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Banking and Finance

UK – Law & Practice

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Winston & Strawn London LLP handles cross-border corporate lending, project finance, mergers and acquisitions, joint ventures, competition and trade regulatory matters and dispute resolution across a range of industry sectors, including oil and gas, infrastructure, renewable energy, power, financial services, manufacturing, and luxury consumer/retail products and services. Its London team's experience encompasses advising commercial banks and investment banks, finance companies, private equity funds, public and private companies, and private equity portfolio companies in investment grade, leveraged, and mezzanine financings, including acquisition, working capital, asset based and reserved based facilities covering many industries, including automotive, manufacturing, retail, and oil and gas. A substantial part of the practice is cross-border. Many of its clients are expanding into the emerging markets of Eastern Europe, Central Asia, Russia/CIS, the Middle East and Africa.

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1. Loan Market Panorama

1.1 Impact of Economic Cycle and Regulatory Environment

During 2014 and 2015 the UK loan market has continued to recover from the financial crisis, helped by stability (and some growth) in the UK economy. Interest rates currently remain at historically low levels. According to recent market surveys, 2014 was the busiest year for the UK loan market since 2007 (and July 2015 the second highest point for global M&A values only behind April 2007). With instability in some areas of the Eurozone, the UK is an attractive market for many lenders looking to expand their operations.

In general, the market conditions for loan terms are currently considered more borrower and sponsor friendly than at any time since the financial crisis. One important trend, in part driven by increasing bank regulation (in particular capital risk requirements and the resulting increased costs of capital), is the continuing growth of the direct lending or alternative credit provider market.

1.2 The High Yield Market

The post-crunch credit squeeze drove some non-investment grade borrowers to raise capital on the high yield debt markets, which in turn has led to the strengthening and deepening of these markets. Investors have been attracted to the interest rates available on these bonds. As many of the prospective investors in these bonds are based in the US, there has been a move towards US-style, New York law bond structures, with more flexible covenants, so-called 'cov-lite' or 'cov-loose' deal terms, and incurrence based tests.

Similarly, an increasing number of leveraged loans have seen the traditional maintenance covenant package disappear in favour of the US style 'cov-lite' or 'cov-loose' terms. There has also been a growing use of bonds alongside loans on transactions that might have been fully financed by loans before the financial crisis. While bond/loan combinations remain common, loan providers have begun to compete with US lenders, and more recently UK syndicates, offering looser, bond-style terms to strong borrowers.

1.3 Alternative Credit Providers

There has been a significant growth in the UK alternative credit provider market, particularly in the mid-market space. The alternative credit providers group includes a diverse collection of direct funds, investment funds and debt arms of hedge funds and buy-out houses. Mid-market M&A deals are increasingly structured with a combination of credit providers, often with the bank providing a revolving credit facility and the direct lender providing a uni-tranche facility.

1.4 Evolution of Banking and Finance Techniques

There has been a continued growth in the asset based lending (**ABL**) market in the UK and it is predicted that this will continue to grow throughout 2015-16. This form of finance has benefited borrowers, with competitive pricing, but also lenders, by offering lower credit risk. Against the backdrop of growing capital adequacy requirements, some banks consider ABL to be an efficient form of lending from the perspective of regulatory capital allocation.

Peer-to-peer lending and equity-based "crowd funding" of start-ups and small and medium-sized enterprises by online alternative credit providers is a further example of evolving finance techniques. According to a recent market survey, the European online alternative finance market (which is dominated by the UK) grew by 144% in 2014 and it is estimated that it could reach EUR7 billion in 2015.

1.5 Recent Developments

The UK loan market is expected to be impacted by recent regulation and reform in the following areas:

- LIBOR, EURIBOR and other benchmarks;
- The US Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standards;
- Basel III rules, the Capital Requirements Directive IV package and the US Dodd-Frank Act; and
- Sanctions and anti-corruption laws.

It is anticipated that the market will also be affected by the following tax developments:

- The current rate of UK corporation tax is 20% reducing to 18% for the financial year beginning 1 April 2020;
- For foreign banking groups operating in the UK through permanent establishments or subsidiaries the bank levy rate will decrease from 0.21% to 0.18% from 1 January 2016 and continue to decrease each calendar year until 2021;
- A proportionate decrease to 0.9% with effect from 1 January 2016 will be made to the bank levy half rate with corresponding reductions being made each following calendar year until 2021;
- A bank corporation surcharge of 8% on the profits of banking companies within the charge to UK corporation tax is to be introduced for accounting periods beginning on or after 1 January 2016.

Also noteworthy are various initiatives over the past year to stimulate the private placement market in the UK, with the aim of making it easier for mid-sized businesses to obtain debt (either by way of loan or note issuance) from investors such as insurers, pension funds and fund managers. This includes the UK government proposal of a new withholding tax exemption applying to payments of interest on a 'qualifying private placement.' A qualifying private placement is defined as a security which:

(i) is issued by a company and is a 'loan relationship' (effectively a loan of money) with the company as borrower;
(ii) has a tenor of at least three years and
(iii) is unlisted.

The exemption was enacted in primary legislation at the end of March 2015 under the Finance Act 2015. Regulations to implement the exemption are currently under discussion with a consultation group involving representatives from a number of professional firms interested in the private placement market. The Loan Market Association (in co-operation with the International Capital Market Association) has also published recommended forms of loan and subscription agreements for private placements of debt.

2. Authorisation

2.1 Requirements and Procedures

In the UK, authorisation requirements vary by level and type of activity. Wholesale lending activity is generally unregulated and, provided that the lender will not be accepting deposits or conducting investment business within the UK, it will not require authorisation from the authorising bodies (the Financial Conduct Authority (**FCA**) and the Prudential Regulation Authority (**PRA**)).

However, the position is different in relation to transactions or arrangements involving debentures and other instruments creating or acknowledging indebtedness. Persons carrying out certain activities in relation to these types of instruments must be authorised under the framework set out under the Financial Services and Markets Act 2000, unless they fall within an exemption. Similarly, persons intending to carry out regulated consumer credit activities will have to apply for authorisation.

3. Structuring and Documentation Considerations

3.1 Foreign Lender Restrictions: Granting Loans

There are no specific restrictions on the making of loans by foreign lenders.

3.2 Foreign Lender Restrictions: Granting of Security

There are no specific restrictions on the granting of security or guarantees to foreign lenders.

3.3 Foreign Currency Exchange Restrictions

There are no exchange controls.

