MACFARLANES

BANKING AND FINANCE DISPUTE RESOLUTION

LITIGATION, ARBITRATION, INVESTIGATIONS AND FINANCIAL CRIME

QUARTERLY UPDATE

Welcome to the latest issue of our Quarterly Update, in which we look at some of the recent highlights and developments in banking and finance disputes and financial crime.

The dominant subjects in the second quarter of 2016 have been the interpretation of contractual documentation, including ISDA terms, mis-selling of derivatives, claims in respect of negligent valuation, and the advisory duty of care. During this period, the trial of the *Property Alliance Group* litigation has concluded, in which allegations of implied misrepresentations about LIBOR were made, and judgment is keenly awaited in this test case in the Financial List.

At the same time developments in financial crime have seen the Serious Fraud Office secure its second Deferred Prosecution Agreement involving failure to prevent bribery and corruption, in which it has exercised a degree of financial leniency in order to avoid the insolvency of the relevant commercial organisation. As the Government announces its intention to introduce new offences of failure to prevent money laundering, false accounting and fraud, the prospect of DPAs being used much more extensively than expected in the future is becoming very real.

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FINANCIAL CRIME

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NOTABLE CASES AND DEVELOPMENTS

A SALUTARY LESSON: IF YOU DO NOT INTEND TO BE BOUND BY A LETTER OF COMMITMENT, SAY SO CLEARLY

In *Novus Aviation Limited v Alubaf Arab International Bank BSC* [2016] EWHC 1575 (Comm), the Commercial Court determined that a letter of commitment that was unsigned by one of the parties, and stipulated that completion of the transaction was "conditional upon satisfactory review and completion of documentation", was nevertheless enforceable.

In 2013, Novus Aviation Limited (Novus), an aviation finance company, was in discussions to finance the purchasing of a number of aircraft for Malaysia Airlines (MA), whereby Novus would purchase aircraft to be used by MA and lease them to MA. Alubaf Arab International Bank BSC (Alubaf) expressed an interest in providing the majority of the equity funding for the transaction and leaving Novus to arrange the debt funding. Following discussions between the parties, Novus sent Alubaf a letter of commitment for signature. The letter was signed and returned to Novus. Alubaf's board of directors subsequently decided not to proceed with the transaction for financial reasons. Novus claimed Alubaf had committed a repudiatory breach of the letter of commitment.

Novus was unable to establish that it had counter-signed the agreement. Alubaf argued that there was no agreement as: (i) the commitment letter was not intended to be legally binding and/or was void for uncertainty; (ii) although the Head of Risk and Compliance at Alubaf (A) had signed the commitment letter, he did not have authority to bind Alubaf; and (iii) there was no binding contract because it was not counter-signed by Novus and returned to Alubaf before Alubaf withdrew from the transaction.

The Commercial Court determined that the commitment letter was enforceable.

Intention to create legal relations

In doing so, the Court applied the test in *RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG* [2010] UKSC14, which states that intention to create legal relations *"depends not upon [the parties'] subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations."* The Court decided that it was plain from the terms of the commitment letter that it was intended to create legally binding relations.

Certainty

Although the commitment letter said that funding was subject to "*satisfactory review and completion of documentation for the purchase, lease and financing*", this was not uncertain. Alubaf's right to reject documentation was not totally unfettered (as usual, it was a discretion that could only be exercised in good faith and not arbitrarily, capriciously or unreasonably and was in any event a question of fact). A finding that a document lacked sufficient certainty as to create legal relations, where the parties had intended to make a contract, was "*one of last resort*" and the Court here found the letter to have sufficient certainty.

Authority and execution

Alubaf argued that A lacked authority to execute the letter of commitment. It said it had specific signing procedures that were known to Novus and a single signature was not sufficient. The Court rejected this argument on the grounds that the procedures did not clearly exclude a single signature and that if A considered more than one signature was required he would have arranged it. On the basis of communications between the parties, Novus could, in any event, reasonably assume that A was duly authorised by virtue of his apparent authority.

In relation to Alubaf's argument that it was not bound by the commitment letter as Novus allegedly failed to sign and return the document, the Court reiterated that acceptance of an offer can be communicated by conduct. Novus had not counter-signed the letter of commitment, but upon receiving a signed copy from Alubaf it continued to the next steps required to progress the transaction.

