Agreement.

We note further that where Automatic Early Termination applies (i.e. has been selected to apply in the Schedule) then the ISDA Master Agreement would automatically terminate on the insolvency of the Mauritius Trustee, which may not be in the non-Mauritius counterparty's interests where there are sufficient assets remaining in the Mauritius Trust to meet its obligations under the relevant ISDA Master Agreement, especially in the Limited Recourse Situations. To avoid or reduce complications in this regard, the non-Mauritius counterparty may wish to incorporate a contractual procedure that requires the Mauritius Trustee to transfer his functions to a new trustee nominated by the non-Mauritius counterparty, immediately prior to the onset of insolvency (or as soon as practical thereafter), and to transfer (assign and novate) all documents and assets to the new trustee and to take all other steps as may be necessary to accomplish this.

Insolvent Mauritius Trust, Solvent Trustee

Aside from the solvency of the Mauritius Trustee, there is the question of the "solvency" of the Mauritius Trust itself (though, as indicated, a Mauritius Trust does not have legal personality under the law of Mauritius). Where the Mauritius Trustee is solvent but the Mauritius Trust is insolvent, which is to say that the assets of the Mauritius Trust exceed its liabilities, then we are of the opinion that the close-out netting provisions of Section 6(e) of the ISDA Master Agreement should be effective simply as a matter of contract. Insolvency set-off cannot apply in these circumstances because, as indicated above, there are no statutory rules regarding the claims of competing unsecured creditors of a Mauritius Trust; this may be determined by the rules set out in the trust deed or such claims may be paid out by the Mauritius Trustee in the order that they are made.

To the extent the non-Mauritius counterparty has a valid security interest over the Mauritius Trust's assets, then (and on the basis of which no issues of preferences and illegal conveyances prior to insolvency should arise, as outlined above), such a secured creditor should be able to realise his

security out of the Mauritius Trust's assets ahead of the other (non-secured) creditors of the Mauritius Trust.

We also note that, in the Personal Capacity Situations, the Mauritius Trustee will be contractually liable for any shortfall in the non-Mauritius counterparty's claim against the assets in the Mauritius Trust, and so on the basis that the Mauritius Trustee is solvent the non-Mauritius counterparty should be able to realise its claim in full.

Insolvent Mauritius Trust, Insolvent Trustee

Where the Mauritius Trustee is insolvent and the Mauritius Trust is insolvent, which is to say that the assets of the Mauritius Trust exceed its liabilities, then we are of the opinion that the close-out netting provisions of Section 6(e) of the ISDA Master Agreement should be effective, in accordance with the analysis set out above under the heading 'Solvent Mauritius Trust, Insolvent Trustee'. Again, this is so either as a matter of contract or by application of insolvency set-off.

In a case where both the Mauritius Trust and the Mauritius Trustee are insolvent and the Mauritius Trustee is the subject of insolvent liquidation proceedings, the net balance owing to any creditor of the Mauritius Trust would remain as a valid claim against the Mauritius Trust, as in the case where the Mauritius Trust remained solvent. If the Mauritius Trust is insolvent, however, obviously such claims could not be satisfied in full. In a case where the Mauritius Trust were being administered by a liquidator, creditors of the Mauritius Trust would be entitled to receive a pro rata distribution out of the assets of the Mauritius Trust to the extent of their net claims after applying set off.

Conclusion

Typically, a Mauritius Trustee will execute the ISDA Master Agreement on the basis of one of the Limited Recourse Situations. In each of these typical cases, either: (a) Mauritius insolvency principles will not apply (i.e. where there are no insolvent liquidation proceedings in relation to the Mauritius Trustee) and close-out netting will operate in accordance with the contractual terms of the ISDA Master Agreement; or (b) if there are insolvent liquidation proceedings in respect of the Mauritius Trustee, insolvency set-off may apply but will not create difficulties because the mutuality requirement for insolvency set off will be satisfied, and so the insolvency analysis as set out in Part I above ('Questions relating to Close-Out Netting under the ISDA Master Agreements') will apply.

Save as aforesaid, our opinion as to the enforceability of the ISDA Master Agreements relating to a Mauritius Trust where the named counterparty to the ISDA Master Agreement is a Mauritius Trustee is as set out above in relation to a Mauritius Company, i.e. we are of the opinion that, inter alia, the provisions of the ISDA Master Agreements providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of the Mauritius Trust or the Mauritius Trustee are enforceable under the laws of Mauritius.

1. ASSUMPTIONS AND RESERVATIONS

We give the following opinions on the basis of the assumptions set out in Schedule 2 (**Assumptions**), which we have not verified, and subject to the reservations set out in Schedule 3 (**Reservations**).

2. OPINIONS

Based upon and subject to the assumptions set out in Schedule 2 and having regard to our reservations set forth below under Schedule 3, we are of the following opinion:

I. Questions relating to Close-Out Netting under the ISDA Master Agreements

1. ***Assuming the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organized in your jurisdiction, are the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty enforceable[4] under the law of your jurisdiction?***

We confirm that the termination of all Transactions and outstanding obligations in the circumstances described in the question would be enforceable[i] in accordance with Mauritius law.

Under Mauritius law, there is no requirement that the parties to an ISDA Master Agreement agree to automatic, termination under such agreement. Although it is not a statutory requirement, we would recommend to the extent possible that the agreement be executed in

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[4] The term "enforceable", as used above, means that the obligations of the Mauritius Company, the Mauritius Insurance Company, the Mauritius Partnership or the Trustee under the termination provisions and the netting provisions of the ISDA Master Agreements are of a type that the Mauritius courts will enforce. It does not mean that such obligations will necessarily be enforced in all circumstances in accordance with their express terms. In particular:

(i) enforcement of such obligations may be limited by general principles of equity and matters that are within the discretion of the courts of Mauritius. By way of example, equitable remedies, such as specific performance for the delivery of physical securities, may not be available where damages are considered to be an adequate remedy;

(ii) claims for enforcement of such obligations may become barred under statutes of limitation or may become subject to defences of counterclaims, estoppels, laches and similar defences;

(iii) a determination or calculation of any party to the ISDA Master Agreements as to any matter provided therein (for example, as to Early Termination or the Close-out Amount or Settlement Amount) might be held by a Mauritius court not to be conclusive, final and binding if the determination or calculation can be shown to have an unreasonable or arbitrary basis, or in the event there is manifest error in such determination or calculation; and

(iv) an obligation of the Mauritius Company, Mauritius Insurance Company or Mauritius Partnership to make a payment that is found to constitute an unlawful penalty (that is to say, a requirement for a stipulated sum to be paid irrespective of, or necessarily greater than, the loss actually sustained by the payee) will not be enforceable. If it cannot be demonstrated to the Mauritius court that any such payment is a reasonable pre-estimate of the loss suffered, the Mauritius court will determine and award what it considers to be reasonable damages.

as many originals as the number of parties to such agreement, unless the parties have unanimously agreed otherwise.

Please note, in relation to the ISDA Master Agreement and any Transaction contemplated thereby, that, in accordance with S.339 *General Rule* of the Insolvency Act 2009, the provisions of a netting agreement (as defined below) are enforceable in accordance with its terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by –

(a) any action of the liquidator;

(b) any other enactment relating to bankruptcy, reorganisation, composition with creditors, receivership, conservatorship or any other insolvency proceeding the insolvent party may be subject to; or

(c) any other enactment that may be applicable to the insolvent party.

A "**netting agreement**" is defined under the Insolvency Act 2009 as:

(a) an agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into under the agreement by the parties to the agreement;

(b) an agreement between two parties that provides for netting of the amounts due under two or more agreements referred to in paragraph (a);

(c) any collateral arrangement related to an agreement under paragraph (a) or (b) entered into between the parties after or before the commencement of this Act.

The definition of a "**qualified financial contract**" under S.338 of the Insolvency Act 2009 includes all Transactions currently contemplated by ISDA Master Agreement as set out in Appendix A to this opinion so that the ISDA Master Agreement (and the Transactions contemplated thereby) falls within the meaning of a qualified financial contract, qualifies as a netting agreement under the Insolvency Act 2009, and will be enforceable in accordance with its terms. The provisions of the Insolvency Act 2009 constitute a source of law that would be recognized and followed by Mauritius courts.

For instance, Renewable Energy Certificate Transactions (**REC Transactions**) (as defined in Appendix A) would fall under the definitions of "qualified financial contract" defined as (a) a financial agreement, contract or transaction including any term or condition incorporated by

reference in the agreement, contract or transaction pursuant to which payment or delivery obligations are due to be performed at a certain time or within a certain period of time; and (b) includes – (xxiii) any other agreement, contract or similar transaction to any agreement contract or transaction referred to with respect to one or more reference items or indices relating to (without limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value.

REC Transactions would therefore qualify as a netting agreement under the Insolvency Act 2009 and would therefore be enforceable in accordance with its terms.

Furthermore, the ISDA Master Agreement generally stipulates either the laws of New York or the laws of England as its governing law. If a question arises as to whether the Mauritius courts would uphold such a choice of law, in the absence of the commencement of insolvency proceedings in respect of a Mauritius counterparty, the Mauritius courts would uphold such choice law (i.e. the laws New York for ISDA Master Agreements governed by New York law or the laws of England in respect of ISDA Master Agreements governed by English law) and, in so doing, would follow the precedent set in *Vita Food Products Inc*. v. *Unas Shipping Co., Ltd*. [1939] 1 All ER 513 (P.C.) a decision of the Judicial Committee of the Privy Council. The *Vita Foods* case clearly establishes that the governing law of a contract is the law that the parties intend should apply. Where the parties' intention is manifested in an express term which selects the law of the contract, the courts will give effect to that choice, provided that it is *bona fide*, legal, and there is no reason for avoiding it on grounds of public policy. It is essential too that (i) the choice of law provision be expressly pleaded in any action before a Mauritius court; (ii) such choice of law is valid and binding under English law/ New York law (as applicable); and (iii) recognition would not be contrary to public policy as that term is understood under Mauritius law . In the absence of any such pleading the court will apply Mauritius law. Where insolvency proceedings have been initiated against Mauritius counterparty, there is a possibility that certain aspects of Mauritius law (discussed below) may be applied to the ISDA Master Agreement.

