

CITY OF LONDON LAW SOCIETY
FINANCIAL LAW COMMITTEE
Minutes of a meeting held at the office of
Travers Smith LLP, 10 Snow Hill, London EC1A 2AL
on 3 October 2018 at 1.00pm

Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)
Penny Angell (Hogan Lovells LLP)
James Bresslaw (Simmons & Simmons LLP)
Richard Calnan (Norton Rose Fulbright LLP)
Charles Cochrane (Clifford Chance LLP)
Matthew Denning (Sidley Austin LLP)
David Ereira (Paul Hastings (Europe) LLP)
Mark Evans (Travers Smith LLP)
Andrew McClean (Slaughter & May)
Flora McLean (Freshfields Bruckhaus Deringer LLP) (alternate for Ken Baird)
Simon Roberts (Allen & Overy LLP)
Sarah Smith (Akin Gump LLP)
Jeremy Stokeld (Linklaters LLP)
Nick Swiss (Eversheds LLP)
Nigel Ward (Ashurst LLP)

In attendance: Rachael MacKay (Herbert Smith Freehills LLP)

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

The Chairman opened the meeting and reported that apologies had been received from Ken Baird (Freshfield Bruckhaus Deringer LLP) and Presley Warner (Sullivan & Cromwell LLP).

It was noted that the minutes of the last meeting which took place on 19 July 2018 had been circulated and were now approved.

2. SECURED TRANSACTION REFORM

2.1 The Business Contract Terms (Assignment of Receivables) Regulations 2018 – ban on non-assignment clauses in some business to business contracts regarding receivables

The Committee was reminded that The Business Contract Terms (Assignment of Receivables) Regulations 2018 had been laid before Parliament on 4 July 2018 and had been debated in the House of Commons on 10 September. The reading in the House of Lords was scheduled for 17 October and it was thought likely that the Regulations would therefore come into force shortly thereafter. The Committee was reminded that, once in force, the Regulations will apply to relevant contracts entered into on or after 31 December 2018.

It was noted that questions could arise in practice as to the extent to which the Regulations might apply to charges, although assignments by way of charge appeared to be within scope, to the extent not covered by any exclusion.

2.2 CLLS Secured Transactions Law Reform/Code

It was noted that work on the proposed code was continuing.

2.3 European Commission ("EC"): Proposal for a Regulation on the law applicable to the effects of assignment of claims on third parties

The Committee was reminded that the EC was proposing to adopt a new rule that, subject to certain exceptions, the law of the country where the assignor (creditor of original debtor) has its habitual residence will govern the third party effects of the assignment of claims. The exceptions relate to cash held at a credit institution, claims arising from financial instruments and securitisations.

It was noted that numerous bodies, including the CLLS, the LMA and the Financial Markets Law Committee ("**FMLC**"), had responded to earlier consultations to explain why such a rule was unwelcome in, and could lead to major difficulties for, the syndicated loans market, following which the UK Government had (in July) exercised its option not to opt into the Regulation (should it later come into force).

It was also noted that, since the last meeting, the European Central Bank had submitted an opinion (dated 18 July 2018) which was highly critical of the proposal as regards credit claims and the FMLC had written a further letter (dated 30 July 2018) urging the EC not to adopt the proposal.

It was also noted that the EC further consultation on the proposal was due to end on 17 October 2018.

The Committee would keep watch for further developments.

3. LIBOR – POSSIBLE PLANNED END FOR END OF 2021

The Committee's working party chairman reported that the working party had recently met to discuss matters, in particular the issues for legacy contracts. However, until more progress had been made in the market, little progress could be made by the working group.

4. INTRAGROUP GUARANTEES, INTRAGROUP LOANS AND DISTRIBUTIONS

Nothing to report.

5. PRA CONSULTATION CP6/18: CREDIT RISK MITIGATION, INCLUDING LEGAL OPINIONS

Nothing to report.

6. ELECTRONIC SIGNATURES

The Chairman reported that some Committee members had recently met with the Law Commission to discuss electronic execution of documents and the Law Commission's Consultation Paper (21 August 2018 CP237).

The Committee had formed a joint working group with the CLLS Company Law Committee with a view to sending a joint response.

It was noted that responses to the Consultation were due by 23 November 2018.

After note: The joint working group submitted a response on 23 November 2018.

7. GOVERNMENT PROPOSALS FOR A NEW REGISTER OF BENEFICIAL OWNERS OF OVERSEAS COMPANIES WHICH OWN UK PROPERTY AND DRAFT BILL

The Committee was reminded that, on 23 July, the Government had published a draft Registration of Overseas Entities Bill which would provide for the introduction of a new register of beneficial owners of overseas companies which own property in the UK, and which was expected to be operational in 2021.

It was noted that the deadline for commenting on the draft Bill had already passed (on 17 September).

It was also noted that the LMA had responded to the draft Bill expressing its concerns from the perspective of a security agent or lender. These would apply equally to a security agent for a bond, securitisation or the holder of security in a structured finance.

The Committee was reminded that it had supported the LMA's response to the previous call for evidence and the Chairman suggested sending a letter of support in relation to the most recent LMA response.

8. COMPETITION: EUROPEAN COMMISSION MANAGEMENT PLAN 2017 – SYNDICATED LENDING

It was reported that the outcome of the EC study into syndicated lending was expected to be available around the end of 2018. The Committee would continue to watch for further developments.

9. FINANCIAL STABILITY: EU BANK RECOVERY AND RESOLUTION DIRECTIVE, ARTICLE 55 (CONTRACTUAL RECOGNITION OF BAIL-IN), PROPOSED MORATORIA AMENDMENTS

Nothing to report although it was noted that the latest European Parliament text of Article 55 (which, as previously noted, now includes some unpracticability language) may be adopted by the end of the year.

10. INSOLVENCY AND CORPORATE GOVERNANCE – GOVERNMENT RESPONSE TO CONSULTATION

It was noted that some radical changes in insolvency law were being proposed, although as yet these were high level proposals. The Committee would keep a watching brief on developments.

11. BREXIT

It was noted that Statutory Instruments on financial services and notices on preparations for a (so-called) hard Brexit had been published.

Also it was noted that the LMA had recently issued a supplement to its earlier Brexit paper (September 2016 and September 2018).

12. FINANCIAL STABILITY

Nothing to report.

13. ANY OTHER BUSINESS AND CLOSE

13.1 Sanctions – it was noted that the opposing treatment of Iran under the EU Blocking Regulation and under US sanctions laws had the potential to cause some difficulties in practice.

13.2 Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Fourth EU Anti-Money Laundering Directive (article 31) – LMA letter dated 28 September noted.

13.3 There being no further business the meeting closed.

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