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Umbrella facilities: Pros and cons for a sponsor

Richard Fletcher & Yagmur Yarar
Macfarlanes LLP

Overview

In this chapter, we will discuss what constitutes “umbrella facilities” (including how they compare and contrast with more standard fund finance facilities) and explore the pros and cons of using these products from the perspective of a sponsor. We will also cover which types of funds tend to use umbrella facilities, and the outlook for the future of umbrella facilities in the market.

Description of umbrella facilities

A standard fund finance facility will involve a single fund (or several parallel funds, still referred to in this chapter as “a fund”) as borrower(s), with the lender(s) providing a single revolving facility, or sometimes both a revolving facility and a term facility, on a committed basis under a single facility agreement to the borrower(s). These facilities can be utilised by the fund for any permitted purpose in the usual way, with multiple drawdowns, repayments and redrawings (in the case of a revolving facility) depending on the needs of the fund. The usual security package for a standard fund finance facility includes security over the uncalled commitments of the fund’s investors, and security over the bank account into which the proceeds from drawdowns of those commitments are paid.

In contrast, umbrella facilities are documented under one set of finance documents but apply to multiple borrowers with separate borrowing bases. These borrowers can include multiple funds, or a single fund, and one or more of its subsidiary special purpose vehicles (“SPVs”). Umbrella facilities can take several different forms, the most popular models of which are generally split into two main types as described below.

A brief history of umbrella facilities

The concept of an umbrella facility for fund financing first developed in the early 2010s. The idea for this type of facility was born out of a desire by fund borrowers to enter into new facilities speedily and in a cost-effective manner. The costs savings arise from both the lack of commitment fee (on the basis that umbrella facilities are, usually, provided on an uncommitted basis) and due to reduced administration time and legal fees being incurred for a succession of new facilities under the umbrella facility compared to legal fees for a succession of standalone facilities and the accompanying finance documents required to document them.

It is worth noting that a solid relationship between borrower and lender is key to a successful umbrella facility. We have experience of umbrella facilities working very well when the borrower is familiar with the lender’s internal credit process and there is a strong relationship between the parties. Where the umbrella facility is uncommitted, lenders usually need to

obtain credit approval quickly in order to meet a specific deal timetable set by the borrower. This process is expedited when the borrower knows exactly what to provide to the lender in terms of information or documentary evidence, and the lender's credit committee is familiar with the borrower's investors (in particular, their creditworthiness) and the borrower's investment activities.

The flexibility that is built into umbrella facility finance documents also helps lenders meet a borrower's needs in a timely fashion because there is (usually) no need to amend the existing facilities agreement to accommodate a specific deal structure; however, it is worth noting that more unusual deal structures can be discussed and implemented relatively quickly when using the master facilities agreement as an agreed starting point. The latter being said, any additional security or variation of term for a specific sub-facility would require negotiation at the time (as discussed below).

Types of umbrella facilities

One type of umbrella facility (“**Model A**”) involves documenting the various facilities using an uncommitted “master facilities agreement”. This provides an agreed framework under which a fund can request facilities from time to time from the lender(s), subject to an overarching master facilities limit agreed between the parties, to be shared between the borrowers. The facilities that may be requested can include term, revolving and letter of credit facilities. Typically, SPVs can also accede as borrowers for specific facilities, or just a single facility, with their obligations being guaranteed by the fund (or by the fund entering into a binding commitment to provide funds to its subsidiary SPV, which is capable of being enforced by a lender).

Each time a borrower (whether the fund as original borrower or a new SPV borrower) requires a new facility, it submits a new facility request, typically using an agreed template, to the lender(s) detailing the type of facility it requires, the new facility amount and any other specific commercial terms relevant to that new facility (such as pricing, covenants, interest rates, currency and fees). The lender(s) will then approve (or not) that requested facility. It is important to note that due to the (typically) uncommitted nature of these facilities, the lender(s) will usually have sole discretion to decide whether to accept a facility. Recourse for the lender(s), for both borrowings by the fund and guarantees by the fund of borrowings of the SPVs, is to the fund's investors and the bank account into which proceeds of investor commitments are paid, as for a standard fund finance facility. Where the fund group operates across a range of jurisdictions and investment strategies, borrowers may need the flexibility to be able to draw in a number of different currencies or to use letters of credit or other ancillary facilities. We therefore often see lender(s) who are able to meet those specific funding needs operating in this umbrella facility market.

