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**Course Title:** Seminar on Updates in Banking Law

**Speakers:** Paul Downes QC – Barrister, 2 Temple Gardens  
Smitha Menon – Partner, WongPartnership LLP

**Duration:** 98 minutes

**Course description:** **Rectification of ISDA Forms – a step too far?**

On 8th March 2016 Mr Justice Cooke handed down judgment in the case of LSREF III Wight v Millvalley [2016] EWHC 466 (Comm) in which he ordered rectification of an ISDA long form confirmation governed by the ISDA 2006 Definitions.

The Judge held that the parties had executed the long form confirmation in error and that they had in fact agreed to a swap governed by an ISDA Master Agreement in the 2002 form (as opposed to the 1992 form which is what the confirmation said).

The Judge held that the entire agreement clause in the 2002 form did not preclude rectification and that the bank's "mistake" should be analysed on a purely objective basis, whilst at the same time sharing the misgivings expressed by Leggatt J in Mihail Tartsinis v Navona Management Company [2015] EWHC 57 (Comm) with regard to the ramifications of a purely objective approach.

**Paul Downes QC** will explain the impact of the decision and the present state of the law with regard to the objective/subjective approaches to rectification. They will look at the trilogy of cases, Britoil v Hunt, Chartbrook v Persimmon Homes and Daventry v Daventry, and discuss whether the purely objective approach is sound, or a modern heresy.

**Smitha Menon** will be sharing her perspective on the Singapore developments in Banking Law.

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### About the speakers:



#### **Paul Downes QC – Barrister, 2 Temple Gardens**

*Paul Downes QC heads the 2TG Banking & Finance Group. Paul joined 2TG after working for Barclays Bank for four years and gaining a first in law from Oxford University. Paul is an Associate of the Chartered Institute of Bankers and is recommended by the leading directories in commercial dispute resolution and banking & finance. Paul has appeared in many high profile banking and commercial cases in recent years including Shah v HSBC (2013) on bank's duties under the Proceeds of Crime Act, FCA v K (2015) on LIBOR manipulation, N v S (2015) the interim declaration, Globe Motors v TRW (2016) on construction, Myers v Kestrel (2015) on the construction of loan notes and insolvency, and Lone Star v Millvalley (2016) on the rectification of ISDA forms.*

*Paul is the lead contributor to the LexisNexis publication Encyclopaedia of Forms and Precedents, Banking Volume, and is also the lead contributor to the Sweet & Maxwell publication: Civil Appeals (chapters on the Supreme Court and the Privy Council).*



#### **Smitha Menon – Partner, WongPartnership LLP**

*Smitha Menon is a Partner in the Banking & Financial Disputes Practice.*

*Smitha has an active practice handling commercial, shareholder and banking litigation and international arbitration matters as well as cross border corporate restructuring matters.*

*Matters of significance which Smitha has been involved in include acting for an international bank in proceedings over disputed foreign exchange transactions giving rise to a USD300 million claim, an international private equity firm in a shareholders' dispute arising from a US\$260 million leveraged buy-out of a technology company which resulted in proceedings before courts in several jurisdictions; an international bank in a multimillion dollar claim arising from disputed accumulator transactions which resulted in two high court trials and two Court of Appeal proceedings; the independent directors of an S-chip company on a high profile board dispute involving questionable investments and transactions in the PRC; a hedge fund in its bid to overturn a decision by the Monetary Authority of Singapore to withdraw the fund's exemption from holding a capital markets services license; foreign administrators in tracing Singapore bank assets that were part of fraudulent transactions, obtaining court orders against compelling the disclosure of banking documents and information to assist in the tracing of assets and injuncting Singapore parties involved in the fraud.*

*A former Council member of the Singapore Law Society, Smitha is active on several working committees and currently serves on the Professional Affairs Committee of the Singapore Academy of Law as well as chairs the Young Members Chapter. She is the International Chamber of Commerce Young Arbitrators Forum Asia Representative and the treasurer of the Singapore network of the International Women's Insolvency and Restructuring Confederation (IWIRC).*

*Smitha graduated from King's College, London and is admitted to the Singapore Bar.*

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