

Date: 14 September 2016
To: International Swaps and Derivatives Association, Inc.
From: Baker & McKenzie Ltd.
Re: Collateral Provider Insolvency

Dear Sirs,

We refer to your instruction letter requesting us to prepare a supplement to our legal opinion on validity and enforceability under the laws of Thailand of Collateral Arrangements under the ISDA Credit Support Documents dated 7 April 2016 (the "**Collateral Opinion**") in relation to 'collateral provider insolvency' for the benefit of members of ISDA.

This memorandum is limited to the laws of Thailand as currently interpreted by the Supreme Court of Thailand in its published decisions which have been published and are available to the public as of the date hereof. We do not purport to be qualified to pass upon, and express no opinion herein as to, the laws of any jurisdiction other than that of Thailand. Our memorandum is also to be construed in accordance with the laws of Thailand.

I. INTRODUCTION

In this memorandum we consider the validity and enforceability under the laws of Thailand of collateral arrangements entered into under:

- (i) the 1994 Credit Support Annex governed by New York law (the "**1994 NY Annex**");
- (ii) (the 2016 Credit Support Annex for Variation Margin (VM) governed by New York law (the "**VM NY Annex**");
- (iii) the 2016 Phase One Credit Support Annex for Initial Margin (IM) governed by New York law (the "**IM NY Annex**");
- (iv) the 1995 Credit Support Deed governed by English law (the "**1995 Deed**");
- (v) the 2016 Phase One IM Credit Support Deed, governed by English law (the "**IM Deed**");
- (vi) the 1995 Credit Support Annex governed by English law (the "**1995 Transfer Annex**");
- (vii) the 2016 VM Credit Support Annex governed by English law (the "**VM Transfer Annex**");
- (viii) the ISDA Euroclear Security Agreement (the "**Euroclear Security Agreement**");
- (ix) the ISDA Euroclear Collateral Transfer Agreement (NY Law) (the "**Euroclear NY CTA**")

- (x) the ISDA Euroclear Collateral Transfer Agreement (Multi-Regime) (the “**Euroclear Multi-Regime CTA**”);
- (xi) the ISDA Clearstream 2016 Security Agreement (the “**Clearstream Security Agreement**”);
- (xii) the ISDA Clearstream 2016 Collateral Transfer Agreement (NY Law) (the “**Clearstream NY CTA**”); and
- (xiii) the ISDA Clearstream 2016 Collateral Transfer Agreement (Multi-Regime) (the “**Clearstream Multi-Regime CTA**”);

in each case, when entered into to provide credit support for transactions (“**Transactions**”) entered into pursuant to an ISDA master agreement (the “**Master Agreement**”).¹

For the purposes of this memorandum:

- (i) “**Annex**” means each of the 1994 NY Annex, the VM NY Annex and the IM NY Annex;
- (ii) “**Deed**” means each of the 1995 Deed and the IM Deed;
- (iii) “**Security Documents**” means the Annexes and the Deeds;
- (iv) “**IM Security Documents**” means the IM NY Annex and the IM Deed;
- (v) “**Non-IM Security Documents**” means the 1994 NY Annex, the VM NY Annex and the 1995 Deed.
- (vi) “**Transfer Annex**” means each of the 1995 Transfer Annex and the VM Transfer Annex;
- (vii) “**Credit Support Documents**” means the Security Documents and the Transfer Annexes;
- (viii) “**Euroclear Documents**” means the Euroclear Security Agreement, the Euroclear NY CTA and the Euroclear Multi-Regime CTA; and
- (ix) “**Clearstream Documents**” means the Clearstream Security Agreement, the Clearstream NY CTA and the Clearstream Multi-Regime CTA.

This opinion is a supplement to the Collateral Opinion, and should be read in conjunction with, the Collateral Opinion. Unless otherwise discussed or specified in this opinion, assumptions, the qualifications and the analyses made in the Collateral Opinion will be applicable.

Capitalized terms used herein that are not defined herein shall have the meanings ascribed to such terms in the Collateral Opinion, the Master Agreement or the relevant Credit Support Document, as applicable.

¹ The various master agreements published by ISDA include (i) the 1987 Interest Rate Swap Agreement, (ii) the 1987 Interest Rate and Currency Exchange Agreement, (iii) the 1992 ISDA Master Agreement (Multicurrency – Cross Border) (iv) the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction) and (v) the 2002 ISDA Master Agreement.

In addition, we have also distinguished between the following three fact patterns when responding to each question:

- I. The Location of the Collateral Provider is in Thailand and the Location of the Collateral is outside Thailand.
- II. The Location of the Collateral Provider is in Thailand and the Location of the Collateral is in Thailand.
- III. The Location of the Collateral Provider is outside Thailand and the Location of the Collateral is in Thailand.

For the foregoing purposes:

- (a) the "**Location**" of the Collateral Provider is in Thailand if it is incorporated or otherwise organized in Thailand and/or if it has a branch or other place of business in Thailand; and
- (b) the "**Location**" of Collateral is the place where an asset of that type is located under the private international law rules of Thailand.

"**Located**" when used below in relation to a Collateral Provider or any Collateral should be construed accordingly.