3.4 Agent and Trust Concepts

Both the agent and trust concepts are recognised under English law.

For example, under the Loan Market Association standard leveraged loan documents, the agent bank is specifically authorised to act for the syndicate members in respect of the administration and servicing of the loan under a contract of agency constituted under the syndicate management clauses of the loan agreement. The agent bank is regarded as an agent of the syndicate members with concomitant fiduciary duty for the duration of the loan contract (subject to any valid exculpatory clauses).

The establishment of a security trust by a security trustee is used generally to hold any English law security on trust for the benefit of the lenders from time to time. The establishment of a trust account is used to deliver the proceeds of payment to and from the borrower and the syndicate members on receipt from the syndicate members and the borrower respectively.

3.5 Loan Transfer Mechanisms

The transfer of loans to new parties is governed by the terms of the loan agreement facilitating changes to the composition of lenders. Trading of syndicated debt is common and active, with the most prevalent structures of trading debt being the following:

- Novation: A novation extinguishes the original contract between the borrower and the outgoing lender and creates a new contract between the borrower and the new lender on the same terms. Novation is the most widely used form of transfer in the London market.
- Assignment: Under English law it is only possible to assign the lender's rights, but not the lender's obligations to the borrower. Assignment is therefore not an appropriate method for transferring loans with outstanding lending obligations.
- Sub-participation: A sub-participation involves the creation of a new contract between the lender and the participant while the existing contract between the lender and the borrower remains in place. Sub-participation may therefore not be suitable where the lender wants to extinguish all of its involvement in the facility.

A transfer will often give rise to various rights of the other existing parties to the loan documentation, such as a right of the borrower or guarantor to be consulted or notified or rights of the other lenders in the syndicate. All of these entitlements need to be addressed and observed in order to ensure a valid transfer.

The buyer of the debt will usually benefit from the security following the transfer without compromising the priority of the security, as English law security held under secured syndicated loans will typically be held on trust by a security trustee for the benefit of the lenders from time to time.

3.6 Debt Buy-back

Lenders, borrowers and sponsors are free to agree contractual terms. The Loan Market Association syndicated facility agreements have been updated to include a choice between restricting or permitting debt buy-backs in certain circumstances, and include provisions which disenfranchise a sponsor that becomes a lender.

Where debt buy-backs are not specifically dealt with in a facility agreement, a borrower or sponsor seeking to buy-back its own outstanding debt will need to consider whether there are provisions of the loan documentation which could prohibit a transfer of debt to it.

3.7 Public Acquisition Finance

Public acquisition finance

The "certain funds" rules are contained in the City Code on Takeovers and Mergers (City Code) and require that a bidder has sufficient means to fully finance any cash consideration, or implement any other type of consideration, offered for an acquisition of a public company before its offer is publicly announced. Financing conditions are normally not permitted to be invoked except in narrowly-defined pre-conditional offers where a necessary material authorisation or regulatory clearance is required for the offer to proceed.

The responsibility to comply with this certain funds requirement rests not only with the potential buyer but also with its financial adviser, who must provide in the offer document a confirmation (referred to as the "cash confirmation") that the bidder has the necessary financial resources available to consummate the offer. For this reason, the bid will usually not be launched without the financial adviser having received a representation letter from the bidder and a comfort letter from the lenders. If a new loan financing is required to fund the bid, the new facility agreement will need to be fully negotiated and executed prior to the offer announcement.

Private acquisition finance

In the last few years, the trend has continued for private equity sponsors to seek certain funds financings on private deals (whether in an auction context or otherwise), to remove or reduce the extent of conditionality both in loan and acquisition documents. The certain funds practice has become so pervasive that the Loan Market Association standard leveraged loan documents now include optional wording for the certain funds concept.

4. Tax

4.1 Withholding Tax

Payments of yearly interest with a UK source are subject to a UK withholding tax (current rate 20%). There are a number of circumstances when application for an exemption from this requirement may be made, including:

(a) interest paid to non-UK residents where authority is obtained from HMRC for the interest to be paid gross (or at a reduced rate) under the terms of a double tax treaty; and
(b) interest payable on an advance from a bank if at the time the interest is paid the person beneficially entitled to the interest is within the charge to UK corporation tax in respect of such interest.

In relation to (a), HMRC operates a fast track double taxation treaty passport scheme for overseas corporate lenders and certain US disregarded LLC or US S-Corporations.

Principal, discounts and premiums are not generally subject to UK deduction of tax.

4.2 Other Taxes, Duties and Charges

Lenders with a permanent establishment in the UK are liable for corporation tax on the income profits of that establishment and gains from the disposal of assets situated in the UK that are used in the trade of the establishment.

The sale or transfer of certain types of registered loan capital are charged to UK stamp duty at the rate of 0.5% of the amount or value of the consideration for the transfer.

4.3 Limits to the Amount of Interest

Relief from UK withholding tax on interest payments to the extent that such interest exceeds an arm's length rate may be denied under the terms of the relevant double tax treaty with the UK.

5. Guarantees and Security

5.1 Assets Available and Forms of Security

General

In the UK, lenders will typically look to take security over all of a chargor's present and future assets, property and undertaking by means of a debenture (a form of security agreement). The debenture will generally include the following types and forms of security interests:

- A legal mortgage over real property;
- An assignment by way of security of insurance policies and certain material contracts;
- Fixed charges over certain assets of the chargor's (including its shares and investments, intellectual property rights, plant and machinery, cash deposit accounts and book debts/receivables); and
- A floating charge to cover the balance of the chargor's assets.

The composition of a security package will of course be a matter of negotiation between the borrower and the lender.

A high level of control by the security holder, both contractually and in practice, must be achieved to ensure an effective fixed security interest. For example, in respect of bank accounts, a charge will only constitute a fixed security interest so far as the lender is able to deny the chargor freedom to deal with the charged assets. If the degree of control exercisable is not sufficient then the security will operate as a floating security regardless of how it is described in the documentation.

In practice, asset-based lenders in the UK will normally require a fixed security interest by way of assignment, both of the receivable itself and of the account into which that receivable is to be paid. All payments from debtors are required to be paid into this receivables account which is controlled by the lender. Monies received into the account may then automatically repay outstandings, so freeing up availability under the facility that the lender's client can draw down into its operating account. Since access to the funds in the receivables account is only available to the lender there is sufficient control over the asset for a fixed charge to exist.

