

**CITY OF LONDON LAW SOCIETY**  
**FINANCIAL LAW COMMITTEE**  
**Minutes of a meeting held at the office of Travers Smith,**  
**10 Snow Hill, London EC1A 2AL**  
**on 10 September 2014 at 1.00pm**

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Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)  
Graham Smith (Allen & Overy LLP – alternate for Simon Roberts)  
Nigel Ward (Ashurst LLP)  
Charles Cochrane (Clifford Chance LLP)  
Nick Swiss (Eversheds LLP)  
Alan Newton (Freshfields Bruckhaus Deringer LLP)  
Gary Hamp (Hogan Lovells LLP – alternate for Penny Angell)  
Jeremy Stokeld (Linklaters LLP – alternate for David Ereira)  
John Woodhall (Sidley Austin LLP – alternate for Matthew Dening)  
John Davies (Simmons & Simmons LLP)  
Andrew McClean (Slaughter and May)  
Mark Evans (Travers Smith)

In attendance: Rachael MacKay (Herbert Smith Freehills LLP)

**1. APOLOGIES FOR ABSENCE, MATTERS ARISING, MINUTES OF LAST MEETING, VACANCY**

It noted that the minutes of the last meeting which took place on 21 May 2014 had been circulated and were now approved. Apologies received from Richard Calnan (Norton Rose Fulbright) and Presley Warner (Sullivan Cromwell). The Chairman reminded the Committee that there was a vacancy on the Committee and that CVs had been circulated for consideration. (*Afternote: the members, after considering the applications, decided to appoint Sarah Smith, now a partner in Akin Gump LLP.*)

**2. SECURED TRANSACTION REFORM**

On behalf of the chairman of the relevant working party, Richard Calnan, the Chairman updated the Committee on the work of the working party.

**2.1 Fixed and floating charges on insolvency**

A very useful open meeting on this topic had taken place on 15 July at which those attending were of the view that there is a problem with the existing insolvency law as, in effect, it imposes a levy on floating charge but not on fixed charges. In light of that meeting, the chairman plans to update the latest discussion paper for comment by the working party. A note of the meeting is available on the CLLS website.

**2.2 Restrictions on transfer**

The Small Business, Enterprise and Employment Bill proposes a prohibition on restrictions on the transfer of receivables in certain types of contract. The working party's view is that this is an unnecessary restriction on freedom of contract and that there are better ways to address valid concerns. The chairman plans to update the working party's note on this topic and then circulate for comment.

3. **MEANING OF "DEBENTURE" AND FSMA: CASE OF *FONS HF (IN LIQUIDATION) V CORPORAL LTD AND PILLAR SECURITISATION LIMITED* [2014] EWCA 304**

The Committee was reminded that following the meeting which had taken place between representatives of this Committee, the CLLS Regulatory Committee, the Treasury, the FCA and the LMA in June, a letter (dated 17 July) from the FCA had confirmed its view that the decision in *Fons* has not affected the FSMA regulatory perimeter. The Committee agreed that the letter was helpful.

4. **FUTURE EC BAN ON "BIG FOUR" CLAUSES (PROVISIONS WHICH RESTRICT CHOICE OF AUDITOR TO PARTICULAR LISTS OR CATEGORIES)**

The Committee was reminded that in April 2014, the European Parliament and Council had adopted the EC's proposal amend the Statutory Audit Directive and introduce a new Regulation on audit. Of significance to banking transactions and loan documentation, is the prohibition on "Big four" terms in any contract such that any provision in an agreement between a company and a third party which restrict a company's choice of auditor to particular lists or categories will be void. It was noted that there are no grandfathering provisions so the prohibition, when in force, will apply to agreements being entered into now.

5. **SCOTTISH INDEPENDENCE REFERENDUM**

It was agreed by all that a myriad of legal issues would arise if Scotland were to vote in favour of independence from the rest of the UK. The Committee would await the outcome of the Referendum on 18 September.

6. **FINANCIAL STABILITY**

6.1 **Banking Reform Act 2013, Bail-in, EU Recovery and Resolution Directive proposal and Liikanen Regulation**

6.1.1 **Banking Recovery and Resolution Directive (BRRD)**

It was reported that the BRRD has been finalised and published in the EU Official Journal on 12 June. The deadline for transposition into national law was 31 December 2014 and (save for the bail-in provisions, as to which see above) the BRRD would apply from 1 January 2015.

6.1.2 **Consultation on UK Implementation**

It was reported that a joint working party meeting would be taking place later that day to consider a response to the Treasury Consultation.

*(Afternote: The response of the Committee, the Insolvency Law Committee and the Law Society for England and Wales is available on the CLLS website).*

6.2 **Structural Reforms**

It was reported that further developments were unlikely until the new Commission is in place.

6.3 **Banking Act 2009**

The recent amendments to the Banking Act 2009 were noted. It was noted that in certain areas (e.g. bail-in) the implementation of the BRRD would render relevant parts of this legislation redundant but other parts would be implemented (e.g. extension of regime to other systematically risky institutions).

7. **FCA WHOLESALE MARKETS REVIEW**

It was reported that the FCA had launched a call for input on whether to hold a market study on competition in wholesale markets. It was further noted that the current main focus includes market infrastructure, investment banking, asset management and corporate banking. The call for input runs until 9 October 2014. The Committee would keep a watching brief on developments.

8. **RATIFICATION OF THE CAPE TOWN CONVENTION (SECURITY OVER AIRCRAFT)**

The Committee was reminded that it had recently supported proposals made by the aviation working group in relation to planned ratification by secondary legislation in order to overcome some of the problems caused by the *Blue Sky* rule concerning *lex situs* of aircraft. Further developments were awaited.

9. **EUROPEAN ACCOUNT PRESERVATION ORDER (EAPO)**

It was noted that the Regulation concerning the new EAPO had come into force in July, although the main provisions will not apply until January 2017. It was noted that the UK remained opted out, but no doubt this would be reviewed.

10. **EC INSOLVENCY REGULATION**

It was noted that the EC had published revised draft recitals to the proposed amended form of the Insolvency Regulation over the summer. The Committee was reminded that under EU law the recitals are part of the legislation and can be used to assist if there are any gaps or uncertainties that need to be addressed in relation to the interpretation and scope of the measure.

11. **BILLS OF SALE – LAW COMMISSION ANNOUNCEMENT TO REVIEW**

It was noted that, in July, the Law Reform Commission had announced a review of the law on bills of sale and that it expects to report and make recommendations for reform in summer 2016. This issue would be considered by the security reform working party at the appropriate time. Until then, further developments were awaited.

12. **ANY OTHER BUSINESS AND CLOSE**

An issue regarding a possible conflict between the ability to redact certain personal information from charge documents filed at Companies House (due to the Companies Act 2006) and inconsistent policy being applied by the Land Registry in relation to redacted documents was raised and discussed. This would be kept under review.

There being no further business the meeting was closed.

**Nothing in these minutes should be considered as legal advice or relied upon as such.**