

# Finance Update

## August 2010

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# General Finance

## General Finance News

### **Bribery Act**

The Bribery Act was due to come into force in October, however due to pressure from large businesses, the justice secretary has delayed its implementation by six months, to April 2011. He has also agreed to carry out another consultation about how companies should ensure they comply with the new law.

### **Companies House**

Companies House has published its frequently asked questions (FAQs) in relation to rectification of the charges register (see [here](#)). The FAQs answer questions in relation to applications to court to rectify the particulars of a charge entered in the register or where a notification of satisfaction in relation to a charge has been erroneously filed.

### **European Parliament**

On 7 July, the European Parliament voted in favour of new regulations restricting bonus payments in the financial sector. Under the proposals:

- cash bonuses will be capped at 30% of the total bonus;
- 60% of bonuses should be variable and for future payment only, with at least 40% deferred for 3 years. With 50% being recoverable if the investments do not perform as expected; and
- limits will be imposed on 'golden handshakes' for departing executives.

These proposals will be formalised and will come into force on 1 January 2011.

### **G-20**

On 26–27 June, the G-20 met in Toronto, in its new capacity as the primary forum for international economic co-operation. It was agreed at this summit that the G-20 would work towards its commitments agreed at previous summits and would focus on, among other things:

- implementing tough capital rules to force banks to hold sufficient funds to guard against a future crisis;
- implementing measures to improve transparency of hedge funds, credit rating agencies and OTC derivatives; and
- improving the regulation of systemic institutions, so that problems can be resolved without taxpayers having to bear the burden.

The G20 also agreed a compromise pledge to halve fiscal deficits by 2013. The declaration published in response to this meeting is available [here](#) and the next G-20 meeting will take place in Seoul, Korea on 11-12 November 2010.

## **Loan Market Association (LMA)**

The LMA has produced new and updated secondary debt trading documents and amended versions of its co-ordinating committee letters. It has also updated its secondary trading documentation users' guide.

The LMA has published a revised version of the senior term and multicurrency agreement for leveraged finance transactions and the accompanying users' guide. These have been updated to take into account the HMRC's new double taxation treaty passport scheme, which will come into effect on 1 September 2010 (see the [June 2010 Finance Update](#) for more information).

## **HM Treasury**

On 13 July, HM Treasury published a consultation paper entitled '[Bank levy: a consultation](#)'. This consultation follows the government's announcement to introduce a bank levy in the June Budget. The aim of the levy is to increase the resilience of the financial sector. This consultation considers, among other things, the types of institution which will be subject to the levy, the levy base and how the new levy will be applied. The consultation period ends on 5 October 2010 and the levy will come into force on 1 January 2011.

On 26 July, HM Treasury published a consultation paper entitled '[A new approach to financial regulation: judgement, focus and stability](#)'. This consultation was launched to gather views on the Government's proposals (announced by the Chancellor of the Exchequer in his mansion House speech on 16 June) to reform the UK's financial regulatory framework, giving the Bank of England control of macro-prudential regulation and oversight of micro-prudential regulation (see the [June 2010 Finance Update](#) for more information in relation to the speech given on 16 June).

On 13 August, HM Treasury published a consultation paper entitled '[A consultation on the implementation of EU Directive 2009/44/EC on settlement finality and financial collateral arrangements](#)'. Member states have until 30 December 2010 to adopt and publish their implementing measures, which are to apply from 30 June 2011. This Directive amends previous directives, updating them with market and regulatory developments. This consultation document seeks views on proposals for the implementation of this Directive in the UK. A draft of the proposed statutory instrument (The Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010) is set out in the Annex to the consultation paper. The consultation period ends on 29 October 2010.

## **Interest Rates**

On 8 July and 5 August, the Bank of England announced that interest rates would be held at 0.5% and that it would continue with the £200 billion programme of asset purchases financed by the issuance of central bank reserves (on both occasions, the majority of the Monetary Policy Committee voted for these proposals, with one dissenting voter, who voted to increase interest rates by 0.25%).

On 8 July and 5 August, the European Central Bank held interest rates at 1% across the euro zone and on 10 August, the US Federal Reserve held interest rates between 0% and 0.25%.