2. ***Assuming the parties have selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organised in your jurisdiction, are the provisions of the ISDA Master Agreement automatically***

terminating all the Transactions upon the insolvency of a counterparty enforceable under the law of your jurisdiction?

We believe that the termination of all pending Transactions and outstanding obligations in the circumstances described in the question would be enforceable. As set out above, there is no provision of Mauritius insolvency law which would prevent the Non-defaulting Party from terminating all the Transactions by designating an Early Termination Date upon the insolvency of the Mauritius counterparty. In fact, there is no requirement that the parties to an ISDA Master Agreement must agree to automatic, rather than optional, termination and liquidation under such agreement.

In our opinion, a court in Mauritius is likely to enforce the retroactive effect of Section 6(a) of the ISDA Master Agreements in relation to bankruptcy and insolvency events described at Section 5(a)(vii)(4) or (8) of each of the ISDA Master Agreements. We note, however, that this has not been tested in any applicable judicial decision in Mauritius.

3. ***Are the provisions of the ISDA Master Agreements providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty enforceable under the law of your jurisdiction? Please also confirm the enforceability of payment netting outside of insolvency.***

We are of the opinion that the provisions of the ISDA Master Agreements providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of the Mauritian counterparties is enforceable under the law of Mauritius. *Moreover, we are of the opinion that payment netting would be enforceable outside of insolvency if there has been a breach on the part of the parties under the laws of Mauritius.*

The ISDA Master Agreements fall within the definition of "**qualified financial contract**" and qualify as a "**netting agreement**"[5] under the Mauritius Insolvency Act, 2009 ("**Insolvency Act**"). The definition of a "qualified financial contract" under S.338 of the Insolvency Act includes all Transactions generally contemplated by the ISDA Master Agreements so that the ISDA Master Agreements (and the

[5] Defined under the Insolvency Act 2009 as:

(a) an agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into under the agreement by the parties to the agreement;

(b) an agreement between two parties that provides for netting of the amounts due under two or more agreement referred to in paragraph (a); and

(c) any collateral arrangement related to an agreement under paragraph (a) or (b) entered into between the parties after or before the commencement of this Act.

Transactions contemplated thereby) fall within the meaning of a qualified financial contract and qualify as a netting agreement under the Insolvency Act.

The provisions of the Insolvency Act constitute a source of law that would be recognized and followed by Mauritius courts and by its operations, parties of the ISDA Master Agreements will have the right upon early termination of the ISDA Master Agreements, to net or set off market values under multiple transactions and pay one net settlement amount, and the provisions of the ISDA Master Agreements which provide for the determination of a net balance of the close-out values, market values, liquidation values or replacement values calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements under one or more qualified financial contracts entered into will not be affected by S.309 of the Insolvency Act (requirements of mutual credit and set-off, i.e., there must be mutuality between the rights and obligations that are to be set off against each other, i.e. they must involve the same parties and such parties must be acting in the same capacity) or any other applicable laws limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.

In accordance with S.339 *General Rule* of the Insolvency Act, the provisions of a netting agreement are enforceable in accordance with its terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by:

(a) any action of the liquidator;

(b) any other enactment relating to bankruptcy, reorganisation, composition with creditors, receivership, conservatorship or any other insolvency proceeding the insolvent party may be subject to; or

(c) any other enactment that may be applicable to the insolvent party.

Accordingly, provisions of the ISDA Master Agreement providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty (including the Mauritian Counterparties) will be valid and enforceable under the laws of Mauritius and should enable parties to set off their existing liabilities upon an event of insolvency arising.

Similarly, provisions for the setting-off of any amount(s) due from a bank to any party (including a Mauritian Counterparty) against any amount due from any party (including a Mauritian Counterparty)

to the bank under any other agreement (including, without limitation, any ISDA Master Agreement) will be valid and enforceable under the laws of Mauritius and should enable parties to set off their existing liabilities, including upon an event of insolvency arising.

Under Mauritian law, no stay, injunction, avoidance, moratoriums or similar proceeding or order shall limit or delay the enforcement of legal, valid and binding contractual obligations relating to ISDA Master Agreements. The liquidator of an insolvent party may not avoid or set aside – *(a)* any transfer, substitution or exchange of cash, collateral or any other interests under or in connection with a netting agreement from the insolvent party to the non-insolvent party; or *(b)* any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement, on the ground of it constituting a preference, a transfer during a suspect period or an onerous contract by the insolvent party to the non-insolvent party, unless there is clear and convincing evidence that the non-insolvent party made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date the transfer was made or the obligation was incurred.

Additionally, pursuant to S.344 of the Insolvency Act:

(a) any transfer, substitution or exchange of cash, collateral or any other interests under or in connection with a netting agreement from the insolvent party to the non-insolvent party; or

(b) any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement,

may not be avoided or set aside on the grounds that such Transactions constitute a preference or transfer during a suspect period or an onerous contract by the insolvent party to the non-insolvent party (unless there is clear and convincing evidence that the non-insolvent party made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date the transfer was made or the obligation was incurred) and such Transactions will be upheld as the legal, valid and binding obligations of the Mauritian Counterparties, enforceable against the Mauritian Counterparties in accordance with its terms, pursuant to the provisions of S.344 of the Insolvency Act 2009.

The Insolvency Act 2009 further strengthens the enforceability of netting transactions, pursuant to S.338(5) by providing that "*a qualified financial contract shall not be and shall be deemed never to*

have been void or unenforceable by reason of the Gambling Regulatory Authority Act, the Code Civil Mauricien or any other enactment relating to games, gaming, gambling, wagering or lotteries."

Under Mauritian law, there is no requirement that the parties to the ISDA Master Agreement agree to automatic, rather than optional, termination and liquidation under such agreements. Accordingly, notwithstanding whether the parties to the ISDA Master Agreement have selected Automatic Early Termination upon certain insolvency events to apply to an insolvent Mauritian Counterparty, provisions of the ISDA Master Agreement permitting the non-defaulting party to terminate all Transactions upon the insolvency of its counterparty will be enforceable under the laws of Mauritius. There are no provisions of Mauritius insolvency law which would prevent the non-defaulting party from terminating all the Transactions by designating an Early Termination Date upon the insolvency of the Mauritian Counterparty.

If an Early Termination Date occurs (whether before or after the commencement of an insolvent liquidation of a Mauritian Counterparty), a court will enforce the ISDA Master Agreement in accordance with its terms without reference to mandatory set-off provisions which become applicable in an insolvent liquidation in Mauritius in virtue of S.343 of the Insolvency Act 2009 which provides that "*the provisions of a netting agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values or replacement values calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements under one or more qualified financial contracts entered into will not be affected by S.309 or any other applicable laws limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.*"

By virtue of S.344 of the Insolvency Act 2009 whereby "*The liquidator of an insolvent party may not avoid or set aside –*

> *(a) any transfer, substitution or exchange of cash, collateral or any other interests under or in connection with a netting agreement from the insolvent party to the non-insolvent party; or*
> *(b) any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement, on the ground of it constituting a preference, a transfer during a suspect period or an onerous contract by the insolvent party to the non-insolvent party, unless there is clear and convincing evidence that the non-insolvent party made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date the transfer was made or the obligation was incurred*",

payments and / or transfers of collateral made by the Mauritian Counterparty in connection with the ISDA Master Agreement will not be affected by the Part IV, Sub-Part IV - Voidable Transactions of the Insolvency Act.

Swap and other derivative creditors will be treated *pari passu* with all other general unsecured and unsubordinated creditors in all insolvency proceedings under Mauritian law. The events of default as provided for in the ISDA Master Agreement adequately list all bankruptcy or insolvency proceedings that may occur under Mauritian law.

Special Considerations in respect of PCCs

A Mauritius company may incorporate as PCC for the purpose of segregating and protecting its cellular assets under the Protected Cell Companies Act 1999 of Mauritius. A PCC is a single legal entity comprising of a core cell and several cells allowing for the legal segregation of risks, assets and liabilities of each cell within a shared structure.

Single Contract

Prior to an insolvency, transactions which are attributed to a cell (within a PCC structure), which would be regarded as a single contract under the governing law of the relevant ISDA Master Agreement, providing for the payment of one net sum and not a series of contracts, would be so regarded under Mauritius law.

Recourse to Cellular and Non-Cellular Assets

To the extent that assets, rights, obligations and liabilities which relate to Transactions under an ISDA Master Agreement are contractually attributed to a particular cell of a PCC under an ISDA Master Agreement,the non-defaulting party:

(i) will be afforded restricted recourse against assets of that PCC;

(ii) will be entitled to make recoveries only against assets attributed to that specific cell to which its respective contracts are attributed; and

(iii) will not be legally entitled to make recovery against assets attributed and credited to any other cell of the PCC, or against the non-cellular assets of the PCC (being those assets which have not been attributed to any other cell of that PCC).

Where there has been no contractual attribution of liability solely to a particular cell under an ISDA Master Agreements, the default position is that:

(i) the cellular assets attributable to that particular cell will be primarily liable until they are exhausted after which non-cellular assets will be secondarily liable;

(ii) the non-defaulting party will therefore be entitled to:

(1) make recoveries against assets attributed to the particular cell to which its respective contracts are attributed until such assets are exhausted following which;

(2) the non-defaulting party shall be able to make recoveries against non-cellular assets of the PCC (being those assets which have not been attributed to any other cell of that PCC);

(iii) the non-defaulting party, however, shall not be entitled to make recoveries against assets attributed and credited to any other cell of the PCC.

Where assets, rights, obligations and liabilities have not been successfully segregated by contract to a particular cell of a PCC under an ISDA Master Agreement (following a failed attempt so to do - which is rare), the Close-out Netting provisions of the ISDA Master Agreement between the counterparties would still be enforceable. The liabilities and rights in relation to any given Transaction will fall into the non-cellular assets and liabilities and only assets which are not segregated (i.e., the non-cellular assets of the PCC only) will be available to the non-defaulting party apply towards the settlement of any net sum which the PCC is liable to pay as the result of the netting.

To avoid uncertainties on this issue and ensure that the non-defaulting party is, at all times, adequately covered, it is advisable that liability with respect to all Transactions to be included for the purposes of Close-out Netting in respect of an ISDA Master Agreement executed with a PCC in respect of a specific cell be expressly attributed to both the cellular assets attributable to that particular cell and non-cellular assets of the PCC.