Under a Model A umbrella facility, each new facility remains outstanding until its specific maturity, subject to an overall master facilities agreement long-stop maturity date, and the aggregate committed amount of all facilities cannot exceed the overarching master facilities limit. The purpose for borrowing each new facility may be for general fund purposes (such as working capital or payment of fees and expenses) or a particular purpose often related to the needs of the fund's specific investment strategy (such as real estate or private equity).

Another difference between a Model A umbrella facility and a standard fund finance facility is the different levels of events of default. Events of default that are relevant only to a single facility (“**Sub-Facility EoDs**”) will usually only trigger an early repayment of that sub-facility, but will allow the other sub-facilities to continue. Events of default that are relevant

to the fund as borrower and guarantor (such as insolvency at fund level, or significant levels of investor default or non-payment) (“**Master Facility EoDs**”) usually trigger early repayment of all facilities. Of course, a Sub-Facility EoD at a borrower SPV level that results in that facility being accelerated may lead to a call on the fund guarantee, and if the fund guarantee is not paid when due, this will trigger a Master Facility EoD, thereby potentially accelerating all the facilities outstanding under the master facilities agreement.

A further key difference between a Model A umbrella facility and a standard fund finance facility is that the Model A umbrella facility is provided on an uncommitted basis, one consequence of which is that commitment fees are not charged until an individual sub-facility is committed, and are then charged for that sub-facility only to the extent it is not utilised. This lowers the ongoing cost of Model A facilities compared to a standard fund finance facility, which we will discuss later in this chapter.

A second type of umbrella facility (“**Model B**”) also involves a master facilities agreement but typically sees a different fund acceding as borrower for each new facility. The funds are managed by the same manager, and so are within the same fund group, but will usually have different, or slightly different, investors. Whilst the recourse position superficially appears the same as for a standard fund finance facility or for a Model A umbrella facility, with recourse to the uncalled commitments of the investors and the bank accounts into which proceeds of such commitments are paid, it is actually different. The lenders will only have recourse to the specific investors of the fund that is the borrower or guarantor of a particular sub-facility, and not to all investors of all the funds of that manager. There is no cross-guaranteeing by the borrower (or fund) of one sub-facility by the borrower (or fund) of another sub-facility. A Model B umbrella facility is particularly relevant when investors are providing their commitments for a specific investment purpose, which will also be the purpose for that sub-facility.

Tied to the preceding point, Model B umbrella facilities are also frequently used by managers with multiple investment strategies. For example, a manager that invests in credit for leveraged buyouts might also invest in real estate debt. Those two asset classes would ordinarily be part of separate investment strategies, and hence separate funds. On the basis that there is a common manager for each of the funds, banks frequently accept including those separate funds within the same umbrella (or Model B) facility and allow for each to become a borrower under separate sub-facilities. However, the ability of a manager to utilise a Model B umbrella facility structure is largely dependent on it having an established track record and, of course, on the strength of its investor base(s). Accordingly, Model B is suited to managers of funds with larger institutional investors with a correspondingly strong borrowing covenant. In a typical Model B umbrella financing, the lenders will already know all of the investors of that fund group and there will be no question regarding the solvency of these “top-class” investors. It is not uncommon for lenders and managers to have a pre-agreed list of such “top-class” pre-vetted investors that invest into different funds who then borrow a sub-facility for a specific investment. The lenders’ awareness of such investors reduces the time taken to complete on-boarding checks for each borrower in a new sub-facility and increases the lenders’ confidence in the investor base of that borrower.

In a Model B umbrella facility, once the manager and lenders have agreed acceptable forms of formation documents and structures for a borrower, the manager can establish each successive sub-facility borrower with formation documents in the same or similar form, giving them confidence that the lenders will be able to accept such documents and reducing the amount of time lenders require for credit approval.

Whilst the overarching framework of Model B is similar to that of Model A (i.e. a master facilities agreement under which sub-facilities are entered into on an as-needed basis), due to the existing familiarity of the relationship between the manager and the lender(s), the strength of the manager's investor base and the frequency of transacting between the parties, the lender(s) and the manager of the fund group will have an agreed framework in place that will be replicated again and again (for each new borrower).