It is also possible to take a charge over a portfolio of securities consisting of assets such as bonds, negotiable bearer instruments, listed debt securities and listed equity securities. The mechanics for creating the security depend on the nature of the assets contained in the portfolio, whether they are listed and whether they have been dematerialised.

Perfection Requirements
The requirements for the formalisation of security interests are very limited, and are in effect confined to registering the security interest at a public register of security interests and serving a notice of security to any relevant third party (in each case, if required).

Specifically, pursuant to section 859A of the Companies Act 2006 any mortgage or charge granted by a UK company or limited liability partnership must be registered at Companies House in the 21-day period beginning with the day after the date of creation of the charge or it will be void against the liquidator, administrator and any creditor of the company. Security interests created over UK registered land, intellectual property, ships or aircraft will also need registering on specialist registers for these asset types. Overseas companies are not required to register at Companies House any charge created by them on or after 1 October 2011.

Whilst there are some exceptions for security over certain leasehold interests, a security interest over freehold and leasehold property located in England and Wales should be registered as soon as possible after the transaction at the Land Registry (registered land) or the Land Charges Department (unregistered land). Whilst such registration is binding on a future lender or a purchaser of the property, generally speaking, the security interest will not be void due to failure to register. Failure to register could however prejudice that security's priority position.

Assignments, licences, mortgages or charges of UK patents, registered trade marks and registered designs should be registered as soon as possible after the transaction on the appropriate register at the UK Intellectual Property Office (**IPO**).

Searches for pre-existing security interests can generally be made electronically on the relevant online registry. As long as the secured creditor registers its security at the relevant register within the prescribed time, the security will be effective against other creditors, a liquidator or administrator with effect from the date of creation.

Financial Collateral Regulations
The Financial Collateral Arrangements (No. 2) Regulations 2003 exempt certain security over financial collateral such as cash, financial instruments and credit claims (claims under loans made by credit institutions) from registration requirements. In practice, however, security documents creating these types of security interests are commonly still registered. The reason is the risk that if a fixed charge over such collateral is re-characterised as a floating charge, it may be deemed to have required registration, and may be void for lack of registration.

Costs involved
The security over a particular asset or asset class can either be in a stand-alone document or incorporated in a debenture or similar security agreement that covers other security as well. An initial security document is simple to produce from existing standard forms and the main documentation costs are normally incurred in negotiating its terms, for example so as to be consistent with any existing loan covenants.

Due diligence costs may be incurred in carrying out a due diligence exercise on whether the assets to be charged are transferable and commercially valuable, in particular where real estate is involved.

All registrations of security at Companies House will incur a fee of GBP13 (or GBP10, if filed electronically) in respect of each security document filed. The fee payable on registrations of security at the Land Registry will be assessed on the amount the mortgage or charge secures and ranges between GBP40 and GBP250 per property (or GBP20 and GBP125 per property, if filed electronically) although where a charge affects more than 20 properties, special rules apply to the calculation of fees. All registrations of security at the IPO will incur a fee of GBP50 in respect of each registered patent, trade mark or design.

Security over property is not liable to stamp duty land tax (SDLT) and there are no other notarisation or stamp fees payable when security is created.

5.2 Floating Charges and Other Security Interests
A floating charge granted over the assets and undertaking of a chargor is one of the most common forms of security taken by lenders in the UK. A floating charge can be created without restricting the chargor's right to deal with the charged assets without the prior consent of the lender until crystallisation (usually occurring upon the occurrence of an event of default), at which point the charge attaches specifically to each individual asset.

An important distinction between a fixed and a floating charge is that a floating charge is subject to various preferred claims and the prescribed part, as discussed below, while a priority fixed charge has priority over all other creditors and survives the insolvency of the borrower. Whilst, following crystallisation, a floating charge will have the characteristics of a fixed charge, it will not have the priority enjoyed by a fixed charge. In effect, crystallisation does not itself affect priorities.

5.3 Downstream, Upstream and Cross-stream Guarantees

Under English law, the board of directors of an English company must act in the best interests of the company of which they are directors, not for instance in the interests of its associated companies or the group of which it is a member as a whole.

Consequently, issues of corporate benefit often arise in the context of upstream and cross-stream guarantees. The issues to be considered in determining whether any such guarantee is valid are similar to the issues that need to be considered in determining whether a transaction at an undervalue might be set aside on a company's subsequent insolvency.

In essence, an upstream guarantee may be acceptable if the guarantor company's board of directors can honestly reach the conclusion that the giving of the guarantee will bring real benefit to the company or their actions are ratified by a resolution of all the shareholders of the company. Such benefit can consist of the group as a whole receiving finance that would not otherwise be available to it on favourable terms and the parent or other group member agreeing to pass on the benefit of that finance to the guarantor company in consideration of the guarantee given by it. In all circumstances, the question of whether there is corporate benefit will depend on the specific facts which must be carefully considered. The standard of the test to be applied is whether 'an intelligent and honest man in the position of a director in the company concerned', could, in the whole of the existing circumstances, have reasonably believed that the transactions are for the benefit of the company.

The position will be more complicated if the company is marginally solvent and a shareholder resolution will probably be insufficient to protect against creditors seeking to set the guarantee aside on an insolvency of the guarantor.

5.4 Restrictions on the Target

The Companies Act 2006 includes prohibitions on the giving of "unlawful" financial assistance by a public company or its subsidiaries in connection with the acquisition of the shares in that public company or for the acquisition of its English holding company's shares by another person. Whilst there is no particular procedure to follow which would permit the giving of such financial assistance, there are certain limited exceptions.

Financial assistance includes giving guarantees or security for any acquisition funding. On a debt-financed acquisition of a public company, the company will therefore often re-register as a private company and give guarantees or security once it has re-registered.

Breach of the restriction can result in criminal sanctions, including fines and possibly imprisonment of directors and officers of the offending company. Security taken from a company in contravention of the financial assistance restrictions will be void.

The statutory financial assistance rules no longer apply to the acquisition of private companies.

Aside from the corporate benefit, financial assistance and insolvency (reviewable transactions) issues discussed elsewhere in this questionnaire, there are no other overarching restrictions.

5.5 Release of Security

Security is usually released by a deed of release.

When security granted by an English registered company or limited liability partnership is released, the security provider will usually require the release to be recorded at Companies House. However, a failure to do so does not affect the validity of the release. When a legal mortgage over registered real estate is released, the lender must also execute and file the appropriate Land Registry or Land Charges Department form.