Insolvency of a PCC or Cell

The insolvency of a PCC (the meaning of which is the same as for other Mauritius companies) as well as the insolvency of any relevant cell is relevant to the matter at hand.

Insolvency of a PCC (as a whole) may trigger the winding up of a cell (even though the cell itself is solvent).

In addition, the cell itself may be insolvent where the cellular assets attributable to a particular cell (when account is taken of the PCC's non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the PCC's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell. A cell may therefore be insolvent where the PCC itself is still solvent. The insolvency/winding up of one cell will not lead to liabilities for other cells and/or the winding-up of the whole vehicle except in unusual circumstances.

Limited Recourse Language to be added to the Schedule in respect of PCCs

For certainty purposes, we further advise that the following limited recourse language and corresponding amendments be made to the Schedule of the ISDA Master Agreement when dealing with a PCC:

ISDA SCHEDULE – DEFINITION OF BANKRUPTCY

Please add the following language to definition of Bankruptcy in the ISDA Schedule:

For the avoidance of doubt, Section 5(2)(vii) shall also apply mutatis mutandis to any cell of a protected cell company as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that the cell is not a company.

ISDA SCHEDULE - LIMITED RECOURSE

The Schedule shall include the following provision:

Limited Recourse. The liability of [the Counterparty/Party B] in respect of any designated cell in relation to this Agreement and any Confirmation thereunder to which it is a party is limited to recourse against the assets of [the Counterparty/Party B] as follows:

(a) the cellular assets attributable to the designated cell shall be primarily used to satisfy the Obligations;

(b) [the Counterparty/Party B]'s non-cellular assets shall be secondarily used to satisfy the Obligations, provided that the cellular assets attributable to the designated cell have been exhausted; and

(c) any cellular asset not attributable to the designated cell shall not be used to satisfy the Obligations.

"Obligations" means with respect to a party, all present and future obligations of that party under the Agreement and any Confirmation thereunder.

Assuming the parties have entered into either a 1992 ISDA Master Agreement (Multicurrency – Cross Border) or one of the 2002 ISDA Master Agreements, one of the parties is insolvent and the parties have selected a Termination Currency other than the currency of the jurisdiction in which the insolvent party is organised, would a court in your jurisdiction enforce a claim for the net termination amount in the Termination Currency? Can a claim for the net termination amount be proved in insolvency proceedings in your jurisdiction without conversion into the local currency?

Nothing in Mauritian law will prevent parties from selecting a Termination Currency other than the currency of Mauritius to apply to their contractual arrangements and parties will not be debarred from filing or proving a claim in a Mauritius Court (whether in the case of insolvency proceedings or otherwise) in a currency other than the currency of Mauritius provided that same has been expressly elected within the agreement governing the obligations between the parties. The same will have to be expressly pleaded in the statement of claim.

4. ***Can a claim for the net termination amount be proved in insolvency proceedings in your jurisdiction without conversion into the local currency?***

There are established precedents where Mauritius courts have awarded judgments in foreign currency so that there will be no difficulty in obtaining a judgment in foreign currency from the Mauritius courts.

Except in instances of execution/enforcement of foreign judgments (see below), Mauritius courts generally have a discretion as to the currency in which they express their judgments, and we would normally expect them to express them in the currency of the obligation.

The judgment debt in such instances is usually satisfied by either payment of the judgment debt in foreign currency or by payment of its equivalent in Mauritian rupees.

Executing a Judgment in Foreign Currency in Mauritius:

A final and conclusive judgment of a foreign court, based upon which a sum of money is payable (not being a sum of money payable in respect of taxes or other charges of a like nature, in respect of a fine or other penalty, or in respect of multiple damages), may be enforced in Mauritius through:

- the Foreign Judgments (Reciprocal Enforcements) Act, 1923 (the "**1923 Act**"), where applicable, or

- '*exequatur*' proceedings as prescribed under our '*Code de Procédure Civile*' ("**Civil Procedure Code**").

Please note, however, that, in the event that default or insolvency of a Mauritius counterparty results in enforcement of a foreign court's judgment in a Mauritius court, there may be an exchange risk arising through the mandatory conversion requirements of the 1923 Act or in '*exequatur*' proceedings. This issue will be further canvassed below.

Judgments in Foreign Currency - Exchange and Conversion Risk

Under the law of Mauritius, the conversion of foreign currency for the purpose of determining the value of net claims against a company is generally calculated at the date of the judgment / winding-up order was obtained. *Re. Dynamics Corporation of America [1976] 2 All ER 669; Re. Lines Brothers Limited [1983] Ch.1*.

We note, however, that under the definition of "Termination Currency Equivalent" referred to in Section 6(e) of ISDA Master Agreements, a different date for converting foreign currencies may apply.

In our opinion, in accordance with established practice, the rates as at the date of the judgment / winding-up order will most likely prevail over those on the contractual date, if these are different. The conversion will, in our view, also have to be calculated by reference to the date of the judgment / winding-up order, not only for the purposes of filing any proof of claim in respect of a liability of a Mauritius counterparty, but also for the purposes of calculating rights of set-off. Please note, however, that there is some uncertainty on this issue, which has not been tested in any applicable judicial decision.

The preceding paragraph assumes that termination under the ISDA Master Agreement occurs as a direct result of the liquidation of the Defaulting Party ((i.e. that a Bankruptcy Event of Default was triggered under Section 5(a)(vii) of the ISDA Master Agreement). For the sake of completeness, we confirm that the result would be different if close-out took place prior to and unconnected with any subsequent liquidation. Close-out under such circumstances should give rise to a valid settlement based on the contractual conversion rate. Creditors' rights in liquidation become crystallized as at the date of the judgment / winding-up order and valid transactions up to that point are unaffected by the liquidation.

Enforcement under the 1923 Act

A final and conclusive judgment of a foreign court against the Mauritius counterparty, based upon which a sum of money is payable, in respect to any monies payable under the ISDA Master Agreement (not being a sum of money payable in respect of taxes or other charges of a like nature, in respect of a fine or other penalty, or in respect of multiple damages) may be enforceable in Mauritius if the foreign court is situated in a country to which the 1923 Act applies. The 1923 Act only applies to England and Wales.

The procedure provided for in the 1923 Act must be followed if the 1923 Act applies.

Under the 1923 Act, a judgment obtained in the superior courts of a territory to which it applies would be enforced by the Supreme Court of Mauritius without re-examination of the merits of the case provided that:

(i) the court had the requisite jurisdiction;

(ii) the judgment was not obtained by fraud;

(iii) the judgment debtor, being the defendant in the proceedings, was served with the process of the original court and either voluntarily appeared or submitted to or agreed to submit to the jurisdiction of that court;

(iv) the judgment debtor, being a person who was either carrying on business or ordinarily resident within the jurisdiction of the original court either voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of the court;

(v) the judgment is not contrary to any principle affecting public policy in Mauritius;

(vi) the application for enforcement is made to the Supreme Court of Mauritius within a period of 12 months after the date of the judgment unless a longer period is granted by the Supreme Court;

(vii) the judgment is final and conclusive, notwithstanding that an appeal may be pending against it or it may still be subject to an appeal in such country;

(viii) the judgment has not been given on appeal from a court which is not a superior court; and

(ix) the judgment is duly registered in the Supreme Court of Mauritius in circumstances in which its registration is not liable thereafter to be set aside.

Where the 1923 Act applies, it involves a procedure for registering a foreign judgment obtained in the courts of Mauritius for an amount in Mauritius rupees, converted at the rate of exchange prevailing on the date of the foreign court's judgment.

There may be a significant time lapse between the date of the foreign court's judgment and the date of registration in the Mauritius court.

While there is no Mauritius judicial authority on point, the risk is that the rate for conversion at the date of the foreign court's judgment would be applied for the purpose of establishing a Non-defaulting Party's claim in the insolvent liquidation of the Mauritius counterparty.

Enforcement Through 'Exequatur' Proceedings

A final and conclusive judgment of a foreign court against a Mauritius counterparty, in respect to any monies payable under the ISDA Master Agreement (not being a sum of money payable in respect of taxes or other charges of like nature, in respect of a fine or other penalty, or in respect of multiple damages) can, under the present case-law in Mauritius, be enforced by the courts in Mauritius through the '*exequatur*' proceedings, without re-examination of the merits of the case provided that:-

(i) the foreign judgment is still valid, final and capable of execution in the country in which it was delivered, notwithstanding that an appeal may be pending against it or it may still be subject to an appeal in such country;

(ii) the foreign judgment is not contrary to any principle affecting public order in Mauritius;

(iii) the foreign court which delivered the said judgment had jurisdiction to hear the claim;

(iv) the Mauritian conflict of laws rules were respected;

(v) there has not been any '*fraude à la loi'*, i.e. any malice, bad faith and fraud on and in the choice of law and jurisdiction clauses;

(vi) the Mauritius counterparty had been regularly summoned to attend the proceedings before the foreign court; and

(vii) the foreign judgment is duly registered with the relevant authority in Mauritius, in circumstances in which its registration is not liable, thereafter, to be set aside.

Once again, '*exequatur*' proceedings involves a procedure for registering a foreign judgment in the courts of Mauritius for an amount in Mauritius rupees, converted at the rate of exchange prevailing on the date of the foreign court's judgment.

THERE MAY BE A SIGNIFICANT TIME LAPSE BETWEEN THE DATE OF THE FOREIGN COURT'S JUDGMENT AND THE DATE OF REGISTRATION IN THE MAURITIUS COURT. While there is no Mauritius judicial authority on point, the risk associated with the conversion of the claim is that the rate for conversion at the date of the foreign court's judgment would be applied for the purpose of establishing a Non-defaulting Party's claim in the insolvent liquidation of the Mauritius counterparty.

II. Questions Relating to Close-Out Netting for Multibranch Parties

We assume the same assumptions as set forth in Schedule 2 with the following modifications.

When addressing Issue 1 below, we assume that a bank organized in Mauritius has entered into an ISDA Master Agreement on a multibranch basis. In the ISDA Master Agreement, the local bank has specified that Section 10(a) applies to it. The local bank then has entered into Transactions under ISDA Master Agreements through the bank in Mauritius and also through one or more branches located in other countries that had been specified in the Schedules to

the bank's ISDA Master Agreements. After entering into these Transactions and prior to the maturity thereof, the local bank becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of your jurisdiction.