A variant of Model B uses a common terms agreement (in conjunction with a short-form loan agreement for each borrower) rather than a master facilities agreement. The common terms agreement sets out the main body of borrowing terms that apply to each facility, whilst the short-form loan agreement entered into by individual fund borrowers incorporates the common terms by reference, and documents the agreed commercial terms and any other terms that are bespoke to that particular borrower and facility.

Recourse and security

The basic security package for an umbrella facility operates on the same basis as any other fund finance transaction. As mentioned above, the lenders' key recourse is to the uncalled commitments of the fund's investors, and the lenders will therefore require security over uncalled commitments and security over the bank account into which the proceeds of such commitments are paid when drawn down. If there are feeder funds between a borrower/guarantor fund and the investors to which the lenders are to have recourse, typically those feeder funds will give guarantees and security over the uncalled commitments of their investors. In this way, the lenders always have direct security over the commitments of each investor, whether that investor is a direct investor in the fund or an indirect investor through a feeder vehicle. Furthermore, whilst the primary recourse of the lenders is to the uncalled commitments of the investors in that fund and the bank account(s) into which the proceeds of drawdowns from investors are paid, those same fund bank accounts frequently receive distributions and proceeds from the underlying investments of the fund. Where the latter is the case, the lenders will also, in practice, have security over distribution proceeds. It is important to note that each sub-facility obligor is normally severally liable for its own obligations and so the obligations being secured under that obligor's security documents should only extend to that obligor's obligations under its sub-facility and not to those of any other obligor's borrowings under different sub-facilities.

In some circumstances, lenders may also require security over certain fund assets for a specific facility or facilities. For example, if a facility is borrowed by an SPV, the lenders might require security over the bank accounts of that SPV in addition to the bank accounts of the fund. Lenders might also require share security to be granted over the fund's shareholding in the SPV and, if the SPV owns shares in another company, potentially from the SPV over that other company. The latter will clearly need to accommodate any security granted to third-party lenders in respect of any financing for a fund's portfolio company, and is therefore not always obtainable.

This practice of taking additional security over the fund's or SPV's underlying assets is frequently required for a more mature fund where there are fewer uncalled investor commitments remaining. The positive benefit to the fund is therefore to extend the life of its financing, which might otherwise be unavailable due to that reduced level of investor commitments. This additional security can be combined with guarantees being provided by each of the fund's SPVs in respect of each other SPV and the fund's own obligations. When taken together with security granted by each SPV over its bank accounts and, potentially, subsidiary/ies, lenders obtain recourse to both any remaining uncalled investor

commitments and the net asset value (“NAV”) of the fund as a whole. The additional security and asset-recourse structure can be simply documented by a new facility request and security documents covering each of the relevant assets. It may, however, be necessary to conduct additional diligence on: (i) the constitutional documents of the fund and the SPV; and (ii) any facilities that have been made available to an SPV (or its subsidiaries).

For example, a key question for funds looking to enter into umbrella facilities (and for lenders looking to provide umbrella facilities) will be whether the existing constitutional documents of the fund permit the provision of guarantees and security in support of facilities to be provided to an SPV of the fund as borrower. A fund’s constitutional documents will contain restrictions on the term of any of its borrowings (for example, for a maximum period of 12 months). If the fund is only permitted to provide guarantees and security to support borrowings of an SPV for the same term, this would restrict the tenor of a NAV-based SPV facility, making such facilities less attractive from a borrower perspective as they may not align with the life cycle of the fund’s investments.

It will also be necessary to confirm that each SPV can cross-guarantee each other in the manner described in the above paragraph, although a detailed consideration of these issues is beyond the scope of this chapter.

Pros and cons

Viewed from a high level, the pros of using umbrella facilities compared to standard fund finance facilities can be best summarised as offering flexibility. This flexibility may encompass: (i) a facility that develops over the life of a fund, starting off as a capital call facility then potentially becoming a partially asset-based facility towards the end of the life of the fund; (ii) multiple borrowers and funds within one facilities agreement structure; and (iii) flexibility of timing – with the majority of terms pre-agreed, a new sub-facility can be put in place in answer to a sudden need for additional funding. Added to that flexibility, they are generally considered less expensive from both a fees and costs perspective, as explained in more detail below.

Again, from a high level, the cons are that umbrella facilities can be unwieldy and more time-consuming to negotiate, and may not suit all conceivable types of potential fund finance transaction. While the parties can make every effort to pre-empt what they consider will be required throughout the term of the agreement, they are unlikely to be able to predict every eventuality. The umbrella facility may therefore need to be amended if the needs or activities of the fund change materially.