## World markets

Over the past two months, worldwide economic news has been variable. The British Government has continued to introduce policies to deal with the budget deficit, although fresh fears about their ability to meet their targets have emerged in light of the publication of the public borrowing figures for June showing a figure of £14.5bn, above expectations of £13bn. Increasing concerns have also emerged due to continuing high inflation figures, which has ignited debate about interest rate rises within the Bank of England's Monetary Policy Committee. Economic data, such as an increase in manufacturing output for July of 0.3%, is still indicative of recovery, however, unemployment data remains contradictory, with numbers indicating a rise in those employed over the last few months, but this is as a result of increased part-time employment and the numbers for those employed full-time continues to fall.

In the US, data from the Labour Department saw a rise in those claiming unemployment benefits in July, bringing the figures for unemployment to 9.6%, a six month high. Concerns have also grown of a double-dip recession after annualised domestic product slowed from 3.7% in the first quarter of 2010 to 2.4% in the second, leading economists to question whether there may be a period of negative growth later in the year.

In contrast, emerging economies have been raising their interest rates to curb growing inflationary pressures, in Brazil interest rates were increased to 10.75% in July, Australia has raised its interest rates five times since the start of the financial crisis and Malaysia and Thailand, among others, have also been tightening their fiscal policies.

In light of all the conflicting economic data, world markets have experienced a volatile few months, with the FTSE 100 falling to a yearly low at the end of June, only to have a strong rally at the start of July. Markets again fell at the start of August as a result of the release of data showing large trade deficits in the US and disappointing import figures from China.

# General Finance

## General Finance Cases

### Floating charges

The case of *Gray & Ors v G-T-P Group Ltd Re F2G Realisations Ltd (in liquidation)* [2010] EWHC 1772 (Ch) considered the characterisation of a floating charge and whether such floating charge would be void for lack of registration or protected under the Financial Collateral Arrangements (No. 2) Regulations 2003.

*Facts:* G provided store card debit services to F under a service agreement. Under this agreement, payments made with the debit cards were paid into a bank account in the name of G. In order to regulate how the monies in this account were dealt with, a declaration of trust was entered into between G and F. Under this declaration, G was a trustee holding the sums on trust for F as beneficiary. It was agreed that G would transfer monies in the account to F as F directed and G could only withhold payment of money in certain specified circumstances.

In July 2008, F went into administration (and subsequently into liquidation). The administrators terminated the service agreement and sought repayment of the balance of the money in the account to F, minus an agreed termination fee owed to G. G wanted to set off other sums against the account, including, operating fees and loss of revenue. The liquidators of F claimed that the arrangement under the declaration amounted to an unregistered floating charge and therefore was void.

*Issues:* What rights did the parties intend to create over the account? What was the legal characterisation of these rights? Did the arrangements constitute a security financial collateral arrangement under the 2003 Regulations, exempting it from registration under the Companies Act 1985?

*Decision:* The account was held to be merely a conduit through which monies passed from G to F. In reality the position between G and F was similar to that of a bank and chargor under a floating charge. F was able to deal with the assets subject to the charge until a future event occurred, therefore, the account was not classified as a blocked account and G held a floating charge over the monies in the account. The arrangement did not constitute a security financial collateral arrangement under the Regulations as there was a requirement for control in Article 2(2) of the Directive, which was held to mean legal rights to deal with the assets, not just administrative control. Therefore, the floating charge was void against the liquidators for non-registration and G could only claim the agreed termination fee.

*Comment:* There has been very little previous authority in relation to the 2003 Regulations and it appears that the level of control required for an arrangement to fall within them is very high, being much closer to that of a fixed charge rather than a floating charge. The judgment also raises the issue of whether such declarations of trust need to be registered as floating charges to protect the rights of creditors in an insolvency scenario.

## Guarantee

The case of *Carey Value Added SL (formerly Losan Hotels World Value Added I SL) v Grupo Urvasco SA* [2010] EWHC 1905 (Comm) considered whether a guarantee contained language equivalent to a demand bond, thereby imposing primary liability on the guarantor.

