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GETTING THE DEAL THROUGH: BREXIT

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The terms of the UK's withdrawal from the EU will inevitably dictate the extent to which Brexit impacts upon financial agreements. As this stage, it is important to consider the clauses which may have to be reviewed.

The changing political and economic landscape may affect material adverse change and force majeure clauses. Such clauses have, however, typically been interpreted in a restrictive manner by the English courts and therefore, unless explicit references are made, are unlikely to be triggered by Brexit.

Governing law and jurisdiction clauses and enforcement of judgements will be affected with the current reliance upon Brussels I Recast and Rome I Regulation no longer available. It is anticipated that similar reciprocal arrangements will be negotiated, however, in any interim period or until England becomes an independent signatory to the Lugano Convention, enforcement of judgements between England and EU Member States will no longer be automatic.

EU Member States are required to ensure that EEA financial institutions incorporate contractual recognition of write down and conversion wording into agreements not governed by EEA law imposing liabilities upon them. Such bail-in language currently provided for under Article 55 of the Bank Recovery and Resolution Directive may now be required to be expressly included in English law documents.

The EC Insolvency Regulation ensures that where a debtor's centre of main interest (COMI) is within an EU state this state is deemed the appropriate forum for the main insolvency proceedings. COMI representations may now require amendment to reflect the new position outside of the EU.

Sanctions clauses may require redrafting to reflect that EU sanctions no longer necessarily apply to UK entities or those dealing with UK entities.

References in agreements to Financial Collateral Arrangement Regulations need to be reviewed to ensure that such security arrangements continue to be enforceable in the UK.

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