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Global Transportation Finance Newsletter

In This Issue...

What…the FATCA? 1

What Is a "Vessel"? 3

Court Ruling Calls into Question One-sided Jurisdiction Clauses 5

Additional Thought Leadership…

"LIBOR: A Finance Lawyer's Assessment," ***The Banking Law Journal,*** **February 2013.**

Vedder Price's Ron Scheinberg explores the use of LIBOR-based loan pricing in the wake of the recent LIBOR scandals. To read this article, go to ***www.vedderprice.com/Banking-Law-Journal.***

What . . . the FATCA?

What is FATCA, and why should you care? FATCA refers to the "Foreign Account Tax Compliance Act"[1], which was enacted as part of the "Hiring Incentives to Restore Employment Act of 2010".[2] FATCA imposes a 30% withholding tax on U.S.-source payments to certain non-U.S. persons (foreigners). You should care because the FATCA rules are very broad and will need to be considered for all transactions involving payments with a U.S. connection that are made to foreigners.

FATCA was enacted, in part, as a response to scandals over the last few years involving U.S. taxpayers using offshore accounts and shell corporations to hide income and thereby avoid U.S. federal income tax on such income. While FATCA is similar to the traditional U.S. withholding tax regime[3] in that it imposes a requirement to withhold taxes from payments made to foreigners, the objectives of FATCA are very different in that FATCA is designed to increase compliance by U.S. taxpayers rather than to enforce collection from foreigners. In order to achieve its compliance objective, FATCA requires foreigners to report information related to the ownership by U.S. persons of assets held overseas and, thereby prevent U.S. persons from hiding income abroad.[4] While the Joint Tax Committee estimated that the implementation of FATCA would generate 8.7 billion dollars of additional revenue over 10 years,[5] the source of this revenue increase is expected to be tax collections from increased federal income tax compliance by U.S. taxpayers rather than actual collections of the 30% withholding tax on payments destined for foreigners.[6]

Overview of the Rules

If you are making a U.S.-source payment to a foreigner, you need to be concerned with the application of FATCA. Since it is difficult to envision a situation in which a 30% withholding would be acceptable, you should either make sure that FATCA does not apply or confirm that the payee qualifies for an exemption. Note that unlike certain withholding regimes whereby treaties reduce traditional U.S. withholding rates below the statutory 30%, there is no corresponding FATCA treaty regime – it is 30% withholding or 0% withholding.[7]

Foreign Entities Subject to FATCA

The principal targets of FATCA enforcement are "foreign financial institutions" (FFIs). An FFI is a foreign entity that is engaged in a banking, brokerage, investment or similar business. Targeting FFIs makes sense because U.S. persons are likely to hold offshore accounts with these types of institutions. In addition, related parties (generally at or above the 50% common ownership and control threshold) are treated as FFIs. Thus, the parent holding company of a foreign bank, and its affiliates, are all FFIs. While the definition specifically includes typical financial institutions (i.e., banks, investment banks and brokerage firms), the definition is broad enough to include private equity funds, hedge funds and insurance companies.

FATCA also targets "non-financial foreign entities" (NFFEs) unless they provide information on their U.S. owners, if any. This prevents U.S. persons from simply setting up an offshore company to hold their overseas accounts.

Payments Subject to FATCA

FATCA withholding applies to "withholdable payments" made to FFIs or NFFEs. A withholdable payment broadly includes any payment of U.S.-source: (a) interest (including OID), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments and other fixed and determinable annual or periodical gains, profits or income, or (b) gross proceeds from the sale or other disposition of any property of a type that can produce U.S.-source interest or dividends.[8]

Sometimes sourcing is easy – if a U.S. airline borrows money from a foreign lender, the interest payments to that foreign lender are of a U.S. source and subject to FATCA. However, in the complex financing structures often used in aircraft transactions, sourcing can be trickier. Additionally, rental income sourcing, particularly for transportation assets, may be particularly challenging, and possibly subject to special statutory rules to determine source, as rental income is sourced based on the location in which the property is used.

How Do FFIs and NFFEs Avoid Withholding?