When addressing Issues 2 and 3 below, we assume that a bank ("Bank F") organized and with its headquarters in a country ("Country H") other than Mauritius has entered into ISDA Master Agreements on a multibranch basis. Bank F has entered into Transactions under ISDA Master Agreements through Bank F and also through one or more branches located in other countries that Bank F had specified in the Schedules to Bank F's ISDA Master Agreements, including in each case a branch of Bank F located in and subject to the laws of your jurisdiction (the "Local Branch"). After entering into these Transactions and prior to the maturity thereof, Bank F becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Country H.

Issue 1 - In relation to a multibranch party organised in your jurisdiction would there be any change in your conclusions concerning the enforceability of close-out netting under the ISDA Master Agreement based upon the fact that the bank has entered into an ISDA Master Agreement on a multibranch basis and then conducted business in that fashion prior to its insolvency?

Our conclusions set out above remain the same in relation to insolvency proceedings commenced in Mauritius against a bank incorporated under the laws of Mauritius. The laws of Mauritius would not regard a branch as a separate legal entity. However, the laws of the jurisdiction in which the non-Mauritian branch is operating might produce a different result.

Issue 2 - In relation to a multibranch party with a branch located in your jurisdiction:

a. would there be a separate proceeding in your jurisdiction with respect to the assets and liabilities of the Local Branch at the start of the insolvency proceeding for Bank F in Country H? Or would the relevant authorities in your jurisdiction defer to the proceedings in Country H so that the assets and liabilities of the Local Branch would be handled as part of the proceeding for Bank F in Country H? Could local creditors of the Local Branch initiate a separate proceeding in your jurisdiction even if the relevant authorities in your jurisdiction did not do so?

The branch of an overseas bank carrying on business in Mauritius would be required to obtain the approval of the Central Bank of Mauritius (the "**Bank of Mauritius**") and register under Part XXII of the Companies Act. Where Bank F has valid approval from the Bank of Mauritius, then liquidation proceedings in respect of Bank F would be possible (though not necessary), even though insolvency proceedings might also be pending in Country H. If such proceedings

were not instituted at the initiative of the Bank itself, any creditors (including local creditors) of Bank F could apply to the court in Mauritius for Bank F to be wound up.

If the creditors were successful in a petition to wind up Bank F, the court would appoint a liquidator to wind up Bank F on a world-wide basis. There is no provision for a "local" winding up in the sense that it is restricted to assets situated in Mauritius and Mauritius creditors. In theory, winding up would proceed in exactly the same way as if it were a company incorporated in Mauritius. However, in appropriate cases the local proceedings would be conducted as proceedings ancillary to the principal proceedings in Country H. To our knowledge there has only been one case where a company holding a valid approval from the Bank of Mauritius has been wound up (locally). The result was two conflicting sets of winding up proceedings, one in Mauritius and one in the country of incorporation. Ultimately, the liquidator in Mauritius agreed with the liquidator in the other jurisdiction to take no further action in relation to the winding up of the overseas company upon condition that Mauritius creditors were treated pari passu with creditors in the country of incorporation. That agreement was sanctioned by the court in Mauritius. In our view, this agreement is consistent with the basic principles of Mauritius law under which liquidators appointed under the jurisdiction of the country of incorporation are recognised in Mauritius.

Issue 3 - if there would be a separate proceeding in your jurisdiction with respect to the assets and liabilities of the Local Branch, would the relevant insolvency official and the courts in your jurisdiction, on the facts above, include Bank F's position under an ISDA Master Agreement, in whole or in part, among the assets of the Local Branch and, if so, would the insolvency official and the courts in your jurisdiction recognise the close-out netting provisions of the ISDA Master Agreement in accordance with their terms? The most significant concern would arise if the insolvency official or court considering a single ISDA Master Agreement would require a counterparty of the Local Branch to pay the mark-to-market value of Transactions entered into with the Local Branch to the insolvency official of the Local Branch while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from other Transactions with Bank F under the same ISDA Master Agreement. In considering this issue, please assume that close-out netting under the ISDA Master Agreement would be enforced in accordance with its terms in the proceedings for Bank F in Country H.

In the circumstances described above, a Mauritius court would recognise and enforce the close-out netting provisions of the ISDA Master Agreement in the same way as is described in Part I of this opinion. In short, the provisions applicable to companies incorporated in Mauritius would also be applied to Bank F, provided always that it had a valid permit under Part XXII of the Companies Act. Whether the Bank's positions under an ISDA Master Agreement would be included among the assets of the local branch would depend on the circumstances prevailing at the time but, if such positions were included, certainly close-out netting would be recognised to the extent affirmed above in this

opinion. In other words, the liquidator and the courts would not require a counterparty to make gross payments of the kind referred to in the question.

It should be said that it seems unlikely in the circumstances described above that the Mauritius courts would seek to take a leading or controlling role in the winding up of Bank F. The common law principles expounded in the English case would be followed by the Mauritius courts. Under those principles, the jurisdiction of incorporation should control the winding up proceedings, provided that the winding up law of the jurisdiction is similar to that of Mauritius and does not contain provisions which would be contrary to public policy in Mauritius.

At present, the Mauritius Court can grant an ancillary winding up order in respect of a foreign company in liquidation where that company had traded in Mauritius through an agent. Where the Mauritius Court grants an ancillary winding up order of a foreign company in excess of the Mauritius Court's jurisdiction that order cannot subsequently be challenged before a Mauritius Court. Such a challenge is considered an impermissible collateral attack on the winding up order. The collateral attack issue is presently subject to an appeal to the Privy Council.

Issue 4 - As indicated above thus far ISDA has obtained legal opinions indicating that bilateral and multibranch close-out netting would be enforceable in over 50 jurisdictions. However, ISDA would like you to confirm that where courts in your jurisdiction have jurisdiction over the assets of a bank organised in your jurisdiction or a Local Branch, a multibranch master agreement such as the ISDA Master Agreement would be treated as a single, unified agreement by an insolvency official under the laws of your jurisdiction regardless of the treatment of the ISDA Master Agreement or Transactions thereunder by an insolvency official in a jurisdiction where close-out netting may be unenforceable.

On the assumption that the Mauritius Courts have jurisdiction over the assets of the relevant Mauritius bank or Mauritius Branch and, subject to what is set out below, the relevant multi-branch master agreement would be treated as a single, unified agreement by a Mauritius liquidator under Mauritius law regardless of the treatment of the agreement or transactions by an insolvency official in the country where close-out netting may be unenforceable.

In an insolvency of a Mauritius bank the fact that the bank might have a Non-Netting Branch should not affect the calculation of the set-off. To the extent that all or the vast majority of the assets were located in Mauritius, the existence of the Non-Netting Branch should have no bearing at all.

If the bank had assets in the jurisdiction of the Non-Netting Branch, conceivably the position could be different. The foreign insolvency official in that jurisdiction might seek to enforce claims of the foreign counterparty against assets of the bank located in the foreign jurisdiction without taking account of items which under our law would reduce the claim of the counterparty by operation of set-off. In these circumstances our courts would take account of any benefit realised by the counterparty in the foreign jurisdiction when determining the amount of any dividend to be distributed to the foreign counterparty

in the Mauritius proceedings. The foreign counterparty would not be likely to receive any dividend in the Mauritius proceedings until it had accounted to the Mauritius liquidator for any benefit obtained abroad or until the other creditors of the company had received dividends which represented the same pro rata value as the benefit obtained abroad by the foreign counterparty.

There is of course a limit on how far a liquidator or court in Mauritius may ensure that its law in relation to liquidation is enforced against foreign counterparties. Competing claims against assets located in foreign jurisdictions will likely be determined by the law and courts of the foreign jurisdiction. The conflicts rules of the foreign jurisdiction will determine: (i) the extent to which the law of Mauritius will have a bearing; and (ii) the extent to which the Mauritius office-holder will be recognised.

There is a possibility that the courts of the two relevant jurisdictions would enter into a protocol to deal with the conflicts between the two jurisdictions.

In the event of liquidation proceedings in Mauritius, the liquidator and the Mauritius courts would apply Mauritius law in relation to set-off. If there were insolvency proceedings in the home jurisdiction of the bank, our courts would likely consider the proceedings here to be ancillary to those pending in the home jurisdiction. However, before transferring assets to the foreign jurisdiction, our courts are likely to take account of the rights of set-off under the law of Mauritius. See the decision in re In re Bank of Credit and Commerce International SA (No. 10) [1996] 4 All E.R. 796.

III. Key Differences between (i) the 1992 ISDA Master Agreement and (ii) and 2002 ISDA Master Agreement

5. ***We ask that you confirm that the inclusion of the Force Majeure Event would not affect your opinion. If the inclusion of this provision would affect your opinion, please set forth the legal implications. Please note that this is not a request for advice on force majeure and impossibility issues generally under the laws of your jurisdiction, but merely whether the inclusion of the Force Majeure Event would affect your opinion on the enforceability of the termination, close-out netting and multi-branch netting provisions of the 2002 ISDA Master Agreement.***

In our opinion, absent the occurrence of an act of bankruptcy with regard to the Mauritius Company or partners of the Mauritius Partnership or an insufficiency of assets over liabilities in the Mauritius Trust (as the case may be), the inclusion in the 2002 ISDA Master Agreement of the Force Majeure Event Termination Event provisions do not affect our opinion that the termination provisions and the netting provisions of the 2002 ISDA Master Agreement are enforceable against the Mauritius Company , the Mauritius Partnership or the Mauritius Trustee as previously outlined.

6. ***Please confirm that the inclusion of Close-out Amount in lieu of the prior choice between Market Quotation and Loss would not affect your opinion on the***

enforceability of the termination, close-out netting and multi-branch netting provisions of the 2002 ISDA Master Agreement.

The inclusion in the 2002 Master Agreement of Close-out Amount as a measure of damages does not affect our opinion that the termination provisions and the netting provisions of the 2002 ISDA Master Agreement are enforceable against the Mauritius Company, the Mauritius Partnership or the Mauritius Trustee; except and in so far as enforcement of such provisions is limited as a matter of Mauritius law, for the reasons already discussed in this opinion.