We consider the pros and cons in further detail below in light of the two main characteristics of umbrella facilities.

Flexibility and convenience

Compared to a standard fund finance facility, umbrella facilities can be hugely flexible. They can offer the convenience of an uncalled capital commitment together with an underlying assets (or NAV-based) facility within one agreement. They can provide for either single or multiple borrowers as well as different forms of borrower vehicle (e.g. both fund entities as well as corporate vehicles). They can also be adapted over the life of a fund as its needs change, without having to put multiple standalone facility agreements in place or make extensive amendments to existing standard fund finance facilities. Umbrella facilities can be structured so that certain terms and conditions differ between each sub-facility. For example, certain representations might only be made by, or certain undertakings might only apply to, specific funds in order to be able to address differences in a fund’s structure, investor subscription documents or constitutional documents.

Umbrella facilities can provide borrowers with greater speed of execution than a standalone facility because they do not have to go through an extensive conditions precedent process or enter into a new suite of finance documents every time they require a new facility, as the documents used are effectively streamlined. This is particularly true in relation to new security (although see above in relation to asset-specific security). In particular, under a Model A umbrella facility, borrowers submit a new facility request each time they want to borrow a new facility, which is typically based on a short-form agreed template. For straightforward transactions, the borrower can prepare the new facility request themselves without needing legal input. This enables the borrower to act quickly and efficiently without needing to instruct lawyers and, because the requests are (usually) substantially the same on each occasion, the borrower will become well versed and ever more efficient in preparing the new facility requests over time.

Umbrella facilities also provide funds with the ability to match their funding requirements to a club of lenders who can provide all of the necessary facilities. The facility should have the discretion to allow lenders to be selected according to their ability to provide certain facilities. Where revolving or ancillary facilities are required, lenders with the ability to provide those facilities (and the requisite rating, if required) will participate. Lenders who can only provide term debt can be selected to provide a proportion of the term debt facilities. The latter point also enhances the ability to syndicate these sorts of facilities to alternative lenders, providing greater liquidity for the lenders and, potentially, greater pricing competition for the borrower. Lenders may also benefit from the increased likelihood that the manager will request a further facility to support a fund's strategy in subsequent investment periods. Where a fund structure involves entities in a number of different jurisdictions, there can be tax issues in respect of certain lenders lending into some jurisdictions, so a club of lenders can be organised so that the appropriate lenders lend to certain entities within the structure, to avoid withholding tax issues. Umbrella facilities can often be bilateral financings, but they are frequently, if not more commonly, syndicated and, in a number of cases, to a wide lender base. The separate, distinct nature of each facility facilitates bringing different lenders into different sub-facilities.

While we have highlighted ways in which an umbrella facility can make life easier for borrowers and lenders alike, trying to create an all-purpose master facilities agreement may not always end up being as convenient as it seems. The parties (and their legal counsel) might spend a significant amount of time at the outset negotiating provisions into the master facilities agreement that do not end up being utilised (for example, the facilities agreement might provide for a letter of credit facility that is then never used). It is also possible that the fund might negotiate the initial facilities agreement with the expectation that it will last for the full life of that fund, but realise over time that market terms have moved on and/or that it does not require a later life/asset-based facility.

Finally, whilst an umbrella facility being uncommitted might be convenient from a costs perspective, as each new facility will require credit approval, this could potentially delay the borrower's plans to draw down on a particular date. As discussed above, a well-developed relationship between borrower and lender can help to avoid this pitfall.

Fees and costs

As mentioned previously, one of the main features that distinguishes an umbrella facility from a standard fund finance facility is that this type of facility is often partially or wholly uncommitted. The resulting absence of a commitment fee can be a significant cost saving for the borrower. The facility structure can therefore remain in place (albeit uncommitted)

without unnecessary ongoing costs accruing. This saves the borrower negotiating a new facility agreement at the point in time where it intends to draw down funds (again, subject to the points discussed above about the uncommitted nature of the structure) without paying a commitment fee for a facility that they are not actively or fully using.

From a lender's perspective, umbrella facilities can be operationally easier to administer than multiple standalone facilities. For example, there is a single relationship between the lender and the fund (on a Model A-type umbrella financing) or between the lender and the manager (on a Model B-type umbrella financing), so lenders are able to pass on their cost savings to the borrower by charging lower fees. On the other hand, and in particular in relation to Model A umbrella facilities, if a borrower requires a complex, bespoke financing arrangement, then the lender may charge more for providing a specialist product at the outset.