*Facts:* C provided financing to H by way of a sale and lease-back transaction in relation to the development of a hotel. G guaranteed the obligations of H (its subsidiary) to C. C advanced several tranches to H under the loan agreement before work on the site ceased in September 2008. C contended that due to an event of default it was not under any obligation make further advances under the loan agreement. H claimed it could rescind the sale and lease-back contract as C had failed to honour its commitments under the loan agreement and it was not obliged to repay C. C demanded repayment, of the amounts lent under the loan agreement, from H and made a demand against G under the guarantee. C then applied for summary judgment in relation to its claim under the guarantee.

*Issues:* Did the guarantee take effect as a performance or demand bond, i.e. was it repayable on demand and would any defence available to H be unavailable to G on the basis of the wording of the guarantee?

*Held:* Demand bonds are irrevocable instruments whereby the issuer would not be concerned with disputes in relation to the underlying documentation before making payment. In this case, the guarantee created an obligation on G to indemnify C but the amount of the indemnity was limited to the amount that C would otherwise have been entitled to recover under the loan agreement. Therefore, it could not be classified as a demand bond and G had a real prospect of successfully defending the claim. Therefore the application for summary judgment was dismissed.

## Misrepresentation

The case of *Raiffeisen Zentralbank Osterreich AG v Royal Bank of Scotland plc* [2010] EWHC 1392 (Comm) considered the issue of misrepresentation in the context of the syndicated loans market.

*Facts:* RBZ's claims arose from a complex structured finance arrangement, the purpose of which was to enable Enron (E) to borrow £138.5 million without the borrowing featuring in its accounts. RBS set up a special purpose entity (S) which was capitalised by equity of £4.9 million from RBS and a loan from RBS of £138.5 million, which was then syndicated to other banks, including RZB. These monies were used by S to purchase shares in a subsidiary of E. Enron entered into a total return swap with S, the effect of which was to guarantee the loan but not the equity. However, E gave oral assurances to RBS to the effect that it would see that RBS recovered the full amount of its equity, as well as a return on the equity of 13.5% per annum. These assurances could not be formalised, as to do so would have meant that the requisite percentage of equity would not be classified as "at risk" for the purposes of the US GAAP, although numerous attendance notes of meetings and calls recorded the promises. RBS drafted various documents as part of the syndication of the £138.5 million loan. These included an Information Memorandum (IM), which was provided to RZB and other banks that were considering participating in the syndication, and a Confidentiality Agreement (CA) which RBS and RZB entered into. RZB claimed that RBS had made four separate implied misrepresentations, despite a standard clause in the IM stating that no representation was made and no responsibility accepted as to the reasonableness of the IM. The CA contained similar wording.

*Issue:* Was RBS liable to RZB for misrepresentation?

*Decision:* In order to succeed, RZB had to show that: (1) RBS made representations to it and understood that those representations were being made; (2) the representations were false; (3) RZB was induced by one or more of the representations to subscribe to the syndication agreement; (4) RBS intended that the representations should induce RZB to enter into the contract; and (5) RZB was not precluded from advancing its claim by the terms of the IM and CA.

On the evidence, it was held that none of the alleged representations had been made by RBS. An IM is a summary prepared by the arranger of a syndication and a bank cannot reasonably assume it contains everything that anyone might think relevant and assurances on the legality of a transaction should be obtained from lawyers, not from the arranger. It was also held that even if the representations had been made, they were not false. In order to establish that RZB had been induced, it was necessary for RZB to show that the representations played a real and substantial role in inducing them to enter into the contract. The judge was not persuaded that in the absence of the representations RZB would not have entered into the transaction. The court then went on to consider RBS's position, that certain provisions in the IM, the CA and other syndication documents limited RBS's potential liability. On the facts, it was held that the relevant provisions were not an attempt to exclude or limit RBS's liability for any misrepresentation, but their purpose was merely to set out the basis on which the information contained in the syndication documentation was being provided, i.e. that the information was not to be regarded as a representation of facts on which RBS intended that RZB should rely. It was emphasised that sophisticated commercial parties should be permitted to regulate their future relationship by prescribing the basis on which they were to deal, which could include agreeing clauses to the effect that no representations had been made or were intended to be relied upon.