When an asset subject to a floating charge is sold, a release of the charge is not usually necessary. However, the buyer may request a letter of non-crystallisation from the charge holder. This is to ensure the buyer takes the asset free from the charge.

5.6 Rules Governing the Priority of Competing Security Interests

Rules of priority

Priority is governed by English common law rules, not by order of registration. Consequently, a lender which advances money to a company in reliance on a clear search of the register of security interests should not assume that it is protected; there may well be an earlier charge granted within the preceding 21 days that has not yet been registered.

With respect to competing fixed security or mortgages, priority generally is determined based on which security was created first (as long as such security was registered within the 21 day grace period noted above). The same applies with respect to competing floating charges. A fixed charge or mortgage will rank ahead of a floating charge, except when the fixed charge (or mortgage) is obtained after the existence of a floating charge and the holder of the fixed charge (or mortgage) obtained it knowing that it violated the terms of the existing floating charge.

The priority of successive assignments of an account receivable is not governed by the general common law rule of first in time but rather by the first to give notice. Consequently, an assignee who takes without notice of an earlier assignment and is the first to give notice of assignment to the debtor will obtain priority over the earlier assignee.

There are however a number of exceptions and qualifications to these rules including that where the security is granted over an asset requiring registration in a specialist register (such as for real estate, intellectual property, ships and aircraft), the priority of such security will be determined by the order of registration in the specialist register. With respect to the priority of mortgages and fixed charges over real estate, the rules are particularly complex and differ for registered and unregistered land. The basic priority rules for registered land are that between themselves legal mortgages rank in priority in the order shown in the relevant Land Registry register and equitable mortgages and charges rank in order of date of creation. The basic priority rules for unregistered land are, firstly, that a lender holding the title deeds to the property subject to a legal or equitable mortgage or charge can rely on the possession for priority. If the title deeds are not held by the lender, the lender can protect its security by registering a Class C land charge with the Land Charges Department where the security is over a legal estate. Registered Class C land charges rank in order of their registration.

Subordination

The most common methods of subordination in the UK market are, depending on the nature of the particular transaction, structural subordination, contractual subordination, assignment of junior debt and taking security.

Contractual subordination may be achieved by agreement between creditors by, for example, them entering into a deed of priority or an inter-creditor agreement. In its simplest form, contractual subordination not only prevents the junior creditor being paid until the senior creditor has been paid in full, but also subordinates the junior creditor in an insolvency situation to all other creditors ranking equally with the senior creditor. It is however also possible to create arrangements whereby the junior creditor is subordinated to the senior creditor only.

Contractual subordination will remain effective on the insolvency of a borrower incorporated in England, subject only to the mandatory statutory *pari passu* principle that the priority of creditors on insolvency is determined by whether they are preferential, general or deferred creditors. The application of proceeds upon insolvency is considered below.

6. Enforcement

6.1 Enforcing Collateral

The "self-help" principle applies in relation to the enforcement of security. The security holder may take steps (either itself, or by the appointment of an agent or receiver) to enforce its security over the asset encumbered in its favour by its borrower without recourse to the courts or the realisation of the asset by means of a public auction or other court-administered sale process. Although a court order is not required for enforcement, in the context of security over real property, in order to realise (eg sell) the property, it may be necessary to evict the chargor, which requires a court order.

Enforcement methods will depend upon the nature and terms of the security package. The main methods of enforcing security in England are:

- Taking possession;
- Selling the collateral;
- Appointing a receiver who realises the collateral;
- Foreclosure and appropriation.

Where the borrower is solvent the lender will normally be able to appoint a receiver to realise the security. Where the security is by way of floating charge, the document will normally provide that the charge crystallises on certain events, including taking steps in relation to enforcement. If the security was created prior to 15 September 2003, an administrative receiver may be appointed. The role of the receiver in this case is to identify the charged assets, and realise them in the same way as with fixed security. If the security was created after 15 September 2003, the lender can only appoint an administrator who must act in the interests of all creditors to achieve the purposes of the administration.

Where the client is insolvent, it is still possible that enforcement will be through the appointment of a receiver, but it is also possible, particularly where the security package is more comprehensive and includes more of the client's assets, that the company could be subject to a formal insolvency procedure such as an administration. Insolvency procedures in English law are considered below.

6.2 Governing Law, Submission to Foreign Jurisdiction and Waiver of Immunity

The English courts will uphold the parties' express choice of law as the governing law of the contract save for certain circumstances in which the parties' choice of law may be modified by law (in respect of contractual obligations under the Rome Convention or the Rome I Regulation, or non-contractual obligations under the Rome II Regulation). For example, where the choice of forum is England and Wales, English mandatory rules will apply irrespective of the parties' choice of law in respect of both contractual and non-contractual obligations. Expert evidence as to non-English law must be adduced at trial where English courts consider disputes based on 'foreign' law.

As to submission to a foreign jurisdiction, the start point is that the English courts look to uphold exclusive jurisdiction clauses (including where in favour of non-English jurisdiction), subject to the application of the European regime, which includes the 2001 Brussels Regulation, the 2007 Lugano Convention and the Recast Brussels Regulation and the English common law.

Where the 'foreign' jurisdiction (chosen by the parties) is within the European regime, it will have jurisdiction (save in certain exceptions set out in the Convention and Regulations, for example where the proceedings relate to rights *in rem*). The European regime provides for a mechanism to address competing claims to jurisdiction which is broadly based on which jurisdiction was first 'seised' of the claim and (from January 2015) whether an exclusive jurisdiction agreement exists between the parties. Where the 'foreign' jurisdiction is not within the European regime, the English courts have been willing to stay English proceedings in favour of the foreign proceedings, usually so long as the European regime does not expressly reserve jurisdiction to itself in the particular case. In future, such an approach may depend on whether the foreign court was first 'seised'.

Any foreign or Commonwealth state may waive its right to sovereign immunity by submitting to the jurisdiction of the English courts.

