

11 January 2008

Our ref F4GKW/AJAG1903360.5  
Matter ref S1516/00037

FirstCaribbean International Bank (Bahamas) Limited  
as Agent, Arranger and Security Trustee  
Providenciales Branch,  
PO Box 236, Leeward Highway,  
Providenciales,  
Turks and Caicos Islands,  
British West Indies

and

each such Senior Finance Party  
as defined in the Credit Agreement (as defined below)

Dear Sirs

## **TURKS AND CAICOS HOSPITALS PPP PROJECT**

We have acted as English legal advisers to First Caribbean International Bank (Bahamas) Limited in connection with the documents listed in the Schedule hereto (the "**Agreements**" and each an "**Agreement**").

Expressions defined in the credit agreement dated the same date as this opinion entered into between Interhealth Canada Infrastructure (TCI) Limited (as Borrower) (1), Interhealth Canada Infrastructure Holdings (TCI) Limited (as HoldCo) (2), First Caribbean International Bank (Bahamas) Limited (as Arranger, Agent, Security Trustee and Account Bank) (3), First Caribbean International Bank (Bahamas) Limited and Export Development Canada (as Original Project Term Lenders) (4), First Caribbean International Bank (Bahamas) Limited and Export Development Canada (as Original MES Term Lenders) (5) and HSBC Bank PLC and HSBC Bank (Panama) S.A (as Original Equity Bridge Lenders) (6), (the "**Credit Agreement**") and not re-defined below shall have the same meanings in this opinion, unless the context otherwise requires.

This opinion extends to the enforceability of each Agreement in respect of each of:

- (a) the Borrower;
- (b) Hold Co;
- (c) Global Facilities;

(d) HIFML; and

(e) ICL

(together the "**Companies**" and each a "**Company**") to the extent set out at paragraph 4.2.

## 2. DOCUMENTS EXAMINED

2.1 For the purposes of giving this opinion, we have examined:

(a) executed originals of the Agreements.

(b) a copy of the legal opinion dated 11 January 2008 from Misick and Stanbrook, Turks and Caicos Islands legal advisors to the Borrower and Hold Co;

(c) a copy of the legal opinion dated 11 January 2008 from Chancery Chambers, Barbadian legal advisors to Global Facilities;

(d) a copy of the legal opinion dated 11 January 2008 from Cassels Brock, Ontario legal advisors to ICL; and

(e) a copy of the legal opinion dated 11 January 2008 from Berwin Leighton Paisner, English legal advisers to the Borrower and Hold Co.

2.2 We have not examined any other documents or records nor made any enquiries or searches, except as stated below.

2.3 We are giving this opinion in reliance upon the legal opinions set out in clause 2.1.

## 3. SEARCHES

We carried out an on-line search through the Companies House Direct Service on 11 January 2008 timed at 12.10pm of information available for inspection in relation to HIFML, which revealed no order or resolution to wind up HIFML and no notice of the appointment of an administrator or receiver in relation to HIFML. We made a telephone enquiry to the Companies Court in London at about 12.13pm on 11 January 2008 and were told there were no entries against HIFML on the registers of administration and winding up petitions.

## 4. SCOPE OF OPINION

This opinion is given only with respect to English law in force at the date of this letter. No opinion is expressed or implied as to the laws of any other territory, or as to matters of fact.

## 5. OPINION

5.1 Based on the foregoing and the assumptions in the appendix to this opinion (which we have taken no steps to verify), and subject to the qualifications set out below and to any matters not disclosed to us, we are of the opinion that:

### 5.2 Validity

4.2.1 The Credit Agreement constitutes valid and legally binding obligations of the Borrower and Hold Co enforceable under English law.

4.2.2 The Intercreditor Deed constitutes valid and legally binding obligations of the Borrower, Hold Co, Global Facilities, HIFML and ICL enforceable under English law.

- 4.2.3 The Security Trust Deed constitutes valid and legally binding obligations of the Borrower and Hold Co enforceable under English law.
- 4.2.4 The Interest Rate Hedging Agreement constitutes valid and legally binding obligations of the Borrower enforceable under English law.
- 4.2.5 The CPI Hedging Agreement constitutes valid and legally binding obligations of the Borrower enforceable under English law.
- 4.2.6 The Fees Letters constitute valid and legally binding obligations of the Borrower enforceable under English law.
- 4.2.7 The Subordinated Debt Deed of Assignment constitutes valid and legally binding obligations of HIFML under English law.

### 5.3 **Registration and approvals**

Subject to filing prescribed particulars of the Subordinated Debt Deed of Assignment with the Registrar of Companies in accordance with Section 395 of the Companies Act 1985, no filings or registrations with any registration office and no authorisations, consents or approvals from any governmental authority in England and Wales are necessary to ensure the validity and legality of the Agreements or their enforceability against the Companies.

