

**CITY OF LONDON LAW SOCIETY
FINANCIAL LAW COMMITTEE**

**Minutes of a meeting held at the office of Sidley Austin, Woolgate Exchange, 25 Basinghall
Street, London EC2V 5HA
on 22 May 2013 at 1.00pm**

- Present: Dorothy Livingston (Herbert Smith Freehills – Chairman)
Nigel Ward (Ashurst)
John Naccarato (Cameron McKenna)
Charles Cochrane (Clifford Chance)
Nick Swiss (Eversheds)
Jonathan Shann (Freshfields – alternate for Alan Newton)
Jeremy Stokefield (Linklaters – alternate for David Ereira)
Richard Calnan (Norton Rose)
John Davies (Simmons & Simmons)
Matthew Dening (Sidley Austin)
David Bicknell (Slaughter & May - alternate for Sarah Paterson)
Presley Warner (Sullivan & Cromwell)
- Apologies: Simon Roberts (Allen & Overy)
Alan Newton (Freshfields)
David Ereira (Linklaters)
Mark Evans (Travers Smith)
Sarah Paterson (Slaughter & May)
Philip Wood (Allen & Overy)
- In attendance: Rachael MacKay (Herbert Smith Freehills – taking minutes)

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

- 1.1 The minutes of the last meeting which took place on 27 February 2013 had been circulated and were now approved.
- 1.2 Apologies for absence were received from Simon Roberts (Allen & Overy), Alan Newton (Freshfields), David Ereira (Linklaters), Mark Evans (Travers Smith), Sarah Paterson (Slaughter & May) and Philip Wood (Allen & Overy).
- 1.3 The Chairman reminded the Committee that following Geoffrey Yeowart's recent retirement, a deputy Chairman needed to be appointed and the future membership of the Committee needed to be considered. The Committee felt that further consideration should be given to these important matters before any decisions could be made.

2. CHARGES

2.1 Companies Act 2006 (Amendment of Part 25) Regulations 2013

The Committee note that the new regime for the registration of charges granted by UK companies had been in force since 6 April 2013. There had been some teething problems with Companies House in the immediate weeks following implementation but these issues

had been resolved. It was noted that there was some uptake of the new web filing system to register charges but some users considered that it required considerable process changes to utilise prudently, so that there was also considerable continuing use of the paper based system. The Committee will continue to keep an eye on this topic.

2.2 **Scottish Charges: implementation of the Bankruptcy and Diligence (Scotland) Act and charges over moveables**

In relation to implementation of floating charge aspects of the Bankruptcy and Diligence (Scotland) Act, there was nothing to report.

In relation to Scottish law charges over moveables, it was reported that the Scottish Law Commission are looking to update this archaic area of law.

2.3 **Financial Collateral exceptions – work with FMLC**

Nothing to report.

3. **SECURED TRANSACTION REFORM WORKING PARTY**

It was reported that the last working party meeting had taken place earlier in May which had identified two main issues requiring further consideration:

- the difficulties of characterising fixed and floating charges in view of case law both on the concept generally and in relation to the Financial Collateral Arrangements (No 2) Regulations and associated problems arising on insolvency;
- restrictions on assignments in contracts.

The next working party meeting would take place in June and would take forward the first of these issues.

4. **OPINION LETTERS WORKING PARTY**

The Committee was reminded that Geoffrey Yeowart was continuing to chair this working party for the time being and had been in discussion with the American Bar Association. Other than that, there was nothing to report.

5. **PROTOCOL FOR DISCHARGING COMMERCIAL MORTGAGES – UPDATE ON WORK BY CLLS PROPERTY LAW COMMITTEE**

The general view was that the draft protocol for discharging commercial mortgages which the CLLS Property Law Committee had decided to try and formulate appeared less suitable for multi-party and multi-jurisdiction deals, and that the draft was in any event undergoing further revision at present.

6. **FINANCIAL STABILITY**

6.1 **EU Recovery and Resolution Directive proposal**

The Law Society Multi-Disciplinary working group and the FMLC were both continuing to comment to the EU and UK authorities on this proposal and the Committee continued to keep a watching brief.

6.2 **Treasury/DBiS Banking Reform: Changes in Financial Services Act 2012, Financial Services (Banking Reform) Bill**

The Bill, which provides a "ring-fencing" mechanism for large retail banks, which is intended to insulate them and their customers from certain activities and make these banks easier to resolve, is in the nature of a framework. Statutory instruments will be key to understanding the impact of the measures and how they impinge on transactional work. Most issues are prudential or regulatory, but some important issues relate to practicality and the ability of ring-fenced banks to meet client needs in international financial transactions. The FMLC and the Law Society Committee are both active. There will be a

consultation and draft subsidiary legislation over the summer and the Committees will consider whether to respond.

Afternote: There is a consultation on four draft SIs which will close on October 9th.

7. **INSOLVENCY**

7.1 **European Commission proposals to amend the EU Insolvency Regulation**

It was noted that the UK has opted into negotiations on the proposals to amend the EU Insolvency Regulation and that the Committee had responded positively to the UK's consultation on the proposed reforms and whether the UK should opt in (See CLLS website).

7.2 **Special Administration Regime for investment firms**

The Committee was reminded that Peter Bloxham's report reviewing the investment bank special administration regime had been published on 23 April. A number of Committee representatives were due to meet with Mr Bloxham in June to provide comments and discuss the way forward.

7.3 **Special Administration Regime proposals for payment and settlement systems**

The Committee was reminded that the Treasury had issued a consultation paper on 25 April 2013 which proposed extending the special administration regime to payment and settlement systems. The Committee felt that there was no pressing need to comment on these proposals as they did not at their present stage of development impact transactional work. However the Committee would keep a watching brief on developments and review draft SIs on this and other exclusions on the special administration regime as they emerged.

8. **EUROPEAN ACCOUNT PRESERVATION ORDER PROPOSAL**

It was reported that according to the European Parliament forecast, an EP Committee vote at first reading was scheduled for 30 May and a first or single reading plenary session was scheduled for 9 September 2013. The UK was currently opted out, but participating in discussions. Other than that, there was nothing to report.

9. **UK REVIEW OF EU COMPETENCIES**

The Committee was informed that the UK Government had announced a review of the balance of competences between the UK and the EU in July 2012. The review is an audit of what the EU does and how it affects government and the UK public.

It was noted that the civil justice competency was currently under review which was not of interest to the Committee, but that the Committee should keep a watching brief as future phases were likely to be relevant to banking.

10. **ANY OTHER BUSINESS AND CLOSE**

10.1 **Scottish bonds**

It was noted that this proposal had been put into abeyance until after the Scottish vote on independence scheduled to take place in September 2014.

Afternote: Responses to consultation, including that of the Committee, have been published by HM Treasury. The Committee's response is also on the CLLS website.

10.2 **Scottish independence vote**

The Committee was reminded that the vote on Scottish independence was scheduled to take place in September 2014. It was noted that most questions currently being considered on the legal effect of Scottish independence, should it happen, were currently political, economic or EU related.

10.3 **Cases**

The following recent cases were noted as being of interest:

- Grupo Hotelero Urvasco S.A. v Carey Value Added SL [2013] EWHC 1039 Comm
- BNY Corporate Trustee Services Limited v Eurosail-UK 2007-3BL Plc, BNY Corporate Trustee Services Limited v Neuberger Berman Europe Ltd [2013] UKSC 28
- TAEL One Partners Ltd v Morgan Stanley & Co International Plc [2013] EWCA Civ 473

10.4 There being no further business the meeting was closed.

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