II. PART 1: SECURITY INTEREST APPROACH PURSUANT TO THE SECURITY DOCUMENTS

In this Part 1 of our supplemental memorandum, in addition to the assumptions made in the Collateral Opinion, we have assumed that:

- (A) The Security Collateral Provider has entered into a Master Agreement and a Security Document with a Secured Party. The parties have entered into either (i) a Master Agreement governed by New York law, or (ii) a Master Agreement governed by English law.
- (B) In respect of answering the questions in respect of the 1994 NY Annex, the 2016 VM NY Annex and the 1995 Deed, the parties will enter into (i) the 1994 NY Annex and/or the 2016 VM NY Annex in connection with a New York law governed ISDA Master Agreement; and (ii) the 1995 Deed in connection with an English law governed ISDA Master Agreement.
- (C) In respect of answering the questions in respect of IM Security Documents, each IM Security Document could be entered into in connection with either a New York law or English law governed ISDA Master Agreement and may be subject to a different governing law than the relevant ISDA Master Agreement (depending on whether the parties choose to align the governing law of the IM Security Document to (i) the Location of the relevant Custodial Account; or (ii) the governing law of the ISDA Master Agreement). The IM NY Annex forms a part of the relevant ISDA Master Agreement and therefore, unless revised by the counterparties, is subject to the same governing law as the relevant ISDA Master Agreement. In respect of an IM NY Annex entered into in connection with an English law governed ISDA Master Agreement, the parties will provide in paragraph 13 of the IM NY Annex that the Annex is governed by and construed in accordance with New York law.
- (D) Although each of the Security Documents (other than the IM Security Documents) is a bilateral form in that it contemplates that either party may be required to post Collateral to the

other depending on movements in Exposure under the relevant Credit Support Document, we assume, for the sake of simplicity, that the same party is the Security Collateral Provider at all relevant times under the applicable Security Document. In the case of the IM Security Documents, both parties will be required to post Collateral to the other (either under the same IM Security Document or under separate IM Security Documents) in an amount that depends on the IM calculation provisions. For the sake of simplicity, we assume that the same party is the Security Collateral Provider at all relevant times under the applicable IM Security Documents.

- (E) Each party is either (i) a corporation, or (ii) bank or other similar financial institution that is subject to the requirement to post or collect initial margin with respect to derivatives or swaps. In case the Collateral Provider is Located in Thailand, please see Appendix B of the Collateral Opinion for details of the applicable Thai party with respect to this supplemental opinion.
- (F) Each Master Agreement and each Security Document is enforceable under the laws of New York or England, as the case may be, and that each party has duly authorized, executed and delivered, and has the capacity to enter into, each document.
- (G) No provision of the Master Agreement or the relevant Security Document has been altered in any material respect. The making of standard selections contemplated by the Master Agreement or the relevant Security Documents would not in our view constitute material alterations, except where expressly indicated in the discussion herein.
- (H) Pursuant to the relevant Security Documents, the counterparties agree that Eligible Collateral will include cash credited to an account (as opposed to physical notes and coins) and certain types of securities (as further described below) that are located or deemed located either (i) in Thailand, or (ii) outside Thailand.
- (I) Any securities provided as Eligible Collateral are denominated in either Thai baht or any freely convertible currency and consist of (1) corporate debt securities whether or not the issuer is organized or located in Thailand; (2) debt securities issued by the government of Thailand; (3) debt securities issued by the government of a member of the “G-10” group of countries; and (4) corporate equity securities whether or not the issuer is organized or located in Thailand, and in the case of the 1994 NY Annex, the 2016 VM NY Annex and the 1995 Deed is held in one of the following forms:
 - (i) directly held bearer securities: by this we mean securities issued in certificated form, in bearer form (meaning that ownership is transferable by delivery of possession of the certificate) and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party (that is, not held by the Secured Party indirectly with an Intermediary (as defined below));
 - (ii) directly held registered securities: by this we mean securities issued in registered form and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party so that the Secured Party is shown as the relevant holder in the register for such securities (that is, not held by the Secured Party indirectly with an Intermediary);
 - (iii) directly held dematerialized securities: by this we mean securities issued in dematerialized form and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party so that the Secured Party is

shown as the relevant holder in the electronic register for such securities (that is, not held by the Secured Party indirectly with an Intermediary); or

- (iv) intermediated securities: by this we mean a form of interest in securities recorded in fungible book-entry form in an account maintained by a financial intermediary (which could be a central securities depository (CSD) or a custodian, nominee or other form of financial intermediary, in each case an "**Intermediary**") in the name of the Secured Party where such interest has been credited to the account of the Secured Party in connection with a transfer of Collateral by the Security Collateral Provider to the Secured Party under a Security Document.

The precise nature of the rights of the Secured Party in relation to its interest in intermediated securities and as against its Intermediary will be determined, among other things, by the law of the agreement between the Secured Party and its Intermediary relating to its account with the Intermediary, as well as the law generally applicable to the Intermediary, and possibly by other considerations arising under the general law or the rules of private international law of Thailand. The Secured Party's Intermediary may itself hold its interest in the relevant securities indirectly with another Intermediary or directly in one of the three forms mentioned in (i), (ii) and (iii). In practice, there is likely to be a number of tiers of Intermediaries between the Secured Party and the issuer of such securities, at least one of which will be an Intermediary that is a national or international CSD.