7. ***We are not asking you to opine on the enforceability of Section 6(f), but to confirm that the inclusion of Section 6(f) would not affect your opinion on the enforceability of the close-out netting provisions of the 2002 ISDA Master Agreement.***

The inclusion in the 2002 Master Agreement of Section 6(f) does not affect our opinion that the termination provisions or netting provisions of the 2002 ISDA Master Agreement are enforceable against the Mauritius Company, the Mauritius Partnership or the Mauritius Trustee.

IV. 2001 ISDA Cross Agreement Bridge

8. ***Please confirm that the inclusion of the 2001 Bridge would not materially affect the conclusions reached in your opinion. Please note that we are not asking you to confirm the validity or enforceability of the 2001 Bridge under the laws of your jurisdiction.***

We make the following assumptions and reservations in relation to Part IV of this opinion:

a. we have reviewed the 2001 Bridge and have considered the amendments that a 2001 Bridge would make to an ISDA Master Agreement, should the provisions of a 2001 Bridge be properly incorporated therein. We are not opining herein as to the enforceability of the 2001 Bridge or any of the provisions of the 2001 Bridge; and

b. we have not reviewed any of principal master agreements that may be included under a 2001 Bridge.

In our opinion, the inclusion under an ISDA Master Agreement of the 2001 Bridge will not affect enforceability of the termination provisions or the netting provisions, as indicated under Parts I and II of this opinion, above.

V. 2002 ISDA Energy Agreement Bridge

9. ***Please confirm that the inclusion of the 2002 Bridge would not materially affect the conclusions reached in your opinion. Please note that we are not asking you to***

confirm the validity or enforceability of the 2002 Bridge under the laws of your jurisdiction.

We make the following assumptions and reservations in relation to Part V of this opinion:

1. we have reviewed the 2002 Bridge and considered the amendments that a 2002 Bridge would make to an ISDA Master Agreement should the provisions of a 2002 Bridge be published in that form and it is properly incorporated into an ISDA Master Agreement. We are not opining as to the enforceability of the 2002 Bridge or any of the provisions of the 2002 Bridge; and

2. we have not reviewed any of principal master agreements that that may be included under a 2002 Bridge.

In our opinion, inclusion under an ISDA Master Agreement of the 2002 Bridge will not affect enforceability of the termination provisions and the netting provisions, as indicated under Parts I and II of this opinion, above.

VI. CLOSE-OUT AMOUNT PROTOCOL

We make the following assumptions and reservations in relation to Part VI of this opinion:

a. we have reviewed the 2009 ISDA Close-Amount Protocol and have considered the amendments that the Protocol would make to an ISDA Master Agreement, should the provisions of the Protocol be properly incorporated therein. We are not opining herein as to the enforceability of the Protocol or any of the provisions of the Protocol; and

b. we have not reviewed any of principal master agreements that may have included a Close-Out Amount.

In our opinion, the proposed amendments by the Protocol to replace the relevant 1992 Master Agreement provisions with the Close-out Amount provisions contained in the 2002 Master Agreements and consequential changes to replace references to Market Quotation will not with references to Close-out Amount will not likely affect the conclusions reached in our opinion.

VII. JUNE 2014 AMENDMENT TO THE ISDA MASTER AGREEMENT

We make the following assumptions and reservations in relation to Part VII of this opinion:

a. we have reviewed the Annexes to the June 2014 Amendment to the ISDA Master Agreement in relation to Section 2(a)(iii); and

b. we have not reviewed any of principal master agreements that may have included the amendments.

In our opinion, inclusion under an ISDA Master Agreement of the June 2014 Amendment will not affect enforceability of the termination provisions and the netting provisions of the ISDA Master Agreements.

VIII. SFT Schedule Provisions

10. ***Please confirm whether the inclusion of the SFT Schedule Provisions in the ISDA Master Agreement would change the conclusions provided in the opinion. If your conclusions would be different, please comment on the changes.***

We make the following assumptions and reservations in relation to Part VIII of this opinion:

a. we have reviewed the SFT Schedule Provisions in the ISDA Master Agreement and have considered the amendments that the SFT Schedule Provisions would make to an ISDA Master Agreement, should the provisions of the SFT Schedule Provisions be properly incorporated therein. We are not opining herein as to the enforceability of the SFT Schedule Provisions or any of the provisions of the SFT Schedule Provisions; and

b. we have not reviewed any of principal master agreements that may be included under the SFT Schedule Provisions.

In our opinion, the inclusion under an ISDA Master Agreement of the SFT Schedule Provisions will not materially affect the conclusions reached in this Opinion.

IX. Acceleration Option

11. **Assuming parties have selected Acceleration Option to apply with respect to one or more insolvency events in your jurisdiction (and such events are Acceleration Option Notice Events), are the provisions of the SFT Definitions allowing the Acceleration Option Non-defaulting Party to elect to accelerate each parties' obligations under each SFT Transaction under the ISDA Master Agreement to which the Acceleration Option applies upon the insolvency of a counterparty enforceable under the law of your jurisdiction notwithstanding that other Transactions under the ISDA Master Agreement would not be closed out unless and until an Event of Default occurs?**

It is our opinion that the provisions of the SFT Definitions allowing the Acceleration Option Non-Defaulting party to elect to accelerate each parties' obligations under each SFT Transaction under the ISDA Master Agreement to which the Acceleration Option applies upon the insolvency of a counterparty enforceable under the laws of Mauritius notwithstanding that

other Transactions under the ISDA Master Agreement would not be closed until and unless an event of default occurs.

12. **Assuming that the parties have selected Acceleration Option to apply with respect to one or more insolvency events in your jurisdiction (and such events are Acceleration Option Without Notice Events), are the provisions of the SFT Definitions automatically accelerating each parties' obligations under each SFT Transaction under the ISDA Master Agreement to which the Acceleration Option applies upon the insolvency of a counterparty enforceable under the law of your jurisdiction notwithstanding that other Transactions under the ISDA Master Agreement would be closed out unless and until an Event of Default occurs?**

We are of the view that the provisions of the SFT Definitions automatically accelerating each parties' obligations under each SFT Transaction under the ISDA Master Agreement to which the Acceleration Option applies under the insolvency of a counterparty would be enforceable under the laws of Mauritius notwithstanding that other Transactions under the ISDA Master Agreement would be closed out unless and until an event of default occurs.

X. Acceleration Option and Failure to Transfer on the Termination Date/Repurchase Date

13. **If a Bankruptcy Event of Default occurs with respect to an insolvent entity, would there be any restrictions in your jurisdiction on amounts previously calculated in respect of the exercise of the Acceleration Option or a Termination Date/Repurchase Date Securities Transfer Failure and unpaid as of the Early Termination Date being included as Unpaid Amounts in the calculation of any amounts due on termination of all Transactions under the ISDA Master Agreement.**

We are of the opinion that there are no such restrictions under the laws of Mauritius.

XI. Recent Developments and Further Considerations

You have asked us to comment on any recent developments in Mauritius (such as legislation, court decisions, administrative rulings of official interpretations) that could materially affect the conclusions reached in this opinion.

We confirm that as of the date of this opinion we are not aware of any pending developments that could materially and adversely affect the conclusions reached in this opinion.

This opinion is addressed to you solely for your benefit and the benefit of your members and is neither to be transmitted to any other person, nor relied upon by any other person or for any other purpose nor quoted or referred to in any public document nor filed with any governmental agency or person, without our prior written consent, except as may be required by law or regulatory authority. A copy

of this opinion may, however, be provided to (but not relied upon) your and your members': (a) advisors; (b) affiliates; and (c) regulatory authorities Further, this opinion speaks as of its date and is strictly limited to the matters stated herein and we assume no obligation to review or update this opinion if applicable law or the existing facts or circumstances should change.

This opinion is governed by and is to be construed in accordance with Mauritius law. It is given on the basis that it will not give rise to any legal proceedings with respect thereto in any jurisdiction other than Mauritius.

Yours faithfully

Appleby

Appleby

SCHEDULE 1

Part 1

Acts of Bankruptcy – Mauritius Companies (including Mauritius Insurance Companies) and Partners of a Mauritius Partnership that are either Mauritius Companies or individuals in respect of whom a Mauritius court may assert jurisdictions[6].

The existence of an "act of bankruptcy" and knowledge thereof is relevant to the application of set off under insolvency Act. Pursuant to the insolvency Act, the following matters are within the contemplation of the expression "act of bankruptcy":

An "act of bankruptcy" is an act committed by a debtor under the laws of Mauritius if, in any of the following cases: (1) A debtor is adjudicated bankrupt where – (a) a creditor of the debtor petitions the Court for a bankruptcy order; or (b) the debtor petitions the Court for a bankruptcy order; and the Court makes the bankruptcy order. (2) (a) The Court shall not make a bankruptcy order on a creditor's petition unless one of the following grounds of adjudication is established to the satisfaction of the Court – (i) failure to comply with a bankruptcy notice; (ii) departure from Mauritius with intent to defeat or delay a creditor; (iii) notification in writing by the debtor to a creditor that he has suspended, or proposes to suspend, payment of his debts; or (iv) admission to creditors that the debtor is insolvent. (b) There shall be an admission for the purposes of subsection (2)(a)(iv) where the debtor admits at a meeting of creditors that he is insolvent and – (i) a majority in number and value of the creditors present at the meeting require the debtor to file an application for adjudication; or (ii) the debtor agrees to file an application for adjudication and does not do so within 2 working days after the meeting. (3) The Court shall not make a bankruptcy order on the petition of a secured creditor unless the creditor has established that the amount of the debt exceeds the value of the security claimed by the creditor by at least 100,000 rupees or, where 2 or more creditors join in the application, the debtor owes a total of 100,000 rupees or more to those creditors between them. (4) The debt owed has to be a specific sum (*une somme certaine*) and the debt has to be payable either immediately or at some certain future time. (5) A petition under this section may not be withdrawn except with leave of the Court on such terms as it may determine.

The summaries in Parts II and III below, list the main types of Transaction which are void or voidable particularly in an insolvency:

[6] A debtor who is either personally present in Mauritius, ordinarily resided or had a place of residence in Mauritius, was carrying on business in Mauritius personally or by means of an agent or manager or was a member of a firm or partnership which carried on business in Mauritius.

