

## **When does a funding agreement become binding?**

In the current economic climate it is not unusual for parties to try to avoid the consequences of agreements they have reached with other parties, especially where the new economic circumstances force parties to assume a much higher financial burden than would otherwise be the case.

A recent case involved a dispute between Maple Leaf, a Cayman incorporated hedge fund, and Astin, an investment manager, and the senior executives of a French drinks company. The defendants urgently needed finance in order to regain control of the company they operated, but the only funding they could obtain within the time deadline was very expensive at a fixed return of 25% per annum and a redemption amount equal to 125% of the loan sum of some 52m Euros. Therefore they tried to back out of their deal with the claimants at the earliest stage possible. The claimants claimed damages for breach of contract.

A version of a funding agreement had been signed by all but one of the intended parties and subsequent revised versions were circulated but not signed by the defendants. The defendants argued that the funding agreement they had made with the claimants was neither binding nor enforceable.

The defendants asserted that they did not believe they had entered into a contract, which the judge, was prepared to believe. However this did not assist them as the Courts apply an objective test of whether a reasonable man versed in business would have understood the exchanges between the parties to show an intention to enter into a legally binding contract.

The judge decided in favour of the claimants, ruling that a funding agreement becomes legally binding and enforceable when those involved have shown an intention to be contractually bound and it is reasonable for the claimants to believe that the defendants intend that to be the case.

The judge also dismissed the defendants' argument that the terms of the contract were too uncertain.

This is another example which shows that the Courts will adopt a practical and commercial approach looking to the true nature of the commercial arrangement between the parties rather than focusing purely on a precise technical analysis of whether there is "offer" and "acceptance".

It also underlines the importance of involving your lawyers in each step of the negotiations to ensure that you do not inadvertently find that you have made a binding contract before you were satisfied that all the key issues are covered.

If you would like to know more about this topic please contact Giles Gillingham, either by telephone on 01483 302000 or by email: [Giles.Gillingham@howell-jones.com](mailto:Giles.Gillingham@howell-jones.com)