- (J) Cash Collateral is denominated in a freely convertible currency and is held in an account under the control of the Secured Party.

The assumptions made in paragraphs (I) and (J) will be subject to modification as discussed below in (i) paragraph (N) in respect of the IM Security Documents and (ii) paragraph (O) in respect of Collateral held in a central securities depository.

- (K) Pursuant to the terms and conditions of the Master Agreement, the Security Collateral Provider enters into a number of Transactions with the Secured Party. Such Transactions include any or all of the transactions described in Appendix A of the Collateral Opinion. Under the terms of each Security Document, the security interest created in the relevant Collateral secures the obligations of the Security Collateral Provider arising under the Master Agreement as a whole, including the net amount, if any, that would be due from the Security Collateral Provider under Section 6(e) of the Master Agreement if an Early Termination Date were designated or deemed to occur as a result of an Event of Default in respect of the Security Collateral Provider.
- (L) In the case of questions 12 to 15 below, after entering into the Transactions and prior to the maturity thereof, the rights of the Security Collateral Taker under paragraph 8 of the relevant Annex or Deed (as applicable) have become exercisable following the occurrence of any of the relevant pre-conditions specified in the Annex or Deed (which shall comprise solely of the events listed in Paragraph 8 or as an election in the pro-forma Paragraph 13) which are then continuing, but that an insolvency proceeding has not been instituted (which is addressed separately in assumption (M) and questions 16 to 18 below).
- (M) In the case of questions 16 to 18 below, an Event of Default under Section 5(a)(vii) of the Master Agreement with respect to the Security Collateral Provider has occurred and a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the "insolvency") has been instituted by or against the Security Collateral Provider.

- (N) With respect to IM Security Documents only, the Collateral provided under the IM Security Document is held in an account (which may hold cash (in a freely convertible currency) and securities) (a "**Custodial Account**") with a third-party custodian ("**Custodian**"), with the following characteristics: (x) the Custodian holds the Collateral in the Collateral Provider's name pursuant to a custodial agreement between the Collateral Provider and custodian; (y) the Custodial Account is used exclusively for the Collateral provided by the Collateral Provider to the relevant Collateral Taker; and (z) the Collateral Provider, the Collateral Taker and the Custodian have entered into an agreement (which may be a separate control agreement or may be part of the custodial agreement) under which the Collateral Taker can take control of the margin under certain circumstances.
- (O) In certain circumstances, "initial margin" Collateral may be held at a central securities depository. In these circumstances, the parties will not enter into an IM Security Document. Instead (x) the Custodian is a central securities depository and holds the Collateral in the Custodian's name, acting in its own name but for the account of the Collateral Taker; (y) the parties have entered into securities documents and/or other agreements governing the pledge of the Collateral held by the central securities depository and movement of the Collateral into and out of the Custodial Account; and (z) such securities documents and/or other agreements are enforceable in accordance with their terms under applicable law (which may be different than the law of Thailand).
- (P) The parties may enter into more than one Credit Support Document, including multiple Credit Support Documents each subject to different governing laws, and may also enter into arrangements described in assumption (O) instead of entering into an IM Security Document.

Questions relating to the Security Documents

- A1. *For Non-IM Security Documents, would any of your responses to questions 1 through 21 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of any changes in law in your jurisdiction?*

Answer

As of the date hereof, there are no new laws or changes in the interpretation of the laws of Thailand that would materially or adversely affect the conclusions reached in the Collateral Opinion.

Nevertheless, as noted in the Collateral Opinion, Thailand's legislative body recently passed the Business Security Act, B.E. 2558 (2015) (the "**Business Security Act**"). This act has been in effect since 2 July 2016. In the past if the Eligible Collateral in the form of cash deposited to an account (the "deposit") is Located in Thailand, our stance was that it was theoretically impossible under Thai law to create a security interest over deposits. Also, it was uncertain whether a Pledge of "the right to receive deposits" was valid and enforceable as a security interest under Thai law. Under the Business Security Act, a security interest can now be created over any right of claim including deposits, but not cash.

We summarize below the key features of the Business Security Act covering, where relevant, questions 1 through 21 in the Collateral Opinion.

I. Who is eligible to act as a security provider and security taker?

Both individuals and juristic persons (i.e. a security provider) can use their assets as security under the Business Security Act. However, only "financial institutions" and those specifically designated under a ministerial regulation can accept business security as secured creditors. "Financial institutions" in this context are (i) licensed commercial banks (including branches of foreign commercial banks licensed to undertake commercial banking business in Thailand), finance companies, and credit foncier companies under the Financial Institution Business Act, B.E. 2551 (2008), as amended; (ii) licensed insurance companies under the Life Insurance Act, B.E. 2535 (1992), as amended, and Non-Life Insurance Act, B.E. 2535 (1992), as amended; and (iii) commercial banks or financial institutions established under specific laws. This effectively excludes foreign banks without a branch in Thailand from accepting business security under the Business Security Act.