PART 2

Mauritius Companies (including Mauritius Insurance Companies and Mauritius Trustees)

(a) Section 314 of the Insolvency Act provides that a transaction by a debtor may be set aside by the Supreme Court of Mauritius ("**Court**") on the application of the Official Receiver[7] or a liquidator where it is a voidable preference and was made within 2 years immediately before adjudication or commencement of the winding up. A voidable preference is a transaction by the debtor that is made at a time when the debtor is unable to pay his due debts and enables another person to receive more towards satisfaction of a debt by the debtor than that person would receive, or would be likely to receive, in the bankruptcy or liquidation. A "transaction" means any of the following steps by the debtor –

i. conveying or transferring the debtor's property;
ii. creating a charge over the debtor's property;
iii. incurring an obligation;
iv. undergoing an execution process;
v. paying money (including money paid in accordance with a judgement or an order of a Court); or
vi. anything done or omitted to be done for the purpose of entering into the transaction giving effect to it.

(b) However, the Insolvency Act further provides that unless there is clear and convincing evidence that the non-insolvent party entered into a transaction, made a transfer or incurred the obligation within 2 years immediately before the debtor's adjudication or the commencement of the winding up with actual intent[8] to hinder or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date the transfer was made or the obligation was incurred, a liquidator may not avoid or set aside *(a)* any transfer, substitution or exchange of cash, collateral or any other interests by the debtor within such 2 year period under or in connection with a netting agreement to the non-insolvent party; or *(b)* any payment or delivery obligation incurred by the insolvent company and owing to the non-insolvent party within such 2 year period under or in connection with a netting agreement within such 2 year

[7] "Official Receiver" means the Official Receiver appointed by the Court pursuant to section 371 of the Insolvency Act.
[8] "Actual intent" is not a defined term under the Insolvency Act and therefore it would be interpreted at the discretion of the court. Given that the Insolvency Act has come into operation quite recently, there has not been any guidance from the court in this respect till date.

period, on the ground of it constituting a preference, a transfer during a suspect period or an onerous contract by the insolvent company to the non-insolvent party.

(c) A transaction that is made within 6 months immediately before the debtor's adjudication or the commencement of the winding up is presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his due debts. Where (a) a transaction is, for commercial purposes, an integral part of a continuing business relationship such as a running account between a debtor and a creditor (including a relationship to which other persons are parties) and (b) in the course of the relationship, the level of the debtor's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship, then –

i. the above provisions apply in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and

ii. the transaction referred to in subsection (a) above may only be taken to be an insolvent transaction voidable by the Official Receiver or liquidator where the effect of applying other above provisions is that the single transaction referred to in subsection (b)(i) is taken to be an insolvent transaction voidable by the Official Receiver or liquidator.

(d) However, as stated above, the Insolvency Act further provides that unless there is clear and convincing evidence that the non-insolvent party made a transfer or incurred the obligation within 6 months immediately before the debtor's adjudication or the commencement of the winding up with actual intent to hinder or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date the transfer was made or the obligation was incurred, a liquidator may not avoid or set aside *(a)* any transfer, substitution or exchange of cash, collateral or any other interests by the debtor within such 2 year period under or in connection with a netting agreement to the non-insolvent party; or *(b)* any payment or delivery obligation incurred by the insolvent company and owing to the non-insolvent party within such 6 month period under or in connection with a netting agreement, on the ground of it constituting a voidable preference, a transfer during a suspect period or an onerous contract by the insolvent company to the non-insolvent party.

(e) As discussed above, section 314 of the Insolvency Act provides that a charge over any property or undertaking of a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where the charge was given within 2 years immediately before the date

of the debtor's adjudication or the commencement of the winding up and, immediately after the charge was given, the debtor was unable to pay his or its due debts. A charge given by a debtor under an agreement to give the charge that was made before the period of 2 years immediately before the date of adjudication or the commencement of the winding up may not be set aside under this section. However, Section 315 of the Insolvency Act provides that a charge may not be set aside under Section 314 where the charge secures money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the charge holder to the debtor at the time when, or at any time after, the charge was given. A charge or security may not be set aside under this section where the charge is a substitute for an existing charge that was given by the debtor more than 2 years before the date of adjudication or the commencement of the winding up, except to the extent that (a) the amount secured by the substituted charge is greater than the amount that was secured by the existing charge; or (b) the value of the property subject to the substituted charge at the date of substitution was greater than the value of the property subject to the existing charge at that date.

(f) Section 316 of the Insolvency Act provides that a debtor who gives a charge within 6 months immediately before the date of adjudication or the commencement of the winding up is presumed, unless the contrary is proved, to have been unable to pay his or its due debts immediately after giving the charge.

(g) However, as stated above, the Insolvency Act further provides that unless there is clear and convincing evidence that the non-insolvent party made a transfer, incurred the obligation or entered into the charge within 6 months immediately before the debtor's adjudication or the commencement of the winding up with actual intent to hinder or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date the charge was given, transfer was made or the obligation was incurred, a liquidator may not avoid or set aside *(a)* any charge, transfer, substitution or exchange of cash, collateral or any other interests by the debtor within such 6 month period under or in connection with a netting agreement to the non-insolvent party; or *(b)* any payment or delivery obligation incurred by the insolvent company and owing to the non-insolvent party within such 6 month period under or in connection with a netting agreement, on the ground of it constituting avoidable preference, a transfer during a suspect period or an onerous contract by the insolvent company to the non-insolvent party.

Note that if the non-insolvent party does not have actual intent to hinder or defraud any entity to which the insolvent party was indebted to, any transactions or transfers entered into 2 years and 6 months from the Client's insolvency will be generally enforced and upheld.

SCHEDULE 2

Assumptions

For the purposes of issuing this opinion, we have reviewed the ISDA Master Agreements in their respective forms, as at the date hereof.

In formulating the opinions herein we have considered such issues of Mauritius law, and have had due regard to such English law precedents (given that the ultimate court of appeal in Mauritius is the Judicial Committee of the Privy Council, which is comprised of the same judges that sit in the Supreme Court in England) as we have considered necessary as a basis for such opinions.

Capitalised terms used herein, to the extent not defined in this opinion, have the same meanings attributed to similar terms defined in the ISDA Master Agreements.

We have made the assumptions you have requested as follows:

1. Two institutions (either two derivatives dealers or a derivatives dealer and a sophisticated end-user of derivatives), each of which is a type of entity falling within one of the category types specified in Appendix B as covered by this opinion, have entered into an ISDA Master Agreement. The parties have selected one of New York law, English law, French law or Irish law to govern, at least one of the institutions entering the ISDA Master Agreement is organized in your jurisdiction and neither institution has specified that the provisions of Section 10(a) apply to it.

2. No material amendment has been made to any of: (i) the Core Provisions of the ISDA Master Agreement; or (ii) to either the non-Core Provisions or to the Schedule where such amendment would have the effect of materially modifying a Core Provision;

3. On the basis of the terms and conditions of the ISDA Master Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the ISDA Master Agreement, the parties over time enter into a number of Transactions that are intended to be governed by the ISDA Master Agreement. The transactions entered into include any or all of the Transactions described in Appendix A.

4. Some of the Transactions provide for an exchange of cash by both parties and others provide for the physical delivery of shares, bonds or commodities in exchange for cash.

5. The parties to any 1992 ISDA Master Agreements have elected for the Second Method to apply.

After entering into these Transactions and prior to the maturity thereof, one of the parties, which is organized in Mauritius, becomes the subject of a voluntary or involuntary case under the insolvency laws of Mauritius and, subsequent to the commencement of the insolvency, either that party or an insolvency official seeks to assume the Confirmations representing profitable Transactions for the

insolvent party and reject the Confirmations representing unprofitable Transactions for the insolvent party.

We have made the following additional general assumptions for the purposes of issuing this opinion, namely that:

(a) each ISDA Master Agreement, Schedule and Confirmation (or other documentary evidence of a Transaction entered into pursuant to an ISDA Master Agreement) is within the capacity and powers of, and has been validly authorised, executed and delivered by each party[9] thereto;

(b) each ISDA Master Agreement (or documentary evidence of a Transaction entered into pursuant to an ISDA Master Agreement) is valid and binding on each party thereto under the laws of such party's jurisdiction of incorporation or establishment, and that each such party acts in compliance with all applicable laws, when it enters into that ISDA Master Agreement, and Transaction pursuant thereto;

(c) each party to an ISDA Master Agreement (or documentary evidence of a Transaction entered into pursuant to an ISDA Master Agreement): (i) is the beneficial owner of the claims against the other party thereto that arises pursuant to that ISDA Master Agreement, and is personally liable to the other party in respect of each Transaction entered into pursuant thereto; (ii) neither party to such ISDA Master Agreement has sought in any way to assign, charge or grant any other form of security interest over its rights under such ISDA Master Agreement; and (iii) in entering into each Transaction under such ISDA Master Agreement, each party is acting in the same capacity and as principal rather than as agent or in any other capacity;

(d) each ISDA Master Agreement, and the documentary evidence of each Transaction thereunder, constitutes a valid and binding agreement of each party thereto, and is enforceable in accordance with its terms against such parties under the laws by which that ISDA Master Agreement is expressed to be governed (generally, the laws of the State of New York in the United States of America, or the laws of England);

(e) in so far as any obligation under an ISDA Master Agreement is to be performed or observed in a jurisdiction outside Mauritius, such performance or observance will not be illegal or ineffective under the laws of that jurisdiction;

[9] In the Assumptions portion in this opinion where the Mauritius Counterparty to the ISDA Master Agreement, Schedule or any confirmation, as applicable, is a Mauritius Partnership, a 'party' in respect of that Mauritius Partnership that is a general partnership shall mean any partner of the Mauritius Partnership and where the Mauritius counterparty is a limited partnership, the general partner of the Mauritius Partnership, save where the Mauritius Partnership has elected to have separate legal personality, in which case it means the Mauritius Partnership itself.