*Comment:* A recurrent theme throughout the judgment was that both parties were sophisticated and experienced in the syndicated loans market and, as such, the court was more likely to be inclined to uphold the terms of the contracts concluded by them. This should give comfort to financial institutions who regularly deal with documentation of this nature.

# Real Estate Finance

## Real Estate Finance News

### **Mortgage Rescue Scheme / Mortgage Homeowners Support**

On 23 July, the Department for Communities and Local Government published an **interim report** evaluating the effectiveness of the Mortgage Rescue Scheme (MRS) and Mortgage Homeowners Support (MHS). Both of these schemes were introduced to help prevent mortgage repossession and help homeowners to remain in their homes. MRS provides a structured exit from homeownership for vulnerable households who would otherwise have been entitled to homelessness assistance and MHS provides support to lenders to encourage forbearance, for up to two years, for borrowers unable to access other forms of support. The report outlines the findings of the research carried out and the schemes' impact on preventing repossessions. However, it seems to conclude that neither scheme has been operational for a sufficient length of time to carry out a full evaluation.

### **Real Estate Finance News**

According to the Jones Lang LaSalle Quarterly Index, property total returns slowed to 3.6% in the second quarter of this year compared with a figure of 6.1% in the first quarter. Figures from IPDs' latest UK Monthly Index showed that commercial property capital values rose by 0.5% in June, however, in July capital values only rose by 0.2%, perhaps indicating that commercial property growth is beginning to stagnate. In contrast commercial property prices in the US increased by 3.6% in May, according to the Moody's/REAL Commercial Property Price Indices, and total direct real estate investment Europe-wide increased 11% in the second quarter of this year, according to figures from DTZ.

According to figures from the Land Registry, house prices rose 0.1% in June, making them on average 8.4% higher than a year ago. During July, according to figures from Hometrack, house prices fell by 0.1% and according to figures from the Nationwide House Price Index, house prices fell by 0.5%. However, according to figures from Halifax, house prices rose by 0.6% during the same month.

Figures from the Council of Mortgage Lenders show that gross mortgage lending in June increased 15% to approximately £13.1bn, an increase from £11.4bn of lending during May and a 7% increase on the figures from June 2009. However, Bank of England figures show that mortgage approvals for home purchases fell 3.7% in June and remortgage approvals fell 2.6%.

# Restructuring and Insolvency

## Restructuring and Insolvency News

### European Parliament

The European Parliament commissioned a report entitled '**Harmonisation of Insolvency Law at EU Level**' from INSOL Europe. The report outlines the differences between national insolvency laws across Europe and lists problems which can occur due to the absence of harmonised insolvency laws. It then goes on to consider the areas where harmonisation across the EU would be desirable and achievable and the extent to which this harmonisation might facilitate the harmonisation of company law.

### Insolvency Service

On 26 July, the Insolvency Service published a consultation entitled '**Proposals for a Restructuring Moratorium**'. The moratorium would be intended to assist companies where their business is viable, but in order to avoid financial distress or insolvency, a form of restructuring would be advisable. The moratorium, sanctioned by a court, would provide the company and its directors with breathing space during which the restructuring can be negotiated and agreed for an initial period of up to 3 months. The consultation period ends on 18 October 2010.

### Office of Fair Trading (OFT)

On 24 June, the OFT published the results of its study of the market in which insolvency practitioners operate and suggested reform of the insolvency regulatory regime to improve trust in the market and to protect the interests of creditors. The OFT recommends fundamental changes to the regulatory system, including:

- an industry-funded, independent complaints handling body with broad powers to review insolvency practitioners' fees and actions, impose fines, and return overcharged fees to creditors;
- reform of the regulatory system by repositioning the Insolvency Service as the dedicated oversight regulator of the Recognised Professional Bodies and withdrawing its role as a direct regulator of insolvency practitioners; and
- providing objectives for the regulatory regime against which its performance can be measured.

The OFT and the Department for Business, Innovation and Skills are working together to formalise these proposals.