Another financial advantage of using an umbrella facility is that legal fees will usually be lower overall because the fund is not entering into multiple facility agreements during its life or because a sponsor does not need to negotiate an entirely new facility agreement for each new borrower or SPV. This reduces the time spent on negotiating finance documents, providing conditions precedent and incurring local counsel fees. However, a complex master facilities agreement or common terms agreement will require more extensive upfront discussion and negotiation than for a standard fund finance facility, so the upfront legal fees are likely to end up being higher than for a standard fund finance facility. As a new sub-facility is established, the fund will still be required to provide the usual suite of conditions precedent and to enter into the security documents required in each applicable jurisdiction, and the lenders' counsel will still need sufficient time to conduct their due diligence of the fund structure to ensure there are no issues with the fund entering into the financing. The diligence workstream in particular is not to be underestimated by parties. As a consequence, legal fees (particularly when several sets of local counsel are involved) can therefore still be a notable amount.

Putting an umbrella facility in place should also save the borrower's key personnel time in the long run as the expectation is that it will become an efficient vehicle to be used by the borrower. A significant amount of time will be needed from these key personnel to negotiate the initial umbrella facility. However, once the facility is in place, each new facility request should require much less time from both lawyers and key personnel than a standard fund finance facility. This will therefore allow the borrower's treasury personnel to spend more time on other day-to-day fund activities, as well as reducing legal costs. Where a manager operates multiple different funds, there is potentially even greater cost and time savings where those funds can all benefit from a single umbrella facility (as discussed further below). As mentioned above in respect of fund set-up, the sponsor can co-ordinate the establishment of its funds that are expected to be borrowers with a degree of confidence that they will be subject to a straightforward route to lender approval if they follow an established format, therefore saving time on restructuring to accommodate lender requirements.

Despite the pros listed above, borrowers need to carefully compare the potential costs savings of an umbrella facility against the potential running costs of a standard fund finance facility. Whilst, as highlighted above, one of the most significant savings of an umbrella facility is the absence of commitment fees, if a fund is very active and is likely to draw a large portion of its available facilities, then the actual level of commitment fees paid for a fully committed facility (i.e. a standard fund finance facility) will be low. For this kind of fund, fee savings will be unlikely to be determinative of whether to use a standard fund finance facility or an umbrella facility.

In addition to the above, it is clearly worth testing whether the flexibility provided by an umbrella facility is actually required by a fund. On the basis that a substantial amount of time and cost will be spent in the negotiation of an umbrella facility, care must be taken to ensure that its use will be frequent enough to justify that initial outlay. There is a danger of flexibility being an end in itself rather than the facility having genuine application to the fund's needs. Having said that, many borrowers will only use an umbrella facility for bridging capital calls and be perfectly happy that that limited purpose is sufficient to justify the upfront costs.

While the complexity (and as a result, flexibility) of an umbrella facility can be seen as a pro for some sponsors, such complexity is also a potential con. Providing sufficient flexibility in the master facilities agreement (especially if it is the first time a borrower and lender are entering into an umbrella facilities agreement together) takes a significant amount of time. The facilities agreement will need to include more options than a standard fund finance facilities agreement and there will therefore be extensive commercial discussions between lenders and borrowers, and the lawyers will have to spend more time on drafting. Furthermore, in light of this additional complexity, a manager might require additional advice from their legal counsel in order to understand the terms of the facilities agreement (and this has time and cost implications).

Who and where?

The diversity of the types of funds that use umbrella facilities reflects the multi-use nature of such facilities.

Even a single fund with a simple structure (i.e. the absence of a multiplicity of feeder vehicles and SPVs) might take advantage of the umbrella facility's flexibility. This flexibility might be required to ensure that it only has to enter into one facilities agreement during its life. As mentioned above, at the beginning of a fund's life, its value for lenders is in the undrawn commitments of its investors, and, as the fund matures, this will increasingly change to the value of the investments it has made or assets it has purchased with those commitments, and a fund's facility may therefore need to change from a pure capital call facility towards an asset-backed facility. Alternatively, a fund may be planning on carrying out bespoke activities that require something more complex than a standard fund finance facility.