### 5.4 **Choice of law**

The choice of English law to govern the Agreements will be recognised and upheld by an English Court, but will not displace mandatory rules of law applicable in another jurisdiction with which the relevant transaction is otherwise solely connected or in which any dispute with respect to the Agreements is being adjudicated. To the extent that such mandatory rules affect any part of the transaction, an English Court is likely to restrict the application of those rules to the relevant part of the transaction and to apply English law in respect of the remainder.

### 5.5 **Security**

Subject to due registration as noted in paragraph 4.3 (*Registration and approvals*) above, the Subordinated Debt Deed of Assignment creates security interests in the assets expressed to be subject to a security interest in the Subordinated Debt Deed of Assignment.

## 6. **QUALIFICATIONS**

### 6.1 This opinion is subject to the following qualifications:

- (a) The expression "enforceable" means that the obligations of each Company created by the Agreements to which it is a party are of a type which English Courts enforce. It does not mean that they will be enforced in all circumstances in accordance with their terms.
- (b) Our opinion as regards the binding effect and validity of the Agreements and their enforceability against the Companies is subject to the limitations resulting from all insolvency and other laws of general application affecting creditors' rights.
- (c) We express no opinion as to the existence, assignability, transferability, marketability or value of any property of any Company or its title to such property, the nature of any security created or to be created by the Subordinated Debt Deed of Assignment, the priority or ranking of such security or (save as specifically

stated in paragraph 4.3 (*Registration and approvals*) above) the registerability of such security or any restriction affecting any such property or security. These matters involve complex technical issues. In particular, the priority of security can be affected according to whether such security is a legal or equitable charge, whether it is fixed or floating and, where relevant, by the time of creation or registration of such security.

- (d) The exercise of any powers or remedies conferred by the Subordinated Debt Deed of Assignment or by law is subject to general equitable principles regarding the enforcement of security and the supervisory powers of the English courts.
- (e) The power of an English court to grant equitable remedies is discretionary and we express no opinion as to whether they would be available. Specific performance is not usually ordered and an injunction not usually granted where damages would be an adequate remedy.
- (f) Where any obligation is to be performed in or by a person subject to the laws of a jurisdiction outside England and Wales, the obligation may not be enforceable under English law to the extent that its performance would be illegal or contrary to public policy under the laws of that other jurisdiction.
- (g) Where a person is vested with a discretion, or may determine any matter in his opinion, English law may require that the discretion is exercised reasonably and in a manner which does not frustrate the reasonable expectations of the parties. In addition, a provision that any certificate or determination will be conclusive will not be effective if it is fraudulent or made on an unreasonable basis.
- (h) Any provision for the payment of compensation or additional interest which is not a genuine pre-estimate of loss may be unenforceable as a penalty.
- (i) The effectiveness of contract terms seeking to exclude or restrict liability for negligence or breach of duty is limited by the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999.
- (j) Enforcement of the rights of the parties under the Agreements may become time-barred under the Limitation Act 1980 or by reason of the Foreign Limitation Periods Act 1984 or may be or become subject to defences of set-off or counterclaim, depending on the relevant facts.
- (k) An English Court may refuse to give effect to a provision dealing with the cost of litigation brought before an English Court which is unsuccessful or where the Court itself has made an order for costs.
- (l) Except in those cases where jurisdiction is determined in accordance with the provisions of the EC Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters an English Court will normally stay an action where it is shown that it can, without injustice to the claimant, be tried in a more convenient forum. An English Court may also, at its discretion, order a claimant in an action, if he is not ordinarily resident in the United Kingdom, to provide security for costs.
- (m) Provisions as to severability in the Agreements may not be binding and the question of whether or not any invalid provision may be severed from other provisions in order to save such other provisions would be determined by arbitrators and English Courts at their discretion.

