

## **Bonuses – A Contractual Entitlement?**

There is a popular view that because bankers' behaviour led to the economic recession, they should not be paid any bonuses. We know that the Chancellor Alistair Darling has intervened to impose a temporary payroll tax of 50% on any individual discretionary bonus of more than £25,000 which appears to have, quite incidentally, produced a sizeable "bonus" for the Treasury. Certainly you could expect to see pressure on bonus payments over the next few years and at the very least banks and financial institutions retaining a contractual right to withdraw bonuses if financial performance is poor.

However, what about bonuses "earned" in recent years, but not yet paid? What attitude will the courts take if financial institutions avoid its contractual obligations and refuse to make payments to senior executives?

The High Court have recently rejected arguments raised by a major bank that executives must give up their contractual benefits because of subsequent unforeseen events (that is, the recession), or that because each executive had a contractual obligation to act in its employer's best interests, they should not receive their contractual bonuses. The court felt the contractual terms were sacrosanct as the bonuses had in effect been "declared" (even though the bonuses were said to be "discretionary").

It will come as no surprise that this case involved many millions of euros in bonus payments and that skilful (and expensive) legal advisers would have considered the cases from every angle. However the cases are just as relevant for the executive whose bonus expectation is a fraction (rather than a multiple) of his or her salary and who will be comforted to know that some of the creative arguments that employers adopt in trying to avoid bonus payments, will not necessarily succeed in court.

### **Ends**

### **Words – 295**

For further information please contact:

Suzanne Orsler, SOPR – Tel 07813 131350, or email [suzanneorsler@my.intervivo.com](mailto:suzanneorsler@my.intervivo.com)  
suzanneorsler@aol.com

Alan Jones - Tel 07970 495733  
jonesa@averta.com

Avarta Employment Lawyers  
Vienna House  
Starley Way  
Birmingham International Park  
Solihull  
B37 7GN

Tel - 0870 421 1952

[www.averta.com](http://www.averta.com)