An FFI can avoid FATCA withholding by agreeing in writing to provide the U.S. Treasury with information on its U.S. account holders.[9] The information required to be reported includes such matters as name, address, U.S. TIN and account information (such as balance, value, withdrawals and receipts) for each U.S. account holder. In addition, FFIs domiciled in a jurisdiction that has entered into a bilateral inter-governmental agreement (an IGA) with the United States do not need to execute individual agreements with the U.S. Treasury. Rather, these FFIs will report to their governments, which will pass the information along to the U.S. Treasury. The United States has already negotiated several IGAs,[10] and numerous other IGAs are in the process of being negotiated. There are also other methods by which an FFI can become compliant.

An FFI that demonstrates FATCA compliance to the IRS will be issued a "global intermediary identification number" (GIIN). As a practical matter, a U.S. payor will require the payee's GIIN prior to remitting any payments to such payee that would otherwise be subject to FATCA withholding. The IRS will maintain and publish a list of entities and their GIINs so that payors can check the validity of the number provided. The IRS is modifying its W-8 form series to account for the FATCA regime.[11]

Note also that when an FFI agrees (or is deemed to agree under an IGA) to report, it also agrees (or is deemed to agree) to become a withholding agent with respect to any U.S.-source payments it makes to other FFIs or to certain account holders who do not provide the required information.

NFFEs generally can avoid withholding by certifying that they are the beneficial owner of the payment being made to them and that they have no substantial U.S. owners (i.e., 10% or greater) or by disclosing the name, address and TIN of each substantial U.S. owner. In addition, certain classes of NFFEs are exempt (such as publicly traded companies or companies predominantly engaged in an active business).

When Do the FATCA Rules Go Into Effect?

After several delays and extensions, the FATCA rules are currently scheduled to apply to payments of interest, dividends, rentals and similar payments made after December 31, 2013. Obligations outstanding on January 1, 2014 are "grandfathered," and the FATCA rules do not apply to payments made under these pre-existing obligations unless such obligations are substantially modified after that date. A substantial modification may be triggered by, among other things, a change in interest rate, maturity or obligor. Withholding on payments of "gross proceeds" is not set to begin until after December 31, 2016. Although FATCA withholding will not apply until 2014, transactions being documented currently should take into account the possible application of FATCA withholding in the future.

* * *

The above is intended as a practical summary. With the "final" regulations exceeding 420 pages, a complete explanation of the FATCA rules is far beyond the scope of this article. The key takeaway is that beginning on January 1, 2014, before you make a U.S.-source payment to a foreigner, require the foreigner to supply its W-8, in order to be able to verify its GIIN or other exempt status.

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1 I.R.C. §§ 1471-1474.

2 Pub. L. No. 111-147.

3 *See* I.R.C. § 1441 et seq. The U.S. taxes its citizens on their worldwide income and taxes foreigners on U.S.-sourced income. The traditional U.S. withholding tax is designed to collect taxes on U.S.-sourced income paid to foreigners by collecting the relevant tax from the U.S. payor before funds leave the country and escape the jurisdictional grasp of the United States. These taxes are often reduced or eliminated by bilateral treaty exemptions or statutory relief. For example, many treaties provide for zero withholding on interest and aircraft rent.

4 While the U.S. tax system is labeled a "voluntary" tax regime, history has amply demonstrated that taxpayer compliance is significantly increased when the voluntary system is backed up by the "trust but verify" mechanism of information reporting. The classic example is the 1099 (interest, dividends, etc.) information reporting system. Laws, and significant related penalties for failure to comply, already established a strong incentive for U.S. taxpayers to report their income from assets held abroad. However, in light of recent scandals, Congress felt that these mechanisms were inadequate and sought to institute an information-reporting regime. Unlike U.S. financial institutions, foreign entities not otherwise engaged in business in the United States are not subject to the jurisdiction of the United States. Therefore, the 30% withholding tax imposed by FATCA is the "stick" to force these foreign persons to report their U.S. account holders, and in some cases U.S. owners, to the U.S. Treasury.

5 *See* Joint Committee on Taxation, "Estimated Revenue of the Revenue Provisions Contained in Senate Amendment 3310, the Hiring Incentives to Restore Employment Act, under Consideration by the Senate," JCX-5-10 (Feb. 23, 2010).

6 As a practical matter, the 30% withholding tax will make it economically impractical to do business with foreign persons who are not FATCA compliant, or exempt, if the transaction has any U.S.-source payment component.

