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Asset Finance Legal Update

October 2024

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CLIFFORD CHANCE BRIEFINGS



LIBOR cessation – English court implies 'Reasonable Rate' term into perpetual preference shares

Where contracts do not contemplate LIBOR cessation, the market has been transitioning LIBOR-referenced contracts to newer risk-free rates by agreeing amendments to the documentation. But what if a counterparty will not transition? Should a term be implied, or should the product be redeemed?

That was the choice for the English Court in *Standard Chartered PLC v Guaranty Nominees Limited and Ors* [2024] EWHC 265, in an eagerly-awaited 'test case'.

The Court implied a term – a decision that has been largely welcomed by the financial markets. But, as ever there is nuance.

Clifford Chance has prepared a briefing paper considering implications for other products, and how the facts of the case may have impacted the Court's decision in this instance. To view a copy of the briefing paper, please click on the link to the PDF version. Alternatively, you can access the paper via the Clifford Chance website.

Links:

- [Clifford Chance website version](#)
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Anti-money laundering – global developments and their impact on business

Global efforts to enhance anti-money laundering (AML) measures to combat financial crime are increasing.

Clifford Chance has prepared a briefing paper extracted from a recent Clifford Chance webinar, looking at the latest AML trends in the EU, US, UK and Singapore, what they mean for business and compliance processes and providing some practical suggestions for adapting to them. To view a copy of the briefing paper, please click on the link to the PDF version. Alternatively, you can access the paper via the Clifford Chance website.

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- [Webinar](#)

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Ukraine – the latest global sanctions and export controls

The US, EU, UK, Poland, Japan, Singapore, Australia and Ukraine have imposed sanctions and export controls on Russia. These new sanctions are complex, multilateral and continue to be incrementally changing in real time in response to the developments on the ground in

Ukraine. Our team of sanctions experts is monitoring the situation closely and we will endeavour to keep our briefings up to date.

Clifford Chance has prepared a briefing paper discussing these sanctions and export controls, as well as measures adopted in response by Russia, as of 6:00 pm GMT, 23 October 2024. To view a copy of the briefing paper, please click on the link to the PDF version. Alternatively, you can access the paper via the Clifford Chance website.

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Corporate re-domiciliation – proposal for implementation published

Following an initial consultation in 2021-2022, an expert panel convened by the Department for Business and Trade has published its report advising the government on how to make it easier for foreign companies to relocate to the UK.

Clifford Chance has prepared a briefing paper discussing the proposals. To view a copy of the briefing paper, please click on the PDF link below.

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- [PDF version](#)

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Refueled – Price Cap Coalition issues new advisory focused on sanctions evasion

After a period of quiet, the Price Cap Coalition issued new guidance on October 21, 2024 with an Advisory 'concerning specific best practices for private sector actors involved in the maritime trade of crude oil and refined petroleum products, as well as government stakeholders'. The Advisory, in addition to adding four new recommendations, provides guidance on preventing sanctions evasion and steps for enhancing compliance with the price caps on crude oil and petroleum products of Russian Federation origin.

Clifford Chance has prepared a briefing on the Advisory and its implications. To view a copy of the briefing, please click on the link to the PDF version. Alternatively, you can access the paper via the Clifford Chance website.

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Motor Finance Commissions – taking stock

The investigation by the Financial Conduct Authority (FCA) into potential mis-selling of motor finance on the basis of discretionary commission arrangements will potentially have a wide-reaching impact.

Clifford Chance has prepared a briefing, in which we set out a stocktake of the ongoing FCA investigation, the position of the financial ombudsman and the outcome of recent court challenges including the Court of Appeal judgment in *Hopcraft, Johnson and Wrench* ([2024] EWCA Civ 128) in relation to broker commission which may impact a wider range of commission models. Finally, we highlight implications and action points for firms. To view a copy of the briefing paper, please click on the link to the PDF version. Alternatively, you can access the paper via the Clifford Chance website.

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LEGAL AND REGULATORY



[LMA publishes note on TLBs in leveraged finance transactions](#)

The Loan Market Association (LMA) has published a LMA Leveraged Focus note on Term Loan B (TLBs).

The note introduces the TLB product and the framework of a typical style of European TLB covenant package by comparing it to the traditional European LBO covenant package contained in the LMA recommended form of leveraged finance documentation.

The LMA intends to publish a series of Leveraged Focus notes exploring specific elements of the TLB product.

Links:

- [LMA homepage](#)
- [Note](#)

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Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) (Revocation) Regulations 2024 made

The Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) (Revocation) Regulations 2024 (SI 2024/976) have been made.

The Regulations revoke the Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) Regulations 2024 (SI 2024/714), which were made to commence section 6 of the Retained EU Law (Revocation and Reform) Act 2023 on 1 October 2024 and create appropriate saving provisions. The revocation of SI 2024/714 means that section 6 of the Act will no longer come into force on 1 October 2024. Section 6 deals with the role of the courts and the application of retained case law by domestic courts interpreting and applying retained EU law.

SI 2024/976 entered into force on 18 September 2024.

Links:

- [Legislation.gov.uk homepage](#)
- [SI 2024/976](#)

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An uptick in UK sanctions enforcement

On 29 August 2024, the Office of Financial Sanctions Implementation (OFSI) imposed a GBP 15,000 penalty on Integral Concierge Services (ICSL) for contravening UK sanctions against Russia. A month later, on 27 September 2024, the Financial Conduct Authority (FCA) fined a UK retail bank approximately GBP 29 million for failings in its financial crime systems and controls.

Meanwhile, on 11 October 2024, it was reported that OFSI is investigating 37 UK linked businesses for potentially breaching Russian oil sanctions.

These developments come at a time when the UK has just launched the Office of Trade Sanctions Implementation (OTSI), a new body with new civil enforcement powers in relation to certain UK trade sanctions. They demonstrate that sanctions compliance is at the forefront of regulatory risk in the UK and the enforcement notices provide valuable lessons in relation to sanctions compliance expectations.

Clifford Chance has published a post on our Regulatory Investigations and Financial Crime Insights Blog summarising this development and key takeaways.

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- [Blog post](#)

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States cannot rely on immunity to resist registration of ICSID awards in England

On 22 October 2024, the English Court of Appeal (CoA) handed down judgment in *Infrastructure Services Luxembourg S.À.R.L. v Kingdom of Spain and Border Timbers Ltd v Republic of Zimbabwe*, rejecting appeals brought by Spain and Zimbabwe against the registration of two ICSID awards against the States.

Clifford Chance has published a post on our International Arbitration Insights Blog on the implications of the judgment.

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- [Blog post](#)

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