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# Banking & Finance Disputes Journal - December 2016

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DAC Beachcroft's Banking & Finance Disputes Update focuses on events occurring within the banking, financial, city business and general regulatory sectors that give rise to or concern contentious matters, civil or regulatory.

## News and views

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### **International swaps and restitution - when can parties recover payments made under invalid or null and void swaps?**

In the latest in a series of disputes arising out of interest rate swap transactions entered into with Italian municipalities, the High Court has confirmed its approach to the question of when restitutionary remedies will be available, and what law should be applied in considering them.

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### **Beware the prospect of Unexplained Wealth Orders**

The Criminal Finances Bill (the "Bill"), which was introduced to the House of Commons on 13 October 2016, contains a new "unexplained wealth order" ("UWO") which will require an individual or organisation to explain the nature and extent of their ownership of a particular property, as well as the source of the funds used to purchase that property.

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### **Noteholders entitled to declaration that restructuring of a separate debt amounts to an event of default under the notes**

The Court of Appeal has rejected an appeal brought by a leading Spanish company ("FCC") against a first instance decision that an event of default had occurred in respect of a debt instrument.

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### **Lehman Brothers International (Europe) (in administration) ("LBIE") v Exxonmobil Financial Services BV ("EMFS") [2016] EWHC 2699 (Comm), 28 October 2016**

"Close of business" is a standard expression often used in business documents on the assumption that it has an established meaning. The High Court recently provided a useful reminder that whilst the expression does provide commercial flexibility, where certainty of terms is required, specific timings may be preferable for contractual documentation.

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### **Competition and Markets Authority ("CMA") secures disqualification of a director under the Companies Directors Disqualification Act 1986 ("CDDA")**

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### **Defendants successfully apply for discharge of ex parte Worldwide Freezing Order and dismissal of claim**

On 8 November 2016, judgment was delivered in PJSC Tatneft v Bogolyubov and others [2016] EWHC 2816 (Comm). In his judgment Picken J provided a detailed review of the meaning of a "good arguable case" and "risk of dissipation" in the context of a worldwide freezing order ("WFO") and fraud claims.

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## Dawn Raids: What to do when you get the knock on the door

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