7 Under limited circumstances, refunds, or credits against taxes otherwise owed, may be available.

8 A further variance from traditional withholding rules is that the FATCA regime will eventually apply to proceeds from the sale or other disposition of instruments producing U.S.-source interest or dividends. The rules are broad enough to include principal payments on debt instruments. A 30% withholding tax on payments of principal is harsh medicine indeed.

9 The Treasury has released model forms of such agreements, which are available at http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

10 So far, IGAs have been signed with the United Kingdom, Denmark, Ireland, Mexico and Switzerland.

11 A new W-8BEN-E form will be used for foreign entities and will include the appropriate information to demonstrate FATCA compliance or exemption from FATCA withholding.

What Is a "Vessel"?

On January 15, 2013, the United States Supreme Court issued its decision in *Lozman v. City of Riviera Beach, Fla.,*[1] which examined one of the most fundamental questions in vessel finance – what is a vessel? This decision is of great importance to vessel financiers for many reasons, but perhaps the most important of these reasons is that a watercraft's status as a "vessel" is critical to its eligibility for documentation and imposition of a preferred mortgage, which is the primary vehicle for financing vessels in the United States and elsewhere in the world.[2]

In its decision, the Court analyzed the proper factors to consider in applying the definition of "vessel" found in the Rules of Construction Act:[3]

The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.[4]

This definition of "vessel," which is commonly referred to as the *default definition*, applies throughout the U.S. Code, except where a different definition is set forth for a specific purpose. As neither the Vessel Documentation Act nor CIMLA sets forth a different definition, the *default definition* applies for purposes of determining whether a watercraft is eligible for documentation and imposition of a preferred mortgage.

Facts of the Case

The watercraft under scrutiny in *Lozman* was a non-self-propelled, homemade floating structure comprised of a plywood hull with bilge space and a deck capped with a house constructed with land-based materials, including French doors and windows, and containing everyday household appliances. The craft was secured by rope in a public marina in the City of Riviera Beach, Florida and connected to shore-side utilities by an extension cord and a garden hose. The Court observed that nothing about the structure was of marine quality, although it had been towed over water long distances twice during a seven-year period. As the result of disputes with Mr. Lozman, the City of Riviera Beach arrested the craft on alleged maritime lien claims for failure to pay dockage fees. The District Court held that Mr. Lozman's structure was a vessel, and the Eleventh Circuit Court of Appeals affirmed, whereupon the structure was ordered sold at auction to the municipal claimant, which destroyed the craft after unsuccessful efforts to sell or donate it.

Mr. Lozman petitioned for certiorari on the basis that the arrest and sale of his floating structure was wrongful in that the structure was a floating home and not a "vessel" and therefore could not be arrested or sold in an *in rem* action, as there was no admiralty jurisdiction. The Court granted certiorari to resolve conflicts among the federal circuits on the proper factors to be considered in applying the statutory definition of "vessel." The gaming industry and two floating home associations, among others, submitted briefs *amici curiae* in support of Mr. Lozman's position. A labor union, a large group of law professors, the National Marine Bankers Association and the Maritime Law Association of the U.S. (MLA) submitted *amici* briefs in support of the City of Riviera Beach. Vedder Price New York shareholders Francis X. Nolan, III and John C. Cleary authored the *amicus curiae* brief in the case on behalf of the MLA.[5]

The Court's Opinion

Justice Breyer wrote the Court's opinion, joined by six other justices, reversing the Eleventh Circuit and holding that Lozman's structure was not a "vessel" within the meaning of the Rules of Construction Act. Justice Sotomayor, joined by Justice Kennedy, filed a

dissenting opinion. Although the Court and the dissent agreed that not everything that floats is a vessel, they disagreed on the interpretation of the statutory definition. The majority opinion focused specifically on the meaning of the phrase "capable of being used" and referred to a series of cases as possibly being read to support the just-discredited "anything that floats" approach. While not expressly overruling the holdings of these decisions, the majority at least cast doubt on this series of cases, which had been considered settled law on various classes of waterborne structures.