The lack of a signature to a letter of commitment, therefore, does not necessarily prevent its enforceability. Absent an express provision that execution by both parties is required, the parties' conduct or communications may be sufficient to create a valid agreement. An express provision requiring "*execution of this Agreement*" will mean that signature (or waiver of that provision) will be required. The message for any organisation seeking to avoid being bound by a document which could be seen as binding, is to make express provision for execution, and to avoid appearing to have reached agreement by conduct.

In addition, banks should note the principle that, unlike some other jurisdictions, it is very difficult in England to challenge an agreement on the basis of the authority of the signatory. Banks should therefore ensure that employees are aware of the scope of their authority and the potential consequences of their actions.

REFINEMENT OF THE APPROACH TO CONTRACTUAL INCONSISTENCY

In *Mark Alexander v West Bromwich Mortgage Company Ltd* [2016] EWCA Civ 496, the Court of Appeal held that West Bromwich Building Society (West Bromwich) could not rely on variation clauses in its standard buy-to-let mortgage terms where there were no corresponding rights in the specific offer document. The mortgage in question was entered into prior to the Consumer Rights Act 2015 (CRA) coming into force; any similar cases involving contracts post 1 October 2015 would likely be argued by reference to the CRA.

West Bromwich's standard terms included a clause providing that: "*[i]f there are any inconsistencies between the terms in the Mortgage Conditions and those contained in the Offer of Loan then the terms contained in the Offer of Loan will prevail*". The issue before the Court was whether there were inconsistencies between: (i) a provision in the offer document that the rate of interest would vary in accordance with the Bank of England base rate (a "tracker" mortage) and the standard terms which gave West Bromwich wide discretion to vary the interest rate; and (ii) a provision in the offer document that the loan was for 25 years and the standard terms which gave West Bromwich the right to require repayment of the loan on one month's notice.

The Court of Appeal noted that where there is an inconsistency clause, the question of inconsistency should be examined without any pre-conceived assumptions. It held that inconsistency extends beyond cases where clauses cannot be read together literally, to where clauses cannot fairly or sensibly be read together, and courts should have regard "*… to considerations of reasonableness and business common sense.*" The Court also applied the reasoning in *Glynn v Margetson & Co.* [1893] AC 351 that a printed standard term must not be construed as inconsistent with the main purpose of the contract.

The Court overturned the decision at first instance and ruled that the provisions in the standard terms were inconsistent with those in the offer document. Accordingly, those provisions had not been incorporated into the contract and thus the terms of the offer document prevailed. The result would have been the same had there not been an inconsistency clause: Alexander, the borrower, could have relied upon the principle that special conditions prevail over printed standard conditions in the event of conflict.

This case serves as a reminder that if a party wishes to rely on wide-ranging rights in their standard terms and conditions, best practice would be to highlight such rights in any bespoke documentation to avoid falling foul of contractual inconsistency and to ensure that the contractual documents accurately reflect the intentions of the parties.

COURT CONSIDERS WHEN LOCAL LAW MAY BE IMPOSED ON A CONTRACT

In this case, *Banco Santander Totta SA v Companhia de Carris de Ferro de Lisboa SA* [2016] EWHC 465 (Comm), the High Court considered the application of Article 3(3) of the Rome Convention to ISDA documentation and confirmed when the Article may impose local law provisions on the contract irrespective of the parties' chosen governing law.

Article 3(3) provides as follows (emphasis added):

"The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, <u>where all the other elements relevant to the situation at the time of the choice are connected with one country only,</u> prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement."

The Claimant (Banco Santander) was a Portuguese bank seeking payment under interest rate swap transactions (the Swaps) entered into with a public sector Portuguese transport company, Companhia de Carris de Ferro (CCF). The Swaps had been subject to a cumulative "spread", which was added to the fixed rates payable by CCF when interest rates went outside agreed upper and lower "barriers". The spreads were also (in most cases) subject to leverage, which multiplied their effect, such that these were known as "snowball" swaps. Following the sustained period of near zero interest rates from 2009 onwards, CCF had incurred very considerable losses under the Swaps and had ceased making payments.

CCF argued that: (i) it had lacked capacity to enter into the "speculative" Swaps under Portuguese law; (ii) Portuguese law defences applied relating to "*games of chance*" and "*abnormal change in circumstances*" because, notwithstanding the parties' choice of English law (and jurisdiction) in the documents, where "*all elements relevant to the situation are connected with one country only*" that country's mandatory law provisions could not be displaced by agreement (Article 3(3), Rome Convention); and (iii) Banco Santander had breached the Portuguese Civil Code in offering the Swaps to CCF in the first place.

