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SKAT (the Danish Customs and Tax Administration) v [REDACTED] (in Special Administration) and others ([REDACTED])

Summary of the Independent Review undertaken by Pinsent Masons LLP of the previous work carried out by Pinsent Masons LLP for [REDACTED], in the context of the involvement of Pinsent Masons LLP in acting for SKAT in the above litigation

1. BACKGROUND

- 1.1 Between 28 November 2011 and 16 September 2014, Pinsent Masons LLP (the "Firm") acted primarily through its London office for [REDACTED]. The Firm ceased acting for [REDACTED] (referred to in this document collectively as the [REDACTED]) in September 2014.
- 1.2 In November 2016, the Firm was formally instructed to act on behalf of the Danish Customs and Tax Administration ("SKAT") in bringing proceedings against [REDACTED] and a number of other defendants, including entities owned or controlled by [REDACTED]. The Firm has through its Birmingham office been acting for SKAT since that date, and through its Dubai office since May 2018.
- 1.3 Proceedings have been brought by SKAT against the [REDACTED] in England and Dubai. The English proceedings were issued against [REDACTED]. The Dubai proceedings were issued by SKAT [REDACTED].
- 1.4 In addition to the two sets of Pinsent Masons' teams advising SKAT in Birmingham and Dubai, there is a third team of Pinsent Masons' lawyers in Leeds who are independently reviewing [REDACTED] in Dubai and held by Deloitte. Pinsent Masons [REDACTED].
- 1.5 When it first became apparent to the SKAT Birmingham team that some of the [REDACTED] were to be defendants, it was concluded that the Firm's previous involvement for [REDACTED] did not present any legal conflict of interest or create any other professional reason why the Firm should not act for SKAT.
- 1.6 As a result of the independent review carried out by the Leeds office, certain Pinsent Masons invoices came to the attention of SKAT in September 2018, and confirmations were provided to SKAT by the Firm that [REDACTED] were former clients. An information barrier was applied to the Firm's electronic files relating to [REDACTED] in September 2018.
- 1.7 There has been coverage in the Danish press about the Firm having a conflict of interest in representing SKAT; this appears to be as a result of documents belonging to [REDACTED] (including the Firm's advice) having been leaked to the press. The



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conflict issue has also been raised in the Danish Parliament by the Minister of Finance on 7 November 2018 (and now to be tabled for discussion in Parliament imminently).

- 1.8 It is of note is that the lawyers advising [REDACTED] have not raised the conflict issue with Pinsent Masons either directly or at two "return date" hearings between the parties relating to the worldwide freezing orders obtained against [REDACTED] on 13 July 2018 and 12 October 2018: at both hearings [REDACTED] was represented by lawyers.
- 1.9 The Risk & Compliance team within the Firm has conducted over the course of the last several days, an independent review of its previous work for [REDACTED], in the context of the claims being made by SKAT in the proceedings referred to above (the "Review").
- 1.10 This report is to summarise the conclusions of the Review.

2. REGULATORY FRAMEWORK

2.1 The Firm is regulated by the Solicitors Regulation Authority ("SRA"). The SRA has issued a number of mandatory Principles with which the Firm and all solicitors must comply. The SRA has also issued a Code of Conduct which contains a number of mandatory Outcomes with which the Firm must comply, and non-mandatory Indicative Behaviours with which the Firm is expected to comply.

2.2 The Firm takes compliance with its professional and regulatory obligations extremely seriously. The following Principles are relevant to the subject matter of the Review:

You must:-

1. uphold the rule of the law and proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised; and
4. act in the best interests of each client;

2.3 The SRA Code of Conduct defines conflicts of interests as follows:-

2.3.1 "client conflict" means "any situation where you owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and the duties conflict, or there is a significant risk that those duties may conflict"; and

2.3.2 "own interest conflict" means "any situation where your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter."



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- 2.4 Outcome 3.4 provides that a Firm should not act "if there is an own interest conflict or a significant risk of an own interest conflict".
- 2.5 Outcome 3.5 provides that a Firm should not act "if there is a client conflict, or a significant risk of a client conflict, unless circumstances set out in Outcomes 3.6 or 3.7 (which are not relevant here) apply."
- 2.6 The SRA Code of Conduct also contains the following rules relevant to confidentiality:
- 2.6.1 Outcome 4.1 states that you must keep the affairs of clients confidential unless disclosure is required or permitted by law or other client consents.
- 2.6.2 Outcome 4.3 states that where your duty of confidentiality to one client comes into conflict with your duty of disclosure to another client, your duty of confidentiality takes precedence.
- 2.6.3 Outcome 4.4 provides that you must not act for a client in a matter where it has a interest adverse to another client for whom you hold confidential information, where that information is material to the first client in that matter, unless the confidential information can be protected by the use of effective safeguards, and:
- (a) the first client is aware of, and understands, the relevant issues and gives informed consent;
 - (b) either the client whose confidential information the Firm is holding gives informed consent and you agree the safeguards to protect their information or, where this is not possible, you put in place effective safeguards to protect their information, including information barriers; and
 - (c) it is reasonable in all the circumstances to act for the first client with such safeguards in place.

