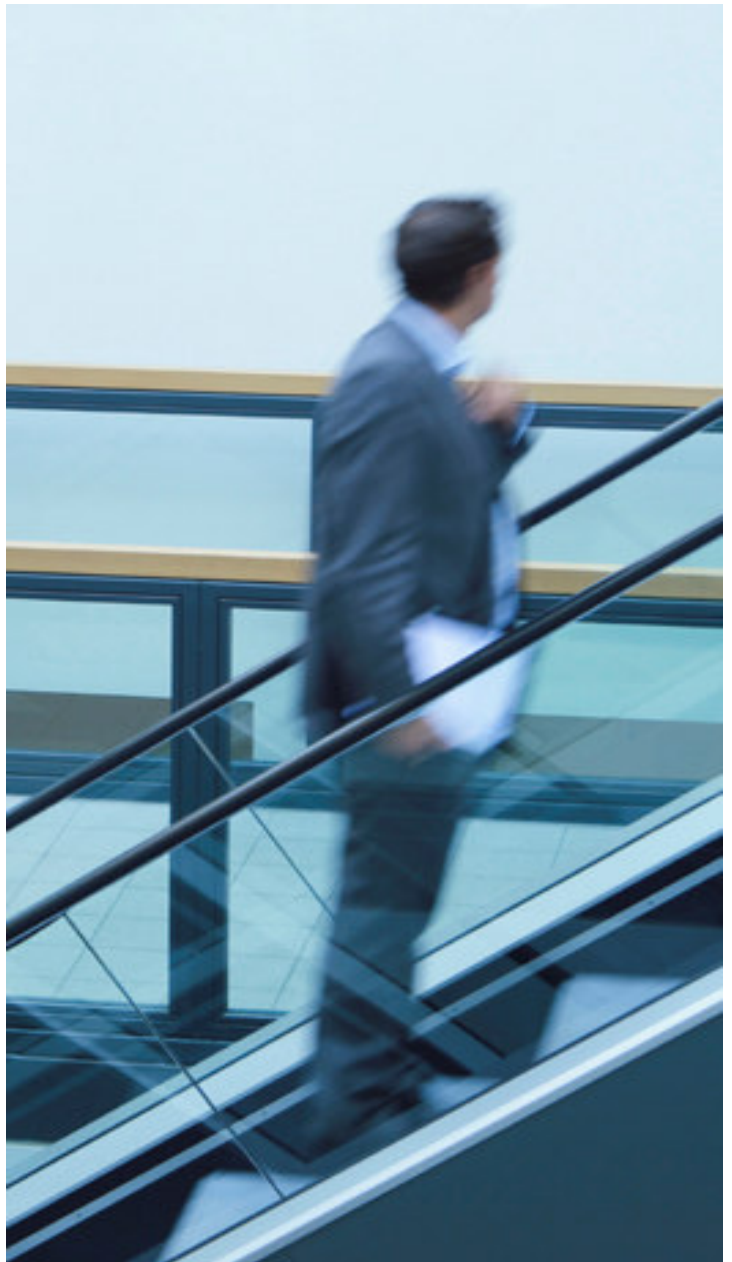


## Stop Press

Corporate & Commercial  
URGENT REVIEW OF  
DOCUMENTATION REQUIRED  
ENVIROCO LTD V FARSTAD  
SUPPLY AS



As a result of the case of Enviroco Ltd v Farstad Supply AS reliance on the definition of “subsidiary” as contained in the Companies Act as widely used in legal documentation may have unexpected and undesirable consequences.

The decision means that a company that would otherwise have fallen within the definition of a subsidiary may no longer do so as a result of the shares in that company being used as security.

## **Potential Impact on Standard Documents**

This decision does not affect parent-subsidiary relationships that exist (that is, by virtue of the parent holding the majority of the voting rights in the subsidiary) but changes may be necessary to documentation where the form of security is a pledge or a legal mortgage to avoid an unintended alteration to the relationship.

## **Contractual implications**

This ruling has implications for contracts entered into which contain a definition of "subsidiary", "affiliate", "group" and "holding company" by reference to the definition of “subsidiary” contained within the Companies Act.

## **Impact on financial documentation**

Financial institutions may wish to consider tightening or amending the definitions of "subsidiary", "affiliate" and "member" contained in their standard finance documents.

## **Impact on tax provisions**

The decision may have VAT implications. This is because current VAT group rules rely on the Companies Acts' definition of subsidiary.

## **Impact on employee share and share option plans.**

In some circumstances, the decision may have implications for employee share option plans and for employee benefit trusts. Companies and advisers will need to consider the possible consequences of this decision, if there is a legal mortgage or pledge over a participating company's shares, or shares are held by a nominee, or either of these situations may occur.

## **Impact on property agreements**

In a property context, the definition of “subsidiary” is relevant to provisions that determine occupation or business use under the Landlord and Tenant Act 1954.

## **Next steps**

The relevant provisions of the Companies Act 1985 are repeated, without material amendment in the Companies Act 2006. This decision is therefore still relevant to the definition of subsidiary under the new Companies Act 2006.

You should carry out a review of existing agreements that use or incorporate the Companies Act definition of subsidiary and decide whether supplemental wording should be agreed.

In light of the importance of this decision the case is being appealed to the Supreme Court. We shall issue a further Release as soon as we become aware of the outcome of Appeal.

**This note does not constitute legal advice but is intended as general guidance only**

If you would like further information on this or any other related matter please e-mail us at [corporate@druces.com](mailto:corporate@druces.com) or telephone us on 020 7638 9271 and ask for Toby Stroh or Christopher Axford