- (n) A term of a written agreement may be varied by oral agreement of the parties, notwithstanding that such written agreement requires variations to be made only in writing.
- (o) An English Court is able, where the amount claimed is denominated in a currency other than sterling, to make a judgment in that other currency in appropriate cases, as a matter of current procedural practice. However, the debtor may settle the debt in sterling, applying the rate of exchange current at the time of payment or enforcement (as the case may be). Further, in the event of any Company's insolvent liquidation under English law, any foreign currency claim against that Company would be converted into sterling at the date on which the liquidation commenced or is deemed to have commenced.
- (p) Where a judgment has been given by an English Court in respect of the Agreements (or any part of them) that judgment may subsume some or all of the obligations under the Agreements. For example, where a judgment has been given in respect of an obligation contained in the Agreements, an English Court will assist the aggrieved party to enforce the judgment debt, but will not permit the aggrieved party to bring fresh proceedings in respect of the original obligation under the Agreements.
- (q) We express no opinion as to the efficacy of the charges created by the Subordinated Debt Deed of Assignment in respect of any property or rights situated outside England and Wales, or as to any further action which may be required under the laws of the jurisdiction in which such property or rights are situated or as to whether the laws of any such jurisdiction would recognise the chargor as creating the security interests expressed to be thereby created.
- (r) The enforcement of subordination provisions will be subject to principles of equity and public policy. The cases of *Re British & Commonwealth Holdings plc (No 3)* [1992] BCC 58 and *Maxwell Communications Corporation plc (No 3)* [1993] BCC 369, taken together, are authority for the proposition that subordination of claims (whether by means of a trust or contract) is valid and binding in an English winding up and it is implicit in these decisions that a liquidator would be required to give effect to such subordination. The court in *Maxwell* specifically ruled that subordination did not offend against the statutory rule that the property of a company in winding up is to be applied in satisfaction of its liabilities *pari passu*.
- (s) There is a question whether a turnover trust of the kind included in the Intercreditor Deed gives rise to a charge on a book debt (the term "book debt" is not defined by statute) which would be void against an administrator, liquidator and any creditor of the subordinated creditor, unless prescribed particulars had been filed in accordance with Section 395 or Section 409 of the Companies Act 1985.
- (t) We have taken no account of the effect of the Human Rights Act 1998 on any laws applicable to the interpretation or enforcement of any Agreement or on the action by any party in entering into or performing that Agreement. The Act gives effect to rights and fundamental freedoms guaranteed under the European Convention on Human Rights ("**Convention rights**"). In particular, it is unlawful for a public authority to act in a way which is incompatible with a Convention right and, insofar as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with Convention rights. There is at present only limited English case law to provide guidance on how the overarching law introduced by the Act will apply to different factual cases.

- (u) An "entire agreement" clause is not effective to exclude liability for fraudulent representations and may not be effective to (i) prevent reliance on pre-contractual representations which have not been incorporated in the contract; or (ii) exclude remedies for misrepresentation unless it meets the test of reasonableness under the Unfair Contract Terms Act 1977.
- (v) There is no judicial authority for the validity of the Contractual Currency provision set out in Section 8 of the ISDA Master Agreement forming part of a Hedging Agreement.
- (w) A contract, arrangement or undertaking to assume liability for non-payment or insufficiency of United Kingdom stamp duty on an instrument or to indemnify any person against such liability or such non-payment or insufficiency is void under section 117 Stamp Act 1891. In addition, an unstamped or insufficiently stamped document is not admissible in evidence in civil proceedings before an English Court and cannot be used for United Kingdom tax purposes.
- (x) We express no opinion as to any taxation matters, or the rights or remedies of any taxation authority in respect of non-payment of taxes or the failure to comply with law and regulations relating to taxation. For these purposes "taxation" and "taxes" shall be deemed to include stamp duties and value added tax.
- (y) We express no opinion as to:
  - (i) matters of public procurement, or other public law rights, duties or obligations or matters of competition law or regulation; or
  - (ii) any provision of the Agreements which purports to oblige a person to perform an obligation, or provide services, materials or equipment, to a standard which is expressed in subjective or qualitative terms (such as without limitation, "high quality", "efficient", "smooth running") and might not be capable of objective determination.
- (z) We have not considered the particular circumstances of any party to the Agreements (save the Companies to the extent expressly stated in this opinion letter) or of any assignee, transferee or successor of that party, or the effect of those particular circumstances on the Agreements or the transactions contemplated thereby.
- (aa) We express no opinion on whether the requirements of the EU Insurance Mediation Directive (2002/92/EC) and the UK legislation implementing its requirements in respect of insurance mediation activities (the Financial Service and Markets Act 2000 and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) have been or will continue to be met.

## 7. OBSERVATIONS

### 7.1 We also make the following observations:

- (a) We express no opinion as to the correctness of any warranties given by the Companies (expressly or impliedly) under or by virtue of the Agreements.
- (b) We have not considered the particular circumstances of any party to the Agreements (save the Companies to the extent expressly stated in this opinion letter) or the effect of such particular circumstances on the Agreements or the transactions contemplated thereby.