A multi-asset, multi-strategy fund manager (i.e. a fund manager that raises multiple pools of capital across more than one sector (e.g. credit and private equity)) is one of the most obvious beneficiaries of the umbrella facility structure. In addition to its flagship commingled funds, the manager might need the facility to be available for single managed accounts ("SMAs") and also require flexibility for parallel funds or feeder vehicles to accede to the facilities. An umbrella facility provides this flexibility from day one as, whatever form the relevant vehicle requiring finance takes, the finance documents already include the framework to allow those different types of vehicle into the facility.

However, for some SMAs, a bespoke individual committed facility may be better than an umbrella facility, if the reality is that their investment activity will be limited. A Model B umbrella facility would be best suited to this kind of situation, especially where a manager is looking to keep its commingled investments separate to those of SMAs. As above, however, a manager would need to assess which facility structure is most likely to be used by its managed funds, and whether the flexibility of having all entities in one structure is of genuine benefit.

The jurisdictions in which a fund can be based to take advantage of an umbrella facility are potentially unlimited. We have advised both borrowers and lenders in relation to facilities agreements governed by English law and with borrowers in onshore (for example, the UK or Luxembourg), near-offshore (for example, the Channel Islands) and far-offshore (for example, the Cayman Islands or Mauritius) jurisdictions.

Conclusion and outlook

We have considered what constitutes umbrella facilities and some of the pros and cons of using them, with a look at which types of funds are using these types of facilities, and in what jurisdictions.

A key driver in the continuing popularity of umbrella facilities is the tendency of managers to establish SMAs (due to the amount of cash investors are looking to invest), which, in turn, drives investors to seek bespoke investment strategies. If a manager can add those SMAs into an existing umbrella structure rather than having to go through the process of establishing a new structure (or indeed, put a single fund finance facility in place for each fund), then this is likely to appeal to investors and set the relationship between the manager and the investors off to a good start. Other positives for a manager are that investors will be attracted by the scope for cost saving (this is a direct benefit for investors as well as managers, because the return on their investment will be higher as fewer fees and costs will be deducted when calculating their profit), and managers will save themselves a significant amount of time and energy by not having to manage multiple single facilities.

On balance, it appears there are more pros than cons for certain types of funds looking to enter into umbrella facilities. In particular, the inbuilt flexibility and the lack of commitment fee are largely what makes an umbrella facility attractive to a fund that: (i) requires such flexibility due to the nature of its activities; or (ii) is part of a structure that is more suited to an umbrella rather than a standard fund finance facility. These two key pros are also the main distinctions between an umbrella facility and a standard fund finance facility. The long-lasting nature of an umbrella facility is itself an advantage – a facility intended to cater to the various life stages and specific investment needs of a fund (as a Model A umbrella facility can) or for several different borrowers (as for a Model B umbrella facility) ensures long-term communication between sponsor and lenders, and the accompanying potential for a firm and rewarding relationship for all parties. However, despite the potential advantages of using umbrella facilities, there are plenty of funds looking to borrow for whom a standard fund finance facility can be more attractive because it is less complicated (and therefore quicker to put in place and easier to manage on an ongoing basis) and better suited to their immediate business needs. In particular, we are currently seeing strong borrowers choose to negotiate a precedent fund finance facility with a lender for one SMA and then replicating this facility with the same lender and same legal counsel for its other SMAs – rather than using an umbrella facility. Nevertheless, umbrella facilities continue to remain popular with sponsors across their commingled fund and SMA portfolios.

**Richard Fletcher****Tel: +44 20 7849 2244 / Email: richard.fletcher@macfarlanes.com**

Richard is a partner in the finance team at Macfarlanes and advises financial institutions and corporates on a range of financing matters, with a particular focus on fund finance, speciality finance and structured finance.

Richard's fund finance experience includes advising on leverage facilities, investor call bridge facilities and equity bridge facilities.

**Yagmur Yasar****Tel: +44 20 7849 2000 / Email: yagmur.yasar@macfarlanes.com**

Yagmur is a solicitor in the finance team at Macfarlanes, advising borrowers and lenders on a broad range of domestic and cross-border finance transactions, including fund finance, acquisition finance, real estate finance and leveraged finance.

Macfarlanes LLP

20 Cursitor Street, London EC4A 1LT, United Kingdom
Tel: +44 20 7831 9222 / Fax: +44 20 7831 9607 / URL: www.macfarlanes.com

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