6.3 Judgments and Arbitral Awards by Foreign Courts

English courts will generally give effect to a foreign judgment without a retrial of the underlying merits of a case. Broadly, foreign judgments will be enforced using one of four principal avenues:

- Judgments of the courts of EU member states, and other European countries will be enforced via the European regime which consists primarily of the 2001 Brussels Regulation and the Recast Brussels Regulation (the "Brussels Regime"). In order to enforce a judgment pursuant to the Brussels Regime, the enforcing party must apply to the English court by filing the judgment (and a certified translation). There is very limited scope for defending an enforcement action under the Brussels Regime. Such grounds include arguing that the judgment is irreconcilable with an earlier judgment in a third member state covering the same cause of action, or fundamentally contrary to public policy in the enforcing member state (only in exceptional circumstances). Certain "uncontested claims" brought in the courts of EU member states can be enforced using the EEO Regulation which provides a simplified method of enforcement, in which the enforcing party applies for a certificate from the originating court. Following issue of the certificate, the judgment is treated as if it were a judgment of an English court.
- Judgments of the courts of Norway, Switzerland, and Iceland (European Free Trade Association countries) will be enforced pursuant to the 2007 Lugano Convention. The process of enforcement and the grounds for resisting enforcement are similar to the Brussels Regime.
- Judgments of certain Commonwealth countries (such as Australia, India and New Zealand) will be enforced pursuant to the Foreign Judgments (Reciprocal Enforcement) Act 1933 and the Administration of Justice Act 1920. In order to enforce pursuant to the above acts, the relevant judgment must be:

    (i) final and conclusive, and
    (ii) for a sum of money (but not for a tax, fine or other penalty). A defendant may resist enforcement if it can prove that the original court did not have jurisdiction (according to English conflicts of law rules), or if it can establish certain matters (for example, that the judgment would be contrary to public policy, or that the judgment was obtained by fraud).

- Finally, foreign judgments not covered by the above instruments can be enforced at common law by suing on the foreign judgment as a debt. This typically involves applying for summary judgment which, except in very limited circumstances (such as fraud), will not require retrial of the merits of the case. However, there are additional grounds under the common law for defending an enforcement action than with other mechanisms. For example, a defendant may seek to argue that the original proceedings breached the rules of natural justice, that enforcement would be contrary to public policy or the Human Rights Act 1998, or that the judgment is for multiple damages and is, therefore, unenforceable pursuant to the Protection of Trading Interests Act 1980.

Similarly, pursuant to the Arbitration Act 1996, the English courts will give effect to arbitral awards, without re-examination of the merits of an underlying case. In particular, Part III of the Arbitration Act gives effect to the New York Convention, meaning that arbitral awards made abroad are enforceable in England and Wales (with limited scope for the party being enforced against to object).

6.4 Other Matters Impacting a Foreign Lenders Ability to Enforce its Rights

There are no restrictions applicable to foreign lenders specifically.

7. Bankruptcy and Insolvency

7.1 Company Rescue or Reorganisation Procedures

Unless a company is in liquidation or administration, a secured creditor can appoint a receiver to realise the assets over which it has security. The receiver is in an anomalous position in that it is appointed by the secured creditor but acts as agent of the company. The receiver will take control of the relevant assets and realise their value for the security holder.

An alternative procedure is administration. This is a court supervised process under which the administrator owes duties to the creditors as a whole. The procedure is designed to preserve an insolvent company's business and requires that an administrator be appointed to manage the affairs of the insolvent company. The aims of administration are set out in paragraph 3(1), Schedule B1 to the Insolvency Act 1986 (**IA 1986**) and are one or more of the following:

(a) to rescue the company as a going concern;
(b) to achieve a better result for creditors than would be achieved on a winding up; or
(c) to make a distribution to one or more secured creditors, if neither (a) nor (b) can be achieved.

In the context of an administration the holder of a "qualifying floating charge" (as defined in paragraph 14(2) of Schedule B1 to the IA 1986 and in principle meaning a floating charge over all or substantially all of a company's assets) has certain important rights, including the right to effectively veto the appointment of an administrator by an insolvent company's directors or creditors and insist on its own appointee.

If the company has been put into administration, rather than a liquidation, the role of the administrator is to act in the interests of all the creditors in achieving the aims set out above. Where the administrator decides that none of the aims can be achieved he returns to court for the discharge of the administration appointment. On an administration an automatic moratorium is put in place under paragraphs 42, 43 and 44 of Schedule B1 to the IA 1986 that prevents creditors from enforcing their security over the company without leave of the administrator or the court. There are various criteria set for when leave should be given. Essentially, it is a balancing exercise between the rights of the secured creditor and the needs/aims of the administration.

The administrator can distribute funds to the secured and preferential creditors. He can distribute to unsecured creditors with leave of the court. More usually, he will collate the unsecured creditors' claims and will, once there are proceeds for distribution (including the prescribed part described below), cause the company to enter into a voluntary arrangement or liquidation. The supervisor of the arrangement or the liquidator deals with the adjudication of the proofs of debt and distribution of assets according to the statutory order of priority. The administrator can be the supervisor or liquidator if creditors do not object.

Company voluntary arrangements (CVAs) and schemes of arrangement are additional procedures available to assist a corporate reorganisation or debt restructuring. These may form part of or be separate from other procedures such as administration or liquidation.

7.2 Impact of Insolvency Processes on Lenders Rights to Enforce

In the enforcement section of this note, reference has been made to the fact that enforcement in the context of an insolvency may occur as part of a formal insolvency procedure. An important exception is that if the debtor company is in administration, then its assets will be subject to a temporary moratorium and the lender will be unable to enforce its security unless that security constitutes a financial collateral arrangement. A further exception where a moratorium applies to suspend creditor action is where the debtor has been put into compulsory liquidation and where an eligible small debtor company has proposed a voluntary arrangement. The insolvency of the principal obligor does not reduce or extinguish the lender's rights against the guarantor.

As to the commencement of an insolvency process, it should be noted that a lender which wishes to start such proceedings against a borrower with interests in more than one EU member state should consider the location of the borrower's centre of main interest (or its COMI). Under the EC Insolvency Regulation, which is incorporated into English law, there is a rebuttable presumption that the COMI will be the place of the company's registered office. However, there may be occasions in which a borrower's COMI is held to be located in a different EU member state, despite the registered office being located in England and Wales.

7.3 Payment of Creditors

In insolvency, claims generally rank in the following order:

(a) Administrator's or liquidator's costs and expenses in realising fixed security;
(b) Fixed security;
(c) Expenses of the insolvent estate;
(d) Creditors preferred by statute, primarily employee claims and contributions to an occupational pension scheme (in practice amounts may be fairly limited);
(e) Floating charges;
(f) Unsecured creditors;
(g) Equity holders.