(f) any Transaction entered into under an ISDA Master Agreement is entered into prior to the Non defaulting Party having notice that the Defaulting Party has committed an act of bankruptcy (as defined in Part 1 of Schedule 1 hereto);

(g) any calculation required to be made pursuant to any ISDA Master Agreement is made in good faith and in a commercially reasonable manner;

(h) the ISDA Master Agreement and each Transaction entered into under an ISDA Master Agreement is entered into in good faith and for full value and not with a dominant intent to defraud or prefer unlawfully[10] any one previously unsecured creditor of: (i) the Mauritius Company; (ii) the Mauritius Insurance Company; or (iii) (where relevant) the Mauritius Partnership or any of the partners of a Mauritius Partnership (as the case may be) in any case over their respective other creditors or to remove assets from within the reach of any party;

(i) all Transactions entered into by the parties are limited to the type of Transactions described in Appendix A hereto;

(j) nothing under any applicable law (other than the law of Mauritius) has a material adverse affect upon any of the opinions expressed herein;

(k) all factual representations, warranties and undertakings contained in any ISDA Master Agreement are accurate and are complied with, and all preconditions of the parties thereto are satisfied or duly waived;

(l) an election will have been made in the Schedule to a 2002 ISDA Master Agreement for the purposes of and to apply the provisions of paragraph 3(g) of that 2002 Master Agreement;

(m) no party to the ISDA Master Agreement has entered into it or any Transaction thereunder in breach of the unsolicited call provisions of the Investment Business Act 2003;

(n) the provisions of each of the 2001 ISDA Cross-Agreement Bridge (**2001 Bridge**) and the 2002 ISDA Energy Agreement Bridge (**2002 Bridge**) (as the case may be) together with the SFT Definitions and related SFT Schedule Provisions (**SFT Documents**) are properly incorporated into a 2002 Master Agreement and that the underlying principal master agreements which may be included under a 2001 Bridge and a 2002 Bridge (as the case may be) are themselves valid and enforceable;

(o) at the time of entering into an ISDA Master Agreement, and at the time of entering into any Transaction(s), satisfying any unsecured obligation, creating or enhancing any security interest, or disposing of any asset in relation to any of the foregoing pursuant to an ISDA Master

[10] Parts 2 and 3 of Schedule 1 outline the various doctrines whereby Transactions are void or voidable against a Mauritius Company (including a Mauritius Insurance Company), a Mauritius Partnership or an individual partner of a Mauritius Partnership.

Agreement, each of the parties: (i) is able to pay its debts, taking into account contingent and prospective liabilities; and (ii) in the case of a party that is a Mauritius Insurance Company: (A) the value of its assets exceeds its liabilities, taking into account contingent and prospective liabilities (calculated according to the Insurance Act including any applicable regulations); and (B) it complies with applicable statutory financial tests applicable to that party including applicable statutory solvency requirements and liquidity ratios;

(p) where the Mauritius Counterparty is a Mauritius Partnership: (i) where the Mauritius Partnership is a general partnership, all of the partners of the Mauritius Partnership are incorporated, established or resident in Mauritius; and (ii) where the Mauritius Partnership is a limited partnership, the general partner of the Mauritius Partnership is incorporated, established or resident in Mauritius;

(q) where the Mauritius Counterparty is a Mauritius Trustee in respect of a Mauritius Trust, that each of the ISDA Master Agreement, Schedule, Credit Support Document and Confirmation (or other documentary evidence of a Transaction entered into pursuant thereto): (i) is in accordance with the purposes of the Mauritius Trust as set out in the relevant trust deed(s) or settlement(s) establishing or governing the operation of that trust; (ii) is within the powers of the Mauritius Trustee granted to it as trustee of the Mauritius Trust by the relevant trust deed(s) or settlement(s) establishing or governing the operation of that trust; (iii) has been validly authorised, executed and delivered by the Mauritius Trustee in its capacity as trustee of the Mauritius Trust in accordance with the provisions of the relevant trust deed(s) or settlement(s) establishing or governing the operation of that trust; and (vi) is expressly stated as being entered into by the Mauritius Trustee in its capacity as trustee of the Mauritius Trust;

(r) when the Mauritius Counterparty enters into an ISDA Master Agreement, and each Transaction pursuant thereto, that the ISDA Master Agreement is valid and binding on the Mauritius Trustee in relation to the assets of the Mauritius Trust in accordance with the relevant trust deed(s) or settlement(s) establishing or governing the operation of that trust;

(s) each of the ISDA Master Agreement and the documentary evidence of each Transaction thereunder, constitutes a valid and binding agreement of the Mauritius Trustee both in its capacity as trustee of the Mauritius Trust in respect of the assets of the Mauritius Trust and in its corporate capacity (and does not exceed its corporate capacity);

(t) any ISDA Master Agreement and any transactions thereunder with the Bank of Mauritius will be entered into by the Bank of Mauritius or through another duly appointed official of the Government of Mauritius in each case in their capacity as a member of the Government and that such ISDA Master Agreement and transactions will accordingly be binding on the Government of Mauritius;

(u) that contracts entered into by the Bank of Mauritius or by another duly appointed government official would be treated as contracts entered into by, and binding on, the Government of Mauritius. Accordingly, references in this opinion to the Bank of Mauritius should be construed as references to the Government (through duly appointed government official); and

(v) no admission, withdrawal, retirement, dissolution, or bankruptcy of the Mauritius Trustee will trigger the termination of the Mauritius Trust.

SCHEDULE 3

Reservations

1.1 Enforcement of the obligations of the Defaulting Party may be the subject of a statutory limitation of the time within which such proceedings may be brought.

1.2 We express no opinion as to any law other than Mauritius law and none of the opinions expressed herein relates to compliance with or matters governed by the laws of any jurisdiction except Mauritius. This opinion is limited to Mauritius law as applied by the courts of Mauritius at the date hereof.

1.3 Where an obligation is to be performed in a jurisdiction other than Mauritius, the courts of Mauritius may refuse to enforce it to the extent that such performance would be illegal under the laws of, or contrary to public policy of, such other jurisdiction.

1.4 We express no opinion as to the validity, binding effect or enforceability of any provision incorporated into the ISDA Master Agreements by reference to a law other than that of Mauritius, or as to the availability in Mauritius of remedies which are available in other jurisdictions.

1.5 Where a person is vested with a discretion or may determine a matter in his or its opinion, such discretion may have to be exercised reasonably or such an opinion may have to be based on reasonable grounds.

1.6 Any provision in the ISDA Master Agreements that certain calculations or certificates will be conclusive and binding will not be effective if such calculations or certificates are fraudulent or erroneous on their face and will not necessarily prevent juridical enquiries into the merits of any claim by an aggrieved party.

1.7 We express no opinion as to the validity or binding effect of any provision in the ISDA Master Agreements for the payment of interest at a higher rate on overdue amounts than on amounts which are current, or that liquidated damages are or may be payable. Such a provision may not be enforceable if it could be established that the amount expressed as being payable was in the nature of a penalty; that is to say a requirement for a stipulated sum to be paid irrespective of, or necessarily greater than, the loss likely to be sustained. If it cannot be demonstrated to the Mauritius court that the higher payment was a reasonable pre-estimate of the loss suffered, the court will determine and award what it considers to be reasonable damages.

1.8 We express no opinion as to the validity or binding effect of any provision of the ISDA Master Agreements which provides for the severance of illegal, invalid or unenforceable provisions.

1.9 A Mauritius court may refuse to give effect to any provisions of the ISDA Master Agreements in respect of costs of unsuccessful litigation brought before the Mauritius court or where that court has itself made an order for costs.

1.10 Save for the amendments made by the Close-Out Amount Protocol published by ISDA on 27 February 2009, which we hereby confirm are not material to and do not affect the conclusions reached in this opinion, we are providing no opinion in respect of the 2002 ISDA Master Agreement Protocol or any of the agreements listed in Schedule 3 to this opinion.

1.11 The settlor or protector of a Mauritius Trust will often have the power to remove a trustee. As such, if after review of the relevant trust deed, it is clear that the settlor or protector of the Mauritius counterparty that is a Mauritius Trust, that person should either be made a party to the Agreement or the relevant trust deed should be amended to provide that for the duration of the Agreement, the settlor or protector either agrees that it will not exercise its power to remove a trustee or the power to remove a trustee is suspended for that time.

1.12 We suggest that to the extent the Mauritius Partnership has issued security for its obligations under the ISDA Master Agreements is not able to register its interest against the Mauritius Partnership, that the security be registered against the Mauritius Company that is the general partner of a Mauritius Counterparty that is a Mauritius Partnership, specifically and only in its capacity as general partner of the Mauritius Partnership.

1.13 There is no insolvency regime applicable to the Government of Mauritius.

1.14 If the ISDA Master Agreements stipulate English law as its governing law, a question may arise as to whether the Mauritius courts would uphold such a choice of law. The Mauritius courts would uphold the choice of English law and, in so doing, would follow the precedent set in *Vita Food Products Inc*. v. *Unas Shipping Co., Ltd*. [1939] 1 All ER 513 (P.C.) a decision of the Judicial Committee of the Privy Council. The *Vita Foods* case clearly establishes that the governing law of a contract is the law that the parties intend should apply. Where the parties' intention is manifested in an express term which selects the governing law of the contract, the courts will give effect to that choice, provided that it is *bona fide*, legal, and there is no reason for avoiding it on grounds of public policy. It is essential too that the choice of law provision be expressly pleaded in any action before a Mauritius court. In the absence of any such pleading the court will apply Mauritian law. Where insolvency proceedings have been initiated against Mauritian Counterparties, there is a possibility that certain aspects of Mauritian law may be applied to the ISDA Master Agreements.

1.15 Mauritius courts can give judgments in currencies other than Mauritius rupees provided that same has been expressly elected within the agreement governing the obligations between the

parties, but such judgments may be required to be converted into Mauritius rupees for enforcement purposes.

1.16 The acceptance of jurisdiction by the Mauritius courts is subject to the following:

(i) a Mauritius court will only assume jurisdiction to hear the case and give judgment against a defendant on the basis of personal service or other valid mode of service. Consequently where the defendant cannot be served, the Mauritius courts will not assume jurisdiction and we give no opinion in this respect; and

(ii) where the defendant is not able to be served in Mauritius, then leave from the Mauritius court will ordinarily be required to serve the originating process out of the jurisdiction. This is a matter of discretion. To obtain leave, a plaintiff will have both to satisfy one of a series of specific requirements and also to persuade a court that it should exercise its discretion to grant leave. The inclusion of a clause providing for the jurisdiction of the Mauritius courts will ordinarily satisfy one such requirement but we give no opinion as to whether the court would exercise its discretion to grant leave.