II. What assets can be used to create business security?

There are two alternatives for creating security over assets, namely (i) creating security over the business which will cover *all assets* used by the security provider for conducting the business; or (ii) creating security over specific assets.

Creating security over the "business": The term "business" is broadly defined, without much guidance, as the assets used in the business operation of the security provider (including related rights) that secure the performance of its obligations and can be transferred to a third party as a going concern.

Creating security over "specific assets": The Business Security Act paves the way for many additional types of assets over which security interest can be created as follows:

1. right of claims, including receivables and other rights - whether present or future - such as *bank deposits*, but excluding rights represented by an instrument (e.g. bill of exchange or promissory note which can be pledged under the existing law);
2. movable property used in the business of the security provider such as machinery, inventory, and raw materials;
3. immovable property (only if the security provider is engaged in the real estate business);
4. intellectual property (e.g. copyright, trademark, patent and trade secrets); and
5. other types of assets as may be prescribed.

Therefore, under the Business Security Act, creation of security interest over bank deposits is now permitted under Thai law, subject to formalities and conditions prescribed under the Business Security Act.

III. How to create business security (i.e. creation and perfection of business security)?

Under the Business Security Act and the regulations issued thereunder, the security interest can be created over bank deposits by the parties entering into a "business security agreement" in writing and registering the same with the Business Security Registration Officer.² The registration shall contain at least the following:

- (i) the date, month, year, and time of registration;
- (ii) the name, address and identification number (if the debtor/security provider is an individual) or registration number (if the debtor/security provider is a juristic person) of the debtor and the security provider;
- (iii) the name, address and identification number (if the security taker is an individual) or registration number (if the security taker is a juristic person) of the security taker;
- (iv) secured debts;
- (v) details of the property granted as a security;
- (vi) statements showing that the security provider has placed the assets specified in the registration particulars with the security taker as security for debt repayment;
- (vii) the agreed maximum amount secured by the assets;

² Section 13 of the Business Security Act.

- (viii) enforcement events under the business security agreement; and
- (ix) other particulars prescribed by the Registration Officer and published in the Government Gazette.³

Once the agreement is registered, the security taker shall be regarded as a secured creditor under the Bankruptcy Act.⁴ Given the formalities required for the creation and perfection of security interest over bank deposits as explained above (especially in relation to the content required to be registered), the parties should be able to agree that the secured obligations shall include any and all present and future obligations of the Secured Party. With respect to the creation of security interest over future Collateral, based on our unofficial discussion with the officer of Department of Business Development, the amount of money in the bank deposits granted as security is not required to be specified for the purpose of registration (though one of the items required for the registration is details of the bank deposits granted as security) as the amount of money in the bank deposits may fluctuate from time to time. Given that the amount of money in bank deposit provided as security interest will not be specified in the registration, the cash deposited into account after the date of registration can also be considered as deposit subject to the business security.

IV. *What are the main features of business security?*

Business security created under the Business Security Act resembles many attributes of a "floating charge" under foreign laws. Notable among them are:

1. business security is non-possessory; no delivery of the secured asset is required; and
2. the security provider retains the rights to possess, use, exchange, mortgage (excluding pledge), and sell the collateral, and to receive interests derived therefrom (except as otherwise agreed).⁵ This comes with the duty of care of the security provider, in addition to the entitlement of the security taker to reasonable inspection of the collateral. The security provider is also required to prepare a list and maintain an account of the collateral which the security taker can examine from time to time.⁶

With respect to security interest over bank deposits, as the law does not provide any specificity as to how the deposit should be made available for inspection by the security taker, the obligations imposed on the security provider as explained above would be applicable, *mutatis mutandis*.

3. Due to the floating charge nature of business security, the preferred right of the security taker will extend to any asset the security provider receives in exchange for, or in place of, a transfer of the collateral assets (including compensation in the case of its loss or damage), once the change of business security is registered with the relevant authorities.

³ Section 18 of the Business Security Act and the Notification of Department of Business Development re: *rules and procedures for registration of business security agreement* which has been in effect since 2 July 2016.

⁴ Section 17 of the Business Security Act.

⁵ Section 22 of the Business Security Act.

⁶ Section 24 and 25 of the Business Security Act.

V. *How do you enforce collateral as business security?*

The security taker can enforce business security once an enforcement event (specified in the business security agreement and registration) takes place. In enforcement, specific assets and businesses are subject to different procedures and in either case, the Act does recognize and somewhat facilitate the enforcement of collateral by a security taker, e.g. the enforcement will in most cases be through out-of-court proceedings.