The Enterprise Act 2002 introduced the concept of a prescribed part, being a "ring-fenced pot" of money (up to a maximum of GBP600,000), which must be set aside for unsecured creditors out of the net floating charge realisations. A conservative minded lender at the outset of a relationship with a new client may wish to reserve for the full GBP600,000 potential exposure until it has a better understanding of the levels of non-bank credit with which it might be competing for these realisations.

The priority rules relating to the prescribed part do not apply to companies that are subject to a company voluntary arrangement or to floating charges that are financial collateral arrangements under The Financial Collateral Arrangements (No. 2) Regulations 2003.

7.4 Risk Areas for Lenders

Under section 238 of the IA 1986, a liquidator or administrator has two years from the commencement of the insolvency procedure to commence actions to unwind transactions that are at an undervalue. The term transaction would include the grant of a guarantee or pledging of assets for security. The court will however, not avoid a transaction entered into in good faith and that was entered in reliance in the reasonable belief it would benefit the company.

The insolvency practitioner also has the ability (under section 238 of the IA 1986) to challenge transactions that occurred in the last six months before the onset of insolvency (or two years in the case of connected parties) and that give a creditor a preference over other creditors with the desire to prefer that creditor.

Lastly, any floating charges, other than in support of a new financing, entered into between unconnected parties and granted within one year of the onset of insolvency by an insolvent chargor (or if the chargor became insolvent as a result of it) are invalid (section 245 of the IA 1986).

8. Project Finance

8.1 Introduction to Project Finance

Project finance as a financing technique has been used to finance large capital intensive energy and infrastructure projects in the UK since the 1970s. Project finance is the raising of finance on a non - or limited - recourse basis by a special purpose vehicle (**Project Co**), with the repayment of the financing dependent on the internally generated cash-flows of the project.

The financing structure of a project includes the equity investor(s) and owner(s) of Project Co and the lenders (usually composed of a consortium of financiers, including commercial banks and, often, export credit agencies). In the wake of the financial crisis, continuing pressure on commercial banks' liquidity has seen many players exiting the industry. Tightened regulatory requirements under the Basel III rules have also placed a greater burden on commercial lenders leaving a gap in the market for institutional investors.

In recent years infrastructure projects in the UK have proven an attractive safe haven for institutional investors through the use of project bonds, filling the gap left by commercial banks.

Project finance in the UK is not subject to a specific legal framework. Rather, the applicable rules will often depend on the sector of the project. In addition to the UK legislation, namely the laws of England and Wales, the laws of Scotland and the laws of Northern Ireland, a number of European law issues should be taken into consideration when structuring a project, such as the state aid rules under articles 107 and 108 of the Treaty on the Functioning of the European Union (**State Aid Rules**) and the many EU environmental regulations. As further described below, the planning and licensing regime in the UK will also be a prime consideration of project sponsors.

8.2 Public-Private Partnership Transactions

The UK has long been at the forefront of public-private partnership (**PPP**) transactions. PPP is a form of project financing where, typically, a public service is funded and operated by the private sector under a long-term concession granted by a public authority. There is considerable precedent for this type of financing in the UK.

If, under the PPP arrangement, the government or public authority grants any advantage to the project company such as a guarantee, public grant, offtake by a public authority above market price, tax break or use of a state asset for free or at less than market price, the State Aid Rules may prohibit such an arrangement.

To support the development of PPPs in the UK the government established Infrastructure UK (**IUK**) in 2010, a unit that is part of Her Majesty's Treasury. The role of IUK is to co-ordinate and simplify the planning and prioritisation of long-term infrastructure projects and to secure private sector infrastructure investments. Such security provided by the government has led some projects supported by IUK to be challenged on State Aid Rules ground.

The procurement process for PPPs in the UK with a value in excess of the applicable financial threshold set out in the EU Public Sector Procurement Directive 2014/24/EU is governed by the Public Contract Regulations 2015. Formal tender processes such as this are typically viewed positively in the market thereby facilitating the financing of infrastructure projects.

Private finance initiative (**PFI**) is the dominant PPP model in the UK. PFI is a government policy under which private sector companies, usually through a special purpose vehicle, finance, build, operate and maintain the project and is traditionally used for capital intensive projects. Under the PFI arrangement, the public authority will in return pay for the use of the project and usually, at the end of a fixed period of time, the ownership of the project will be transferred to the public authority. In 2012, the UK government adopted a new approach to PFI known as Private Finance 2 or PF2 (**PF2**) and all PPP documents must now follow the standard wording and guidance set out in the Standardisation of PF2 Contracts published by Her Majesty's Treasury.

8.3 Government Approvals, Taxes, Fees and Charges
The relevant government approvals, licences and statutory controls required for a project will depend on the specific nature of each project. For example, as further described below, many commercial and industrial activities in the UK require a permit governed by the Environmental Permitting (England and Wales) Regulations 2010 (as amended). And project companies involved in the generation, supply, transmission or distribution of electricity, or the supply, shipping, distribution or transmission of gas onshore in the UK, or the operation of an inter-connector require a licence, from the Office of Gas and Electricity Markets (**Ofgem**).

The tax regime governing project finance transactions is generally the same as for other commercial loan transactions as set out in Section D (*Tax*). In addition, there are a number of tax incentives in the UK to attract investments in energy and infrastructure projects such as those brought in by the Energy Act 2013 for low-carbon generation and enhanced capital allowance for specific energy-saving plant and machinery.

The transaction documents do not need to be registered or filed with a governmental body with the exception of any document creating a security interest. To be enforceable, any such security documents must be registered with Companies House in exchange for a minimal fee.

The governing law of transaction documents for projects in the UK will generally be the laws of England and Wales. However, depending on the location of the project, Scots law or the laws of Northern Ireland may govern some project documents.

8.4 Responsible Government Body
Several government bodies are responsible for projects in the UK. Most central government departments have a private finance unit responsible for overseeing the projects in their sector such as the Ministry of Defence, Department for Transport, Department of Health and the Department of Energy and Climate Change for oil and gas exploration or production activities. In addition to these government bodies, PPP and PFI policies are driven from within Her Majesty's Revenue and the Cabinet Office. It should also be noted that PPP and PFI are devolved matters and are regulated by the Strategic Investment Board in Northern Ireland, the Scottish Infrastructure Investment Unit in Scotland and the Welsh Assembly in Wales.

Certain regulated sectors are also administered by government bodies such as the Water Services Regulation Authority (the economic regulator of the water sector), Ofgem (the regulator of the electricity and gas market) and the Office of Communication (the regulator and competition authority for the communications industries). These bodies are, among their various functions, responsible for issuing licences to operate in their respective sectors.