## **CRC Guidance**

The CRC Energy Efficiency Scheme (previously known as the Carbon Reduction Commitment) (CRC) is a new, mandatory, energy saving and carbon emissions reduction scheme for the UK. It will act as an incentive to improve energy efficiency and will help large private and public sector organisations generate cost savings through reduced energy bills. The Environment Agency has published guidance on how CRC applies to companies which go into receivership, are wound up or cease trading during their qualification year or prior to registration (see [here](#)).

# Restructuring and Insolvency

## Restructuring and Insolvency Cases

### Administration orders

This case of *In the matter of the representation of Anglo Irish Asset Finance, Royal Court (Samedi Division) 6 May 2010* is the most recent example of the Royal Court of Jersey agreeing to issue a letter of request to the High Court of England and Wales to request that it make an administration order in respect of a Jersey company, pursuant to section 426 of the Insolvency Act 1986.

*Facts:* S had defaulted on the money it borrowed from A in order for it to acquire and develop a large site in London. On S's default, A demanded repayment of the principal (£30.5 million) plus accrued interest. With S unable to pay, A appointed receivers in respect of S's property. Although the receivers ensured the completion of the development, their powers were limited and the letter of request was issued to seek the appointment of administrators (with far wider statutory powers than receivers) by the English Court, under its jurisdiction under section 426 of the Insolvency Act 1986.

*Decision:* The ultimate judgment, by the Royal Court of Jersey, was to agree that a letter of request be issued to the High Court of England and Wales, as the Royal Court was satisfied that administration might achieve a better result for S's creditors as a whole and would give A confidence to inject more money into the development and therefore generate a greater recovery.

*Comment:* Administrators have extensive statutory powers to manage the affairs, business and property of the company in administration, particularly compared with the narrow powers of receivers. However, in Jersey, there is no equivalent to an administration order under the Insolvency Act 1986. Only at the request of the Royal Court of Jersey can the High Court of England and Wales have jurisdiction to consider making an administration order for a Jersey company with no UK centre of main interests. The Royal Court of Jersey has in recent years shown willingness to approve the use of English administrations in respect of Jersey companies. Previous cases involved successful requests by the Governor and Company of the Bank of Ireland in 2009 and a request by OT Computers Limited in 2002.

All three cases demonstrate the willingness of the Royal Court of Jersey to consider issuing letters of request by creditors seeking to place Jersey companies into administration under English law.

## Client Money Rules

*In the matter of Lehman Brothers International Europe (in administration) [2010] EWCA Civ 917* the Court of Appeal considered issues relating to the identification and distribution of client money held by Lehman Brothers International (Europe) (LBIE) when it went into administration.

*Facts:* See the [March 2010 Finance Update](#).

*Decision:* The Court of Appeal agreed with the decision at first instance that where client money was received from, or for the account of a client, the trust arose when the money was received by LBIE. However, the Court of Appeal disagreed with the decision at first instance in certain respects. The amount of money due to the clients should be assessed by reference to the amount of client money which should have been segregated, not the amount of money actually segregated and clients should share in the pool of money on the basis of the amount which should have been segregated on their behalf, not on the basis of the amount of money which had been segregated.

*Comment:* This judgment means the protections given to clients under CASS 7 are not reliant on the segregation of client money and it increases the number of creditors who may now be able to make claims against LBIE. It is likely this case will be appealed to the Supreme Court.

## Landlords and company voluntary arrangements (CVAs)

The case of *(1) Mourant & Co Trustees Ltd (2) Mourant Property Trustees Ltd v (1) Sixty UK Ltd (in administration) (2) Peter Hollis (3) Nicholas O'Reilly (as joint administrators of Sixty UK Ltd) [2010] EWHC 1890 (Ch)* considered whether a CVA unfairly prejudiced the landlords of an insolvent company.

*Facts:* S sold wholesale and retail fashion garments. Among its shops were two at a shopping centre in Liverpool, which it leased from M Mourant & Co Trustees Ltd and another as trustees of a property unit trust (the landlords). The leases were guaranteed by Sixty SpA, the ultimate holding company of the Sixty group. S went into administration and its administrators proposed a CVA for the company, which was approved at a creditors' meeting. The administrators were also the supervisors under the CVA. The CVA would impact on S's leases at the landlords' centre, releasing Sixty SpA from liability under its guarantees on payment of £300,000 to the landlords. However, almost all of S's other creditors would continue to be paid in full. The only creditors present at the meeting who voted against the CVA proposal were the landlords.