If the secured asset is a right to deposits and the security taker is a financial institution accepting such deposits itself or accepting the deposits on behalf of all security takers, the security taker is entitled to immediately debit funds in the account and apply such funds towards repayment of debt, provided that it must send a notice, by registered mail or any other method which shows that the security provider has received such notice, notifying the security provider of such deduction within seven days from the date of the deduction. On the other hand, if the security taker is not a financial institution accepting the deposits itself, the security provider and security taker may *agree* that the financial institution accepting the deposit may deduct the debt from the deposits on behalf of the security taker. In such case, the financial institution may deduct the debt from the deposits upon receipt of the notice from the security taker that there is a cause for security enforcement.⁷

Any deduction made shall be allocated for payment in the following order:

- i. expenses for maintenance and preservation of the secured property (i.e. bank account) (if any);
- ii. reasonable expenses and fees from enforcement of the security (if any);
- iii. payment of debt to the Secured Party and other secured creditors who have preferential right over the secured property in the order appearing on the list of registration;
- iv. payment of debt to the creditors under other court judgments for the distribution of the assets or the proceeds obtained from public auction; and
- v. the remaining amount, if any, shall be returned to the security provider.

If the amount of money in the deposit account is less than the amount of the outstanding debt, the shortfall shall be regarded as a debt that the security taker may claim from the debtor.⁸

VI. *How do you release collateral as business security?*

Pursuant to the Business Security Act, the business security agreement shall be terminated when:

- (i) the secured debt is extinguished for reasons other than prescription;

⁷ Section 43 of the Business Security Act.

⁸ Section 52 of the Business Security Act.

- (ii) the security taker and the security provider have agreed in writing that the business security agreement shall be terminated;
- (iii) the secured asset has been redeemed;
- (iv) the secured asset has been sold due to security enforcement, or
- (v) when the secured asset has been foreclosed and vested in the security taker.⁹

Upon the events specified in (i)-(iii) above, the security taker has the duty to submit written consent to register the release of business security with the Business Registration Officer via electronic platform immediately. The security provider, with consent from the security taker, is responsible to register the release of business security within 14 days from the date which the consent is obtained.¹⁰

Upon the events specified in (iv)-(v) above, the security taker has the duty to register the release of business security within 14 days from the date such events occur.¹¹

- A2. *For Non-IM Security Documents, would any of your responses to questions 1 through 21 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of the inclusion of Security Documents in this opinion that were not previously included?*

Answer

No. The inclusion of Security Documents in this opinion that were not previously included would not affect our responses to questions 1 through 21 in our Collateral Opinion. Our analysis remains the same that the procedures for the creation and perfection of security interest under Thai laws is only applicable to Collateral Located in Thailand. In case the Collateral is Located outside Thailand, under the Thai conflict of law, the creation and perfection of such Collateral shall be in compliance with the law of the place where the Collateral is located ("lex situs").

Hence, whether to which extent the Non-IM Security Documents could be used for the creation and perfection of the Collateral depends on the location of the Collateral. That is, if the Collateral is Located in Thailand, the Non-IM Security Documents may not be able to be used to create and perfect the security interest over such Collateral given that the provisions therein may not entirely comply with Thai laws requirements for the creation and perfection of each security interest as described in the Collateral Opinion. On the other hand, if the Collateral is Located outside Thailand, the Non-IM Security Documents could be used so long as the provisions therein comply with lex situs.

- A3. *For Non-IM Security Documents, would any of your responses to questions 1 through 21 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of the inclusion of equity securities as Eligible Collateral described in assumption (I)(4)?*

⁹ Section 80 of the Business Security Act.

¹⁰ Clause 10 and 11 of the Notification of Department of Business Development re: *rules and procedures for registration of business security agreement* which has been in effect since 2 July 2016.

¹¹ Clause 11 of the Notification of Department of Business Development re: *rules and procedures for registration of business security agreement* which has been in effect since 2 July 2016.

Answer

With respect to the inclusion of equity securities as Eligible Collateral described in assumption (I)(4), our responses to question 1 to 21 in the Collateral Opinion remain the same as our analysis already covered the case where the Eligible Collateral is equity securities, except for the indicative guideline on how the court will determine the location of the equity securities. Nevertheless, the same guideline with respect to debt security provided in our response to question 2 can be applied to Eligible Collateral being equity securities, *mutatis mutandis*.

- B. *For the IM Security Documents only, assume that the Collateral will be held in a Custodial Account with a Custodian as described in assumption (N) above and not pursuant to (i) the assumptions in (I)(i) to (iv) and (J) above or (ii) assumption (O) above.*
- B1. *Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (N) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of any changes in law in your jurisdiction?*

Answer

No, except for the effectiveness of the Business Security Act as explained in (A).

- B2. *Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (N) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the inclusion of the IM Security Documents in this opinion?*

Answer

No. The inclusion of IM Security Documents would not affect our responses to questions 1 through 21 in our Collateral Opinion.

- B3. *Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (N) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the inclusion of equity securities as Eligible Collateral described in assumption (I)(4)?*

Answer

Please refer to our response in (A3) above.

- B4. *Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (N) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the holding of the Collateral pursuant to one of the custodial arrangements described in (N) above?*

Answer

Under Thai law on conflict of laws, to create security interest over the Collateral or to transfer title to the Collateral to a Collateral Taker, the law of the place where the Collateral is situated, *lex situs*, would be applicable. Given this, if the Eligible Collateral held by the Custodian is Located in Thailand, we provide below our analysis relating to how the custodial arrangements are required to be made in order to create and perfect security interest over the Eligible Collateral Located in Thailand. In case the Eligible Collateral is Located outside Thailand, the following custodial arrangements will not be applicable as the creation and perfection of such Collateral shall be in compliance with *lex situs*.