Clearly frustrated at oral argument by the inability or unwillingness of the parties to articulate a test, the majority held that whether an object is a vessel from now on will depend in each case on the perception of a "reasonable observer" viewing the physical attributes of a craft and its "activities" or "behavior." The Court also stated that the subjective intent of the owner of the craft should not be taken into account in determining vessel status. The Court indicated that the reasonable observer's analysis should focus on whether the structure was "designed" at least in part to any practical degree "to serve a transportation function" and actually did so sometimes. The Court further noted that it is possible that a watercraft that at one time may have been a "vessel" may depart that status if it is altered in some way or "permanently moored" so as to disable its ability to perform transportation on water. Further, capability to perform transportation on water was to be determined on a "practical, not a theoretical" level. In its discussion of "activities" or "behavior," the Court gives no hint as to the extent of the activities or behavior required to support a finding that a watercraft is a "vessel"; however, the Court did observe that two lengthy trips in tow over water is insufficient activity.

The dissenting opinion pointedly criticized the majority for announcing a wholly unprecedented "reasonable observer" standard that abandoned years of precedent sorting out which craft are or are not "vessels." As the dissent rightly warned:

> without knowing whether a particular ship is a [vessel under the Rules of Construction Act], it is impossible for lenders to know how properly to characterize it as collateral for a financing agreement because they do not know what remedies they will have recourse to in the event of a default.[6]

Although Mr. Lozman's contraption was neither documented nor mortgaged under federal law, the *Lozman* Court's "reasonable observer" standard for determining whether a watercraft is a vessel will apply to vessel documentation and mortgaging because the Court was interpreting the *default definition* of vessel contained in the Rules of Construction Act. As a consequence, whether a watercraft can be lawfully documented and mortgaged and be subject to in rem arrest is now a determination that is left to the reasonable observer viewing not only physical characteristics, but also the activity and behavior of the craft at a given moment in time. And because, as the Court noted, status can change, what is a vessel on the day a mortgage is imposed may not remain a vessel until the mortgage is satisfied.

Questions Left Unanswered

The Court's decision did not address many issues of concern raised by certain *amici*, and in announcing the "reasonable observer" standard, the Court left open more questions than it answered.

Gaming Industry and Floating Home Associations

The principal concerns of the gaming industry and the floating home associations appear to arise out of fears that an expansive view of vessel status would result in bartenders, card dealers and domestic employees being treated as "seamen" under federal maritime laws such as the Jones Act.[7] This is so even though many waterborne casinos continue to assert vessel status for the very same structures for purposes of documentation and encumbrance with preferred mortgages. The *Lozman* Court ignored this incongruity, as has the U.S. Coast Guard in past practice. It remains to be seen whether Coast Guard practice will allow many of these casino boats to remain documented as vessels following the decision in *Lozman*.

Maritime Law Association

Although urged to do so by the MLA, the Court was silent on the issue of what constitutes "permanently moored," a matter of continuing uncertainty in determining vessel status on a case-by-case basis.[8] In addition, the Court did not address the need to sharply distinguish between the "existential vessel" that is capable of transportation on water and the vessel in navigation. If anything, the Court's appointment of the "reasonable observer" to evaluate physical attributes together with "behavior and activities" seems to undermine and perhaps vitiate the capability test. Many existential watercraft that are "capable of being used as a means of transportation on water" likely would not be viewed by a "reasonable observer" as being either designed to serve, or actually serving, a transportation function. In addition, the status of vessels in longer-term "cold layup" and that of tankers dedicated to stationary offshore storage of oil and gas may need to be addressed in the wake of *Lozman*.

* * *

Given the new "reasonable observer" standard, maritime financiers should (i) carefully consider the risk of financing structures at the edges of the maritime world; (ii) confine their finance activities to more traditional vessel types and uses; and (iii) consider the uses to which a vessel is devoted during the term of a mortgage in order to minimize the possibility that a financed watercraft will suffer an adverse change in status as a "vessel." Financiers who do otherwise run the risk that a court will, after the fact, determine that a financier's collateral was not a "vessel," or at some point ceased to be a vessel, which, in either case, would render a preferred mortgage invalid – all under the guise of what a "reasonable observer" would think.

As we all know, reasonable minds may differ.

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1 133 S. Ct. 735 (2013).