The landlords challenged the CVA on the statutory basis that it unfairly prejudiced their interests as a creditor, within the meaning of section 6 of the Insolvency Act 1986. This was founded on the alleged inadequacy of the compensation offered and being compulsorily deprived of the guarantees. The landlords argued that they were unfairly treated in comparison with the rest of the creditors and there was no justification for requiring the landlords to give up the valuable benefit of the guarantees.

*Decision:* The High Court decided in the landlords' favour, holding that the CVA was fatally flawed and must be set aside. In judging whether a CVA unfairly prejudices particular creditors, certain techniques can be applied. A creditor's position in a liquidation should be compared with its position under a CVA, which identifies the "irreducible minimum" below which the return in the CVA cannot go. The creditor's position should also be compared with that of other creditors to ascertain whether any difference in treatment was justified.

The Court stated that a liquidation would not deprive the landlords of the guarantees for the remainder of the leases, which the CVA would do. The guarantees were of obvious commercial value to the landlords (particularly in times of financial turmoil) and the very reason the guarantees were taken in the first place was to use them if the tenant encountered financial difficulties or entered into a form of insolvency proceedings. The Court considered it unreasonable and unfair to require the landlords to give up their guarantees in return for a sum of money, about which it was difficult to determine whether it fairly compensated the landlords. The £300,000 was not a genuine estimate of the value of the landlords' claim and the evidence showed £1 million was more appropriate. The Court also held that the difference in treatment between the landlords and the other creditors could not be justified.

*Comment:* The earlier case of (1) *Prudential Assurance Co Ltd & Ors* (2) *Luctor Ltd & Ors v (1) PRG Powerhouse Ltd & Ors* (2) *Anthony Murphy & Ors* [2007] EWHC 1002 (Ch) established the possible use of CVAs for tenant companies to deprive landlords of the benefit of third party guarantees of the tenant's liabilities. However, this case was decided in favour of the landlords, against the use of CVAs to guarantee strip. The Court stated that it is the administrators' duty to remain independent, act in good faith and only propose a CVA if satisfied it will not unfairly prejudice any creditor's interests. This is particularly so where the CVA is structured so that it is bound to be passed by the votes of creditors whose position is unaffected or improved, and a much smaller class of creditors is to be deprived of valuable contractual rights. The Court stated that the administrators lost a proper sense of objectivity and allowed themselves to side with the Sixty group against the landlords' interests. It is unfortunate that the administrators did not defend themselves against the criticism levied as the judgment may in these circumstances have been more balanced.

Following this decision, the creditors of S have proposed a voluntary liquidation of the business.

### **Pre-packs**

*In the matter of Halliwells LLP* [2010] EWHC 2036 (Ch) the High Court considered whether it should approve the pre-packed sales of parts of the firm's business.

*Facts:* H was a national law firm that entered into a number of occupational leases, which left it with onerous payment obligations to landlords. The burden of those leases, along with a drop in work revenues and the departure of several partners, left H unable to pay its debts as they fell due. In May 2010, H engaged proposed administrators (A) to assist it with the management of the sale of the business. A contended that H could not be rescued as a going concern and the best result for H's creditors would be to realise the assets of H by way of various sales and to make a distribution to H's creditors. Four asset sale agreements were proposed, for the court's approval, as well as an application for an administration order, as the proposed purchasers would not buy other than from an administrator of H.

*Decision:* The court considered the case of *Re Kayley Vending* [2009] EWHC 904 (Ch) (see the [July 2009 Finance Update](#)) which summarised the concerns about the use of pre-packs as being, that they may too easily lead the directors to a solution which is convenient for them and their interests but which harms the interests of the creditors. The court must also be alert to see that the procedure is not being used to the disadvantage of the creditors and in this purpose it is assisted by the provision of the information required by SIP 16.

