

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

**Minutes of a meeting held at the office of Norton Rose Fulbright, 3 More London, Riverside,  
London SE1 2AQ**

**on 4 December 2013 at 1.00pm**

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

1. **APOLOGIES FOR ABSENCE, MATTERS ARISING, MINUTES OF LAST MEETING, MEMBERSHIP**
  - 1.1. The meeting opened with the Committee offering its congratulations to the chairman, Dorothy Livingston, on receiving one of the UK's most prestigious awards for individual lawyers: the CLLS Lifetime Achievement Award. In reply, the chairman thanked the other Committee members for their work as part of the Committee which she felt had contributed to the award.
  - 1.2. The chairman welcomed its two newest members: Penny Angell of Hogan Lovells and Andrew McClean of Slaughter and May.
  - 1.3. The minutes of the last meeting, which had taken place on 11 September 2013, had been circulated and were approved.
2. **CHARGE REGISTRATION WORKING PARTY AND SECURED TRANSACTION REFORM**
  - 2.1 It was reported that the long standing working party on registration of charges had been dissolved as its work had come to an end with the coming into force of the Companies Act 2006 (Amendment of Part 25) Regulations 2013. The chairman of the working party, Richard Calnan, thanked those Committee members who had played an active role on the working party for their contributions over many years.
  - 2.2 It was reported that the working party on secured transaction reform was continuing and that a further draft of the discussion paper would shortly be circulated to the working party and then the Committee.

3. **COMPETITION COMMISSION FINAL REPORT ON REMEDIES IN STATUTORY AUDIT SERVICES MARKET INVESTIGATION**

It was reported that the Competition Commission had published its final report on 15 October 2013 and that the proposed blanket ban on loan agreements restricting choice of auditor to lists or categories (ban on "big four" auditor clauses) had been watered down – it will be possible to specify in loan agreements that an auditor should satisfy objectively justified criteria. The next step is for the Competition Commission to incorporate the prohibition into an Order under the Enterprise Act 2002 which will have binding legal effect. Thereafter the Order is expected to be in force in October 2014

It was agreed that the Committee would keep a watching brief on developments, in particular to consider commenting on the draft Order when it becomes available.

*Afternote: The timetable has slipped as a result of progress with EU legislation to a similar effect.*

4. **COMPETITION: UK CRIMINAL CARTEL OFFENCE – DRAFT PROSECUTION GUIDANCE CONSULTATION**

It was reported that the Enterprise and Regulatory Reform Act 2013 introduces changes to the criminal cartel offence, including the removal of the dishonesty requirement, which results in a definition of the offence that could catch certain agreements because of their form, rather than their substance, even though they do not have anti-competitive effects: for example, syndicated loan agreements, even though the borrower wishes to raise money from several banks on common terms. Issues could also arise whenever there is a change to the parties or where there is a change in financial terms. The criminal offence would be committed by individuals involved in the transaction, not the companies involved, but it is unclear whether this would affect the legality of the agreement. It is also unclear how the exclusions and defences provided for would affect this issue, but employees would need the consent of their employers to take the steps required to take advantage of most exclusions and defences.

It was further reported that the Competition and Markets Authority (CMA) had issued and consulted on draft prosecution guidance relating to the offence, and that the CLLS Competition Law Committee had commented.

It was agreed that the Committee should support the submissions made by the Competition Law Committee on this matter.

*Afternote: The Chairman was able to express the Committee's support at a meeting of the Competition Law Committee with DBis and the CMA on 5<sup>th</sup> December 2013. The Competition Law Committee's submissions are on the CLLS website.*

5. **BIS TRANSPARENCY AND TRUST DISCUSSION PAPER**

The Committee was reminded about the discussion paper on Transparency and Trust issued by BIS in July 2013, which set out proposals to require UK companies to obtain information on their "beneficial owners" (to be defined) which would be recorded on a new central registry of company beneficial ownership held at Companies House and which would be publicly accessible. In October, the Government had announced its plan to proceed with its proposals. Whilst further details were still awaited (expected in early 2014), it was thought that the proposals could impact on share security.

It was noted that, to date, no CLLS body appeared to have commented on the paper.

It was therefore agreed that the Committee would write to BIS to express the view that the proposal to create such a central registry should not impact on those who take security over shares.

*Afternote: For further discussion as the proposed disclosure obligation would seem only to apply to individuals.*

## 6. FINANCIAL STABILITY

### 6.1 EU Recovery and Resolution Directive proposal

It was reported that the Law Society Multi-Disciplinary working group and the FMLC continued to comment to the EU and UK authorities on the proposal and the Committee continued to keep a watching brief. Uncertainties on bail-in remain.

*Afternote: It is expected the proposal will become law in April and take effect in 2015-2016. The exact text remains uncertain, but a working draft dated 18<sup>th</sup> December 2013 is available.*

### 6.2 Financial Sector Resolution

It was noted that Government proposals for various new resolution regimes applicable to investment firms, banking group companies and clearing houses were progressing, with a distinction being made in the case of failure of systemically important "non-banks" eg a central counterparty.

*Afternote: The Financial Services (Banking Reform) Act 2013 and amendments to the Banking Act 2009 provide a framework for these changes.*

## 7. CLLS LAND LAW COMMITTEE PROTOCOL FOR DISCHARGING COMMERCIAL MORTGAGES

It was noted that the Protocol for Discharging Commercial Mortgages prepared by the CLLS Land Law Committee was now in final form and, following a request from that Committee, it was agreed that this Committee would be willing to endorse the Protocol.

*Afternote: Now on the CLLS website.*

## 8. EUROPEAN ACCOUNT PRESERVATION ORDER ("EAPO") PROPOSAL

It was noted that JURI had approved the European Parliament's EAPO proposal (a proposal for a new self-standing European procedure enabling a creditor to freeze a debtor's bank accounts across the EU pre- and/or post-judgment) on 30 May 2013 and that its' first reading/plenary vote was expected to take place on 3 February 2014.

The Committee was reminded that the UK had opted out of the EAPO proposal, but the Committee would keep a watching brief on developments.

## 9. CASE: ARM ASSET BACKED SECURITIES SA [2013] EWHC 3351 (CH)

The recent case of *In the matter of ARM Asset Backed Securities SA*, concerning an urgent *ex parte* application by a Luxembourg company to be wound up and for provisional liquidators to be appointed and involving jurisdictional issues, was noted.

*Afternote: The CLLS Insolvency Law Committee had also recently considered this case.*

## 10. SCOTTISH GOVERNMENT'S WHITE PAPER ON INDEPENDENCE

It was noted that the Scottish Government had recently issued a White Paper on independence which proposes a formal currency union with the UK. The Committee would continue to keep a watching brief on developments.

## 11. ANY OTHER BUSINESS AND CLOSE

There being no further business, the meeting closed.

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