There has been a history of state ownership, however nowadays most of the energy and infrastructure industry has been privatised in the UK.

8.5 Structuring the Project Company
The first issue to be considered when structuring a project is the bankability of the contractual arrangement. During this process, once identified, the various risks should be allocated in the transaction documents to the parties that are best placed to bear them.

The equity investor(s) and owner(s) of the project company can be a single party but are more commonly a consortium of sponsors. Project companies in the UK are commonly special purpose vehicles incorporated as a limited liability company.

Funding techniques available to project companies include commercial lenders, export credit agencies, international institutions such as the European Investment Bank and project bonds investors. As indicated above, project bonds have been increasingly popular in recent years for infrastructure projects in the UK, such as motorways and attracting investments from institutional investors. The financing is provided on a limited recourse basis which means that the lenders only recourse in case of default is to the assets of the project company. It is however not unusual for lenders to require from the sponsors contingent equity and/or some form of completion guarantees. Project financing in the UK is typically highly leveraged with a gearing ratio generally in the range of 80/20, but it is not uncommon for the gearing ratio to be as high as 90/10.

EU laws, the laws of England and Wales, the laws of Northern Ireland and the laws of Scotland will be relevant to project companies in the UK depending on the sector and the location of the project.

Restrictions may apply to foreign investors in relation to certain regulated business sectors in the UK such as energy and defence. For example, the EU Third Energy Package, which aims to split generation from transmission of gas and electricity, requires Ofgem to certify as independent the holder of electricity transmission and interconnection licences. If the certification application is made by an entity controlled by a person outside of the EEA, Ofgem is required to notify the Secretary of State of the UK Government and the European Commission of such an application. The Secretary of State and the European Commission may make a recommendation against the grant of such certification if the security of electricity supplies in the UK or any EEA state would be put at risk by the certification, in which case Ofgem may follow the recommendation and decline to grant the certification. Ofgem also enforces the Competition Act 1998 and Articles 81 and 82 of the EC Treaty in the electricity and gas sector which prohibits any prevention, restriction or distortion of competition within the common market.

Investors from outside the EU may also be affected by EU sanctions which may reflect measures imposed by resolutions adopted by the UN Security Council or may be autonomous. These restrictive measures may prohibit such foreign investors from being involved in project financing in the UK.

8.6 Acquisition and Export of Natural Resources

Natural resources in the UK include oil, natural gas, coal and minerals. Ownership of oil and gas within the land area of Great Britain is vested in the Crown by the Petroleum (Production) Act 1934 and the Continental Shelf Act 1964. The ownership of almost all coal in Great Britain resides with the Coal Authority while ownership of gold and silver is vested in the Crown. Other minerals are in private ownership, with the owner of the land entitled to everything beneath or within it. Details of land ownership are held by the Land Registry. The Minerals Development Act (Northern Ireland) 1969 vested the ownership of most minerals in Northern Ireland in the Department of Enterprise, Trade and Investment.

The natural resources sector in the UK is regulated by a number of statutory bodies, depending on the mining activity and the location, including the Environment Agency in England, the Scottish Environment Protection Agency in Scotland, Natural Resources Wales in Wales and the Northern Ireland Environment Agency in Northern Ireland together with the Health and Safety Executive and the Department of Energy and Climate Change (**DECC**).

Planning permission and licences are required from the relevant authority for the extraction of natural resources in the UK in addition to the rights of access granted by the landowner (for onshore natural resources), unless the land is owned by the project company. The Oil and Gas Authority (an agency of DECC) is responsible for issuing licences for oil and gas exploration onshore (excluding Northern Ireland which issues its own licences) and on the UK Continental Shelf, for regulating field development and oil and gas pipeline activities and monitoring environmental impact, including decommissioning. The Energy Act 2008 introduced further requirements for licensing, including for the offshore storage of natural gas and carbon dioxide, and additional requirements relating to the funding of the decommissioning of offshore installations. The Coal Authority (sponsored by the DECC) is responsible for issuing licences for coal exploration and extraction. The Crown Estate Mineral Agent is responsible for granting exclusive leases and licences for exploration and development of Royal Mines to mine gold and silver. There is no specific licensing requirement for the exploration and extraction of other non-fuel minerals.

Planning authorities play an important part in the regulation of mining activities in the UK. In England and Wales planning permission is granted by the mineral planning authority, commonly the County Council and under the Planning Act 2008, the Planning Inspectorate makes recommendations to the DECC who makes the final decision on applications to develop significant projects. In Scotland, planning permission is granted by the local planning authority and in Northern Ireland, planning permission is granted by the strategic planning unit.

There are no restrictions to trade most natural resources with other EU countries as the EU operates as a single market. Natural resources exporters may however need a licence for the export of a number of strategic controlled goods such as goods with a potential military use listed in the Export Control Order 2008 (as amended) which applies to certain metal fuels and alloys.

The environmental impact of natural resources extraction should be a prime consideration of project sponsors. The main source of environmental controls in the UK is derived from the planning permission regime. Most planning permissions will impose environmental restrictions and obligations on the permit holder, including upon decommissioning. In addition, the Environmental Permitting (England and Wales) Regulations 2010 (as amended) requires environmental permits for most natural resources related activities. Any impact on local wildlife may also give rise to the requirement to obtain a licence under various conservation legislation.

8.7 Environmental, Health and Safety Issues

As highlighted above, the main sources of environmental laws applicable to projects in the UK is the Environmental Permitting (England and Wales) Regulations 2010 (as amended) and the planning permit obtained by the project company. The regulatory bodies overseeing environmental issues in the UK are the Environment Agency in England, the Scottish Environment Protection Agency in Scotland, Natural Resources Wales in Wales and the Northern Ireland Environment Agency in Northern Ireland. Projects in the UK are also subject to EU environmental laws in many areas such as air pollution, sustainable development, waste management, water protection, soil protection and noise pollution. On 12 March 2014 the European Parliament adopted the Environmental Impact Assessment Directive 2014/52/EU (**EIA Directive**) which substantially amended the Environmental Impact Assessment Directive 2011/92/EU (implemented in the UK as the Town and Country Planning (Environmental Impact Assessment) Regulations 2011). The new EIA Directive will not be transposed into UK legislation until 2017. The EIA Directive imposes, among other things, requirements for the assessment of the impact of projects on bio-diversity, climate change, landscape and disaster risks and imposes monitoring obligations during both the implementation and operation of the project.