In this case, the evidence showed that the purpose of the administration was to realise H's assets by means of the proposed sales and there was no evidence of abuse of process. The pre-packs would

maximise the returns available and would not unnecessarily harm the interests of the creditors as a whole. Therefore the administration order was granted and the proposed pre-packaged sales were approved.

### **Schemes of arrangement**

In the case of *Re: La Seda De Barcelona SA [2010] EWHC 1364 (Ch)* a company incorporated in Spain, applied for an order sanctioning a scheme of arrangement under s899 of the Companies Act 2006.

*Facts:* S, incorporated in Spain, is the parent company of the La Seda group, which includes companies incorporated in Spain, the UK and elsewhere. The scheme of arrangement in question concerned a facilities agreement entered into between S and a syndicate of lenders, governed by English Law, with an English jurisdiction clause and secured by charges and guarantees given by its subsidiaries, including A, a company incorporated in the UK. The financial position of the group deteriorated and it defaulted under the facilities agreement. A entered into administration. The directors of S needed to restructure its debts in order avoid further insolvency proceedings in other jurisdictions and it wanted to enter into a scheme of arrangement under English Law, as Spanish Law schemes of arrangement require the unanimous consent of the lenders. As part of the proposed scheme, despite A not being a party to the scheme, A's guarantee would be released and in return A would release any claims it had against S.

*Decision:* The court had jurisdiction to sanction the scheme of arrangement and the scheme of arrangement, including the release of A, was approved. It was held that A could be released as:

- at the same time A was releasing any claims it had against S, thereby improving the financial position of the S and the rest of the group;
- the creditors of A would recover the same losses as part of their rights against S and the release of their rights against A could be described as ancillary to the scheme; and
- the creditors' rights against A were personal not proprietary (i.e. the release of those rights would not release A from an obligation to return property belonging to the creditors).

***The information in this update is intended as a general overview only of the subjects covered. Detailed specialist advice should always be taken before taking or refraining from taking any action. For more guidance on the changes and their application, please get in touch with your usual Olswang contact.***

# About Olswang

Olswang is a leading business law firm with a distinctive approach. Our pioneering and problem-solving ethos has established a commanding reputation in the technology, media and real estate sectors, as well as a wide range of other industries.

Founded in 1981, our Firm has grown to a team of over 650, including more than 100 partners, across four European offices. In addition, Olswang has a long-established best friends' network of leading independent law firms throughout the world.

Our Firm continues to be acknowledged as a leading practice in many of our core areas: Olswang was voted TMT Team of the Year 2009 for the second year running at the annual Legal Business Awards; Olswang's Corporate Group won M&A Law Firm of the Year at the M&A Awards 2008 in conjunction with M&A Magazine, and was named Corporate Team of the Year – Mid markets at The Lawyer Awards 2008.

Resourceful drive and a climate of shared knowledge and empowerment are the hallmarks of our meritocratic, unstuffy culture. For the last five years Olswang has been ranked in The Sunday Times 100 Best Companies to Work For and our strong management team is dedicated to the personal and professional development of our people.

Olswang is committed to being a responsible business and has developed Corporate Responsibility programmes that allow us to actively manage the social and economical impact of the Firm's activities. For example, through our Green initiative we recycle almost 90% of our waste and on the 1 May 2009 Olswang achieved CarbonNeutral® accreditation. As part of our Corporate Responsibility strategy we also encourage every member of staff to engage in lasting and meaningful pro bono and volunteering activities, both legal and non legal.

We recruit personalities with a genuine fascination and notable reputation in the sectors they focus on, which is reflected in the quality of our advice. We also understand the importance of achieving our clients' goals and ensure that our advice is, above all else, practical.

From world-class businesses to entrepreneurial startups, the rich diversity of our client base ensures a broader perspective and, as a result, deeper commercial insight. Transactional work is the most obvious feature of the role we perform. However, ongoing non-transactional support is an integral part of our business, and we focus on creating long-term relationships with our clients. We employ a range of proactive initiatives such as client care programmes, secondments, client training and feedback sessions to ensure our client relationships are strong.

At Olswang the passion of our lawyers, the confidence of our approach and the commercial edge to our advice provide a unique and compelling service.

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