3. METHODOLOGY OF THE REVIEW

- 3.1 A review of the Firm's client and matter systems was carried out, which identified that the Firm had acted for [REDACTED], [REDACTED].
- 3.2 A further entity which was referred to in the [REDACTED], [REDACTED] was referred to in a matter description for a matter for [REDACTED], but was not a client of the Firm in its own right.
- 3.3 19 matters had been opened across the [REDACTED] (as summarised in the attached Schedule). All matters related to instructions primarily run out of the Firm's London office.
- 3.4 The Firm also identified that [REDACTED], [REDACTED].
- 3.5 The matter descriptions, time records and billing information for each of the 21 matters were reviewed. This revealed that, on 8 of the matters, no time had been billed to the relevant client (on two of the matters, there had been small amounts of time recorded, but not billed). On analysis of the reasons why matters were opened but then not



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progressed, in respect of 5 of the matters, it was because the matter was initially opened in the name of one entity but then progressed in the name of another entity. It is not uncommon for a file to be opened and then, following further discussion with the client, it being appreciated that the work will actually be carried out for the benefit of another entity, and so the file is then opened in the name of the correct client. The Review team agreed that there was no reason why changing client name should have created any concern for the relevant [REDACTED].

- 3.6 On one of the matters where a small amount of time was incurred but not billed (Matter 1 in the Schedule), the fee earners were identified as tax specialists, and their involvement was specifically discussed. The partner (Eloise Walker) confirmed that she (and an associate) had attended an initial meeting with the client, following which a draft engagement letter had been sent to outline a possible scope of work. The draft engagement letter made it clear that the Firm would not be providing advice on US or Cayman tax issues. However, the instructions were never confirmed and so the Firm did not provide any advice.
- 3.7 The remaining 11 matters for the [REDACTED] had led to invoices for fees totalling £131,288.33 (exclusive of VAT and disbursements). Details of the individual matters invoiced amounts are in the Schedule. This fee income for [REDACTED] represents 0.015% of the total fees billed by the Firm in the same period that the Firm acted for [REDACTED].
- 3.8 The matter descriptions of the 11 matters for [REDACTED] and the two matters for [REDACTED] were reviewed to seek to identify matters which looked to have no likely relevance, and those which could be potentially more relevant.
- 3.9 In respect of matters where the descriptions looked to have no relevance to the SKAT litigation (e.g. matters relating to employment law or construction law advice), the documents stored in the electronic matter workspaces were reviewed to ensure that the actual subject matter of the matters was consistent with the matter descriptions. They were, and so those five matters were identified in the Schedule as being irrelevant.
- 3.10 Six matters therefore remained as being potentially relevant (Matters 2, 6, 9, 12, 14 and 17 in the attached Schedule). This comprised one matter for [REDACTED], three matters for [REDACTED], one matter for [REDACTED] and one matter for [REDACTED]. In respect of those matters, the time records were reviewed to identify the fee earners who had been involved in the matters and the electronic matter workspaces for each of the matters was reviewed to understand more about the subject matter of the instruction.
- 3.11 Where the content of the electronic matter workspaces appeared not to have the emails expected from the principal fee earners who recorded time:
- 3.11.1 where the principal fee earner was no longer with the Firm, an IT review was carried out to locate potentially relevant emails, and these were separately reviewed; and
- 3.11.2 where the principal fee earners remained with the Firm, the Review team spoke to the fee-earners concerned to understand more about their involvement, and they were asked to review their own files, prior to a further discussion with the Review team.
- 3.12 The Review team reviewed the documents in the electronic files for the matters concerned, with the intention of identifying any evidence:



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- 3.12.1 that the work related to the dividend arbitrage or other activities which appear to have been carried out by [REDACTED] or [REDACTED]
- 3.12.2 that the Firm was aware, or should reasonably have been aware, that its work product was intended to be used for the activities which appear to have been carried out by [REDACTED]
- 3.13 The main work which was identified in the Danish press article had been carried out by [REDACTED] a partner who left the Firm in 2017, and the Review team was therefore hampered by not being able to discuss the work with him direct. The Review team therefore involved other relevant experts in the Firm (including the Head of Financial Regulation), to carry out the exercise of considering whether anything which had been the subject matter of the advice provided by [REDACTED] was relevant in the context of the SKAT litigation. The Review team discussed their conclusions with them.
- 3.14 The Firm has not discussed the [REDACTED] matters with [REDACTED]. However, the Firm wrote to him at his current employer on 8 November 2018, and the General Counsel of that firm confirmed that [REDACTED] had spoken to the Danish press (which he now regretted), and the GC confirmed that his firm's policy is for lawyers not to have any direct contact with the press, which is a standard policy amongst law firms.
- 3.15 Where the principal fee earners remain with the Firm, the Review team sent the relevant fee-earner the [REDACTED] for the SKAT litigation, and the Review team asked the relevant fee-earner to consider whether anything which had been the subject matter of their advice was relevant in the context of the SKAT litigation. The Review team discussed their conclusions with them.
- 3.16 The picture gained by the Review team from their review of the files and discussions with the principal fee earners and the Head of Financial Regulation, was that there had been no cause for concern in relation to the advice sought from the Firm:
- 3.16.1 The two [REDACTED] were FCA regulated, and appeared to have the internal organisational infrastructure which one would expect in a regulated entity e.g. an in-house legal function and compliance department;
- 3.16.2 The [REDACTED] had used other large City professional advisers (in legal and accounting areas and as confirmed in the agreed search term list, where many professional advisors are listed). This did not cause any concerns but added credibility to the organisations;
- 3.16.3 The [REDACTED] came to the Firm with proposed structures which had been created by other professional advisers or which they had used previously, and none of the structures outlined to the Firm appeared in any way out of the ordinary;
- 3.16.4 The advice sought from the Firm was also not seen as in any way out of the ordinary or such to have caused any alarm bells to ring;
- 3.16.5 The Firm gave no tax advice to any of [REDACTED] – whether on UK or any other tax regime;



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- 3.16.6 In respect of work carried out by the Firm in drafting or reviewing standard form/generic documents, there was no reason to consider that any documents in which the Firm was involved would be used for any purposes connected with the subject matter of the SKAT litigation.
- 3.16.7 There was nothing else to indicate that any of the work was, or would be, used for dividend arbitration or other activities which appear to have been carried out by [REDACTED] (as described in the [REDACTED] in the SKAT litigation).
- 3.17 The conclusions reached for each of the relevant matters (Matters 2, 6, 9, 12, 14 and 17 in the attached Schedule) are set out in the Schedule.

4. OVERALL CONCLUSIONS FROM THE REVIEW

- 4.1 As a result of the Review, the Firm has therefore concluded that, in respect of its obligations to [REDACTED] for whom the Firm acted:
- 4.1.1 The Firm's ongoing obligations of confidentiality mean that no information from those matters can be made available to any third party without client consent. This includes providing access to any third party to enable a review of the conclusions reached by the Firm in the Review;
- 4.1.2 As a result of the Review, the Firm has not identified any matter where the information received by the Firm from [REDACTED] or the advice or other work sought from the Firm is material to the subject matter of the SKAT litigation. In such circumstances, the Firm does not consider that Outcome 4.4 of the SRA Code of Conduct is relevant;
- 4.1.3 Notwithstanding the conclusion in 4.1.2 above, out of an abundance of caution, the Firm put in place effective safeguards to ensure the continued confidentiality of the documents and information received from [REDACTED]. Those safeguards have been in place since 24 September 2018 (except in relation to the matters for [REDACTED], which have been in place since 9 November 2018). In respect of the period since early 2018 (when the relevance of [REDACTED] as potential defendants in the SKAT litigation first became apparent), the Review team has sought individual confirmations from each of the lawyers involved in acting for SKAT that they have not sought (and will not seek) to access any information contained in any of the electronic matter workspaces or hard copy files, and will not otherwise seek to find out any confidential information held by the Firm from its work for any of [REDACTED].
- 4.2 In respect of any potential "client conflict" between the Firm's obligations to SKAT and its obligations to [REDACTED], the conclusion of the Review is that there was no conflict. None of [REDACTED] remains a current client of the Firm and so the Firm is not involved in any matters for [REDACTED] which could conflict with its obligations to SKAT. The Firm has no obligations to act in the best interests of any of [REDACTED].



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- 4.3 The Firm does not consider that there is any "own interest conflict". The Firm considers that it can properly discharge its ongoing obligations in respect of confidentiality to [REDACTED] without in any way bringing those into conflict with its obligations to SKAT.

Pinsent Masons LLP
21 November 2018