The Court considered and rejected CCF's arguments on capacity and breach of the Civil Code.

In reviewing the authorities, the Court held that the Article 3(3) test required it to take account of any elements indicating that the situation had an international character. In this case, there were elements indicating that the Swaps were not purely domestic to Portugal, such as:

- the provision (in the Schedule to the ISDA Master Agreements) allowing Banco Santander to assign and delegate its contractual obligations to parties outside Portugal;
- the parties' use of the "Multicurrency-Cross Border" 1992 ISDA Master Agreement (as opposed to the "Local Currency-Single Jurisdiction" version);
- the parties' use of English to set out and confirm the terms of the Swaps (by contrast with their use of Portuguese in day-to-day dealings);
- Banco Santander's back-to-back hedging arrangements with its Spanish parent (which was a practical necessity for the Swaps); and
- the fact that back-to-back hedging arrangements with foreign entities are routine within the swaps industry.

On the facts, therefore, the contracts were not purely domestic to Portugal, such that Article 3(3) did not apply.

COURT CONFIRMS THAT LIMITATION RUNS FROM WHEN A CLAIMANT KNOWS THE ESSENTIAL FACTS

In this strike-out application, *(1) Qadir and another; (2) Hussain v Barclays* [2016] EWHC 1092 (Comm), the High Court reaffirmed that a claimant only requires knowledge of the essential facts underlying his claim to start time running under the Limitation Act 1980.

The Claimants had taken out loans from the Defendant bank to support their hotel businesses and to acquire a further hotel. The loans were accompanied by interest rate swaps (the Swaps), which effectively fixed the interest rates payable on the loans. The loans were drawn down in July 2008. Subsequently, interest rates fell to historically low levels due to the global financial crisis, leading to significant losses under the Swaps. Discussions and emails over the period from April 2009 to February 2012 indicated that the Claimants were dissatisfied with both their position under the Swaps and the advice they had received, and were keen to restructure the lending in some way. The Swaps were subsequently reviewed as part of a wider review required by the Financial Conduct Authority (FCA). Pursuant to that review, one Claimant was offered (and accepted) financial redress in respect of one of the loans, in mid-2014. The claim was commenced on 5 January 2015, alleging that the Claimants had been negligently advised in relation to the Swaps.

The Defendant bank sought dismissal of the claim, arguing that the three year limitation period (per section 14A Limitation Act 1980) had expired. This period runs from the date on which a claimant becomes aware of the key facts supporting the claim. The Claimants resisted the application on the basis that: (i) they had only obtained the requisite knowledge in June 2012 (when the FCA's mandatory review began); and (ii) the bank was estopped from relying on the Limitation Act due to statements it had made in the context of the review.

The application was granted and the claim dismissed. The Court noted that, for limitation purposes, the knowledge required is that constituting the factual essence of a potential claim. In this case, that meant knowledge that the Swaps were loss-making, and that there were alternative hedging products available. Importantly, it did not require any detailed knowledge of the kind required for a pleading, or knowledge of a specific cause of action. On the facts here, the Claimants had acquired the requisite knowledge before 5 January 2012, such that the statutory period had expired. As to the estoppel argument, the Court held that the Defendant bank's statements had not been sufficiently unequivocal, nor had the Claimants' representative understood the statements as promises relating to a limitation period.

NEGLIGENT VALUER'S LIABILITY EXTENDS TO FULL SUMS ADVANCED

The recent landmark judgment in *Tiuta International Ltd (In liquidation) v De Villiers Surveyors Ltd* [2016] EWCA Civ 661 makes clear that a negligent valuer will be liable for the whole sum loaned on a refinancing and not just additional funds advanced beyond the original loan. This has significant implications for the lending, refinancing and valuations industries, and represents a victory for lenders in a complex and contentious area of the law relating to professional negligence.

The claim related to a residential development (the Property). In February 2011, the Claimant lender (Tiuta) advanced £2.5m to a property developer with security in the form of a first legal charge. Funds were advanced on the strength of a valuation carried out by the Defendant (D).

In November 2011, the property developer approached Tiuta requesting an increase in the facility on the same security.