- (c) We have not consulted the parliamentary debates in *Hansard* on any statutory provision relevant to this opinion. In exceptional cases, the English court will permit a statutory provision to be interpreted by reference to statements made by the sponsoring minister in such debates: for instance, where the meaning of a statutory provision is clearly ambiguous and where a relevant ministerial statement in *Hansard* clarifies it.
- (d) We have not conducted a search in any District Registry of the High Court or County Court where applications for administration orders and out of court appointments of administrators may also be filed, and accordingly this opinion is given on the assumption that such searches (if made) would not reveal any circumstances which would require amendment of this opinion.
- (e) We express no opinion as to the power, capacity and authority of the Companies. We note that:
  - (i) Misick and Stanbrook have provided an opinion (referred to in paragraph 2.1(b)) in relation to the power and capacity of the Borrower and Hold Co;
  - (ii) Chancery Chambers have provided an opinion (referred to in paragraph 2.1(c)) in relation to the power and capacity of Global Facilities; and
  - (iii) Cassels Brock have provided an opinion (referred to in paragraph 2.1(d)) in relation to the power of capacity of ICL.

**8. BENEFIT OF OPINION**

- 8.1 This opinion is given on the basis that it is to be governed by and construed in accordance with English law.
- 8.2 This opinion is addressed to FirstCaribbean International Bank (Bahamas) Limited as Agent, Arranger and Security Trustee and given for its sole benefit for the purposes of the Agreements only and may not be disclosed or quoted to or relied upon by any other person (except as listed in paragraph 7.3), without our prior written consent in each specific case. No person (other than such addressee) into whose possession a copy of this opinion comes may rely on this opinion, without our express written consent addressed to him.
- 8.3 A copy of this opinion may be delivered to each party that is a Senior Finance Party as at the date of the Credit Agreement (or that becomes a Lender by a permitted assignment or transfer effected during primary syndication of the Facilities and in any event no later than 12 months after the date of the Credit Agreement) and may be relied on by it for the purposes of the Agreements, on terms that each such Senior Finance Party accepts a similar restriction on its ability to disclose or rely on this opinion to that contained in paragraph 7.2 above and in this paragraph. This opinion is given on the basis that our clients (including for the purposes of this opinion) was the Arranger and we will not be liable to any other Senior Finance Party in any circumstances where, or to the extent that, we would not be liable to the Arranger whether by reason of our advice or disclosure of information to the Arranger, the scope of its instructions to us or its knowledge of particular facts or law or otherwise.

Yours faithfully

*Lovells LLP*

**APPENDIX TO OPINION**

In this opinion, we have assumed that:

- (a) All documents provided to us as originals are authentic and complete and all signatures and seals are genuine. All documents provided to us as copies (including those transmitted to us electronically or obtained by us from a website) conform to the original documents to which they relate.
- (b) Each party to the Agreements has full corporate capacity, power, authority and legal right to enter into and perform its obligations under the Agreements. Each Agreement has been duly authorised, executed and delivered by such party in each case under all applicable laws and is in full force and effect.
- (c) Each Company is acting as principal and its directors consider in good faith that entry into the Agreements to which it is a party is for the purpose of the business of the Company and will be most likely either to promote the success of the Company for the benefit of its members as a whole or to achieve its other authorised purposes.
- (d) Each Company was able to pay its debts as they fell due (within the meaning of section 123 of the Insolvency Act 1986) at the time of entering into the Agreements and will not become unable to pay its debts as a consequence of doing so.
- (e) No steps have been taken to place any Company into any insolvency procedure or grant an injunction against any Company.
- (f) The Agreements accurately record all terms agreed between the parties and none of the Agreements has been terminated or varied and no obligation under them has been waived.
- (g) The documents referred to in paragraph 2 (*Documents Examined*) contain all relevant information which is material for the purposes of our opinion and there is no other arrangement (oral or written) between the parties or any other matter which affects the conclusions stated in this opinion.
- (h) The binding effect of the Agreements on the Companies is not affected by duress, undue influence or mistake and no Agreement has been entered into by any party in connection with money laundering or any other unlawful activity.
- (i) All formalities and requirements of the laws of any relevant state (other than England and Wales), and of any regulatory authority therein, applicable to the execution, performance, delivery and enforceability of the Agreements, have been or will be duly complied with.
- (j) No law (other than English law) affects any of the conclusions stated in this opinion.
- (k) The opinions and conclusions stated in the legal opinions set out in clause 2.1 are correct.
- (l) No party to the Agreements is resident in or connected with a territory which is subject to any embargo, sanction or similar restriction imposed by the United Nations, the European Union, the Organisation for Security and Co-operation in Europe or the United Kingdom, or any person or body to whom their powers are delegated.



**SCHEDULE**

**Senior Finance Documents**

1. the Credit Agreement;
2. the Intercreditor Deed;
3. the Security Trust Deed;
4. the Interest Rate Hedging Agreement;
5. the CPI Hedging Agreement;
6. the Fees Letters;
7. the Subordinated Debt Deed of Assignment.