1. Pledge

As explained in the Collateral Opinion, in order to create and perfect security interest by way of Pledge, delivery of the pledged property by the pledgor to pledgee is one of the requirements. A Pledge is extinguished when the pledgee allows the pledged property to return into the possession of the pledgor.¹² The parties to a Pledge may agree that the pledged property be kept by a third party.¹³ Supreme Court decision No. 5603/2544 ruled that a pledge under which a director of the pledgor was allowed to be the custodian of the pledged property, and the pledgor was allowed to exploit the pledged property in undertaking its business, equated to the pledged property being allowed to return to the pledgor; consequently, the pledge was extinguished. Therefore, the court might consider that possession by a person who is connected to a pledgor is possession by the pledgor himself, rendering the pledge extinguished. Though Supreme Court decisions do not have the force of law in Thailand, but rather are considered precedent cases, the interpretations of the Supreme Court are usually followed in subsequent cases.

Since the court might consider the possession by a person who is connected to a pledgor as the possession by the pledgor himself, the person who actually has control and possession over the Collateral should not be related to the pledgor in a considerable way. As a result, the Collateral should be kept either by the pledgee or a third party acting as a Custodian for pledgee at all times and pledgee should ensure that the pledged property does not return to the possession of the pledgor to avoid the Pledge being extinguished. If the Collateral is kept either by the pledgee or a third party acting as a Custodian for pledgee, the pledgee will then have control over the pledged property including to instruct the Custodian to release or enforce the pledged property. Therefore, the Custodian should be appointed by a pledgee and should not be a person who is connected to a pledgor in order to ensure the validity of pledge against the pledgor.

¹² Section 769 of the Civil and Commercial Code.

¹³ Section 749 of the Civil and Commercial Code.

2. Security arrangement pursuant to section 228/1 of the Securities and Exchange Act, B.E. 2535 (1992), as amended (the "SEC Act")

As explained in the Collateral Opinion, securities in dematerialized or scripless form Located in Thailand are deposited with the Thailand Securities Depository ("TSD") acting as a Thailand central securities depository. According to the relevant rules issued by the TSD, only a person permitted by TSD as depositor¹⁴ (the "TSD Depositor") can execute the record to create a security interest for scripless securities. A TSD Depositor can create a security interest on behalf of its customers who are Collateral Takers. If the Collateral Taker does not have an account with the TSD, the Collateral Taker may engage a local TSD Depositor to execute the record on its behalf. Such local TSD Depositor should be a broker for the purpose of the sale and enforcement of the subject securities on the Stock Exchange of Thailand ("SET"). The outline of the procedures for the recording of security interest under the rules prescribed by TSD is set out in Annex 1 and 2.

If the custodial arrangement made is in compliance with the TSD rules, that is, the Custodian or a sub-custodian of the Custodian is a TSD Depositor who records the creation of a security interest over scripless securities for the Collateral Taker, the Collateral Taker will be able to exercise its rights over the scripless securities provided as Eligible Collateral as the secured party. This is provided that upon enforcement, the Collateral Taker being a creditor shall notify the debtor and the person placing the collateral in writing requiring him to make a payment of outstanding debts owed to the Collateral Taker within a *reasonable period of time*.¹⁵ If the debtor and the person placing the collateral fail to comply with such notice, the creditor shall have the right to sell the subject securities on the SET in accordance with the procedures specified by the SET or by auction.¹⁶ In other words, if the debtor fails to make a payment of outstanding debts in accordance with the demand notice, the Collateral Taker can then instruct the Custodian being the TSD Depositor to enforce against the subject securities pursuant to the procedures required under the relevant regulations.

With respect to the release of the collateral, section 228/1 of the SEC Act provides that the provisions concerning pledge under the Civil and Commercial Code shall apply to the extent that they are not contrary to or inconsistent with section 228/1. Pursuant to section 769 of the Civil and Commercial Code, the pledge will be extinguished if:

¹⁴ Persons permitted by TSD to act as depositor include securities companies (e.g. securities broker) and commercial banks (e.g. custodian) in Thailand.

¹⁵ There is no statutory requirement as to what notice period would constitute 'reasonable notice' for this purpose. If such an issue were to be reviewed by a Court of Thailand, it would be within its discretion to determine a reasonable period depending on the facts of the case. In considering whether the notice period given is reasonable, the court may consider several factors e.g. the amount of debt. The shortest period that has been held by Thai court as a reasonable period with respect to enforcement of security is 15 days for the amount of debt of Baht 376.47 million (Supreme Court Decision No. 3171-3172/2545). In such Supreme Court decision, the security interest created was in the form of mortgage. To date there is no court precedent which sets out guidance as to how long a notice period should be given before a secured party can enforce the security created pursuant to section 228/1 of the SEC Act.

¹⁶ Section 228/1 of the SEC Act.

