

# Finance Update

Welcome to Taylor Wessing's August 2004 update summarising what we think are the more interesting legal developments in banking and finance.

## Banking: Company Security Interests

On the 18th August, the Law Commission published its provisional recommendations on company security interests. It is proposed that the current rules on registration of mortgages and charges created by companies over their assets be replaced by 'notice-filing' done online by the secured party, rather than the company. The proposals also offer clear priority rules for competing charges. The Law Commission also proposes that the system is used to give information about transactions that are not currently registrable as 'charges' but that fulfil a very similar economic function, for example: conditional sales, hire-purchase and finance leases, with appropriate priority rules to protect the financier. The proposals also set out an effective scheme of remedies. The consultation ends on 23 November 2004.

*If you can face reading the 350 plus pages, please go to [http://www.lawcom.gov.uk/files/cp176\\_web\\_version.pdf](http://www.lawcom.gov.uk/files/cp176_web_version.pdf)*

## Loan Agreements: wrongful acceleration

In round 2 of a dispute between bondholders and the trustee as to the trustee's obligation to accelerate where it was considered an event of default occurred (round 1 was dealt with in the June update) the Court of Appeal has held the bondholders' claim that in seeking an indemnity from a number of the bondholders in a sum in the region of £1 billion, the trustee had fundamentally misconceived the scale of the risk which it would face were it to give an acceleration notice. The court considered that the only real risk which the trustee ran would be its exposure to the costs of proceedings brought to determine whether there had in fact been an event of default. However, the court refused to grant the bondholders' application. The application was for a declaration that the trustee was obliged to give an acceleration notice to the bond issuer and guarantor rendering the bonds immediately due and payable under the terms and conditions of the bond issue. The court refused as it considered it would not be appropriate until it was established that an event of default had occurred.

## Subordination: Turnover Trusts

A recent case has examined the effectiveness of subordination provisions contained in a deed of indemnity between members of the Save group and AIG. AIG was a creditor of two members of the group, Station and Group. Clause 8.2 of the deed prohibited each group company from proving for any debt due from any other group company and from receiving a dividend in respect of such debt in the liquidation of another group company at a time when the debt to AIG remained unpaid. Clause 8.3 provided that any payment received in breach of clause 8.2 be held on trust and paid to AIG. AIG claimed that effect of the deed was to subordinate Station's inter-company debt to Group to that owed to AIG, so that nothing could be paid on account of the inter-company debt unless and until AIG had been paid in full. Group's liquidator challenged this interpretation and further claimed that even if it could be construed this way it was not effective in law, or its effect could be avoided as an unregistered charge.

## Accountancy: IAS 39

The European Commission is apparently considering a partial adoption of IAS 39, carving-out controversial provisions on the fair value option and hedge accounting. This could move the EU away from internationally agreed upon accounting standards and slow down convergence with U.S. standards. The Commission will continue discussions with the International Accounting Standards Board, and hopes to adopt IAS 39 in its entirety in 2005.

## Company: London Stock Exchange publishes Guide to Corporate Governance

The London Stock Exchange, has announced the publication of a guide to corporate governance for UK listed companies. 'Corporate Governance: A Practical Guide', will be available free of charge to UK companies and other interested parties and is designed to give best practice guidance to boards on how to lead and direct their businesses successfully. The guide covers a broad spectrum of issues including selecting and developing a high quality board and succession-planning to ensure that a board works effectively as a team. It goes on to explore a range of issues a board must address, including input to strategy, effective risk management, communicating with shareholders and the development of an integrated approach to corporate social responsibility.

## Consumer credit:

It has been announced that from April 2006, the Financial Ombudsman Service will provide Alternative Dispute Resolution (ADR) for disputes arising under the Consumer Credit Act 1974. This is intended to provide borrowers and lenders with an easier and cheaper alternative to court to resolve any problems. At present, borrowers whose credit agreement is not with a bank or building society only have the option of taking court action, which can be complex and costly.

To read the press release itself, please go to <http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=127038&NewsAreaID=2>.

## Further information

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