

# SEQUANA

Press release

Boulogne-Billancourt, 6 February 2019

**The Court of Appeal in London confirms for the largest part the decision made in first instance  
by the High Court of Justice in the litigation between  
Sequana and British American Tobacco (BAT)**

**This decision only affects Sequana and has no impact on its subsidiaries  
Arjowiggins and Antalis which are not a party to this litigation**

Since the end of 2013, Sequana has been involved in legal proceedings with BAT Industries plc and its subsidiary, BTI 2014 LLC (the BAT Group), regarding the legality of two dividends distributed to Sequana by its former subsidiary Windward Prospects Ltd, for a total amount of €578 million, out of which €443 million was in respect of the first dividend and €135 million for the second.

At first instance, the High Court of Justice decided in July 2016 and February 2017 to dismiss all the claims made by the BAT Group based on the *Companies Act 2006* with respect to both dividends, and to accept the BAT Group claims based on section 423 of the *Insolvency Act 1986* with respect to the second dividend only. The High Court had accordingly ordered Sequana to pay to BAT a principal sum capped at the amount of the second dividend plus interest, as well as part of BAT's costs of the proceedings, amounting to approximately €163 million (excluding forex exchange impact).

Based on the advice received, and considering that it had good arguable points to raise on appeal, especially on whether a dividend is capable of being a transaction falling within section 423 of the *Insolvency Act 1986*, Sequana lodged an appeal in March 2017.

The BAT Group on the other hand lodged appeal against the decisions made against it regarding its claims on both dividends based on the *Companies Act 2006*. However, before the hearing, BAT dropped all of its claims with respect to the first dividend of €443 million, so that the scope of the dispute is limited to the qualification of the distribution of the second dividend under section 423 of the *Insolvency Act 1986* and to the behavior of the directors who had authorised this distribution.

The decision of the Court of Appeal in London handed down today confirms the first instance judgment with respect to the absence of any liability of the directors under the *Companies Act 2006*. However, in spite of Sequana's confidence in an overall positive outcome to this litigation, the Court of Appeal also confirms the first instance decision as to the application of section 423 of the *Insolvency Act 1986* to the second dividend, thus upholding the order against Sequana on this issue.

Sequana is currently reviewing the terms of the decision and intends to seek permission to appeal with the Supreme Court, in accordance with applicable procedural rules.

The decision handed down by the Court of Appeal only affects Sequana, as its subsidiaries Arjowiggins and Antalis are not a party to the proceedings.

Since Sequana is under *sauvegarde* proceedings with an observation period extended until 17 May 2019, Sequana considers that the decision of the Court of Appeal in London cannot be enforced against it due to the fact that the BAT Group's claim remains disputed.

Considering this decision and with the help of its advisors, and while the situation of its group and the value of its assets have been materially adversely affected, in particular due to the uncertainties attached to the BAT litigation, Sequana is considering its options both in the United Kingdom and in France to best protect its interests, including in the *sauvegarde* proceedings opened in its benefit.

### About Sequana

**Sequana** (Euronext Paris: SEQ) reported sales of €2.8 billion in 2017 through:

- **Antalis:** leader in B2B distribution of Papers and industrial Packaging and number two in the distribution of Visual Communication media in Europe with around 5,500 employees based in 41 countries.
- **Arjowiggins:** manufacturer of recycled and specialty papers, with around 2,300 employees.

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## Appendix

### Reminder on the BAT litigation and explanation of the reasoning of the Court of Appeal

As described in the annual reports and in Sequana's previous press releases, the case between Sequana and the BAT group relates to the legality of two dividends distributed to Sequana by its former subsidiary Windward Prospects Ltd and representing a total amount of €578 million, out of which €443 million for the first dividend and €135 million for the second dividend.

On the merits, the BAT Group challenged the disputed distributions on the following grounds:

- (i) the distributions were in breach of the *Companies Act 2006* in that they were illegally and incorrectly decided by the Board of Directors of Windward Prospects Ltd in view of the amount of distributable reserves available at the dates on which the dividends were paid. The BAT Group contends that these amounts were incorrectly calculated given the amount of the provisions that ought to have been set aside to cover risks relating to the costs of cleaning up the Fox River and other sites located in the United States.
- (ii) the distributions were in breach of section 423 of the *Insolvency Act 1986* in England resulting in depletion of Windward Prospects Ltd's assets, which prejudiced the interests of its creditors, among which BAT Industries Plc.