A second valuation was carried out by D. On the strength of this valuation, Tiuta agreed to provide the additional funds requested. This was done by way of refinancing and not as a variation of the original agreement. A second facility agreement and legal charge were entered into. Using the funds advanced, the developer repaid the first loan of £2.5m and the original charge was released.

On expiry of the second facility, the loan remained outstanding. Tiuta appointed receivers to enforce its security. There was a shortfall in the value of the Property, which was insufficient to fully discharge the loan. Tiuta brought a claim against D for the balance of the loan due (which was comprised of sums from the first loan and the second facility) and the cost of funding, on the basis that the November valuation was negligent.

D was initially successful in its application for summary judgment of Tiuta's claim. For the purposes of the application it was assumed that the second valuation was negligent. The judge agreed with D that the loss attributable to the first advance of £2.5m was not caused by the later valuation. The original loan would have been outstanding, in any event, having been advanced before the second, negligent, valuation. Tiuta's loss should therefore be limited to the amount by which the later facility topped up the original loan.

On appeal, this judgment was overturned. The Court of Appeal's analysis, applying the 'but for' test, was that the creation of an entirely new loan, standing apart from the first, was the matter of relevance. Tiuta lost the right to claim against D in relation to the first loan and D was released from potential liability in respect of the first valuation. However, the second loan facility had to be treated separately, and the loss was the difference between the unpaid sums under that loan and the amount of the second (negligent) valuation of the Property.

LENDERS HAVE NO DUTY TO ADVISE ON ONEROUS TERMS

In another mis-selling decision *(Finch & Another v Lloyds TSB Bank* [2016] EWHC 1236 (QB)) the High Court held that loan providers are not under a duty to advise borrowers in respect of potentially onerous terms in loan agreements.

The claim concerned a loan agreement between Bredbury Hall Limited (BBL) and Lloyds TSB Bank plc (LB). LB advanced a loan to BBL for £11.6m for a term of 10 years to enable it to purchase and trade a hotel business. When BBL went into administration, in March 2014, the full loan became repayable together with significant costs for early repayment. The loan agreement had included a clause whereby the lender had to make good any break costs, which, given LB's hedging arrangements, were significant. The Claimants, who were assignees of the claim, claimed (amongst other things) that LB had owed BBL a duty, either in contract or tort, to advise it in respect of the onerous early repayment terms and failed to do so as it did not explain the scope of the break costs provision.

His Honour Judge Pelling QC disagreed. Dealing first with the duty claims, he noted that no claim for contractual breach of duty arose because there was no express contractual provision for LB to provide the advice. Instead, what had been pleaded, was a claim for the implied duty, under section 13 of the Supply of Goods and Services Act 1982, to provide the advice with reasonable care and skill. Such an implied term only arose where LB had agreed to provide a service that included the provision of advice; it had not done so.

Turning to the tortious duties, the judge noted that a bank is not under a legal obligation to provide advice, but if it does give advice, it must do so with reasonable care and skill. In this case, the claim advanced was that no advice had been given and that LB was under a duty to give voluntary advice, even if that advice: (i) was not requested; (ii) was in relation to a product which it was offering; and (iii) might be contrary to its own commercial interests. HHJ Pelling considered that such a duty would have to be exceptional and markedly different form the conventional relationship of banker and customer. He concluded that no such duty arose.

This latest mis-selling decision will be a welcome addition for lenders to the body of case law that now exists generally in their favour. Although there have already been several cases regarding whether advice given by banks was negligent, this decision goes one stage further by confirming that a bank is not under a duty to provide advice at all. This helps to emphasise that even with the most enthusiastic of marketing strategies, it will be hard for a borrower to establish that the bank has a duty to advise.

INTEREST RATE SWAP AGREEMENTS ARE NOT WAGERS

This case, *WW Property Investments Limited v National Westminster Bank plc* [2016] EWHC 378 (QB), is another instalment in the series of claims brought against banks in relation to interest rate hedging contracts. A disgruntled claimant (WW Property) sought to go behind a bank's review and redress scheme, even after it had accepted the bank's redress offers made in relation to four collar agreements. Claims made for losses arising in respect of the four collar agreements were accordingly struck out.