(iii) Even in circumstances where the Mauritius courts assume jurisdiction, a claim may potentially be subsequently stayed or struck out on a number of grounds including:

(iv) *forum nan conveniens* (where there is some other forum with competent jurisdiction which is more appropriate for the trial of the action);

(v) *lis alibi pendens* (where proceedings are pending in another jurisdiction); or

(vi) *res judicata* (where the merits of the issues in dispute have already been judicially determined or should have been raised in previous proceedings between the parties).

(vii) Special rules may apply on the insolvency of insurance companies or branches thereof established in Mauritius. We have not considered such entities in this opinion.

SCHEDULE 4

Observations

We should also like to make the following observations:

1. We express no opinion as to the availability of equitable remedies such as specific performance or injunctive relief, or as to any matters which are within the discretion of the courts of Mauritius in respect of any obligations of a Mauritian Counterparty as set out in the ISDA Master Agreements. In particular, we express no opinion as to the enforceability of any present or future waiver of any provision of law (whether substantive or procedural) or of any right or remedy which might otherwise be available presently or in the future under the ISDA Master Agreements.

2. We have not considered the particular circumstances of any party to the Agreement nor the effect of any such particular circumstances on the Agreement or the effect of any transaction contemplated by the ISDA Master Agreements on any such particular circumstances.

3. We express no opinion in respect of the tax treatment of the ISDA Master Agreements or any transaction; you have not relied on any advice from us in relation to the tax implications of the Agreement or any transaction for any person, whether in Mauritius or in any other jurisdiction, or the suitability of any tax provisions in the ISDA Master Agreements or matters relating to transaction law and practice.

4. We express no opinion as to the existence of or title to any assets to be transferred pursuant to an ISDA Master Agreements.

APPENDIX A

August 2015

CERTAIN TRANSACTIONS UNDER THE ISDA MASTER AGREEMENTS

Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.

Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.

Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.

Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a "spot" or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, "Bullion" means gold, silver, platinum or palladium and "Ounce" means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

Buy/Sell-Back Transaction. A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

Cap Transaction. A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor.

Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price, and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. A Commodity Forward may be settled by the physical delivery of the commodity in exchange for the specified price or may be cash settled based on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index based on the price of one or more commodities.

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

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas

Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.

Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.

Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.

Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and or final exchanges of amounts corresponding to the notional amounts.

Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.

Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and or final payments that correspond to the notional amount.

Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity and shares to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.

Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of shares of an issuer or a basket of shares of several issuers at a specified strike price. The share option may be settled by physical delivery of the shares in exchange

for the strike price or may be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.

Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.

Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor).

Foreign Exchange Transaction. A deliverable or non-deliverable transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.

Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

Fund Option Transaction: A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "Fund Interest"), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).

Fund Forward Transaction: A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund

or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

Fund Swap Transaction: A transaction a transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.

Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity- or mortality- contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).

Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as oil including oil products, coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional or national area.

Renewable Energy Certificate Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of renewable energy certificates, renewable energy credits, or other analogous products (each a "Renewable Energy Certificate" or "REC"), at a specified price for settlement either on a "spot" basis or on a specified future date and is settled by physical delivery,

transfer, export, retirement, cancellation, redemption or other analogous utilization of RECs in exchange for a specified price.

A REC Transaction may also be structured as an option for which a quantity of RECs is settled in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay the difference between the market price of that quantity of the RECs on the exercise date and the strike price.

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.

Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.

APPENDIX B

September 2009

CERTAIN COUNTERPARTY TYPES[11]

Description	**Covered by opinion**	**Legal form(s)**[12]
Bank/Credit Institution. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a "commercial bank" or, if its business also includes investment banking and trading activities, a "universal bank". (If the entity only conducts investment banking and trading activities, then it falls within the "Investment Firm/Broker Dealer" category below.) This type of entity is referred to as a "credit institution" in European Community (**EC**) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (**UK**)).	Yes	Companies or branches of foreign companies.
Central Bank. A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).	Yes	A body corporate established under the Bank of Mauritius Act 2004

[11] In these definitions, the term "legal entity" means an entity with legal personality other than a private individual.

[12] If appropriate, please indicate, as discussed in the instruction letter, any naming convention or rule that would help a reader of the opinion to identify and classify the entity.

Description	Covered by opinion	Legal form(s)[12]
Corporation. A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Appendix B.	Yes.	Corporations in Mauritius would be companies incorporated under the Companies Act, 2001.
Hedge Fund/Proprietary Trader. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.	Yes.	Companies incorporated under the Companies Act 2001.
Insurance Company. A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.	Yes.	Companies incorporated under the Companies Act, 2001.
International Organization. An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.	No.	Does not exist in Mauritius

Description	Covered by opinion	Legal form(s)[12]
Investment Firm/Broker Dealer. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the "Hedge Fund/Proprietary Trader" category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a "broker-dealer" in US legislation and as an "investment firm" in EC legislation.	Yes.	Companies incorporated under the Companies Act 2001.
Investment Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a "collective investment scheme" in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.	Yes.	Companies incorporated under the Companies Act 2001.

Description	Covered by opinion	Legal form(s)[12]
Local Authority. A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.	Yes, the Act binds the State.	Corporation established by statute.
Partnership. A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).	Yes.	Association or Societe
Pension Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a specific class of beneficiaries, normally sponsored by an employer or group of employers. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by pensions legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Pension Fund (for example, a trustee of a pension scheme in the form of a common law trust) contract on behalf of the Pension Fund and are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.	Yes	Mostly associations or unincorporated funds but could also take the form of Trusts in which case they would not be covered by Part V of the Insolvency Act.
Sovereign. A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national	Yes	

Description	Covered by opinion	Legal form(s)[12]
debt office. This category does not include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").		
Sovereign Wealth Fund. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an "investment authority". For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix B the term "Sovereign Wealth Fund" excludes a Central Bank.	Yes	Companies incorporated by statute.
Sovereign-Owned Entity. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any immunity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This category does not include local governmental authorities (see "Local Authority").	Yes	Companies established or incorporated by statute.

Description	Covered by opinion	Legal form(s)[12]
State of a Federal Sovereign. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.	No.	There are no states in Mauritius, that would be foreign states
Variable Capital Company. A legal entity, which may be organized as a corporation or in some other legal form, the principal business of which is to deal in and/or a wide array of activities spread out in investment portfolios which are segmented through sib-finds and special purpose vehicle with its assets and liabilities segregated and ring-fenced.	Yes.	Companies incorporated under the Companies Act 2001 and the Variable Capital Companies Act 2022.

[i] The term "enforceable", as used above, means that the obligations of the Mauritius counterparty or the Mauritius Partnership Counterparty under the termination provisions and the netting provisions of the ISDA Master Agreements are of a type that the Mauritius courts will enforce. It does not mean that such obligations will necessarily be enforced in all circumstances in accordance with their express terms. In particular:

(i) enforcement of such obligations may be limited by general principles of equity and matters that are within the discretion of the courts of Mauritius. By way of example, equitable remedies, such as specific performance for the delivery of physical securities, may not be available where damages are considered to be an adequate remedy;

(ii) claims for enforcement of such obligations may become barred under statutes of limitation or may become subject to defences of counterclaims, estoppels, laches and similar defences;

(iii) a determination or calculation of any party to the ISDA Master Agreements as to any matter provided therein (for example, as to Early Termination or the Close-out Amount or Settlement Amount) might be held by a Mauritius court not to be conclusive, final and binding if the determination or calculation can be shown to have an unreasonable or arbitrary basis, or in the event there is manifest error in such determination or calculation; and

(iv) an obligation of the Mauritius counterparty to make a payment that is found to constitute an unlawful penalty (that is to say, a requirement for a stipulated sum to be paid irrespective of, or necessarily greater than, the loss actually sustained by the payee) will not be enforceable. If it cannot be demonstrated to the Mauritius court that any such payment is a reasonable pre-estimate of the loss suffered, the Mauritius court will determine and award what it considers to be reasonable damages.

December 2021

APPENDIX C

RECOMMENDED AMENDMENTS TO DOCUMENTS

This Appendix aims to assist firms in the consumption and processing of information. We recommend that readers review all relevant sections of this opinion and satisfy themselves as to the conclusions reached prior to making any determinations and do not rely solely upon the information contained in this Appendix.

Application (counterparties)	**Application (documents)**	**Required or optional?**	**Information on amendment**	**Summary of amendment**	**Example wording**
All counterparties	*ISDA Master Agreements*	*Required*	*Page 2 of Netting Opinion: Counterparties*	*Inclusion of the two global business regimes, namely the Global Business Companies and the Authorised Companies*	The above companies may, if eligible, apply for a **Global Business Licence** taking into account the following: A holder of a Global Business Licence shall, at all times: (i) carry out its core income generating activities in, or from, Mauritius by: (a) employing, either directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities; and (b) having a minimum level of expenditure,

					which is proportionate to its level of activities; (ii) be managed and controlled from Mauritius; and (iii) be administered by a licensed management company.
					The above companies may also, if eligible, apply for an **Authorised Company** Licence. The law regulating Authorised Companies requires as follows: Where the majority of shares or voting rights or the legal or beneficial interest in a company, other than a bank, licensed by the Bank of Mauritius, and incorporated under the Companies Act are held or controlled, as the case may be, by a person who is not a citizen of Mauritius and such company: (i) proposes to conduct or conducts business principally outside Mauritius or with such category of persons as

					may be specified in FSC Rules; and (ii) has its place of effective management outside Mauritius, it shall apply to the FSC for an authorisation as an Authorised Company.
					As set out in the preceding paragraph, the areas of activity of GBCs are restricted and unless expressly allowed by the FSC as a condition of their Global Business Licences to engage in the type of transaction contemplated by the ISDA Master Agreements, they will not be allowed to enter into the ISDA Master Agreements.
All counterparties	*ISDA Master Agreements*	*Required*	*Schedule 1: Part 1 of Netting Opinion (Acts of Bankruptcy)*	*Definition of 'Acts of Bankruptcy' amended*	Following added immediately after "(3) The Court shall not make a bankruptcy order on the petition of a secured creditor unless the creditor has established that the amount of the debt exceeds the value of the security claimed by the creditor by at least 100,000 rupees":

					"…[…]..or, where 2 or more creditors join in the application, the debtor owes a total of 100,000 rupees or more to those creditors between them. (4) The debt owed has to be a specific sum (*une somme certaine*) and the debt has to be payable either immediately or at some certain future time."