

Derivatives transactions with offshore counterparties

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Ogier is counsel to the International Swaps and Derivatives Association, Inc. (**ISDA**) in Guernsey and Jersey and provides netting and collateral opinions which are available to members from ISDA's website and updated on an annual basis. We are often asked by banks, prime brokers and other clients to advise on local law issues in connection with their entry into derivatives transactions (or other transactions involving netting provisions) with offshore counterparties.

| Key Issues

The transaction documents (eg ISDA, GMRA or prime brokerage agreements) for derivatives transactions (or other transactions involving netting provisions) are usually governed by English law or New York law. However, there are a number of local law issues which our clients should consider when proposing to enter into such transactions with offshore counterparties, including the following key issues:

1. Are the close-out netting and set-off provisions of the transaction documents enforceable against the counterparty in pre- and post-insolvency circumstances?
2. Are the security/collateral provisions of the transaction documents enforceable against the counterparty in pre- and post-insolvency circumstances, and are there any local registration or other perfection requirements?
3. What statutory provisions and regulatory restrictions apply to the specific type of counterparty (eg company, trust, partnership, cell company/cell or investment fund)?
4. Does the counterparty have capacity and authority to enter into the transaction documents in accordance with its constitutional documents and corporate authorisations?
5. What amendments (if any) should be made to the transaction documents to reflect counterparty issues, eg to the representations, covenants and events of default?

6. Are the transaction documents (including the choice of law and jurisdiction provisions) enforceable against the counterparty under local law?
7. Would a foreign judgment or arbitration award be enforceable against the counterparty?
8. Does our client or the counterparty need to have a local licence or registration to enter into derivatives transactions?
9. What local laws/regulations apply to the marketing of derivatives transactions in the counterparty's jurisdiction?
10. What local insolvency laws could apply if the counterparty became insolvent?

Upon request, we are able to provide legal opinions or memoranda of advice covering the above issues in respect of specific transaction documents and counterparties/types of counterparties incorporated or registered in Jersey, Guernsey, BVI or the Cayman Islands.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

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