1. the principal/underlying obligation, which is secured by that pledge, is extinguished in a manner other than by prescription (statutes of limitation) (i.e. all outstanding obligations under the Master Agreement have been performed in full); or
2. the pledgee allows the pledged property to return into the possession of the pledgor.

Therefore, once the underlying obligation is extinguished, the security arrangement shall be deemed to be extinguished too, and therefore the Collateral Provider should be able to require the Collateral Taker to instruct the Custodian to release the security interest over the scripless securities pursuant to the TSD rules.

3. Security interest over deposits pursuant to the Business Security Act

As explained in (A), under the Business Security Act, security interests can now be created over rights of claims being bank deposits maintained with a commercial bank in Thailand, and that only onshore financial institutions can act as a Collateral Taker. The Act is silent on who can act as a Custodian holding the Custodial Account over which the security interest is created. Nevertheless, pursuant to section 43 of the Business Security Act, it can be interpreted that the account bank and Collateral Taker can be the same person or the Collateral Taker may appoint any third-party account bank to be the Custodian. Given that the Collateral is in the form of cash deposit, a Custodian must be an entity licensed to take a deposit from other persons and maintain a deposit account, i.e. a licensed commercial bank or a special financial institution established under a specific law that allows it to take a deposit (e.g. the Government Saving Bank) in Thailand.

If the Collateral Taker (being a financial institution in Thailand per the definition in the Business Security Act mentioned in our response to question A1 above) appoints an account bank to be the Custodian, upon occurrence of any enforcement event, an instruction for the account bank to deduct the debt from the deposits on behalf of the Collateral Taker can only be made if the Collateral Provider and Collateral Taker have agreed on this.¹⁷ The account bank will immediately make any deduction upon receiving a notice from the Collateral Taker that a cause for security enforcement has occurred.¹⁸

For the release of business security over deposits, please refer to our response in (A1) above for procedures for the release of business security. The regulation only requires that any release of business security shall be registered with the Business Registration Officer. As a result, once the release registration is made, the parties should be able to agree on having the account bank being a custodian release the security interest over deposits.

¹⁷ The regulation is silent on the timing for such agreement to be made. Nevertheless, from the practical standpoint, it is presumably that the parties make this agreement at the point of entry into the agreement.

¹⁸ Section 43 of the Business Security Act.

- B5. *Please describe any requirements that the custodial arrangements described in assumption (N) above must meet to permit the Collateral Taker to exercise its rights as secured party.*

Answer

Please refer to our response in (B4) above. In case the Eligible Collateral is Located outside Thailand, the creation and perfection of such Collateral shall be in compliance with lex situs and thus the custodial arrangements shall be in compliance with the applicable foreign laws.

- C. *Assume that the Collateral will be held in a central securities depository as described in assumption (O) above and not pursuant to assumptions (I)(i)-(iv) and (J) above or assumption (N) above.*

- (i) *Would any of your responses to questions 1 through 9 and 12-21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (O) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the holding of the Collateral pursuant to one of the custodial arrangements described in (O) above? If so, please comment specifically on any such changes. As noted in assumption (O) above, you may assume that the securities documents and other agreements referred to in assumption (O) are enforceable in accordance with their terms under applicable law (which may be different than the law of your jurisdiction).*

Answer

If the Collateral is Located in Thailand, only the Eligible Collateral in the form of securities can be held in a central securities depository having the TSD acting as the depository. Please refer to our response in (B) above for details on how the custodial arrangement shall be made.

In case the Eligible Collateral is held in a central securities depository outside Thailand, the creation and perfection of such Collateral shall be in compliance with lex situs and thus the custodial arrangements shall be in compliance with the applicable foreign laws.

- (ii) *Please describe any requirements that the collateral holding arrangements described in assumption (O) above must meet to permit the Collateral Taker to exercise its rights as secured party.*

Answer

If the Collateral is an initial margin Located in Thailand, please refer to our response in (B) above for details on how the custodial arrangement shall be made. In brief, the creation of security interest over scripless securities is required to be in compliance with the rules issued by the TSD.

If the Collateral is an initial margin Located outside Thailand, the creation and perfection of such Collateral shall be in compliance with lex situs and thus the custodial arrangements shall be in compliance with the applicable foreign laws.

III. PART 2: TITLE TRANSFER APPROACH PURSUANT TO EACH TRANSFER ANNEX

In this Part 2 of our memorandum, we consider issues relating to the Transfer Annex. For this purpose we assume that the parties have entered into a Transfer Annex in connection with a Master Agreement rather than a Security Document. For this purpose, assumptions (A) to (M) should be read as modified by the following: references to the “Security Document(s)” should be deemed to be references to the “Transfer Annexes”; references to the “Security Collateral Provider” and “Secured Party” should be deemed to be references to “Transferor” and “Transferee”, respectively; and references to “Eligible Collateral” should be deemed to be references to “Eligible Credit Support”. Assumptions (N) and (O) in Part 1 will not apply to this Part 2.