The judgments handed down in first instance in July 2016 and February 2017 by the High Court of Justice in London decided as follows:

- they dismissed the claims made by BAT based on the *Companies Act 2006* with respect to both dividends and challenging the validity of Windward Prospects Ltd's accounts on which the distributions of dividends were made. The court considered that the decisions of the directors of Windward Prospects Ltd were properly made in accordance with applicable legal rules and accounting practice, and therefore did not find the directors liable.
- they accepted BAT's claims based on section 423 of the *Insolvency Act 1986* with respect to the second dividend only, and considered that the distribution of a dividend fell within the scope of this provision. The court accordingly ordered Sequana to pay to BAT a principal sum capped at the amount of the second dividend plus interest, as well as part of BAT's costs of the proceedings, amounting to approximately €163 million (excluding forex exchange impact).

In a decision handed down on 6 February 2019, the Court of Appeal in London confirms the first instance judgment with respect to the absence of any liability of the directors under the *Companies Act 2006* and to the application of section 423 of the *Insolvency Act 1986* to the second dividend.

Section 423 (1) (a) of the *Insolvency Act 1986* applies to transactions entered into for the purpose of prejudicing creditors' rights and made at an undervalue; the scope of this provision encompasses a gift made by a person to another as well as transactions that provide for no consideration. Paragraph (2) of section 423 provides that where a court is satisfied that a transaction falls within the scope described in paragraph (1), it may restore the position to what it would have been if the transaction had not been entered into and otherwise protect the interests of persons who are victims of the transaction.

The decision of the Court of Appeal is based on the following reasoning:

- following Sequana's arguments, the Court did not consider that the dividend was a gift, but a return on the shareholder's investment;
- however, and contrary to Sequana's position, while the dividend is not a gift, the Court considered that it could be defined as a transaction with no consideration, and therefore fall within the scope of section 423 of the *Insolvency Act 1986*;
- the Court ruled that a dividend is a transaction, even though the dividend is not a gift and there is no contract between the company and its shareholder for its distribution, the Court considered in the present case that the second dividend of May 2009 could be viewed as a transaction between Windward Prospects Ltd and its shareholder, considering Sequana's involvement in Windward Prospects Ltd as a holding company and its key role in the decision to distribute the dividend by way of set-off with a debt owed by Sequana to Windward Prospects Ltd;
- lastly, the Court confirmed the reasoning of Mrs. Justice Rose in first instance according to which Sequana conducted this transaction with the purpose of putting assets beyond the reach of creditors or of prejudicing creditors, more specifically with a view to escaping Sequana's obligations to Windward Prospects Ltd. This opinion may have been strengthened by the fact

that the distribution of dividend was made by way of a set-off with a claim Windward Prospects Ltd had against Sequana just before the company was sold to a third party;

- the Court of Appeal also dismissed the appeal on the amount of the first instance judgment save for an issue relating to the calculation of interest; indeed the Court decided that interest should apply from a later date than what was decided in first instance by the High Court of Justice. As a consequence, the overall amount of the judgment should be slightly lower.

The appeals lodged by the BAT Group, and in particular those relating to the liability of the former directors of Windward Prospects Ltd for failing to take into account the interests of the creditors, were all dismissed by the Court of Appeal which considered that there was no strong guidance in law or in case law supporting the BAT Group's position. The Court ruled that in order for liability to apply, the directors of Windward Prospects Ltd would have had to have known or ought to have known that the company was likely insolvent when they made their decision. Lastly, the appeal lodged by the BAT Group on issues of currency conversion between € and \$ of the amounts Sequana was ordered to pay was also dismissed.

Sequana considers that the legal grounds on which the decision of the Court of Appeal confirming the first instance decision with respect to section 423 of the *Insolvency Act 1986* is based can be challenged. Accordingly, Sequana intends to seek permission from the Supreme Court in the United Kingdom to bring an appeal before it.

Information has been provided on a regular basis about this litigation, both in the annual reports filed by Sequana with the Autorité des Marchés Financiers since 2014 and, more recently, in the press releases published by the company.