In relation to a swap agreement, which did not form part of the bank's redress scheme, WW Property failed to demonstrate that it had a reasonable prospect of success in arguing at trial that the swap amounted to a wager. An interest rate swap agreement is not a wager where at least one party has entered into the contract for a genuine commercial purpose, and not to speculate. The judgment contains a useful summary of the arguments and previous judicial consideration of wagers in the context of interest rate swap agreements.

WW Property also failed to demonstrate that it had a reasonable prospect of success in arguing at trial that any implied representations or implied terms (including in relation to the integrity of the LIBOR benchmark) existed.

COURT ORDERS RECTIFICATION WHEN EVIDENCE SHOWS THE COMMON INTENTION OF THE PARTIES

In this case, *LSREF III Wight v Millvalley* [2016] EWHC 466 (Comm), the Court ordered rectification of the terms of a restructured interest rate swap agreement.

The original interest rate swap agreement was governed by the terms of the 2002 ISDA Master Agreement. It was subsequently agreed that the interest rate swap agreement would be amended and accordingly a new transaction confirmation was issued (the Restructured Swap). The Restructured Swap referenced the 1992 ISDA Master Agreement. The distinction was important because only the 2002 version contained the Additional Termination Events relied on by the bank (an Irish Bank, which had sold the claim to Wight).

Although very little witness evidence was adduced of the bank's subjective intention when it entered into the Restructured Swap (indeed, no witnesses were produced who had any recollection of the Restructured Swap at all), the Court was persuaded on the basis of the documentary evidence that there was a continuing common intention between the parties that the Restructured Swap should be governed by the 2002 ISDA Master Agreement. The documents available at trial demonstrated that the borrower had agreed in principle to enter into the Restructured Swap governed by the 2002 ISDA Master Agreement and the reference to 1992 only came about because of an error made by the bank's computer systems which automatically generated transaction confirmations. It is also noteworthy that in the pre-action correspondence, the borrower initially corresponded on the basis that the 2002 ISDA Master Agreement applied. This created the impression that the borrower was, in these proceedings, seeking unfairly to take advantage of a mistake so as to avoid liability. Rectification of the Restructured Swap was therefore ordered.

The Court also confirmed that the entire agreement and non-reliance provisions in the Restructured Swap confirmation did not preclude the Court from ordering the rectification of its terms.

COURT OF APPEAL CLARIFIES SCOPE OF ISDA MASTER AGREEMENT EARLY TERMINATION PROVISIONS

The Court of Appeal has confirmed, in *(1) Videocon Global Ltd ("Videocon") (2) Videocon Industries Ltd v Goldman Sachs International (GS)* [2016] EWCA Civ 130, that the requirement to serve a statement of sums due "*as soon as reasonably practicable*" following an Early Termination Date, in accordance with section 6(d) of the 1992 ISDA Master Agreement, was not a condition precedent to the sums becoming payable as at the Early Termination Date. The sums were payable notwithstanding the fact that the requisite statement was not provided until over two years later.

GS and Videocon entered into a number of currency swaps under the umbrella of an ISDA Master Agreement. Videocon failed to meet its margin calls and so GS terminated the swaps on 2 December 2011. GS provided a statement of the sum sought on 14 December 2011. This was deemed not to provide "reasonable detail" under section 6(d) in earlier proceedings. A detailed calculation was not provided until March 2014. Nevertheless, GS thereafter obtained summary judgment for the amount claimed. Videocon appealed on the basis that the second section 6 notice had not been served "*on or as soon as reasonably practicable after the occurrence of an Early Termination Date*" as required by section 6(d)(i). It was argued that this requirement was effectively a condition precedent for an effective notification, which had not been met, and was now impossible to meet, such that the amount due could never become payable.

The relevant notice provisions are as follows (emphasis added):

- *"On <u>or as soon as reasonably practicable</u> following the occurrence of an Early Termination Date, each party will make the calculations on its part…and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under section 6 (e)…"* (section 6 (d)(i))
- *"An amount calculated as being due in respect of any Early Termination Date under section 6(e) <u>will be payable on the day that notice of the amount payable is effective</u>…"* (section 6(d)(ii))

The Court of Appeal rejected the appeal. It reaffirmed the judicial approach of: (i) construing contracts in light of their overall commercial purposes; (ii) being reluctant to invalidate contractual payment provisions; and (iii) interpreting time bar clauses strictly, according to the precise wording used. The Court held that Videocon's argument was inconsistent with the contractual scheme and mechanisms of the Master Agreement, and commercially absurd. The wording of section 6(d)(i) was insufficiently clear to impose a "*time of the essence*" obligation. Whilst that time stipulation was an ordinary contractual provision which, if breached, could give rise to a damages claim by the defaulting party, such a breach would not render the notice ineffective or invalidate the payment obligation.