In addition, we make the following additional assumptions:

- (Q) The Transferor has entered into a Master Agreement governed by English law and a Transfer Annex with the Transferee.¹⁹ Pursuant to the terms of each Transfer Annex, and as a matter of English law, transfers of Eligible Credit Support involve an outright transfer of title, free and clear of any liens, claims, charges or encumbrances or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance system). If an Event of Default exists with respect to either party, an amount equal to the Value of the Credit Support Balance is deemed to be an Unpaid Amount under the Master Agreement and therefore is taken into account for purposes of determining the amount due upon close-out of the Transaction pursuant to Section 6(e) of the Master Agreement. Although such arrangement has an economic effect similar to the Collateral arrangements evidenced by the Security Documents, neither Transfer Annex is intended to create any form of security interest.
- (R) The transfers under each Transfer Annex would not be recharacterized as creating a form of security interest by an English court, provided that the relevant Transfer Annex was not amended in any material way and provided further that the parties by their conduct did not otherwise clearly evidence an intention to create a security interest in the transferred Collateral.

Questions relating to the Transfer Annexes

1. For Transfer Annexes, would any of your responses to questions 22 through 29 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of any changes in law in your jurisdiction?

Answer

As of the date hereof, there are no new laws or changes in the interpretation of the laws of Thailand that would materially or adversely affect the conclusions reached in the Collateral Opinion.

2. For Transfer Annexes, would any of your responses to questions 22 through 29 that you provided as of the last date such responses were provided with respect to your jurisdiction be

¹⁹ For purposes of our analysis of the Transfer Annex, we assume that the Transfer Annex is being used together with either 1992 version of the Master Agreement or the 2002 ISDA Master Agreement only.

different as a result of the inclusion of the VM Transfer Annex in this opinion that was not previously included?

Answer

No.

3. For Transfer Annexes, would any of your responses to questions 22 through 29 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of the inclusion of equity securities as Eligible Collateral described in assumption (I)(4)?

Answer

If the Eligible Collateral is shares listed on the SET, please note also the following reporting requirements.

According to section 246²⁰ of the SEC Act and the relevant regulations,²¹ any person who does any act, whether by his or her own act or acting in concert with others, which results in him or her or such other persons becoming a securities²² holder of a listed company to an extent that reaches or passes through any multiple of 5 percent of the total number of voting rights of the listed company, will be required to **report the acquisition or disposal of the listed shares on the prescribed form, namely Form 246-2, to the Office of the SEC** within three business days from the date of the acquisition or disposal, and to subsequently submit, without delay, **a copy of the report to the SET**. The ownership amount is calculated **at the end of the trading day**.

Under the Form 246-2, shares held by (i) any person who voluntarily notifies the Office of the SEC of being in the same group for the purpose of reporting obligation; (ii) related persons (as defined in the SEC Act and its subordinate regulations) of the acquirer or disposer of shares, (iii) parties acting in concert (as defined in the SEC Act and its subordinate regulations) with the acquirer or disposer of shares, and (iv) related persons (as defined in the SEC Act and its subordinate regulations) of the parties acting in concert with the acquirer or disposer of shares, must be aggregated and integrated with those held by the acquirer or disposer of shares in determining the reporting requirements for the underlying shares.

²⁰ Section 246 of the SEC Act.

²¹ The Notification of the Capital Market Supervisory Board No. ThorJor. 28/2554 Re: *Rules Regarding Report of the Acquisition or Disposition of Securities*

²² Securities under section 246 of the SEC Act and notification concerning the Reporting Obligation refer to (i) shares of a public limited company, whether listed or non-listed, (ii) warrants to purchase shares; (iii) transferable subscription rights; (iv) convertible debentures; or (v) any other securities that may be convertible into shares, as issued by such public company, in order to grant rights to purchase or to convert such securities into shares of that company.

This opinion is given for the sole benefit of the International Swaps and Derivatives Association, Inc. and its members. This opinion is not to be disclosed to any other person nor is it to be relied upon by any other person without our prior written consent. This opinion may, however, be shown by an ISDA member to a competent regulatory or supervisory authority or professional advisors for such ISDA member for the purposes of information only, on the basis that we assume no responsibility to such authority or to any person as a result, or otherwise.

Yours sincerely,
Baker & McKenzie Ltd.

Baker & McKenzie.

**MAJOR PROCEDURAL STEPS FOR THE RECORD OF SECURITY INTEREST
OVER SCRIPLESS SECURITIES**

- (1) The collateral taker may engage a local TSD Depositor to arrange for the execution of the security interest record in the TSD system.
- (2) The TSD Depositor will open an account for scripless securities to be placed as security interests (the “**Collateral Account**”). The Collateral Account will be in the form of an omnibus account.
- (3) The collateral provider will instruct the TSD Depositor to transfer the scripless securities into the Collateral Account in the amount equal to the collateral amount, which the TSD Depositor (by a trade marketing officer) will then record as the giving of security interest into the TSD system.
- (4) The TSD Depositor (by another or the same trade marketing officer) will record the receipt of the security interest into the TSD system.
- (5) The TSD, after they have received proper information pertaining to the record, will then suspend the withdrawal/transfer of the relevant listed securities (scripless) during the period in which the security interest is being placed, and record the creation of the security interest in the TSD system.

Indicative Steps to Create Collateral Arrangement under Section 228/1