2 The preferred mortgage had its genesis in U.S. law with the Ship Mortgage Act of 1920, and is currently codified in the Commercial Instruments and Maritime Lien Act (46 U.S.C. §§31301 et seq. (2006)) (CIMLA). A preferred mortgage enjoys high priority in the hierarchy of liens and claims, and it permits the enforcement of the mortgage by arrest *in rem* against the encumbered vessel. To be encumbered with a preferred mortgage, a U.S. vessel must first be documented with the National Vessel Documentation Center. In addition, the vessel must weigh at least five net tons. For foreign flag vessels, CIMLA recognizes similar foreign instruments as preferred mortgages for purposes of enforcement in the United States.

3 1 U.S.C. §§ 1-8 (2006).

4 1 U.S.C. § 3 (2006).

5 The MLA's amicus brief is accessible under "Library" on the MLA's website (www.mlaus.org).

6 133 S. Ct. at 754, n. 6.

7 46 U.S.C. § 30104 (2006).

8 The Court did conclude that the flimsy connections securing and servicing Lozman's craft did not constitute permanent mooring.

Court Ruling Calls into Question One-sided Jurisdiction Clauses

On 26 September 2012, *in Mme. X v. Banque Privée Edmond de Rothschild*,[1] the French Supreme Court, the Cour de Cassation, ruled that a "one-sided jurisdiction clause" – the type of jurisdiction clause frequently found in aviation finance agreements – was invalid. This decision has created a degree of uncertainty as to how European courts will interpret such clauses.

The Loan Market Association (the LMA) published a considered response to the *Rothschild* case, suggesting three options to assist in avoiding a declaration of invalidity by a local court.

Nature of the Clause

One-sided jurisdiction clauses, which are often included in aviation financing and leasing agreements, typically provide that:

1. Each of the parties to the agreement submits to the exclusive jurisdiction of the courts of a specified jurisdiction; but
2. Any finance party under a finance agreement, or the lessor under a lease agreement, (in either case, Party A) may also pursue the borrower (in the case of a finance agreement) or lessee (in the case of a lease agreement) (in either case, Party B) in any other court.

The primary purpose of such a clause is: (a) to provide certainty to Party A that litigation will be conducted in a jurisdiction that is acceptable to it, and (b) to allow Party A to pursue Party B in any jurisdiction in which Party B has any assets.

The Rothschild *Case*

Mme. X entered into a private banking relationship with the Edmond de Rothschild Private Bank (the Bank) in Luxembourg, which was subject to standard terms and conditions of the Bank. These standard terms and conditions were governed by the law of Luxembourg, and Mme. X submitted to the exclusive jurisdiction of the Luxembourg courts, subject to the Bank's right to take action before the courts of the domicile of Mme. X, or any other competent court.

The relationship deteriorated, and Mme. X brought a claim for damages in Paris. The Bank objected to the jurisdiction of the French courts on grounds that, pursuant to the standard terms and conditions of the Bank, Mme. X had submitted to the exclusive jurisdiction of the Luxembourg courts (and only the Bank had the option to bring a claim in an alternative jurisdiction). The Bank's objections to jurisdiction were ultimately dismissed, after it appealed the verdicts of successive lower courts to the Cour de Cassation.[2]

The Cour de Cassation ruled that the jurisdiction clause was of *"a potestative nature as regards the bank"* and that it was *"contrary to the object and finality of prorogation of jurisdiction under Article 23 of the Brussels Regulation."*[3]

Under Article 1174 of the French Civil Code, any obligation assumed pursuant to a "potestative" condition is void. A potestative condition is one that is entirely within the power and control of one party, which renders the applicable agreement unenforceable for lack of mutuality of obligations. Although the Cour de Cassation's judgment did not set forth a detailed rationale behind its characterisation of the jurisdiction clause, the lower court, the Cour d'Appel in Paris, analysed the right of the parties to choose a jurisdiction pursuant to Article 23 of the Regulation and the principle of autonomy set out in Recital 14 to the Regulation (which states that the autonomy of the parties to choose a jurisdiction should be respected). Notwithstanding this right and the overarching principle, the Cour d'Appel found that there was no agreement on a jurisdiction (as contemplated by Article 23) to be respected because the Bank was able to choose any jurisdiction at its discretion, and Mme. X's right to choose was restricted. Presumably the Cour de Cassation concurred with this analysis in reaching its decision.[4]

From an outsider's perspective, it may be hard to reconcile this analysis with the working realities of agreements containing one-sided jurisdiction clauses. Parties understand the purpose of these clauses, why they are in place and what the consequences of entering into the same might be. If the autonomy of the parties is to be respected, then it might be reasonable to expect that such clear and certain clauses be respected.