FINANCIAL CRIME

SECOND DEFERRED PROSECUTION AGREEMENT - FINANCIAL LENIENCY DUE TO INSOLVENCY

In the second ever Deferred Prosecution Agreement (DPA), the Court has shown financial leniency towards the corporate offender on the ground that it had limited means to pay a financial penalty and disgorgement of profits. In the event, the offender's parent company which had benefited from the subsidiary's conduct through dividends in the relevant period, stepped in to make a long term loan so that its subsidiary could pay a financial penalty of £352,000 (reduced from £1.3m) and £4.2m towards the amount of profits to be disgorged, whilst at the same time itself surrendering almost £2m towards the overall disgorgement.

XYZ Limited (anonymous due to on-going investigations), a SME, was the wholly owned UK subsidiary of ABC LLC, a US registered corporation. XYZ generated the majority of its revenue from exports to Asia. During the period 2004 to 2012, through a small but important group of employees and agents, XYZ was involved in the systematic offer and/or payment of bribes to secure contracts in foreign jurisdictions. In total, 28 contracts were found to have been procured by the offer and/or payment of bribes. Intermediary agents within a particular jurisdiction would offer or place bribes to/with those thought to exert influence or control over the awarding of contracts. This was done on behalf of XYZ's employees and, ultimately, the company. The payments in question were not part of the agents' usual contractual remuneration (percentage commission based on the contract value), but described in correspondence as "fixed commission", "special commission" and "additional commission". The application for the DPA proceeded on the basis that these expressions were euphemisms for bribes.

By its own admission, XYZ did not have adequate compliance systems in place during the relevant period. In 2011, ABC LLC had sought to improve matters by implementing its global compliance programme within XYZ, and it was during this programme that concerns came to light about the way in which a number of contracts had been secured. XYZ took immediate action by retaining a law firm to undertake an independent internal investigation. After making a written self-report on behalf of its client, the law firm continued to supplement the Serious Fraud Office (SFO) with information while it conducted its own investigation. Two further self-reports were made.

Ultimately, the offences in the draft indictment straddled the coming into force of the Bribery Act 2010 on 1 July 2011. For conduct pre-2010, the offence was conspiracy to corrupt, and for post 2010 conduct, conspiracy to bribe contrary to section 1 of the Criminal Law Act 1977 and failure to prevent bribery under section 7 of the Bribery Act.

The terms approved by the Court in addition to the financial aspects summarised above included past and future cooperation with the SFO in all matters relating to the conduct underlying the draft indictment, and review, maintenance of and reporting to the SFO on the organisation's existing compliance programme.

In its postscript, the Court underlined that the parent, ABC, had been entirely ignorant of what had been happening at XYZ and its conduct when it had an intimation of the facts had been beyond reproach. Its behaviour and its support for XYZ had been important features in allowing the case to be resolved through a DPA. On the other hand, any evidence that a parent company has set up a subsidiary as a vehicle through which corrupt payments may be made so that the company can be abandoned in the event that the payments come to light is likely to lead to prosecution of the parent company under section 7 of the Bribery Act.

SANCTIONS UPDATE

On 19 May 2016, the United States, the United Kingdom, France, Germany and the High Representative of the European Union for Foreign Affairs and Security Policy published a joint statement regarding the lifting of economic and financial nuclear-related sanctions on Iran and encouraging the engagement of banks and businesses in Iran. The statement made clear that there are now extensive economic opportunities for companies and financial institutions in Iran and it was in the interests of everyone to ensure the Joint Comprehensive Plan delivers a benefit to the Iranian people. As such, the governments of the United States, the United Kingdom, France and Germany are committed to assisting companies by providing extensive guidance on the scope of sanctions, both lifted and remaining in force, and will provide any additional guidance necessary. This was reiterated on the first anniversary of the signing of the Joint Comprehensive Plan of Action by the High Representative of the EU, who said in a second statement that the European Union will continue to support its effective implementation.

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LITIGATION, ARBITRATION, INVESTIGATIONS AND FINANCIAL CRIME

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This note is intended to provide general information about some recent and anticipated developments which may be of interest.
It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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