The Health and Safety Executive (**HSE**), together with local authorities, is responsible for overseeing health and safety in the UK and enforcing the Health and Safety at Work etc. Act 1974 (as amended) (the **HSW Act**) and a large number of sector specific acts and regulations, such as the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015, which applies to offshore oil and gas activities. Project companies (and their management team) breaching health and safety legislation in the UK risk being prosecuted, with penalties with respect to the HSW Act ranging from GBP20,000 fine and/or 12 months' imprisonment to an unlimited fine and/or two years' imprisonment.

9. Islamic Finance

9.1 Overview

Islamic financial services have been provided in the UK since the 1980s and in 2012 the UK was ranked the 9th largest country by Shari'a compliant assets with USD19 billion. In June 2014, the UK became the first country outside the Muslim world to issue Islamic bonds, known as sukuk. TheGBP200 million of sukuk issued by Her Majesty's Treasury attracted interest from investors in the UK and in the major centres for Islamic finance around the world.

Currently six stand-alone Islamic banks and 15 conventional banks (through Shari'a-compliant operations) offer Islamic financial products and services in the UK, with the number expected to grow further. The value of sukuk listed on the London market exceeds USD34 billion over the past five years with more than 50 bonds listed on the London Stock Exchange.

In recent years, Islamic finance has been increasingly used in major infrastructure projects in the UK such as The Shard, the Olympic Village and the redevelopment of the Chelsea Barracks and Battersea Power Station.

The development of Islamic finance in the UK is a priority of the British Government with Chancellor George Osborne viewing the Islamic finance industry as essential to make Britain the "undisputed centre of the global financial system." In order to support such development, the government has set up an Islamic Finance Task Force to promote the UK's Islamic finance sector, facilitate inward investment and strengthen the UK economy.

9.2 Regulatory and Tax Framework

There are many types of Islamic finance products available in the UK and each must be analysed on its own terms for tax and regulatory compliance. It should be noted that English law does not concern itself with whether a specific arrangement is Shari'a compliant, it is solely concerned with the legal form of such an arrangement.

From a regulatory perspective Islamic banks providing Islamic finance services are subject to the same regulations as conventional banks and must be authorised by both the FCA and the PRA.

Tax legislation in the UK has developed to ensure that the tax treatment of Shari'a compliant products, which are part under English law of the broader category of "alternative finance arrangements," is neither more or less advantageous than conventional finance alternatives. This has been achieved in respect of some Shari'a compliant products such as murabaha (purchase and resale), musharaka (diminishing shared ownership), mudaraba (deposit), wakala (profit share agency) and sukuk (investment bond) but not across the whole Shari'a compliant offering. Legislation on alternative finance arrangements for the purposes of income tax and corporation tax was first introduced in Chapter 5 Part 2 Finance Act 2005. The tax treatment of some of the most commonly used Islamic finance products is now set out for income tax purposes in Part 10A of the Income Tax Act 2007 and for corporate tax purposes in Chapter 6 of Part 6 of the Corporate Tax Act 2009 (**CTA**). For example, under English law, holders of sukuk will be treated like a bondholder provided that they meet the criteria set out in Section 507 of the CTA, which include requirements that the return generated does not exceed a reasonable commercial return, that the sukuk is listed on a recognised stock exchange and that the arrangement has a fixed term or maturity date. If these conditions are satisfied, returns paid on the sukuk will be treated as interest paid by the sukuk issuer to the sukuk holder and will be deductible or taxable accordingly. Under English law, the tax treatment of murabaha is equivalent to the payment or receipt of interest on a loan provided that the arrangement meets the criteria set out in Section 511 of the CTA, which includes the requirement that the difference between the purchase price and the resale price be equivalent to the return on an investment of money at interest on arm's length terms. It should also be noted that if an asset is bought and sold under an alternative finance arrangement, Section 514 of the CTA excludes the return made on the arrangement for the purposes of capital gain tax under the Taxation of Chargeable Gains Act 1992.

The tax treatment of sukuk under the CTA and the issuance of sukuk by the government in 2014 are likely to increase the popularity and the development of sukuk in the financial market in the UK. The takaful industry, a Shari'a compliant form of insurance based on the principle of mutual protection and shared responsibility, is still at an early stage in the UK but should benefit from the general promotion of Islamic finance by the government. The FCA and the PRA will determine on a case by case basis whether an arrangement amounts to insurance and some takaful operators have received FCA and PRA authorisation. Under English law, takaful will generally be treated as insurance contracts.

9.3 Islamic Bank and Takaful Operator Regulation

Islamic banks and takaful operators are set up in the UK as conventional banks and insurance companies respectively and have to be licensed by both the FCA and the PRA under the Financial Services and Markets Act 2000. There is no special regulatory regime for Islamic banks or for takaful operators. As recommended by the Accounting and Auditing Organisation for Islamic Financial Institutions, each Islamic bank and takaful operator has its own Shari'a supervisory board (**SSB**), which is generally comprised of three Shari'a scholars who oversee takaful operations, supervise the development and operation of takaful, and determine the Shari'a compliance of Islamic financial products. In addition, SSBs carry out their own independent audit to determine whether any element of the institution's operations are considered haram — or prohibited under Shari'a.

9.4 Framework for Shari'a-compliant Bodies and Transactions

As highlighted above, the UK government does not employ an established framework for ensuring Shari'a-compliant products and transactions, preferring instead to categorise them as alternative finance arrangements which must comply with all laws and regulations applicable to alternative finance arrangements. This approach reflects the UK government's neutral position as a "secular" regulator — one that is focused solely on the adherence with and enforcement of applicable laws and regulations and not vis-à-vis faith-based arguments or the appropriate role of religion in the UK. As such, the UK government does not take any responsibility for the compliance (or lack thereof) of Shari'a financial products. Instead, the responsibility for ensuring Shari'a-compliant products is borne by private financial institutions.

There is no official supervisory body for Islamic finance in the UK. As stated above, Islamic banks and takaful operators operate as conventional banks and insurers and are therefore regulated by the FCA and the PRA. However, as discussed above, the vast majority of financial institutions in the UK elect to establish SSBs to monitor and regulate Islamic financial products.

The Islamic Financial Services Board (IFSB), an international standard-setting organisation and supervisory agency, publishes prudential standards and guiding principles for institutions offering Islamic financial services, however membership of the IFSB and compliance with such standards is voluntary.

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