The LMA's Response

On 24 January 2013, in direct response to the *Rothschild* case, the LMA produced a note which set out three alternative forms of jurisdiction clauses intended to address the risks presented as a result of the decision:

1. **One-sided Jurisdiction Clause with Fallback Provision.** This alternative would incorporate a fallback provision which, in the event that the one-sided element was declared invalid, would cause the exclusive jurisdiction clause to take precedence. Of the LMA's three alternatives, this clause is closest in form to the existing one-sided jurisdiction clause.[5]
2. **Single Court Exclusive Jurisdiction Clause.** This alternative provides that the courts of one jurisdiction have exclusive jurisdiction. This removes the Rothschild risk but, as a consequence, removes the ability of Party A to pursue Party B in any other jurisdiction chosen by Party A.
3. **Multiple Court Exclusive Jurisdiction Clause.** Under this alternative, several courts would be identified as having jurisdiction. Whilst this alternative reduces the risk that Party A may be subjected to litigation in a jurisdiction that it would rather avoid, it gives rise to the following issues:
   (a) there is little advantage in specifying multiple EU jurisdictions due to the recognition of judgments between Member States within the EU;
   (b) if extra jurisdictions are listed outside the EU, it is unclear what the impact would be if, for example, Party A brings proceedings within a Member State, whilst Party B brings proceedings outside the EU (but within a specified and agreed jurisdiction); and
   (c) any further flexibility in pursuing Party B in as-yet-to-be determined jurisdictions is lost.

Ongoing Risks

Within France, the *Rothschild* decision will have strong persuasive influence over lower French courts, but the decision is not strictly binding. Nonetheless, the decision at best creates uncertainty as to how one-sided jurisdictional clauses will be treated by courts located in France and other European jurisdictions,[6] and at worst gives rise to a number of risks.

There is a risk that parties seeking leverage in litigation may attempt to: (i) bring proceedings outside the jurisdiction stipulated in the relevant agreement so as to have the court in the third country declare the jurisdiction clause invalid and assume jurisdiction, or (ii) challenge the jurisdiction of the courts when brought within the jurisdiction stipulated in the relevant agreement. If any such clause is found to be void and if any of the parties is domiciled in the EU, the fallback provision under the Regulation is that the defendant must be sued in the courts of the country in which it is domiciled.

If (i) an agreement is governed by French law, (ii) one of the parties is located in France, or (iii) there is another connection between the relevant contract and France, there is a distinct risk that a French court, recognising the *Rothschild* decision as precedent, would not respect a one-sided jurisdiction clause. Outside of France but within the EEA, it has been suggested that courts, for instance those in England and Germany, would be unlikely to follow *Rothschild*. As a result, the decision may have a limited impact since, in theory, the interpretation of EU law should be uniform across all Member States. It may ultimately take a European Court of Justice decision to clear the uncertainty created by the *Rothschild* decision.

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1 *Cour de cassation,* Civil Division 1, 26 September 2012, 11-26022 (Rothschild).

2 Mme. X ultimately lost her claim for damages. It is not entirely clear why, even if the jurisdiction clause was void, the French courts had jurisdiction to hear the case. Perhaps the connection arises because Mme. X received some financial services from the Bank in France or because she was advised through a French branch of the Bank.

3 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (as amended) (the Regulation).

4 Interestingly, the Cour de Cassation applied French law when determining the validity of the jurisdiction clause, rather than Luxembourg law, the law chosen by the parties under the agreement. While an agreement on choice of law is normally governed by the Rome I Regulation (Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations), which permits commercial parties to agree on a governing law, that regulation excludes agreements on the choice of court (at Article 1.2(e)). This then allowed the French courts to apply French law, but it is not clear why they chose to apply French law when the express intention of the parties was that the law of Luxembourg should apply to the entire contract.

5 The LMA did not provide a draft of this alternative form of jurisdiction clause but it did provide proposed drafts of the Single Court Exclusive Jurisdiction Clause and the Multiple Court Exclusive Jurisdiction Clause.

6 The provisions of the Regulation, which bind EU members except Denmark, apply to non-EU members of the EEA and to Denmark by virtue of certain treaty obligations.

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